Sisäasiainministeriö E-KIRJELMÄ SM2006-00347

KVTR Kekomäki Kalle 17.07.2006
Asiakirjaan lisätty 1 liite (SM2006-00348).

Suuri valiokunta
EDUSKUNTA

Viite
E72/2004vp
Asia
EU/OSA/Komission tiedonannot Haagin ohjelman arvioinnista

U/E-tunnus: **EUTORI-numero:**

Ohessa lähetetään perustuslain 97§:n mukaisesti komission 28.6.2006 hyväksymät tiedonannot koskien Haagin ohjelman arviointia, sekä tiedonannoista laadittu perusmuistio SM2006-00348.

Ylijohtaja Antti Pelttari

LIITTEET SM2006-00348, COM(2006) 333 final, SEC(2006) 813, SEC(2006) 814, COM(2006) 331 final, COM(2006) 332 final, SEC(2006) 815,
COM(2006) 346 final

Asiasanat	oikeus- ja sisäasiat, poliisiyhteistyö, oikeudellinen yhteistyö rikosasioissa, siviilioikeus, konsulipalvelut, maahanmuutto, maahantulo
Hoitaa	**OM, SM, TM, UM**
Tiedoksi	EUE, OPM, STM, TH, TPK, VM, VNEUS

Sisäasiainministeriö EU-OHJE SM2006-00348

KVTR Kekomäki Kalle 17.07.2006

Asia
EU/OSA/Haagin ohjelman arviointi

Kokous

Liitteet Viite

EUTORI/Eurodoc nro:

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U-tunnus / E-tunnus:

Haagin ohjelmasta on aiemmin eduskunnalle annettu E72/2004vp

Käsittelyn tarkoitus ja käsittelyvaihe:

Komissio esittelee 24.7.2006 pidettävässä OSA-neuvostossa Haagin ohjelman arviointiin liittyvät tiedonannot. Asiasisältöä koskevat keskustelut on tarkoitus aloittaa Tampereella 21.–22.9.2006 järjestettävässä epävirallisessa OSA-ministerikokouksessa. Käsittelyä on tarkoitus jatkaa 5.–6.10.2006 ja 4.–5.12.2006 pidettävissä OSA-neuvostoissa. Tavoitteena on saada keskeisistä asioista kirjaukset 14.-15.12.2006 pidettävän Eurooppa-neuvoston päätelmiin.

Komission EY-tuomioistuinta koskevaan tiedonantoon sisältyy ehdotus neuvoston päätökseksi. Komissiolla ei ole asiassa varsinaista aloitevaltaa. Komissio kuitenkin katsoo, että Amsterdamin sopimuksen voimaantulon jälkeisen siirtymäkauden päätyttyä on tärkeää, että neuvosto täyttää EY 67 artiklan mukaiset velvollisuutensa ja palauttaa yhteisöjen tuomioistuimelle täyden toimivallan antaa ennakkoratkaisuja yhteisön lainsäädännöstä. Tämä on välttämätöntä tehokasta oikeussuojaa koskevan perusoikeuden ja yhteisön oikeuden yhdenmukaisuuden takaamiseksi sekä puutteellisen oikeussuojan korjaamiseksi. Syyskuun epävirallisen OSA-neuvoston jälkeen ehdotus voidaan lokakuussa ottaa työryhmätyöskentelyn pohjaksi. Asia tuodaan eduskunnalle perustuslain 96 §:n mukaisesti Suomen kannan täsmennyttyä.

Asiakirjat:

1) COM(2006) 333 final, 28.6.2006 + taulukkoliitteet SEC(2006) 813 ja 814
2) COM(2006) 331 final, 28.6.2006
3) COM(2006) 332 final, 28.6.2006 + tekninen liite SEC(2006) 815
4) COM(2006) 346 final, 28.6.2006

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

1)-3) Komission tiedonantoja, joihin ei sisälly konkreettisia päätösaloitteita

4) EY 67 artiklan 2 kohdan toisen luetelmakohdan mukaan neuvosto tekee Euroopan parlamenttia kuultuaan yksimielisesti päätöksen yhteisöjen tuomioistuimen toimivaltaa koskevien määräysten mukauttamisesta.

Käsittelijä(t):

SM/Antti Pelttari, puh. 160 42290
SM/Tuomas Koljonen, puh. 160 42720
SM/Jouko Huhtamäki, puh. 160 42231
SM/Maarit Nikander, puh. 160 44646
RVLE/Jukka Savolainen, puh. 020 410 6654
OM/Matti Joutsen, puh. 160 67778
OM/Elina Isoksela, puh. 160 67566
UM/Elisabeth Bygglin, puh. 160 55709
UM/Johanna Himmanen, puh. 160 55716
UM/Kirsi Puronpää, puh. 160 55175
UM/Markku Keinänen, puh. 160 56546
UM/Ilkka Rentola, puh. 160 55641
UM/Hilkka Nenonen, puh. 160 55211
UM/Ann-Christine Krank, puh. 160 55219
VNEUS/Minna Hulkkonen, puh. 160 22187
SM/Kalle Kekomäki, puh. 160 42777

Suomen kanta/ohje:

Suomi pitää hyvänä komission tiedonannoissa selkeästi näkyvää Haagin ohjelman arvioinnin tavoitetta antaa poliittinen sysäys vapauden, turvallisuuden ja oikeuden alueen edistämiselle ja varmistaa tuloksellinen eteneminen nykysopimusten pohjalta. Suomi ei tavoittele koko Haagin ohjelman avaamista.

Komission tiedonannot muodostavat hyvän pohjan Haagin arvioinnin toteuttamiselle. Suomi valmistelee puheenjohtajana Tampereen kokouksen taustamuistioita, joiden on tarkoitus valmistua elo – syyskuun vaihteeseen mennessä. Taustamuistiot tullaan toimittamaan eduskunnalle tuolloin osana Tampereen kokouksen valmistelua.

1. Komission tiedonanto Haagin ohjelman täytäntöönpanosta vuonna 2005

Komission raportti siitä, miten Haagin ohjelmaa on vuoden 2005 aikana pantu täytäntöön, on kattavuudeltaan ja rakenteeltaan erittäin hyödyllinen jatkotyöskentelyn suunnittelemiseksi.

Suomi yhtyy komission huoleen siitä, että joillakin sektoreilla päätöksentekorakenteet ovat Haagin ohjelman tehokkaan täytäntöönpanon esteenä. Yksimielinen päätöksenteko on joissakin yksittäisissä asioissa hidastanut tai estänyt Haagin ohjelman aikataulussa pysymistä.

Suomi tukee täysin komission tapaa katsoa, miten Haagin ohjelman täytäntöönpanossa on edistytty. Neuvoston päätöksen lisäksi on välttämätöntä seurata nykyistä tarkemmin, miten neuvostossa sovitut asiat on pantu kansallisesti täytäntöön. Näin ollen, Suomi pitää erittäin arvokkaana raportin liitteenä olevaa kansallista täytäntöönpanotaulukkoa. Kansallista täytäntöönpanoa tulee seurata vähintään yhtä tarkasti kuin edistymistä neuvoston rakenteiden puitteissa.

2. Komission tiedonanto EU:n vapauden, turvallisuuden ja oikeuden alueeseen liittyvien politiikkojen arvioinnista

Suomi katsoo, että luonnoksen mukainen kokonaisvaltainen arviointijärjestelmä parantaisi selkeästi EU:n oikeus- ja sisäasioiden arviointia ja seurantaa politiikkatasolla. Arviointijärjestelmä systematisoisi eri lainsäädäntöinstrumenttien, poliittisten aloitteiden ja projektien seurantaa. Neuvoston, komission ja Euroopan parlamentin yhteistyön tiivistäminen arviointityössä tuo Suomen näkemyksen mukaan oikeanlaista lisäarvoa - lisää unionin instituutioiden sitoutumista, sekä edistää yhdessä luotuja tavoitteita.

Aloitteesta puuttuu kuitenkin turvallisuusasioihin keskittyvä operatiivinen ja strateginen näkökulma. Schengen-asioihin liittyy vielä erittäin suurimerkityksisiä ongelmia, joita EU-lainsäädäntö ja onnistunut kansallisen lainsäädännön harmonisointi ei ole poistanut.

Vaikka Schengen-arviointijärjestelmän uudistamisesta annetaan aikanaan (Haagin toimintaohjelman mukaan vuonna 2007 - 2008) erillinen esitys, on syytä jo tässä vaiheessa korostaa Schengenin arviointijärjestelmän tärkeyttä. Se mahdollistaa jäsenvaltioiden asiantuntijoiden käynnit säännöstöä soveltavissa ja soveltamista valmistelevissa maissa ja tulosten esittämisen sellaisenaan jäsenvaltioille. Komission tiedonannossa ei käsitellä Schengenin arviointijärjestelmää, vaan viitataan vain erilliseen ehdotukseen. Suomen mielestä tällainen arviointijärjestelmä on edelleen tarpeen, jotta arviointiin sisältyy riittävä operatiivinen näkökulma, jäsenvaltioiden asiantuntemuksen laaja-alaisuus ja tulosten käytettävyys jäsenvaltioiden tasolla.

Kuten on todettu Haagin toimintaohjelmassa, myös yllätystarkastukset tulee ottaa käyttöön. Yllätystarkastuksia suorittava asiantuntijatiimi voisi toimia joko komission tai neuvoston puitteissa. Yhteisen luottamuksen nimissä neuvoston tulisi kuitenkin saada tällaistenkin tarkastusten tulokset käyttöönsä sellaisinaan.

3. Komission tiedonanto: ”Haagin ohjelman täytäntöönpano; seuraavat askeleet”

Suomi pitää tärkeänä, että kun käydään keskusteluja tässä komission tiedonannossa esille tuoduista aihealueista, joissa unionin toivotaan erityisesti edistyvän, huomioitaisiin seuraavat alustavat näkemykset, joita voidaan myöhemmin tarkentaa:

1. Perusoikeudet ja kansalaisuus

Unionin kansalaisuus ja siihen liittyvät kysymykset

EU-kansalaisten vapaa liikkuvuus unionissa on yksi EU:n perusperiaatteita, joten siihen liittyvän lainsäädännön täytäntöönpanon varmistaminen on perustellusti tärkeä prioriteetti myös jatkossa. Direktiivin 2004/38/EY täytäntöönpano jäsenmaissa on käynnissä. Direktiivi olisi tullut saattaa voimaan 30.4.2006, mutta toistaiseksi vain 11 jäsenmaata on pannut direktiivin täytäntöön määräajassa. Myös Suomessa direktiivin saattaminen osaksi kansallista lainsäädäntöä on parhaillaan valmisteilla.

Konsuliasiat

Konsuliasioiden osalta komission esittelemät tavoitteet ovat Suomen pyrkimysten mukaisia. Konsuliasioissa jäsenmaiden virkamiehille annettavan koulutustoiminnot ja ”Euro-konsulaattien” perustamistavoitteet ovat toteutettavissa vasta pitkällä tähtäimellä.

2. Turvapaikkapolitiikan toisen vaiheen kehittäminen

Komission kertomus vastuunmäärittämisasetuksen soveltamisesta

Komissio on arvioinut antavansa Euroopan parlamentille ja neuvostolle kertomuksen vastuunmäärittämisasetuksen soveltamisesta loppuvuodesta 2006. Kyseisen kertomuksen pohjalta on mahdollista aloittaa Suomen puheenjohtajakaudella keskustelu siitä, mihin suuntaan ns. Dublin-järjestelmää tulisi kehittää.

Suomi kannattaa vastuunmäärittämisasetuksella perustetun järjestelmän (ml. Eurodac-sormenjälkijärjestelmä ja DubliNet-järjestelmä) kehittämistarpeiden kattavaa selvittämistä. Samalla kun tutkimme kehitystarpeita, on asetuksen tehokkaan ja oikeudenmukaisen soveltamisen kannalta tärkeää varmistaa, että jäsenvaltioilla on yhdenmukainen käsitys jo olemassa olevien vastuun määräytymistä koskevien artiklojen soveltamisesta.

Yhteinen eurooppalainen turvapaikkajärjestelmä

Ensimmäisen vaiheen vähimmäissäädösten tultua hyväksytyksi ja komission valmistautuessa antamaan vihreä kirja turvapaikkapolitiikasta sekä sitä koskeva politiikkasuunnitelma, Suomi pitää aiheellisena pohtia, miten yhteistä eurooppalaista turvapaikkajärjestelmää voitaisiin tästä eteenpäin parhaiten edistää ja millaisia toisen vaiheen säädöksiä tarvitaan.

Suomi pitää tärkeänä olemassa olevan turvapaikkajärjestelmän toimivuuden ja kattavuuden edistämistä.

- Toimivuuden kannalta on tärkeää, että kaikki jäsenvaltiot sitoutuvat noudattamaan EU-tasolla jo hyväksyttyjä säädöksiä. Turvapaikkaviranomaisten välistä yhteistyötä vahvistamalla voidaan parantaa turvapaikkapäätöksenteon laatua ja tehokkuutta. Yhteisellä ja tehokkaalla turvapaikkamenettelyllä voidaan parhaiten puuttua myös turvapaikkajärjestelmän väärinkäyttöön ja näin taata jatkossakin kaikille kansainvälistä suojelua hakeville pääsy turvapaikkamenettelyyn, menettelyn oikeudenmukaisuus ja korkeatasoinen oikeusturva.

- Yhteisen eurooppalaisen turvapaikkajärjestelmän kattavuutta on laajennettava hyväksyttyjä vähimmäissäädöksiä pidemmälle. On tarkasteltava uudelleen niitä ensimmäisen vaiheen säädöksiä, joiden ulkopuolelle määritelmädirektiivin mukaista toissijaista suojelua saavien asema sekä edut ja oikeudet on joko kokonaan tai osittain rajattu. Suomen puheenjohtajakaudella on ajankohtainen pitkään oleskelleiden kolmansien maiden kansalaisten asemasta annetun direktiivin laajentaminen koskemaan kansainvälistä suojelua saavia. Lisäksi turvapaikkajärjestelmien yhdenmukaistamista on jatkettava edelleen, niin että tarvetta siirtyä jäsenvaltiosta toiseen ei olisi.

Käytännön yhteistyö

Käytännön yhteistyön kehittäminen turvapaikkaviranomaisten välillä on tärkeää päätöksenteon harmonisoinnin edistämiseksi. Käytännön yhteistyön kautta on mahdollista vaikuttaa myös päätöksenteon laadun kehittymiseen. Suomen

puheenjohtajakaudella jatketaan Itävallan kaudella alkanutta työtä käytännön yhteistyön vahvistamiseksi.

Käytännön yhteistyötä tultaneen jatkossa edelleen kehittämään mm. seuraavilla osa-alueilla: lähtömaatiedon vaihto, vertailevan tiedon kokoaminen jäsenvaltioiden eri maita koskevista päätöksentekolinjauksista entistä säännöllisemmällä ja analyyttisemmällä tavalla, koulutusyhteistyö sekä turvapaikka-asioiden yleisiä asiakokonaisuuksia koskeva tiedonvaihto jäsenvaltioiden kesken.

Komissio esittänee Suomen kaudella ehdotuksen turvapaikkaviranomaisten yhteistyöverkoston perustamisesta. Ehdotus saataneen aikaisintaan lokakuussa 2006.

Suomi pitää tärkeänä, että käytännön yhteistyötä kehitettäessä selvitetään mahdollinen tarve neuvoston roolille toiminnan poliittisessa ohjauksessa. Suomi katsoo, että uusia yhteistyömuotoja perustettaessa ei pidä luoda tarpeettomasti päällekkäisiä rakenteita.

3. Maahanmuuton hallinta

Maahanmuuttoa koskeva kokonaisvaltainen lähestymistapa

Suomi tulee edistämään puheenjohtajakaudellaan mm. maahanmuuttoa koskevan kokonaisvaltaisen lähestymistavan (Global Approach to Migration) mukaisia Afrikkaa ja Välimeren aluetta koskevia ensisijaisia toimia, joista Eurooppa-neuvosto päätti joulukuussa 2005. Komissio raportoi ensisijaisten toimien täytäntöönpanosta Suomen kauden lopussa.

Suomi osallistuu aktiivisesti pj. kaudellaan muuttoliikedialogin vahvistamiseen kolmansien maiden kanssa. Tässä pyritään koherenssiin muun ulkosuhdetoiminnan kanssa. Vaikka toimenpiteet ovat viime aikoina painottuneet Välimerelle ja Afrikkaan, pyrimme myös siihen, että maantieteellinen tasapaino otetaan huomioon nykyistä paremmin jatkossa, jotta EU:n lähestymistapa olisi aidosti kokonaisvaltainen. Samalla tulee pyrkiä vaikuttamaan muuttoliikkeen perussyihin, jotka liittyvät mm. köyhyyteen, konflikteihin tai ihmisoikeusloukkauksiin lähtöalueilla.

Laillinen maahanmuutto

Liittyen laillista maahanmuuttoa koskevaan toimintasuunnitelmaan ja sektoridirektiiveihin: Suomi katsoo, että EU-tason yleiset puitteet työperusteiselle maahanmuutolle voivat olla hyödyllisiä edellyttäen, että puitteet mahdollistavat riittävän jouston ja sallivat päätöksenteon kansallisella tasolla. Kolmansista maista tulevaa työvoimaa koskeva työvoimapoliittinen päätöksenteko on säilytettävä sekä mittasuhteiden että rakenteen osalta kansallisella tasolla. Suunnitelmaan sisältyvien tulevien direktiiviehdotusten perusteellinen arviointi ei ole tässä vaiheessa mahdollista. Näyttäisi kuitenkin siltä, että kaavailut merkitsisivät ainakin joiltain osin tiukennuksia Suomessa voimassa olevaan työvoiman maahanmuuttoa koskevaan sääntelyyn. Esimerkiksi sektorikohtaisissa direktiiveissä on suunniteltu edellytettävän taloudellista tarveharkintaa, jollaista Suomen ulkomaalaislain mukaan pääsääntöisesti ei edellytetä sektoridirektiivien alueella.

Direktiiviehdotukset on tarkoitus antaa vuodesta 2007 eteenpäin. Myös muut toimintasuunnitelmassa esitetyt toimet painottuvat Suomen puheenjohtajuuskauden jälkeiseen aikaan. On kuitenkin todennäköistä, että Suomen kaudella käydään keskustelua laillisen ja laittoman maahanmuuton suhteesta. Laillinen maahanmuutto saattaa nousta esille myös päätöksenteon kehittämiseen liittyen (yhteispäätösmenettelyn soveltaminen, johon viitataan myös komission tiedonannossa s. 14).

Laiton maahanmuutto

Suomen puheenjohtajuuskaudella tavoitteena on laitonta maahanmuuttoa käsittelevän tiedonannon perusteella käydä neuvostossa keskusteluja, jotka johtavat oikeus- ja sisäasiainneuvostossa selkeisiin ja ajallisesti Suomen puheenjohtajuuskauden ylittäviin johtopäätöksiin/päätelmiin.

Komission alustavan arvion mukaan tiedonannossa tulevista tavoitteista nostetaan esille ainakin a) rajat, b) asiakirjaturvallisuus ja c) IT-järjestelmien hyödyntäminen. Viimeksi mainittu voisi käsittää menettelyt, joilla voitaisiin nykyistä paremmin todentaa EU-alueelle tulo ja alueelta poistuminen.

Kansainvälinen suojelu

Valtioiden panostaessa laittoman maahanmuuton torjuntaan on tärkeätä taata kansainvälisen suojelun tarpeessa oleville mahdollisuus hakea turvapaikkaa. Kansainvälistä suojelua tarvitsevien tunnistaminen muuttovirroista on haastavaa ja vaatii viranomaisilta erityistä herkkyyttä. Tässä onnistuminen on kuitenkin turvapaikkajärjestelmän uskottavuuden kannalta välttämätöntä. Euroopassa on viime aikoina virinnyt keskustelua erityisesti siitä, miten meritse EU:n alueelle saapuvien joukosta tunnistetaan kansainvälisen suojelun tarpeessa olevat ja löydetään vastuuvaltio heidän asiansa käsittelemiseksi. Laittoman maahanmuuton torjunnan kohdalla Suomi on painottanut, että laajemmista maahanmuuttovirroista tulee tunnistaa kansainvälisen suojelun tarpeessa olevat ja heille tulee tarjota suojelua Geneven vuoden 1951 pakolaisyleissopimuksen velvoitteiden mukaisesti.

Yhteisen eurooppalaisen turvapaikkajärjestelmän keskeisenä tavoitteena on löytää kestäviä ratkaisuja kansainvälistä suojelua Euroopan unionin alueelta hakeville ihmisille. Suomi pitää tärkeänä yhä vahvistaa, että Geneven pakolaisyleissopimusta sovelletaan täysimääräisesti ja että oikeutta hakea turvapaikkaa kunnioitetaan koko Euroopan unionin alueella.

Paluu- ja palautuskysymykset

Keskusteltaessa kokonaisvaltaisesta lähestymistavasta maahanmuuttokysymyksiin ei tule unohtaa linkkiä paluu- ja palautuskysymyksiin Vaikka Haag-tiedonannossa ei paluukysymyksiä käsitellä itsenäisenä kokonaisuutena, tultaneen niitä käsittelemään laitonta maahanmuuttoa koskevassa tiedonannossa. Komissio on myös antanut syyskuussa 2005 ehdotuksen paluudirektiiviksi (KOM(2005) 391 lopullinen, U41/2005), jota käsitellään tällä hetkellä neuvoston työryhmässä. Suomen näkemyksen mukaan yhteiset paluuta ja palauttamista koskevat normit, joiden mukaisesti henkilöt palautetaan humaanilla tavalla ja heidän ihmisoikeuksiaan ja ihmisarvoaan täysin kunnioittaen, ovat tärkeä osa yhteisön maahanmuutto- ja turvapaikkapolitiikkaa. Paluu- ja palautuskysymyksiä koskeva

yhteistyö tulee nähdä keskeisenä elementtinä kolmansien maiden kanssa tehtävässä yhteistyössä.

4. Ulkorajojen yhdennetty hallinnointi ja tietojärjestelmien yhteentoimivuus

EU:n rajaturvallisuusstrategia eli EU:n ulkorajojen yhdennetyn rajaturvallisuusjärjestelmän strateginen tarkastelu

Suomi pitää tärkeänä sitä, että EU:lle saataisiin kattava strategia EU:n ulkorajojen valvonnan kehittämiseen. Tällöin unionilla olisi poliittisen tason kokonaisnäkemys EU:n ulkorajavalvonnan kehittämisestä ja voitaisiin antaa poliittista ohjausta rajaturvallisuusvirastolle. Haagin ohjelmassa yhdennettyyn ulkorajojen valvontamalliin otetaan hyvin tekninen näkökulma eikä se juuri lisää strategiatason elementtejä vuonna 2002 hyväksyttyyn ulkorajojen valvontasuunnitelmaan. Ulkorajojen valvonnan merkitys korostuu Schengen-alueen laajentumisen myötä.

Komission toteamat rajaturvallisuusaloitteet ovat sinänsä tarpeellisia ja kannatettavia. Yhteysupseerien yhteiskäyttöä käsiteltäessä on kuitenkin syytä ajoissa ratkaista asiaan liittyvät käytännön ongelmat.

Tämä muutamasta yksittäisestä aloitteesta koostuva luettelo osoittaa kokonaisvaltaisen tarkastelun tarpeen. Suomi viekin puheenjohtajuuskaudellaan läpi rajaturvallisuusstrategian tarkastelun. Asiaa on jo kerran alustavasti käsitelty neuvoston alaisessa komiteassa (SCIFA), jossa vastaanotto oli myönteinen.

Jäsenvaltioiden lainvalvontaviranomaisten välinen tietojen vaihto – EU:n tietojärjestelmäarkkitehtuurin kehittäminen

Tietojen vaihdon osalta Suomi haluaa edistää joustavaa oikeusvaltioperiaatteet täyttävää tietojenvaihtoa kansainvälisen rikollisuuden torjumiseksi jäsenvaltioiden viranomaisten sekä EU:n virastojen kesken. On tärkeää saada poliittista ohjausta ja selkeyttää tietojen saatavuusperiaatteen määrittelyä jäsenvaltioiden välisessä tietojenvaihdossa, jotta Haagin ohjelmassa määritellyssä tavoitteessa toteuttaa periaate vuoden 2008 alkuun mennessä pysytään. Suomi pitää tärkeänä komission marraskuussa 2005 antamaa Haagin ohjelmassa edellytettyä tiedonantoa tietojärjestelmien (SIS II, VIS ja Eurodac) yhteiskäytön parantamisesta. Myös muiden virastojen (esim. Europol, Eurojust) kanssa käydyissä keskusteluissa on ilmennyt tarvetta käydä laajempaa keskustelua EU:n tietojärjestelmäarkkitehtuurista.

5. Tuomioiden vastavuoroinen tunnustaminen (siviili- ja rikosoikeudellisissa asioissa)

Rikosoikeudellinen yhteistyö: vastavuoroisen tunnustamisen periaatteen edistäminen

Jo Tampereen Eurooppa-neuvoston päätelmissä hyväksyttiin tuomioiden ja oikeusviranomaisten päätösten vastavuoroinen tunnustaminen rikos- ja siviilioikeudellisen yhteistyön kulmakiveksi. Rikosoikeudellisen yhteistyön puolella on toistaiseksi hyväksytty neljä instrumenttia. Parhaillaan on työn alla instrumentteja, jotka koskevat tuomittujen siirtoa, todisteiden luovuttamista, rikosrekisteritietojen vaihtamista sekä ns. ammattikieltojen tunnustamista. Neuvoteltaessa näistä uusista instrumenteista vastavuoroisen tunnustamisen periaatteen toteuttaminen on tuottanut suuria vaikeuksia. Näyttää siltä, että

jäsenvaltioiden keskinäistä luottamusta ei tällä hetkellä ole riittävästi. Yksimielisyysvaatimus vaikeuttaa päätöksentekoa. Neuvotteluihin on myös vaikuttanut kokemukset jo hyväksyttyjen instrumenttien transponoinnista ja soveltamisesta.

Tulevan rikosoikeudellisen yhteistyön syventämiseksi tulisi Eurooppa-neuvoston tehdä päätelmät, joissa kehotettaisiin komissiota laatimaan tulevien instrumenttien neuvottelujen helpottamiseksi selvitys, jossa tarkasteltaisiin horisontaalisia ongelmia, jotka vaikeuttavat vastavuoroisen tunnustamisen instrumenttien hyväksymistä. Selvityksen tulee kattaa sekä ne periaatteelliset kysymykset, joita vastavuoroiseen tunnustamiseen liittyy, että ne käytännön ongelmat ja mahdolliset puutteet nykyjärjestelmässä, jonka vuoksi uusia instrumentteja tarvitaan. Jotta yhteistä tahtoa vastavuoroisen tunnustamisen eteenpäin viemiseksi ylipäätään voi löytyä, uusien instrumenttien pitää tuoda konkreettista lisäarvoa jäsenvaltioiden viranomaisten väliseen yhteistyöhön. Tällainen selvitys olisi tehtävä vuoden 2007 loppuun mennessä.

Siviilioikeudellinen yhteistyö: Vastavuoroinen tunnustaminen ja oikeuden saatavuus

Suomi haluaa parantaa oikeuden saatavuutta. Siviiliprosessioikeuden alalla saatava aikaan konsolidoitu vähimmäisvaatimuksiin perustuva eurooppalainen menettelysäännöstö rajat ylittäviä oikeudenkäyntejä varten. Lainvalintasääntelyn puolella Eurooppa-neuvoston vahvistettava pyrkimys säilyttää lainvalintasääntelyn yhtenäisyys ja johdonmukaisuus velvoiteoikeuden alalla.

Vastavuoroisen tunnustamisen toteuttamiseksi yhteisölainsäädäntöä on Amsterdamin sopimuksen jälkeen säädetty kiihtyvällä tahdilla, osittain samoista asioista ja useiden yksittäisten melko kapea-alaisten instrumenttien kautta. Edistyminen on ollut nopeaa ilman ylitsepääsemättömiä vaikeuksia. Kääntöpuolena on ollut siviiliprosessioikeudellisen lainsäädännön pirstaloituminen, päällekkäisyys ja johdonmukaisuuden katoaminen. Oikeuden saatavuuden helpottamiseksi sääntelyn ymmärrettävyyttä ja käyttäjäystävällisyyttä on parannettava. Lainvalintasääntelyssä vastaavaa monimutkaistumista ei vielä ole tapahtunut, mutta tällainen kehityssuunta on havaittavissa erityisesti velvoiteoikeuden alalla.

6. Terrorismin ja järjestäytyneen rikollisuuden torjunnassa tarvittavien tietojen saanti

Operatiivisen viranomaisyhteistyön tehostaminen jäsenvaltioiden viranomaisten välillä

Operatiivisen viranomaisyhteistyön osalta tavoitteena on varmistaa jäsenvaltioiden välisen viranomaisyhteistyön kehittymistä uudelle tasolle vastaamaan vapaan liikkuvuuden alueen laajentumisesta johtuvat haasteet. Schengen-alueen laajentaminen edellyttää entistä tehokkaampia ja kattavampia korvaavia toimenpiteitä sekä entistä parempaa yhteistyötä erityisesti viimeksi unioniin liittyneiden ja vanhojen jäsenvaltioiden lainvalvontaviranomaisten välillä. Pyritään varmistamaan, että operatiivisen viranomaisyhteistyön linjaus vastaisi periaatetasolla suomalaista PTR-yhteistyötä (luonnollisesti huomioiden jäsenvaltioiden erilaiset viranomaisjärjestelyt) ja toisi paremmin esille parhaita käytäntöjä, joita esimerkiksi Suomi on kehittänyt Baltic Sea Task Forcen puitteissa, sovellettavaksi esimerkiksi Välimeren alueen yhteistyössä. Käytännön tavoitteena on jäsenvaltioiden moniviranomaisyhteistyöhön perustuvan rikostiedustelun kehittäminen. Europolin ja Eurojustin kehittämistä käsitellään tässä yhteydessä.

EU:n keskeiseksi periaatteeksi sovitun rikostiedustelupohjaisen rikosten torjuntamallin (*intelligence-led law enforcement*) käsittely poliittisella tasolla on myös perusteltua periaatteen toteuttamiseksi.

7. Terrorismin ja järjestäytyneen rikollisuuden torjunta, ml. Europolin tulevaisuus.

Järjestäytyneen rikollisuuden torjunnassa edellä mainittu operatiivisen viranomaisyhteistyön tehostaminen on olennaisessa asemassa.

Terrorismin torjunnan osalta strategia ja toimintaohjelma päivitetään Suomen puheenjohtajuuskaudella. Suomen tavoite strategian ja toimintaohjelman osalta on laatia jäsenmaiden kantojen mukaiset toimenpidesuositukset otettaviksi huomioon lähinnä toimintaohjelman päivityksessä. Suomi pyrkii käynnistämään joidenkin toimintaohjelman kohtien käsittelyn. Päivitysten sisällön tulee vastata unionin ja jäsenmaiden tarpeita sisäisen turvallisuuden kannalta ajankohtaisissa ja keskeisissä asioissa.

Europolin osalta aiemmin tehdyt Europol-yleissopimusta muuttavat pöytäkirjat (3 kpl) on saatava hyväksyttyä pikaisesti jäsenvaltioissa, todennäköisesti tämä toteutuu kuluvan vuoden loppuun mennessä. Jotta muutospöytäkirjoja voidaan soveltaa, täytyy hyväksyä myös 2 ministerineuvoston ja 4 Europolin hallintoneuvoston päätöstä, jotka valmistellaan syksyn aikana. Europolin osalta pyritään muuttamaan järjestön oikeusperustaksi Eurojustia vastaavasti neuvoston päätös nykyisen yleissopimuksen sijasta. Europolin tulevaisuudesta esitettyjä eri vaihtoehtoja tutkitaan syksyn aikana, erityisesti niitä jotka voidaan toteuttaa ilman lainsäädäntömuutoksia. EU:n järjestäytynyttä rikollisuutta koskevan uhka-arviota (OCTA) kehitetään myös Europolin roolin osalta.

8. Vapauden, turvallisuuden ja oikeuden alueen rahoitusohjelmat

Oikeus- ja sisäasioiden rahoitusohjelmat kehyskaudelle 2007-2013 tulisi hyväksyä vuoden 2006 loppuun mennessä, jotta ohjelmien täytäntöönpano saataisiin tehokkaasti käyntiin vuoden 2007 alusta.

Suomen yleisenä tavoitteena on saada aikaan mahdollisimman selkeä, tehokas ja oikeudenmukainen kokonaisratkaisu. Päällekkäisyydet tulee välttää yhteensovittamalla eri rahastojen valmistelu huolellisesti.

9. Vapauden, turvallisuuden ja oikeuden alueen ulkosuhteet

Suomi pitää tavoitteena luoda poliittiset edellytykset käytännön operatiivisen yhteistyön tehostamiselle EU:n kannalta keskeisten kolmansien valtioiden, kuten Venäjän kanssa. Vuoden 2006 syksyn aikana laaditaan käytännön toimintasuunnitelmia (action oriented paper) kahdelle OSA-ulkosuhdealueelle (Venäjä sekä terrorismiyhteistyö erityisesti Pohjois-Afrikan maiden kanssa). Suomen pitää painopisteenä Venäjän kanssa tehtävän yhteistyön kehittämistä. Ulkosuhdekysymykset ovat myös yhteydessä muihin arvioinnin tavoitteisiin (esim. viranomaisyhteistyön tehostaminen Venäjän kanssa laittoman maahanmuuton, ihmiskaupan ja terrorismin torjunnassa).

10. Vapauden, turvallisuuden ja oikeuden alueen politiikkojen täytäntöönpano ja arviointi

Tästä on annettu erillinen tiedonanto EU:n vapauden, turvallisuuden ja oikeuden alueeseen liittyvien politiikkojen arvioinnista, johon liittyvät alustavat Suomen kannat on kirjattu tämän muistion ko. kohtaan. (Kts. yllä)

11. Päätöksentekomenetelmien tehostaminen vapauden, turvallisuuden ja oikeuden alueella

Suomi suhtautuu positiivisesti passerelle-option sekä yhteispäätösmenettelyn käyttöönottamiseen oikeus- ja sisäasioissa laajemmin ja toivoo, että menettelyn käyttämisestä saataisiin Suomen puheenjohtajakauden aikana tehtyä periaatepäätös. Erityinen ongelma 25 jäsenvaltion unionissa on III pilarin poliisi- ja rikosasioiden yksimielisyyttä edellyttävät päätöksentekomenettelyt. Nykyisen unionisopimuksen 42 artikla mahdollistaa ns. passerelle-menettelyn käyttämisen. Neuvosto voi SEU 42 artiklan mukaisella päätöksellä siirtää nykyiseen III pilariin kuuluvia poliisi- ja rikosoikeudellisia asiaryhmiä I pilariin ja samalla päättää noudatettavista päätöksentekomenettelyistä. Menettelyn käyttöönotto edellyttää yksimielisyyttä, Euroopan parlamentin kuulemista ja ratifiointia ainakin osassa jäsenvaltioita. Menettelyä ei toistaiseksi ole vielä käytetty.

Suomi tutkii parhaillaan jäsenvaltioiden kantoja ja pohtii sen jälkeen, miten asiassa on tarkoituksenmukaisinta edetä puheenjohtajana. Perustuslakisopimus olisi poistanut pilarijaon ja saattanut kaikki oikeus- ja sisäasiat nykyistä I pilaria pitkälle vastaavien päätöksentekomenettelyjen piiriin (komissiolla pääasiallinen aloiteoikeus, yhteispäätösmenettely, määräenemmistöpäätös).

4. Komission tiedonanto: Yhteisöjen tuomioistuimen toimivalta antaa ennakkoratkaisuja mm. viisumi-, turvapaikka- ja maahanmuuttopolitiikkaa koskevissa asioissa

(tiedonannon nimi sanatarkasti: Komission tiedonanto yhteisöjen tuomioistuimen toimivaltaa koskevien määräysten mukauttamisesta Euroopan yhteisöjen perustamissopimuksen IV osaston kattamilla alueilla.)

Komission tiedonannosta ei ole ollut tietoa etukäteen. Asian kansallinen käsittely on vasta aloitettu ja Suomen kanta sisällön osalta täsmentyy myöhemmin.

Pääasiallinen sisältö:

Taustaa

Tampereella 15.-16.10.1999 pidetyssä Eurooppa-neuvoston kokouksessa päätettiin luoda Euroopan unionista vapauden, turvallisuuden ja oikeuden alue. Nyt kun Tampereella on jälleen määrä pitää oikeus- ja sisäasioiden neuvoston epävirallinen kokous 20.–22. syyskuuta 2006, komissio esittää ensimmäisen poliittisen arvionsa siitä, miten tämän alueen luomista koskevan Haagin ohjelman täytäntöönpanossa on edistytty. Monivuotisella Haagin ohjelmalla tähdätään vapauden, turvallisuuden ja oikeuden lujittamiseen Euroopan unionissa. Ohjelman toteuttaminen on yhteinen tavoite, jonka saavuttaminen edellyttää toimivaa ja vastuuvelvollista päätöksentekoa ja selkeitä poliittisia painopisteitä.

Vapauden, turvallisuuden ja oikeuden alue on unionin ensisijaisten tavoitteiden kärkijoukossa. Eurooppa-neuvostolle 10. toukokuuta 2006 annetussa komission tiedonannossa ”Euroopan kansalaisten toimintasuunnitelma” todettiin painokkaasti sen olevan ensisijainen tavoite.

Nyt kun valmistellaan syyskuussa 2006 pidettävää epävirallista oikeus- ja sisäasioiden kokousta, jossa tarkastellaan saavutettua edistystä, komissio on laatinut ensimmäisen poliittisen arvion Haagin ohjelman toteuttamisessa saavutetusta edistymisestä ja ehdottaa tarvittavia muutoksia. Komissio hyväksyi 28.6.2006 neljä tiedonantoa käsittävän kattavan paketin, jonka tarkoituksena on 1) **arvioida saavutettua** edistymistä ja **täytäntöönpanoastetta** EU:ssa ja kansallisella tasolla, 2) luoda mekanismi tulosten **perusteellista arviointia** varten, 3) **ehdottaa jatkotoimia** vapautta, turvallisuutta ja oikeutta koskevan politiikan toimivuuden parantamiseksi ja 4) **tehostaa oikeussuojaa** yhteisön tuomioistuimen toimivaltaa koskevien tiettyjen määräysten mukauttamisella.

1. Komission tiedonanto Haagin ohjelman täytäntöönpanosta vuonna 2005

> *Ensimmäinen täytäntöönpanokertomus Haagin ohjelmasta ja toimintasuunnitelmasta, jossa luodaan katsaus kaikkiin vuonna 2005 toteutettuihin toimiin ja keskitytään ensimmäistä kertaa täytäntöönpanoon kansallisella tasolla.*

Tämä, laatuaan ensimmäinen arvio oikeus-, vapaus- ja turvallisuusasioiden täytäntöönpanosta kansallisella tasolla antaa sen kuvan, että täytäntöönpano on tässä vaiheessa riittämätöntä. Huomio kiinnittyy erityisesti poliisiyhteistyön ja rikosoikeuden alan täytäntöönpanossa ilmeneviin yleisen tason puutteisiin sekä määrän että laadun suhteen.

Mikäli kuitenkin tarkastellaan mitä jäsenvaltiot ovat vuoden 2005 aikana saaneet aikaiseksi unionin rakenteissa, raportissa todetaan, että edistys on ollut tyydyttävää. Suurin osa vuodelle 2005 kaavailluista toimista on toteutettu tai toteutumaisillaan.

Komission tiedonannon liitteenä on tulostaulukko unionin rakenteissa tapahtuneesta edistymisestä, sekä erillinen tulostaulukko kansallisesta täytäntöönpanotilanteesta.

2. Komission tiedonanto EU:n vapauden, turvallisuuden ja oikeuden alueeseen liittyvien politiikkojen arvioinnista

> *Tiedonannon päätavoitteena on luoda mekanismi, jonka avulla voidaan arvioida tämän alan politiikan täytäntöönpanoa ja tuloksia.*

Niin kutsutussa kolmannessa pilarissa (poliisiyhteistyö ja oikeudellinen yhteistyö rikosasioissa) suuri osa yhteisön säännöstöstä on yhä virtuaalisella tasolla. Tähän on kaksi syytä:

- täytäntöönpanon taso jäsenvaltioissa ei ole tyydyttävä, eikä jäsenvaltioita vastaan voida nostaa rikkomiskannetta yhteisöjen tuomioistuimessa;
- neuvottelut neuvostossa ovat usein vaikeita ja hitaita, ja yksimielisyysvaatimus johtaa usein vesitettyihin sopimuksiin.

Ehdotetulla arviointimekanismilla pyritään lisäämään unionin toimien vaikuttavuutta ottamalla kentällä saadut tulokset huomioon päätöksenteossa. Tämä tulee olemaan erityisen tärkeää, kun Haagin ohjelman voimassaolo päättyy vuonna 2009. Vapauden, turvallisuuden ja oikeuden alueen asioiden arvioinnin kehittäminen edistää myös EU:n yleisiä läpinäkyvyyden ja sääntelyn parantamisen tavoitteita.

Oikeus- ja sisäasiain säännöstön täytäntöönpanon arviointijärjestelmän kehittäminen on keskeinen osa Haagin ohjelman ja siihen liittyvän toimintaohjelman arviointia. Tämä tulee yhä tärkeämmäksi, kun Schengen-alueen laajentumisen myötä EU:n vapaan liikkuvuuden alue laajenee entisestään. Haagin toimintaohjelmassa todetaan erillisen uuden Schengenin säännöstön soveltamiseen liittyvän arviointimenetelmän täydentämistä koskevan ehdotuksen tekeminen vuonna 2007. Haagin ohjelmassa arviointimenetelmää ei ole kytketty perustuslakisopimuksen voimaantuloon, mutta toimintaohjelmassa viitataan tässä yhteydessä perustuslakisopimuksen III-260 artiklaan. Sopimuksen voimaantulo ei ole edellytys mekanismin kehittämiselle, Euroopan parlamentin suorittamaa Europolin ja Eurojustin valvontaa lukuun ottamatta. Suomen puheenjohtajakaudella suoritettavan arvioinnin yhteydessä Eurooppa-neuvostolla on tilaisuus linjata arviointimekanismin keskeisiä periaatteita.

EU:n instituutioiden väliseen toimivaltajakoon kuuluu se, että lainsäädännön toimeenpanon arviointi kuuluu komissiolle, kun taas neuvosto on lainsäädäntöelin. Tämän seurauksena neuvoston alaisuuteen jääneitä arviointimekanismeja pidetään komissiossa tilapäisenä poikkeuksena, joista komission näkemyksen mukaan tulisi päästä eroon. Tiedonanto kattaa koko oikeus- ja sisäasiat kattavan arviointijärjestelmän. Esitys liikkuu yksinomaan lainsäädännön, politiikkojen, ja toimintaohjelmien seurannan tasolla. Operatiivisesta arvioinnista ei ole puhetta.

3. Komission tiedonanto: ”Haagin ohjelman täytäntöönpano; seuraavat askeleet”

> *Tiedonanto on vastaus kesäkuun Eurooppa-neuvoston kokouksessa esitettyyn pyyntöön tutkia mahdollisuuksia parantaa päätöksentekoa ja toimintaa oikeus-, vapaus- ja turvallisuusasioissa nykyisten perussopimusten pohjalta*

Komissio tekee useita toiminta- ja täytäntöönpanoehdotuksia ennen Haagin ohjelman voimassaolon päättymistä (2009). Ehdotukset koskevat seuraavia kysymyksiä:

1. Perusoikeudet ja kansalaisuus

Komissio on saanut paljon pyyntöjä ryhtyä paremmin valvomaan jäsenmaissa tapahtuvia ihmisoikeusloukkauksia. Komissio aikoo jatkaa työtään varmistaakseen, että kaikki jäsenvaltiot kunnioittavat yhteisiä arvoja.

Komission prioriteetteihin kuuluu varmistaa, että jäsenvaltioiden kansalaisten vapaa liikkuvuus ja oleskelu jäsenmaissa toteutuvat asianmukaisesti.

Täytyy myös kehittää yleisiä käytäntöjä miten unionin kansalaisia voidaan auttaa sellaisissa kolmansissa maissa, missä heidän oman maansa edustustoa ei ole. Jäsenmaiden viranomaisille tullaan järjestämään koulutusta tällä alueella.

Parhaillaan myös valmistellaan tiedotus- ja valistuskampanjoita, joilla voidaan parantaa unionin kansalaisten oikeutta saada diplomaattista suojaa tai konsuliasioissa suojaa. Tätä aluetta tullaan vuoden 2006 jälkipuoliskolla kehittämään.

2. Turvapaikkapolitiikan toisen vaiheen kehittäminen

Arvioitava olemassa olevaa oikeudellista puitteistoa.

Julkaistaan vihreä kirja turvapaikkapolitiikasta, jota seuraa vuoden 2007 aikana politiikkasuunnitelma turvapaikkapolitiikasta osana yhteisen eurooppalaisen turvapaikkajärjestelmän täytäntöönpanoa.

3. Maahanmuuton hallinta

Komissio tulee esittelemään lainsäädäntöehdotuksia, jotka on kohdennettu erilaisiin maahanmuuttajien työntekijäryhmiin (korkeasti koulutetut työntekijät, yritysten sisällä siirtyvät henkilöt, kausityöntekijät, palkalliset harjoittelijat).

Vuoden 2006 loppuun mennessä komissio raportoi maahanmuuttoa koskevan kokonaisvaltaisen lähestymistavan mukaisten ensisijaisten toimien täytäntöönpanosta liittyen Länsi- ja Pohjois-Afrikasta unionin alueelle suuntautuvaan muuttoliikkeeseen.

Vahvistetaan maahanmuuttokysymysten roolia osana ulkosuhteita, ml. yhteistyö lähtö- ja kauttakulkumaiden kanssa. Tähän liittyy olennaisesti tietotaidon katoaminen lähtömaista, eli ns. *brain drain*.

Komissio esittelee heinäkuussa 2006 tiedonannon, joka käsittelee laitonta maahanmuuttoa.

Tullaan myös seuraamaan miten jäsenvaltiot ovat edistyneet kotouttamispolitiikan täytäntöönpanossa.

4. Ulkorajojen yhdennetty hallinnointi ja tietojärjestelmien yhteentoimivuus

Tarkastellaan rajaturvallisuusviraston roolia koordinoitaessa yhteisiä operaatioita ja pyrittäessä edistämään yhteysupseerien yhteiskäyttöä.

Komissio tulee esittelemään heinäkuussa 2006 lainsäädäntöehdotuksen, jolla voidaan määritellä nopean toiminnan yksiköiden toimivaltuudet ja rahoitus.

Tullaan jatkamaan selvitystyötä yhteisen Schengen-alueen tietojärjestelmän kehittämiseksi, johon voitaisiin tallentaa biometriset tunnisteet Schengen-alueelle tulevista ja sieltä lähtevistä kolmansien maan kansalaisista.

Tutkitaan mahdollisuutta perustaa yhteistä eurooppalaista rekisteriä EU-kansalaisille myönnetyistä matkustusasiakirjoista.

Jatketaan keskusteluja komission marraskuussa 2005 antamasta tiedonannosta, joka käsittelee EU-laajuisten tietojärjestelmien yhteiskäyttöä. Keskustelujen pohjalta komissio esittelee vuonna 2007 toimintasuunnitelman aiheesta.

5. Tuomioiden vastavuoroinen tunnustaminen (siviili- ja rikosoikeudellisissa asioissa)

Oikeuden alueen, sekä yksityis- että rikosoikeuden, osalta komissio toteaa poliittisessa tiedonannossaan, että vastavuoroisen tunnustamisen periaate on jatkossakin unionin toiminnan kulmakivi ja että sen pohjana on osapuolten keskinäinen luottamus toistensa oikeusjärjestelmään ja oikeuslaitokseen.

Komissio ehdottaa, että sen tekemät rikosoikeuden alan lainsäädäntöehdotukset olisi hyväksyttävä ja pantava täytäntöön nopeasti.

Toisena toimenpiteenä komissio viittaa laativansa vuonna 2007 selvityksen vastavuoroisen tunnustamisen välineiden neuvotteluiden horisontaalisista ongelmista sekä nykyisen rikosasioissa tehtävää yhteistyötä koskevan järjestelmän puutteista, jotka voidaan korjata uusilla välineillä.

Kolmanneksi komissio ehdottaa, että keskinäisen oikeusavun järjestelmät kootaan vähitellen yhtenäisiin vastavuoroisen tunnustamisen välineisiin.

Neljänneksi komissio tuo esille yhteisen yksityisoikeuden alueen perustamisen tärkeyden kansalaisten ja yritysten kannalta. Komissio antaa muun muassa tarpeelliset säädösehdotukset siviili- ja kauppaoikeuden alalla eksekvatuurimenettelyn poistamisen loppuun saattamista.

Lisäksi komissio korostaa kansalaisten oikeussuojakeinojen parantamista vapauden, turvallisuuden ja oikeuden alueen lujittamisessa. Tässä tarkoituksessa Euroopan oikeudellisten verkostojen (siviilioikeudellisen ja rikosoikeudellisen verkoston) perustamispäätöksiä olisi muutettava niin, että verkostot voitaisiin tuoda lähemmäs kansalaisia ja oikeusalan toimijoita ja samalla tehostaa niiden toimintaa.

6. Terrorismin ja järjestäytyneen rikollisuuden torjunnassa tarvittavien tietojen saanti

Terrorismin ja järjestäytyneen rikollisuuden torjunnassa tarvittavia tietoja on voitava toimittaa esteettä jäsenmaiden toimivaltaisten viranomaisten välillä (ns. saatavuusperiaate). Tietojenvaihto koskee muun muassa rikosrekisteritietojen vaihtamista nykyistä yleissopimukseen perustuvaa järjestelmää tehokkaammin ja tietokonepohjaisesti.

Terrorismin ja järjestäytyneen rikollisuuden osalta komissio ei pidä uusi ehdotuksia tarpeellisena vaan korostaa niiden sijasta jo annettujen ehdotusten hyväksymistä sekä nopeaa ja tehokasta täytäntöönpanoa.

Tietojenvaihdon edellytyksenä komissio tuo esille tarpeen sopia oikeudellisesti sitovalla tavalla tietosuojasta, jotta voidaan varmistaa henkilötietojen suojan korkea taso kaikissa jäsenvaltioissa.

7. Terrorismin ja järjestäytyneen rikollisuuden torjunta, ml. Europolin tulevaisuus.

Komissio esittelee lähiaikoina tiedonannon ohjelmaksi kriittisten infrastruktuurien suojelemiseksi. Tähän liittyen komissio esittelee loppuvuodesta ehdotuksen varoitusjärjestelmäksi kriittisten infrastruktuurien suojelemiseksi.

Komissio harkitsee ehdotusta terrorismipuitepäätökseen tehtävästä lisäyksestä koskien määritelmää terrorismiin yllyttämisestä ja pommien tekemiseen liittyvän tietotaidon levittämisen kriminalisoinnista.

Komissio pyrkii vuoden 2006 loppuun mennessä saamaan eteenpäin bioterrorismia koskevan tiedonannon.

Komissio harkitsee esityksen tekemistä neuvoston päätökseksi, joka korvaisi Europolin yleissopimuksen. Tällä tavoin voitaisiin merkittävästi tehostaa Europolin toimintaa ja saattaa se paremmin parlamentaariseen valvontaan.

8. Vapauden, turvallisuuden ja oikeuden alueen rahoitusohjelmat

Komissio tähtää siihen, että vuonna 2007 unionilla olisi jo uudet rahoitusohjelmat käynnissä. Jäsenvaltioita tullaan kehottamaan olemaan aloitteellisia ja käyttämään uusia rahoitusohjelmia tehokkaasti hyödyksi.

9. Vapauden, turvallisuuden ja oikeuden alueen ulkosuhteet

Joulukuussa 2005 OSA-neuvosto hyväksyi ensimmäisen vapauden, turvallisuuden ja oikeuden alueen ulkosuhdestrategian. Komissio tulee jatkamaan strategiassa osoitettujen painopistealueiden kehittämistä. Parhaillaan ulkosuhteissa edistetään yhteistyötä Venäjän, Ukrainan, Euroopan naapuruuspolitiikkamaiden ja Yhdysvaltojen kanssa.

Vuoden 2006 loppuun mennessä komissio laatii edistymisraportin, jossa katsotaan miten ulkosuhdestrategiaa on pantu täytäntöön.

10. Vapauden, turvallisuuden ja oikeuden alueen politiikkojen täytäntöönpano ja arviointi

Komissio on laatinut tiedonannon, jolla pyritään arvioimaan miten jäsenvaltiot ovat panneet täytäntöön yhteisesti tehtyjä päätöksiä. Tiedonanto esittelee mekanismin, jolla vuosittain voitaisiin seurata miten täytäntöönpanossa ollaan edistytty ja jolla voidaan arvioida saavutettuja tuloksia.

11. Päätöksentekomenetelmien tehostaminen vapauden, turvallisuuden ja oikeuden alueella

Vapauden- turvallisuuden ja oikeuden alueen päätöksentekomenettelyjen tehostamiseksi komissio erittelee esiintyneet ongelmat ja ehdottaa ratkaisuksi niin sanottua siirtymäväylälauseketta ns. passerelle-optio.

Ongelmat

Komissio viittaa päätöksentekoprosessin ominaispiirteisiin ja erityisesti yksimielisyysvaatimukseen poliisiyhteistyön ja rikosasioissa tehtävässä oikeudellisen yhteistyön hitaan etenemisen ja vesittyneiden lopputulosten syynä.

Lisäksi tiedonannossa todetaan, että Euroopan parlamentin toimivalta poliisi- ja rikosoikeudellisessa yhteistyössä on riittämätön eikä jäsenmaiden jaettu aloiteoikeus edistä eurooppalaista sääntelyä. Muita ominaispiirteitä ovat Euroopan yhteisöjen tuomioistuimen rajoitettu toimivalta (rikkomismenettelyt eivät ole mahdollisia, ennakkoratkaisut edellyttävät jäsenvaltion suostumusta), mistä syystä yhteisön oikeuden saattamista osaksi kansallista lainsäädäntöä ja sen asianmukaista täytäntöönpanoa on vaikea valvoa.

Poliisi- ja rikosoikeudellisen yhteistyön lisäksi tiedonannossa todetaan, että vastaavia toistuvia ongelmia liittyy myös vapauden, turvallisuuden ja oikeuden alan ”yhteisöpolitiikkoihin” (EY:n perustamissopimuksen IV osasto). Myös niiden osalta yhteisöjen tuomioistuimen toimivaltaan antaa ennakkoratkaisuja liittyy tiettyjä erityispiirteitä (EY:n perustamissopimuksen 68 artikla) ja laillista maahanmuuttoa ja perheoikeutta koskevat päätökset on edelleen tehtävä yksimielisesti.
Euroopan yhteisöjen tuomioistuimen toimivaltuuksien osalta erittäin tärkeät ja arkaluonteiset asiat kuten oikeussuojan saatavuus tai turvapaikkaoikeudet eivät ole kaikkialla Euroopassa yhtäläisen oikeudellisen valvonnan kohteena tai että niitä ei sovelleta yhdenmukaisesti.

Ratkaisuehdotus

Vapaus-, turvallisuus- ja oikeusasioita koskevien politiikkojen toimivuuden parantamiseksi komissio viittaa voimassa olevien perussopimusten mukaisten mahdollisuuksin hyödyntämiseen ja toteaa, että kesäkuun 2006 Eurooppa-neuvosto on antanut tälle hyödyntämiselle mandaatin.

Voimassa olevissa perussopimuksissa määrätään mahdollisuudesta ratkaista yllä mainitut ongelmat soveltamalla Euroopan unionista tehdyn sopimuksen (SEU) 42 artiklaan ja EY:n perustamissopimuksen 67 artiklan 2 kohdan toiseen luetelmakohtaan sisältyviä ”siirtymäväylälausekkeita” (tai passerelle-optio).

SEU 42 artiklan mukaan komissiolla (tai jäsenvaltiolla) on aloiteoikeus ehdottaa, että toiminta sopimuksen 29 artiklassa tarkoitetuilla aloilla (terrorismin ja rikollisuuden torjunta lainvalvonnan ja rikosasioissa tehtävän oikeudellisen yhteistyön keinoin) kuuluu EY:n perustamissopimuksen IV osaston soveltamisalaan, jolloin siihen sovelletaan samaa institutionaalista kehystä kuin muihinkin vapauden, turvallisuuden ja oikeuden alan ”yhteisöpolitiikkoihin”. Neuvoston on tehtävä päätös Euroopan unionista tehdyn sopimuksen 42 artiklan soveltamisesta yksimielisesti Euroopan parlamenttia kuultuaan ja jäsenvaltiot puolestaan hyväksyvät päätöksen valtiosääntönsä asettamien vaatimusten mukaisesti.

EY:n perustamissopimuksen 67 artiklan 2 kohdan toinen luetelmakohta antaa neuvostolle mahdollisuuden päättää yksimielisesti Euroopan parlamenttia kuultuaan, että lailliseen maahanmuuttoon sovelletaan yhteispäätösmenettelyä.

EY:n perustamissopimuksen 67 artiklan 2 kohdan toisessa luetelmakohdassa edellytetään, että neuvosto Euroopan parlamenttia kuultuaan mukauttaa yksimielisesti perustamissopimuksen 68 artiklassa olevia määräyksiä yhteisöjen tuomioistuimen toimivallasta. Tätä varten olisi tehtävä päätös siitä, että yhteisöjen tuomioistuimen toimivalta antaa ennakkoratkaisuja vapauden, turvallisuuden ja oikeuden alan ”yhteisöpolitiikkoihin” liittyvissä asioissa saatetaan vastaamaan tuomioistuimen toimivaltaa EY:n muiden politiikkojen yhteydessä.

4. Komission tiedonanto: Yhteisöjen tuomioistuimen toimivalta antaa ennakkoratkaisuja mm. viisumi-, turvapaikka- ja maahanmuuttopolitiikkaa koskevissa asioissa

(tiedonannon nimi sanatarkasti: Komission tiedonanto yhteisöjen tuomioistuimen toimivaltaa koskevien määräysten mukauttamisesta Euroopan yhteisöjen perustamissopimuksen IV osaston kattamilla alueilla.)

EY 68 artiklan mukaan yhteisöjen tuomioistuimella on rajoitettu toimivalta antaa ennakkoratkaisuja perustamissopimuksen kolmannen osan IV osaston kattamilla aloilla. Toimivaltaa koskevat seuraavat poikkeukset:

- EY 68 artiklan 1 kohdan mukaan ennakkoratkaisua voivat pyytää vain tuomioistuimet, joiden päätöksiin ei kansallisen lainsäädännön mukaan saa hakea muutosta.
- EY 68 artiklan 2 kohdan mukaan yhteisöjen tuomioistuimella ei ole toimivaltaa antaa ratkaisua EY 62 artiklan 1 kohdan nojalla toteutetusta toimenpiteestä tai tehdystä päätöksestä, joka koskee yleisen järjestyksen ylläpitämistä ja sisäisen turvallisuuden suojaamista. Mainitun kohdan mukaan neuvosto voi toteuttaa toimenpiteet, joilla varmistetaan, ettei

sisärajojen ylittämisen yhteydessä unionin tai kolmansien maiden kansalaisiin kohdisteta henkilötarkistuksia.
- EY 68 artiklan 3 kohdan mukaan neuvosto, komissio tai jäsenvaltio voi pyytää yhteisöjen tuomioistuimelta ratkaisua IV osaston tai kyseisen osastoon perustuvan säädöksen tulkinnasta.

EY 67 artiklan 2 kohdan toisen alakohdan mukaan Amsterdamin sopimuksen voimaantuloa seuraavan viiden vuoden siirtymäkauden kuluttua neuvosto tekee Euroopan parlamenttia kuultuaan yksimielisesti päätöksen yhteisöjen tuomioistuimen toimivaltaa koskevien määräysten mukauttamisesta.

Komission tiedonannon tarkoitus on myötävaikuttaa EY 68 artiklaan sisältyvien poikkeusten mukauttamiseen. Komission näkemyksen mukaan mukauttaminen tulisi tapahtua saattamalla kyseiset määräykset perustamissopimuksen yleisen oikeussuojajärjestelmän systematiikan mukaiseksi.

Komissio ehdottaa, että EY 234 artiklan mukaista ennakkoratkaisumenettelyä alettaisiin soveltaa osaston IV kattamilla alueilla. Tämän johdosta perustamissopimuksen EY 68 artiklaa ja nk. Schengenin pöytäkirjan 2 artiklan 1 kohdan kolmannen kappaleen yhteisöjen tuomioistuimen toimivallan rajoittamista koskevaa viimeistä virkettä lakattaisiin soveltamasta.

Komissio katsoo, että Amsterdamin sopimuksen voimaantulon jälkeisen siirtymäkauden päätyttyä on tärkeää, että neuvosto täyttää EY 67 artiklan mukaiset velvollisuutensa ja palauttaa yhteisöjen tuomioistuimelle täyden toimivallan antaa ennakkoratkaisuja yhteisön lainsäädännöstä. Tämä on välttämätöntä tehokasta oikeussuojaa koskevan perusoikeuden ja yhteisön oikeuden yhdenmukaisuuden takaamiseksi sekä puutteellisen oikeussuojan korjaamiseksi.

Komission tiedonannossa esitetään erityisesti neljä syytä, joiden vuoksi EY 234 artiklan mukaisen ennakkoratkaisumenettelyn ulottaminen myös osaston IV kattamille alueille on tarpeen. EY 234 artiklan mukaisessa ennakkoratkaisumenettelyssä yhteisöjen tuomioistuimen toimivaltaa ei ole vastaavalla tavalla rajoitettu.

Yhteisön oikeuden yhdenmukainen soveltaminen ja tulkinta

Yhteisön oikeuden yhdenmukaisuuden turvaamisessa EY 234 artiklan mukaisella ennakkoratkaisumenettelyllä on keskeinen asema. Olennainen osa tätä menettelyä on, että kaikki kansalliset tuomioistuimet voivat käydä vuoropuhelua yhteisöjen tuomioistuimen kanssa. Poikkeukset tästä heikentävät yhteisöjen tuomioistuimen kykyä taata yhteisön oikeuden yhdenmukaisuus. Komissio painottaa, että yhdenmukaisuus on olennainen seikka vapauteen, turvallisuuteen ja oikeuteen perustuvalla alueella. Komission näkemyksen mukaan EY 234 artiklan mukainen menettely tulee ulottaa näille alueille, joilla lainsäädännön kehitys on nopeaa.

Oikeusturvan vahvistaminen

Tehokkaan oikeussuojan periaate on yhteisön oikeuden perusperiaatteita. EY 68 artiklan 1 kohtaan sisältyvät poikkeukset koskevat alueita, jotka ovat erityisen herkkiä ottaen huomioon perusoikeudet ja erityisen suojattomien henkilöiden suojelu. EY 68 artiklaan sisältyvät rajoitukset aiheuttavat oikeussuojaongelmia kahdessa suhteessa.

Ensinnäkin, alioikeudet eivät voi pyytää ennakkoratkaisua yhteisön oikeuden tulkinnasta. Näin ollen henkilöiden täytyy jatkaa oikeudenkäyntiä ylimpään oikeusasteeseen asti saadakseen asiassaan yhteisöjen tuomioistuimen ratkaisun. Toiseksi, jos henkilöiden oikeuksia on loukattu IV osaston määräysten nojalla toteutetuilla toimenpiteillä, näillä henkilöillä ei ole minkäänlaista oikeussuojakeinoa ennen kuin he ovat käyneet läpi kaikki kotimaiset oikeusasteet. Kansallinen alemman oikeusasteen tuomioistuin ei voi jättää soveltamatta yhteisön oikeuden säädöstä vaikka se olisi vakuuttunut säädöksen lainvastaisuudesta.

Komission mukaan edellä esitetty osoittaa, että EY 68 artiklan 1 kohdan sisältämät poikkeukset heikentävät kansalaisten tehokasta oikeussuojaa erityisesti kun otetaan huomioon, että kyseisenlaisissa asioissa (mm. turvapaikka, maastakarkoitus tai perheiden yhdistäminen) henkilöillä ei usein ole taloudellisia mahdollisuuksia kaikkien kansallisten oikeusasteiden läpikäymiseen ja kun he usein tarvitsevat pikaista oikeudellista neuvonantoa. Velvollisuus käyttää kaikki kansalliset oikeussuojakeinot on ristiriidassa myös prosessiekonomisten seikkojen kanssa.

EY 68 artiklan 2 kohdan sisältämä poikkeus merkitsee lisäksi sitä, että neuvoston EY 62 artiklan 1 kohdan nojalla antamat säännökset, jotka koskevat yleisen järjestyksen ylläpitämistä ja sisäisen turvallisuuden suojaamista, ovat kokonaan oikeudellisen arvioinnin ulkopuolella. Tämä seikka on vaikea oikeuttaa vapauden, turvallisuuden ja oikeuden alueilla. Tämä on epäjohdonmukaista myös perustamissopimuksen yleisen systematiikan kanssa, koska yhteisöjen tuomioistuimen tehtävä on alusta lähtien ollut vastaavanlaisten kansallisten toimenpiteiden yhteisön oikeuden mukaisuuden valvominen.

Lopuksi komissio huomauttaa mahdollisista seurauksista suhteessa Euroopan ihmisoikeussopimukseen, mikäli EY 68 artiklan määräyksiä ei mukauteta. Ihmisoikeustuomioistuimen mukaan jäsenvaltiot ovat kollektiivisesti vastuussa yhteisön primäärioikeudesta johtuvista rikkomuksista.

Edellä sanotun perusteella komissio katsoo, että oikeudellisen suojan vahvistamiseksi on välttämätöntä, että EY 68 artiklan 1 ja 2 kohden soveltaminen lakkaa ja käyttöön otetaan perustamissopimuksen yleiset ennakkoratkaisumenettelyä koskevat määräykset.

Siviiliasioihin liittyvän oikeussuojan puutteen korjaaminen

Komission näkemyksen mukaan on ristiriitaista, että kun tuomioistuinten toimivaltaa ja tuomioiden täytäntöönpanoa siviili- ja kauppaoikeuden alalla koskeva nk. Bryssel I sopimus Amsterdamin sopimuksella siirrettiin yhteisön toimivaltaan, yhteisöjen tuomioistuimen toimivalta näissä asioissa EY 68 artiklan määräysten johdosta kaventui. Tuomioistuimella oli aikaisemmin näissä asioissa kansainväliseen sopimukseen perusteella laajempi toimivalta.[1] Ei ole syytä jättää voimaan tällaista oikeussuojan heikentymistä.

Tämän vuoksi komissio katsoo, että EY 234 artiklan yleiset määräykset tulee ottaa käyttöön.

Yhteisöjen tuomioistuimen asianmukainen toiminta

[1] Aikaisemmassa järjestelmässä myös muutoksenhakutuomioistuimilla oli oikeus pyytää ennakkoratkaisua.

Komission näkemyksen mukaan yhteisöjen tuomioistuimen kykyyn käsitellä jutut asianmukaisesti on luotettava. Komissio viittaa tältä osin Nizzan sopimuksen mahdollistamaan toimivallan siirtoon ensimmäisen oikeusasteen tuomioistuimelle sekä uuteen nopeutettuun menettelyyn. Tässä tilanteessa yhteisöjen tuomioistuimen työtaakka ei ole peruste säilyttää säännöstä, joka heikentää oikeusturvaa ja yhteisön oikeuden yhdenmukaisuutta.

Kansallinen käsittely:

Suomen tavoitteita Haagin ohjelman arvioimiseksi on käsitelty EU-ministerivaliokunnassa 19.5.2006.

Eduskuntakäsittely:

Tiedonantoja ei ole aikaisemmin käsitelty eduskunnassa.

Käsittely Euroopan parlamentissa:

Tiedonantoja ei ole käsitelty Euroopan parlamentissa.

Kansallinen lainsäädäntö, ml. Ahvenanmaan asema:

Tiedonannoilla ei ole vaikutusta kansalliseen lainsäädäntöön. Tiedonannossa alustavasti esitetyt uudet linjaukset voivat toteutuessaan aiheuttaa muutospaineita kansalliseen lainsäädäntöön. Muutosten tarvetta voidaan arvioida vasta kun komissio on tehnyt konkreettisia aloitteita.

Taloudelliset vaikutukset:

Tiedonantojen linjausten toteutuessaan aiheuttamia taloudellisia vaikutuksia kansallisesti tai yhteisön talousarvioon on tässä vaiheessa mahdotonta arvioida.

Muut mahdolliset asiaan vaikuttavat tekijät:

-

Asiasanat	oikeus- ja sisäasiat, konsulipalvelut, maahanmuutto, maahantulo, poliisiyhteistyö, oikeudellinen yhteistyö rikosasioissa, siviilioikeus
Hoitaa	**OM, SM, TM, UM**
Tiedoksi	EUE, OPM, STM, TH, TPK, VM, VNEUS

EUROOPAN YHTEISÖJEN KOMISSIO

Bryssel 28.6.2006
KOM(2006) 333 lopullinen

KOMISSION TIEDONANTO NEUVOSTOLLE JA EUROOPAN PARLAMENTILLE

Kertomus Haagin ohjelman täytäntöönpanosta vuonna 2005

{SEC(2006) 813}

{SEC(2006) 814}

KOMISSION TIEDONANTO NEUVOSTOLLE JA EUROOPAN PARLAMENTILLE

Kertomus Haagin ohjelman täytäntöönpanosta vuonna 2005

1. Tämä tiedonanto on vastaus neuvoston komissiolle osoittamaan pyyntöön esittää vuosittain kertomus Haagin ohjelman täytäntöönpanosta ("tulostaulu")[1], ja tämä vuotta 2005 koskeva kertomus on laatuaan ensimmäinen. Tämän kertomuksen laatimiseen valittua menetelmää käytetään myös laadittaessa seuraavat neljä vuosittaista kertomusta.

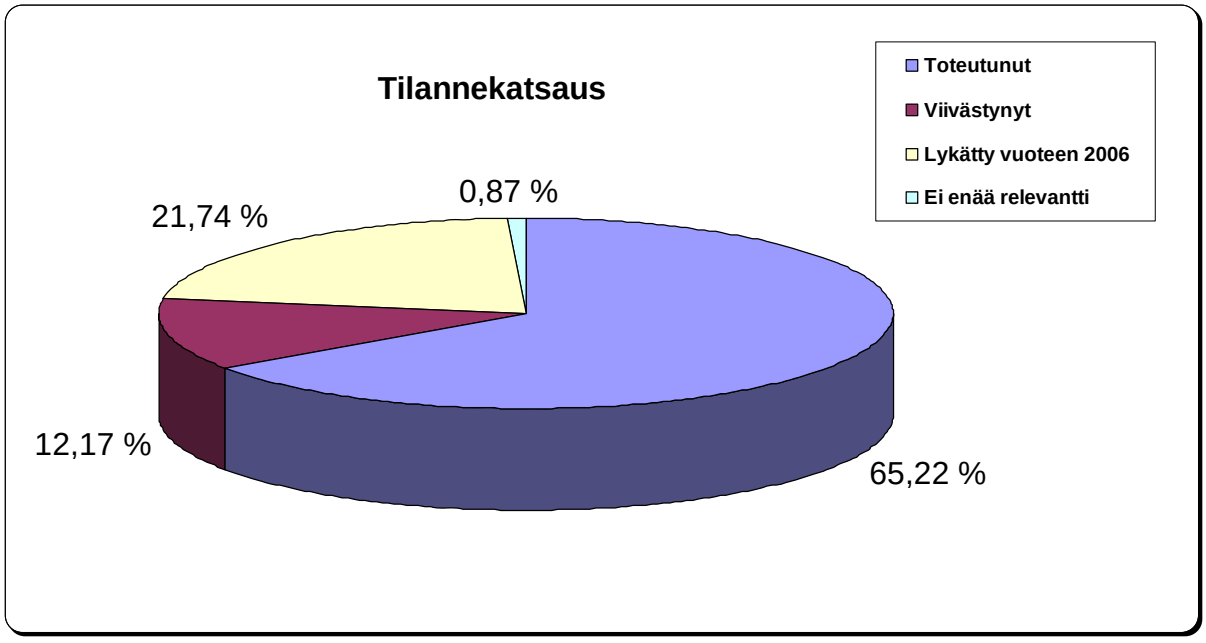
2. Aluksi tarkastellaan, kuten aikaisemmin tehtiin Tampereen työohjelman tulostaulussa, Haagin ohjelmassa mainittujen toimenpiteiden täytäntöönpanon etenemistä ennalta vahvistetun aikataulun mukaisesti. Toimenpiteisiin kuuluvat myös huumausaineita koskevassa toimintasuunnitelmassa, vapauden, turvallisuuden ja oikeuden alueen ulkoista ulottuvuutta koskevassa strategiassa ja terrorismin vastaisessa toimintaohjelmassa kaavaillut toimenpiteet, jotka täydentävät Haagin ohjelmaa. Tässä tiedonannossa käydään läpi kaikki vuoden 2005 aikana toteutettaviksi suunnitellut toimenpiteet. Vuonna 2006 ja myöhemmin toteutettavia toimenpiteitä tarkastellaan seuraavissa vuosikertomuksissa (ensimmäinen osa ja liite 1).

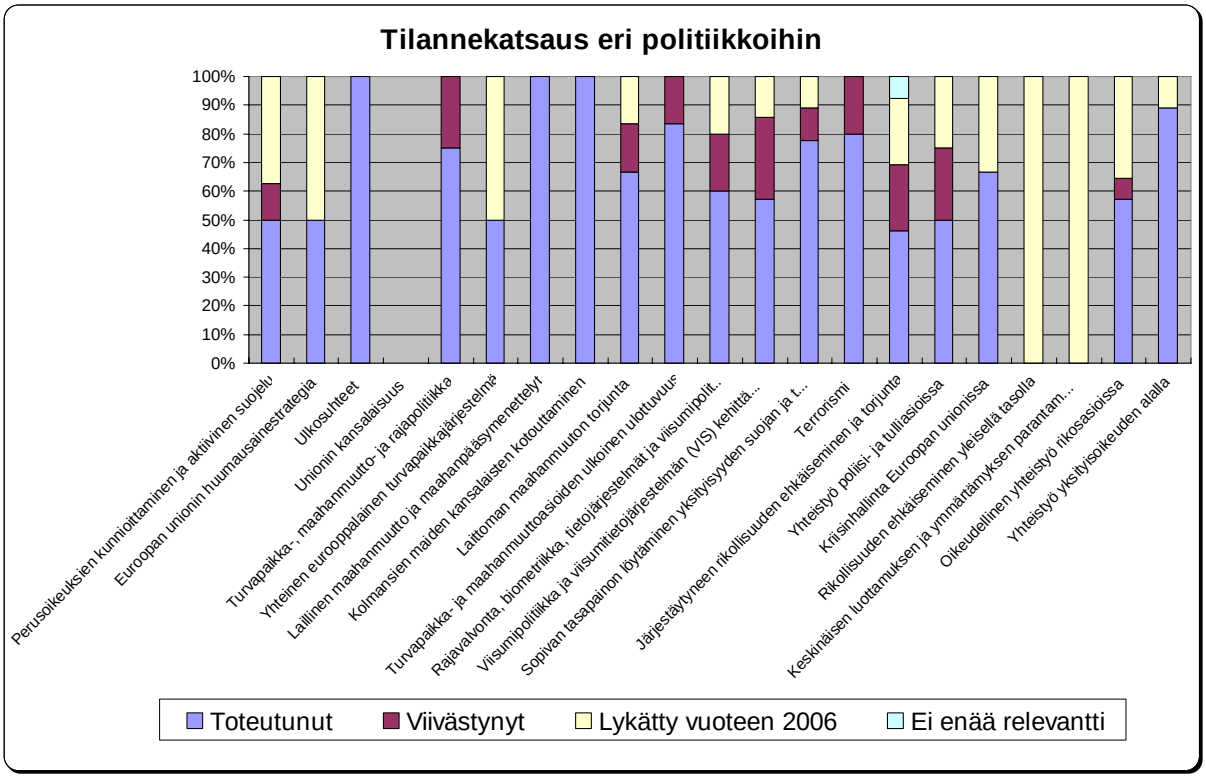
3. Täytäntöönpanoprosessin seurannan ohella tässä tiedonannossa tarkastellaan nyt ensimmäistä kertaa oikeutta, vapautta ja turvallisuutta koskevan politiikan toteuttamista kansallisella tasolla (toinen osa ja liite 2).

1. HAAGIN OHJELMASSA VUONNA 2005 TOTEUTETTAVIKSI SUUNNITELTUJEN TOIMENPITEIDEN HYVÄKSYMINEN

4. Liitteenä olevassa taulukossa (1) esitetään tilanne kunkin Haagin ohjelman toimintasuunnitelman vuonna 2005 toteutettavaksi suunnitellun toimenpiteen osalta tai säännöllisen tai jatkuvan toimenpiteen osalta. Saatu tulos, jota jäljempänä esitetyt taulukot kuvaavat, on kokonaisuudessaan myönteinen, vaikka kaikilla aloilla ei ole saavutettu yhtä hyviä tuloksia.

[1] Haagin ohjelma: vapauden, turvallisuuden ja oikeuden lujittaminen Euroopan unionissa (EUVL C 53, 3.3.2005, s. 1) ja neuvoston ja komission toimintasuunnitelma vapauden, turvallisuuden ja oikeuden lujittamiseen Euroopan unionissa tähtäävän Haagin ohjelman toteuttamiseksi (EUVL C 198, 12.8.2005, s. 1).





1.1. Yleiset suuntaviivat

1.1.1. Perusoikeuksien kunnioittaminen ja aktiivinen suojelu

5. Tällä alalla on edistytty kokonaisuudessaan tyydyttävästi. Suurin osa vuodeksi 2005 suunnitelluista toimenpiteistä on saatu toteutettua tai ne toteutetaan vuoden 2006 kuluessa. Poikkeuksen muodostaa Euroopan unionin liittyminen Euroopan ihmisoikeussopimukseen (yleissopimus ihmisoikeuksien ja perusvapauksien

suojaamiseksi). Tätä toimenpide-ehdotusta ei voitu toteuttaa, sillä se edellyttää Euroopan perustuslaista tehdyn sopimuksen voimaantuloa. Komissio on tehnyt suunnitelmiensa mukaisesti ne ehdotukset, jotka liittyvät vuosien 2007–2013 rahoituskehyksestä tehtyyn yleiseen sopimukseen[2], ja niiden seuranta riippuu tämän yleissopimuksen kehittymisestä.

6. Komission ehdotus, joka tähtää Euroopan rasismin ja muukalaisvihan seurantakeskuksen muuttamiseen Euroopan unionin **perusoikeusvirastoksi** sen toimivaltaa laajentamalla, on todellinen edistysaskel ja yksi Haagin ohjelman painopisteistä.

7. **Tiedonannon antamista lasten oikeuksien suojaamisesta** on lykätty heinäkuuhun 2006. Tämä johtuu valmistelutyön laajuudesta ja siitä, että halutaan varmistaa, että kaikkien osapuolten edut otetaan mahdollisimman hyvin huomioon.

8. Komissio on tehnyt puitepäätösehdotuksen, joka koskee **tietosuojaa** rikosasioissa tehtävän poliisiyhteistyön ja oikeudellisen yhteistyön yhteydessä; tavoitteena on täydentää nykyistä lainsäädäntöä. Ehdotus on välttämätön vastapaino muille ehdotuksille, joilla edistetään tietojen saatavuusperiaatteen käyttöönottoa ja eri jäsenvaltioiden lainvalvontaviranomaisten välistä tietojenvaihtoa.

1.1.2. Euroopan unionin huumausainestrategia

9. Kuten toimintasuunnitelmassa Haagin ohjelman toteuttamiseksi edellytetään, Euroopan unioni hyväksyi joulukuussa 2004 **huumausainestrategian vuosiksi 2005–2012** ja kesäkuussa 2005 **huumausaineita koskevan EU:n toimintasuunnitelman (2005–2008)**. Toimintasuunnitelmassa vahvistetaan kaikille asianosaisille ensisijaiset tavoitteet, toteuttamisen yksityiskohtainen aikataulu sekä arviointivälineet ja konkreettiset indikaattorit kullekin noin kahdeksallekymmenelle toimenpide-ehdotukselle. Toimintasuunnitelman mukaan komissio vastaa suunnitelman seurannasta ja arvioinnista yhdessä Euroopan huumausaineiden ja niiden väärinkäytön seurantakeskuksen sekä Europolin kanssa. Ensimmäinen vuosikertomus huumausaineita koskevan EU:n toimintasuunnitelman toteuttamisesta esitetään syksyllä 2006.

1.1.3. Ulkosuhteet

10. Toimintasuunnitelmassa esitetyn aikataulun mukaisesti Euroopan unioni laati joulukuussa 2005 vapauden, turvallisuuden ja oikeuden alueen **ulkoista ulottuvuutta koskevan strategian**, jonka tavoitteena on erityisesti edistää oikeusvaltion periaatetta, vakautta ja turvallisuutta EU:n rajojen ulkopuolella.

[2] Kaksi erityisohjelmaehdotusta; ehdotus kansalaisuutta ja perusoikeuksia koskevasta erityisohjelmasta ja ehdotus väkivallan torjumista (Daphne) sekä huumetorjuntaa ja -valistusta koskevasta erityisohjelmasta (2005).

1.2. Vapauden vahvistaminen

1.2.1. Unionin kansalaisuus

11. Yksi Haagin ohjelman painopisteistä on direktiivin 2004/38/EY täytäntöönpano. Direktiivi koskee Euroopan unionin kansalaisten ja heidän perheenjäsentensä oikeutta liikkua ja oleskella vapaasti jäsenvaltioiden alueella. Direktiivin täytäntöönpanoa arvioidaan myöhemmin, koska määräaika sen saattamiseksi osaksi kansallista lainsäädäntöä on umpeutunut vasta hiljattain.

12. Kertomus eläkeläisten, opiskelijoiden ja työelämän ulkopuolella olevien oleskeluoikeudesta annetun **direktiivin soveltamisesta** sekä kertomus äänioikeudesta Euroopan parlamentin vaaleissa annetun direktiivin soveltamisesta ovat parhaillaan viimeistelyvaiheessa.

1.2.2. Turvapaikka-, maahanmuutto- ja rajapolitiikka

13. Komissio pyrkii parantamaan kansallisten politiikkojen koordinointia sekä lisäämään yhteistyötä ja säännöllistä tietojenvaihtoa sekä jäsenvaltioiden kesken että näiden ja komission välillä. Saavuttaakseen tämän tavoitteen komissio on tehnyt **ehdotuksen keskinäiseksi maahanmuuttoasioita koskevaksi tiedotusjärjestelmäksi, jonka avulla jäsenvaltiot voisivat ilmoittaa toisilleen** turvapaikka- ja maahanmuuttoasioissa **toteuttamistaan toimenpiteistä**.

14. Huomattavaa edistymistä on saatu aikaan tietojen keruussa, mikä on erittäin tärkeää, jotta pystytään parantamaan maahanmuuton analysointia. Komissio antoi 28. marraskuuta 2005 **vihreän kirja Euroopan muuttoliikkeiden verkoston tulevaisuudesta**, saadakseen asianosaisilta kannanottoja asiasta. Samaan aikaan komissio laati ehdotuksen maahanmuuttoa ja kansainvälistä suojelua **koskevien tilastojen keräämistä koskevaksi asetukseksi**. Ehdotuksen käsittely on edelleen kesken.

1.2.3. Yhteinen eurooppalainen turvapaikkajärjestelmä

15. Tulokset tällä alueella jättävät toivomisen varaa.

16. Neljä vuotta kestäneiden keskustelujen päätteeksi annettiin 1. joulukuuta 2005 direktiivi **pakolaisaseman myöntämistä tai poistamista koskevissa menettelyissä jäsenvaltioissa sovellettavista vähimmäisvaatimuksista.** Direktiivi merkitsi turvapaikkapolitiikan vahvistamisen ensimmäisen vaiheen päätepistettä. Tulevaisuudessa tällaisten toimenpiteiden hyväksymiseen ei periaatteessa enää vaadita yksimielisyyttä, vaan päätökset voidaan tehdä EY:n perustamissopimuksen 251 artiklassa[3] tarkoitetun menettelyn mukaisesti.

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[3] EY:n perustamissopimuksen 67 artiklan 5 kohdan ensimmäisessä luetelmakohdassa määrätään siirtymisestä tähän menettelyyn ensimmäisen vaiheen päätyttyä. Yleisesti ottaen Euroopan yhteisön perustamissopimuksen 251 artiklassa määrätyn menettelyn soveltamisesta tietyillä kyseisen perustamissopimuksen kolmannen osan IV osastoon kuuluvilla aloilla 22 päivänä joulukuuta 2004 tehty neuvoston päätös antaa periaatteellisen mahdollisuuden, Haagin ohjelman vaatimuksen mukaisesti,käyttää 251 artiklassa määrättyä menettelyä turvapaikka-, maahanmuutto- ja

17. Komissio on aloittanut turvapaikkapolitiikan ensimmäisen vaiheen välineiden seurannan ja arvioinnin, mutta sen on ollut pakko lykätä vuoteen 2006 kansainvälistä suojelua saavien henkilöiden pitkäaikaista oleskelulupaa koskevaa ehdotustaan, joka liittyy yhteisen eurooppalaisen turvapaikkajärjestelmän kehittämisen toiseen vaiheeseen. Vuoden 2006 alussa julkaistiin myös tiedonanto jäsenvaltioiden turvapaikkayksiköiden välisen yhteistyön rakenteista.

18. **Euroopan pakolaisrahastoa** koskevan arvioinnin piti valmistua vuonna 2005, mutta se on siirretty vuoteen 2006.

1.2.4. Laillinen maahanmuutto ja maahanpääsymenettelyt

19. Vuodelle 2005 laadittua aikataulua noudatettiin sataprosenttisesti.

20. Taloudellisista syistä tapahtuvaa maahanmuuttoa koskevan vihreän kirjan yhteydessä järjestetyn julkisen kuulemisen pohjalta komissio esitti joulukuussa 2005 laillista maahanmuuttoa ja maahanpääsymenettelyjä koskevan toimintapoliittisen suunnitelman, johon liittyy useita käytännön toimia ja lainsäädäntöehdotuksia, jotka on määrä panna täytäntöön vuosina 2006–2009. Toimenpiteet koskevat maahanpääsyn ja oleskelun edellytyksiä, tiedon levittämistä ja vaihtamista, kotouttamista ja alkuperämaiden kanssa toteutettavia toimia.

1.2.5. Kolmansien maiden kansalaisten kotouttaminen

21. Syyskuun 1. päivänä 2005 annettiin tiedonanto **kolmansien maiden kansalaisten kotouttamista koskevista eurooppalaisista puitteista** ja sitä koskeva yhteinen toimintasuunnitelma, jossa vahvistetaan ne yhteiset perusperiaatteet, joiden mukaan kotouttamista olisi toteutettava Euroopassa.[4] Nämä oikeus- ja sisäasiain neuvoston joulukuussa 2005 hyväksymät puitteet muodostavat pohjan EU:n tuleville aloitteille.

1.2.6. Laittoman maahanmuuton torjunta

22. Komissio teki syyskuussa 2005 päätöksen malleista, joiden mukaan raportoidaan maahanmuuttoalan yhteyshenkilöiden toiminnasta sekä vastaanottavan maan tilanteesta laittoman maahanmuuton osalta. Tarkoituksena on valmistella kumppanuustoimintaa kolmansien maiden kanssa. Päätös tukee huomattavasti asiaankuuluvissa kolmansissa maissa sijaitsevien maahanmuuttoalan yhteyshenkilöverkostojen hallinnointia.

23. **Vuosikertomus laitonta maahanmuuttoa koskevasta yhteisestä politiikasta,** jonka oli määrä valmistua vuonna 2005, esitetään kesän 2006 kuluessa komission tämän alan ensisijaisia toimia koskevan tiedonannon liitteenä.

24. Hiljattain perustettu verkkoteknologiaan perustuva suojattu tietoverkosto maahanmuuton hallinnoinnista vastaavia jäsenvaltioiden viranomaisia varten **(ICONET)** on korvaamaton hallinnointiväline. Komissio järjestää koulutus- ja

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rajaturvallisuusasioita koskevien politiikkojen osalta. Näin ei kuitenkaan voida tehdä laillisen maahanmuuton alalla.

[4] Erityisesti perusoikeuksien edistäminen, syrjimättömyys ja yhtäläiset mahdollisuudet, joille EU:n lainsäädäntö antaa vahvat puitteet.

tiedotustilaisuuksia jäsenvaltioiden yhteysviranomaisille, jotta järjestelmä saadaan täysipainoisesti käyttöön.

25. Kaikki toimenpiteet tehokkaan, yhteisiin normeihin, läheiseen yhteistyöhön ja vastavuoroiseen tekniseen apuun perustuvan maastapoistamis- ja palauttamispolitiikan toteuttamiseksi on pantu täytäntöön. Komissio on esittänyt **palauttamismenettelyjä koskevan lainsäädäntöehdotuksen**. **Valmistelutoimet palauttamisen hallinnointiin** tarkoitettua taloudellista tukea varten on käynnistetty.

26. **Takaisinottosopimukset** Macaon, Hongkongin ja Sri Lankan kanssa ovat tulleet voimaan. Neuvottelut Venäjän kanssa saatiin päätökseen lokakuussa 2005. Albanian kanssa tulokseen päästiin EU:n puolesta marraskuussa 2005. Neuvottelut Ukrainan, Turkin, Marokon ja Pakistanin kanssa jatkuvat.

1.2.7. Turvapaikka- ja maahanmuuttoasioiden ulkoinen ulottuvuus

27. Tällä alalla tapahtui huomattavaa edistymistä vuonna 2005.

28. **Kolmansien maiden kanssa maahanmuutto- ja turvapaikka-asioiden alalla tehtävässä yhteistyössä** EU on hyväksynyt maahanmuuton hallinnointia kolmansien maiden kanssa ja ulkosuhteita koskevat päätelmät. Komission ehdotusten perusteella Eurooppa-neuvosto hyväksyi joulukuun 2005 kokouksessaan kunnianhimoisen toimintasuunnitelman jäsenvaltioiden sekä Afrikan ja Välimerenmaiden yhteistyön lujittamiseksi. Se kehotti komissiota koordinoimaan näitä ensisijaisia toimia yhteistyössä jäsenvaltioiden ja kansainvälisten järjestöjen kanssa. Komission on ilmoitettava asian etenemisestä vuoden 2006 lopulla kokoontuvalle Eurooppa-neuvostolle.

29. Komissio on ehdottanut puitteita EU:n **alueellisten suojeluohjelmien kehittämiselle,** minkä jäsenvaltiot ovat ottaneet suopeasti vastaan. Ensimmäisiä kokeellisia suojeluohjelmia Tansaniassa ja uusissa itsenäisissä valtioissa jouduttiin kuitenkin lykkäämään vuoteen 2006 Aeneas-ohjelman ehdotuspyyntöjen julkaisuaikataulun vuoksi.

1.2.8. Rajavalvonta, biometriikka, tietojärjestelmät ja viisumipolitiikka

30. Myös tällä alalla on edistytty huomattavasti.

31. Henkilötarkastusten poistamiseksi sisärajoilla ja odottaessaan vuodeksi 2006 luvattua arviointia siitä, miten muut kuin SIS II -järjestelmää koskevat säädökset on pantu täytäntöön uusissa jäsenvaltioissa, komissio teki laaditun aikataulun mukaisesti **ehdotuksen SIS II -järjestelmää koskevista säädöksistä**.

32. Ulkorajojen hallinnointia parantamaan 1. toukokuuta 2005 perustetun rajaturvallisuusviraston (FRONTEX) toimintamallin arviointiin perustuvia uusia ehdotuksia ei ole aihetta odottaa ennen vuotta 2007. Komissio on kuitenkin jo vahvistanut aikovansa esittää ehdotuksen **kansallisten asiantuntijaryhmien perustamiseksi.** Asiantuntijaryhmien tarkoituksena on antaa nopeasti teknistä ja operatiivista apua sitä pyytäville jäsenvaltioille.

33. **Schengenin säännöstö (SIS) pantiin osittain täytäntöön Yhdistyneessä kuningaskunnassa** 22. joulukuuta 2004. Neuvoston päätös, joka koskee Schengenin

säännöstön osittaista täytäntöönpanoa Yhdistyneessä kuningaskunnassa, tehdään sen jälkeen kun Yhdistyneessä kuningaskunnassa on toteutettu kaikki tarvittavat tekniset mukautukset.

34. Komission 24. marraskuuta 2005 antama tiedonanto Schengenin tietojärjestelmän (SIS II), viisumitietojärjestelmän (VIS) ja EURODAC-järjestelmän yhteentoimivuudesta on ratkaiseva askel kohti yhdenmukaista lähestymistapaa ja yhdenmukaistettujen ratkaisujen käyttöönottoa **biometriikan** alalla. Joulukuussa hyväksyttiin niin ikään toimintaa koskevat päätelmät kansallisia henkilötodistuksia koskevien vähimmäisvaatimusten kehittämistä varten. Sen sijaan ehdotus yhteisen konsuliohjeiston muuttamiseksi biometristen tietojen keräämistä koskevien sääntöjen ja menettelyjen osalta lykkääntyy vuoteen 2006, sillä ennakkoedellytyksiä koskevat keskustelut ovat edelleen käynnissä.

1.2.9. Viisumipolitiikka ja viisumitietojärjestelmän (VIS) kehittäminen

35. Tiettyjen Haagin ohjelman ensisijaisten toimenpiteiden täytäntöönpanoa joudutaan lykkäämään vuoteen 2006.

36. Tämä koskee mm. komission ehdotusta viisumipolitiikan parantamiseksi tarvittavista muutoksista ja yhteisten viisumikeskusten perustamisesta sekä ehdotusta yhteisen konsuliohjeiston muuttamisesta viisumimaksujen osalta.

37. Kehitystä on kuitenkin saavutettu **kauttakulun** alalla sitä koskevan ehdotuksen ansiosta **sekä paikallista rajaliikennettä koskevan järjestelyn** osalta, jota koskeva poliittinen yhteisymmärrys saavutettiin ensimmäisessä käsittelyssä helmikuussa 2006.

1.3. Turvallisuuden vahvistaminen

1.3.1. Terrorismi: sopivan tasapainon löytäminen yksityisyyden suojan ja turvallisuuden välillä lainvalvonta- ja oikeusviranomaisten välistä tietojenvaihtoa varten

38. Jo ensimmäisessä käsittelyssä saavutetun parlamentin ja neuvoston välisen yhteisymmärryksen ansiosta voitiin 21. helmikuuta 2006 antaa **direktiivi sellaisten tietojen säilyttämisestä,** joita käsitellään yleisten sähköisten viestintäpalvelujen yhteydessä, ja direktiivin 2002/58/EY muuttamisesta. Tämä tapahtui vain viisi kuukautta sen jälkeen, kun komissio oli esittänyt ehdotuksensa, mitä voidaan pitää osoituksena Euroopan unionin poliittisen tahdon toteutumisesta toimielinten yhteistyön avulla.

39. Samaan aikaan saatiin toteutettua suurin osa vuodelle 2005 suunnitelluista toimista **tietojen saatavuusperiaatteen käyttöön ottamiseksi**. Komissio esitti ehdotuksensa lainvalvontatoiminnan kannalta tärkeiden tietojen saatavuutta koskevan periaatteen käyttöön ottamiseksi sekä samanaikaisesti samansuuntaisen ehdotuksen henkilötietojen siirtoa koskevista riittävistä takeista ja tehokkaista oikeuskeinoista rikosasioissa tehtävää poliisiyhteistyötä ja oikeudellista yhteistyötä varten, joka mainittiin jo aikaisemmin[5]. Se, että komissio esitti *kokonaisvaltaisen* ehdotuksen saatavuusperiaatteesta vaikutti kuitenkin niin, että *erityisesti* DNA:ta koskevan

[5] Kohta 8.

ehdotuksen hyväksymistä lykättiin vuoteen 2006. Joulukuussa 2005 päästiin Ruotsin aloitteesta sopimukseen puitepäätöksestä, joka koskee tietojen ja tiedustelutietojen vaihdon yksinkertaistamista Euroopan unionin jäsenvaltioiden lainvalvontaviranomaisten välillä. Komissio teki ehdotuksen lainvalvontaviranomaisten pääsystä viisumitietojärjestelmään (VIS).

40. **Matkustajarekisteritietojen vaihtoa koskevan PNR-sopimuksen** osalta komissio teki 16. kesäkuuta 2006 kaksi aloitetta, joiden avulla pyritään luomaan oikeudellisesti hyväksyttävät puitteet matkustajarekisteritietojen välittämiselle Yhdysvaltoihin. Nämä aloitteet ovat ensimmäiset EU:n toimenpiteet, joilla pyritään korjaamaan Yhdysvaltojen kanssa tehdyn matkustajarekisteritietoja koskevan PNR-sopimuksen oikeusperustaa, koska yhteisöjen tuomioistuin kumosi sopimuksen 30. toukokuuta 2006.

41. Euroopan unioni on yhdistänyt voimansa jatkaakseen terrorismin torjumiseen tähtäävän kokonaisvaltaisen lähestymistavan kehittämistä kaavaillun aikataulun mukaisesti. Komissio teki päätöksen terrorismin torjumiseksi käynnistetyn pilottiprojektin rahoittamisesta. Päätöksessä kaavaillaan erityisesti tiedotus- ja kriisikeskuksen perustamista oikeus-, vapaus- ja turvallisuusasioiden pääosastoon. Komissio on myös tehnyt ehdotuksia, joilla pyritään parantamaan räjähdysaineiden säilytyksen ja kuljetuksen turvallisuutta sekä varmistamaan teollisten ja kemiallisten lähtöaineiden jäljitettävyys. Joulukuussa 2005 määriteltiin väkivaltaista radikalisoitumista ja terroristien rekrytointia koskeva strategia suunnitelmien mukaisesti.

42. Yksikään jäsenvaltio ei onnistunut saattamaan terrorismia koskevaa puitepäätöstä kokonaisuudessaan osaksi kansallista lainsäädäntöään annetussa aikataulussa, ja siksi ei ollut mahdollista aloittaa puitepäätöksen toimeenpanoa koskevaa toista kertomusta ja arviointia tai niihin liittyvää mukauttamista.

1.3.2. Järjestäytyneen rikollisuuden ehkäiseminen ja torjunta

43. Vaikka aikataulun mukaisesti hyväksytty komission tiedonanto **järjestäytyneen rikollisuuden torjuntaa koskevan strategian kehittämisestä** on tärkeä merkkipaalu, on kuitenkin todettava, että useita niistä toimenpiteistä, joilla pyritään parantamaan järjestäytyneen rikollisuuden tuntemusta ja syventämään käsitystä rikollisuuden vakavista ilmenemismuodoista, on jouduttu lykkäämään vuoteen 2006. Samoin jouduttiin tekemään tietojen keruun ja analysoinnin tehostamisen osalta.

44. **Väärennösten torjuntaa** koskevan lainsäädäntöpaketin hyväksymistä neuvostossa on myöhennetty.

45. Sen sijaan suunnitelma, jonka avulla laaditaan yhteiset normit, käytänteet ja mekanismit **ihmiskaupan** torjuntaa varten, saatiin aikaan suunniteltua aikataulua noudattaen.

1.3.3. Yhteistyö poliisi- ja tulliasioissa

46. Oikeus- ja sisäasioiden neuvostossa jatketaan neuvotteluja pyrkimyksistä antaa **Europolille** sellaiset valmiudet, että se voi toimia keskeisenä tekijänä vakavan rajat ylittävän (järjestäytyneen) rikollisuuden ja terrorismin torjunnassa. Nämä

pyrkimykset ovat osoituksena halusta antaa uutta pontta lainvalvontayhteistyön operatiiviselle ulottuvuudelle. Tätä osoittavat myös Euroopan poliisiakatemian **(CEPOL)** perustamisesta tehdyn päätöksen muutokset, keskustelujen aloittaminen Europolin turvallisuuskomitean **(COSI)** tehtävien määrittelystä ja sisäisen turvallisuuden alalla toimivien eri virastojen (ja yksiköiden) välisen yhteistyön käynnistäminen.

1.3.4. Kriisinhallinta Euroopan unionissa

47. Komissio antoi 17. marraskuuta 2005 vihreän kirjan **elintärkeiden infrastruktuurien suojelemisesta.** Lainsäädäntöehdotus, johon kuuluu elintärkeiden infrastruktuurien varoitusverkoston perustaminen (Critical Infrastructure Warning Information Network, CIWIN) annetaan vuonna 2006, jotta voidaan ottaa huomioon vihreään kirjaan saatu palaute.

1.3.5. Rikollisuuden ehkäiseminen yleisellä tasolla

48. Eurooppalaisen rikoksentorjuntaverkoston (**REPC**) organisoinnista vuonna 2005 käydyn mielipiteenvaihdon pohjalta tehdään vuonna 2006 aloite verkoston vahvistamisesta ja sen toiminnan vakiinnuttamisesta.

1.4. Oikeuden vahvistaminen

1.4.1. Keskinäisen luottamuksen ja ymmärtämyksen parantaminen

49. Syksyllä 2005 eri toimijoiden kanssa käytyjen keskustelujen perusteella komissio antaa vuonna 2006 **tiedonannon oikeusalan koulutuksesta EU:ssa.** Tuomareille ja syyttäjille tarkoitettua vaihto-ohjelmaa kehitetään valmistelutoimen pohjalta vuonna 2006, ennen kuin se integroidaan oikeuden ja perusoikeuksien puiteohjelman rikosoikeudelliseen osioon.

1.4.2. Oikeudellinen yhteistyö rikosasioissa

50. Komissio on toteuttanut lupaamansa **vastavuoroista tunnustamista** rikosasioissa edistävät toimenpiteet kaavaillun aikataulun mukaisesti vuonna 2005. Näitä ovat tiedonanto vastavuoroisesta tunnustamisesta rikosasioissa, jossa uudistetaan yleiset puitteet, ehdotus annettujen tuomioiden huomioon ottamisesta uusissa rikosoikeudenkäyntimenettelyissä sekä ehdotus rikosrekisteritietojen vaihdon järjestämisestä ja sisällöstä jäsenvaltioiden välillä. Aikataulu piti myös laadittaessa kertomukset eurooppalaista pidätysmääräystä koskevan puitepäätöksen täytäntöönpanosta.

51. **Sitä vastoin huomattavasti myöhässä ollaan kahden tärkeän toimenpiteen hyväksymisessä**: Eurooppalaista todisteiden luovuttamismääräystä koskevasta puitepäätöksestä saavutettiin poliittinen yksimielisyys vasta kesäkuussa 2006 ja puitepäätöksestä eräistä **prosessuaalisista oikeuksista** keskustellaan edelleen. Kumpaakaan näistä ei saatu hyväksyttyä vuonna 2005, vaikka näin oli suunniteltu Haagin ohjelmassa.

52. Lainsäädäntöjen **lähentämisen** osalta vihreä kirja toimivaltaristiriidoista ja *ne bis in idem* -periaatteesta hyväksyttiin joulukuussa 2005 ja se toimii pohjana keskustelulle, jossa arvioidaan Euroopan unionin tasolla toteutettavien toimien tarpeellisuutta,

mutta vihreää kirjaa syyttömyysolettamasta on lykätty. Myöhempään ajankohtaan on siirretty myös toinen kertomus uhrin asemasta rikosoikeudenkäyntimenettelyissä tehdyn puitepäätöksen täytäntöönpanosta, koska jäsenvaltiot eivät ole kyenneet toimittamaan riittäviä tietoja.

1.4.3. Yhteistyö yksityisoikeuden alalla

53. Oikeudellisessa yhteistyössä yksityisoikeuden alalla on vuonna 2005 saavutettu erinomaisia tuloksia, sillä kaikki suunnitellut toimenpiteet on toteutettu. Erityisesti vastavuoroisen tunnustamisen alalla odotetaan kehitystä tulevina vuosina varsinkin perheoikeuden alalla. Tähän ovat vaikuttaneet vihreä kirja perintöoikeudesta ja vihreä kirja lainvalinnasta ja tuomioistuimen toimivallasta avioeroasioissa, sekä elatusvelvoitteita koskeva asetusehdotus, jota komissio ehdottaa hyväksyttäväksi yhteispäätösmenettelyllä.

2. KANSALLISEN TASON TÄYTÄNTÖÖNPANON SEURANTA

2.1. Valittu menetelmä

54. Seuranta keskittyy ensinnäkin direktiiveihin ja puitepäätöksiin, jotka jäsenvaltioiden on saatettava osaksi kansallista lainsäädäntöä. Kun otetaan huomioon tähän keskimääräisesti kuluva aika, ei ole vielä mahdollista seurata Haagin ohjelman toteuttamiseksi tehdyssä toimintasuunnitelmassa ehdotettujen säädösten saattamista osaksi kansallista lainsäädäntöä, koska yhdenkään täytäntöönpanon määräaika ei ole mennyt umpeen tämän tiedonannon antamishetkellä[6]. Näyttää kuitenkin asianmukaiselta analysoida ja arvioida kokonaisuudessaan vuoden 2005 osalta oikeus-, vapaus- ja turvallisuusasioiden alalla hyväksyttyjen lainsäädäntövälineiden täytäntöönpanoa jäsenvaltioissa tiettyyn määräaikaan mennessä. Tässä tiedonannossa määräpäiväksi valittiin 31. maaliskuuta 2006.

55. Liitteenä olevassa taulukossa 2 esitetään kaikki lainsäädäntövälineet, joiden osalta määräaika niiden saattamiseksi osaksi kansallista lainsäädäntöä on mennyt umpeen tämän tiedonannon antamishetkellä. Direktiivien ja puitepäätösten ohella siinä luetellaan myös sellaiset lainsäädäntövälineet, joita on seurattu kansallisella tasolla ja joiden soveltamisen/täytäntöönpanon määräaika on mennyt umpeen tämän tiedonannon antamishetkellä. Tällaisia ovat tietyt asetukset ja toimintasuunnitelmat, jotka on hyväksytty EY:n perustamissopimuksen perusteella, tai tietyt päätökset, jotka on hyväksytty Euroopan unionista tehdyn sopimuksen VI osaston määräysten perusteella. Taulukossa 2 viitataan Euroopan unionista tehdyn sopimuksen 22 artiklaan, jonka soveltamisesta on julkaistu useita yksityiskohtaisia kertomuksia.

56. Kun hahmotellaan johdonmukaista menetelmää oikeus-, vapaus- ja turvallisuuspolitiikan toteuttamisen arvioimiseksi kansallisella tasolla, on otettava huomioon käytettävissä olevien tietojen monimuotoisuus, mihin vaikuttaa se, onko lainsäädäntöteksti hyväksytty EY:n perustamissopimuksen perusteella vai Euroopan unionista tehdyn sopimuksen VI osaston määräysten perusteella.

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[6] Vasta kertomuksissa Haagin ohjelman täytäntöönpanosta vuosina 2007/2008 voidaan tarkastella ohjelman toimenpiteiden täytäntöönpanoa kansallisella tasolla.

57. Yhteisenä tekijänä on kaikkien jäsenvaltioiden velvollisuus saattaa osaksi kansallista lainsäädäntöä direktiivit ja puitepäätökset panemalla täytäntöön niissä annetut toimenpiteet sekä **ilmoittaa kansallisista täytäntöönpanotoimista säännöllisesti** komissiolle ja/tai tapauskohtaisesti neuvoston pääsihteeristöön. Ilmoitusvelvollisuuden noudattaminen otettiin yhdeksi keskeiseksi tekijäksi, jonka nojalla täytäntöönpanoa kansallisella tasolla arvioidaan. Oli kuitenkin luovuttava tavoitteesta tarkastaa, oliko tätä velvollisuutta noudatettu kyseisissä lainsäädäntövälineissä säädettyyn määräpäivään mennessä, sillä jäsenvaltiot noudattavat näitä määräaikoja puitepäätösten osalta vain harvoin. Tämä ei kuitenkaan merkitse sitä, etteikö tätä kriteeriä voitaisi käyttää tulevaisuudessa, kun arvioidaan Haagin ohjelmassa/Haagin ohjelman toteuttamiseksi tehdyssä toimintasuunnitelmassa kaavailtujen toimenpiteiden täytäntöönpanoa kansallisella tasolla. Tässä vaiheessa pitäydyttiin kuitenkin siinä, että arvioidaan, ovatko jäsenvaltiot noudattaneet velvollisuuttaan kansallisten täytäntöönpanotoimien ilmoittamisessa määräaikaan mennessä, jonka tässä tiedonannossa päätettiin olevan 31. maaliskuuta 2006.

58. Toinen yhteinen tekijä, joka täydentää jäsenvaltioiden velvollisuutta saattaa säädökset osaksi kansallista lainsäädäntöään ja ilmoittaa kansallisista täytäntöönpanotoimista, on se, että jäsenvaltioiden on **saatettava Euroopan unionin lainsäädäntö osaksi kansallista lainsäädäntöään asianmukaisesti ja sovellettava sitä oikein**.

59. Komissiolla on toisinaan mahdollisuus arvioida kansallisen täytäntöönpanon laatua, kun se laatii vastauksia unionin kansalaisten lähettämiin kirjeisiin, Euroopan parlamentin tekemiin kysymyksiin tai Euroopan parlamentille osoitettuihin vetoomuksiin. Koska nämä tietolähteet ovat hyvin monimuotoisia, ei ole mitenkään mahdollista laatia kattavaa luetteloa niistä, eikä niitä siten ole mainittu liitteenä olevassa taulukossa. Tätä kautta saadut tiedot on kuitenkin usein sisällytetty lainsäädäntövälinekohtaisiin kokonaisanalyyseihin kuten kertomuksiin säädösten täytäntöönpanosta.

60. Euroopan unionista tehdyn sopimuksen VI osaston määräysten perusteella hyväksyttyjen puitepäätösten osalta laaditaan ainakin komission kertomus ja sen pohjalta useimmiten neuvoston lopullinen kertomus, josta on harvoin tarpeen keskustella erikseen. Tietyistä puitepäätöksistä, joiden määräysten täytäntöönpanon määräajat on porrastettu, laaditaan useampia peräkkäisiä kertomuksia (esim. uhrin asemaa koskeva puitepäätös). Tämän lisäksi komissio on esittänyt uuden päivitetyn kertomuksen (esim. puitepäätös eurooppalaisesta pidätysmääräyksestä tai terrorismia koskeva puitepäätös) varsinkin, jos kertomus on laadittu ennen viimeisintä laajentumista (esim. puitepäätös rahanpesusta vuodelta 2001). Joissain tapauksissa komissio tekee aloitteen kertomuksen laatimisesta myös sellaisten lainsäädäntövälineiden osalta, joissa ei tästä velvollisuudesta erikseen määrätä (esim. Eurojust-päätös tai välineet taloudellisten etujen suojaamiseksi). Tällaisia aloitteita ei tehty ensimmäisten yhteisten toimien (esim. kuuluminen rikollisjärjestöön) osalta. Yhteisissä kannoissa, kuten puitepäätöksissäkin, määrätään kansallista täytäntöönpanoa koskevan kertomuksen laatimisesta [7].

[7] Joidenkin tekstien osalta tehdään poikkeuksellisesti vertaisarviointi kansallisella tasolla vuoden 1997 yhteisen toiminnan mukaisesti. Tällainen arviointi on määrä laatia eurooppalaisesta

61. Tilanne ei ole samanlainen niiden lainsäädäntövälineiden osalta, jotka annetaan EY:n perustamissopimuksen perusteella. Vaikka suurimmassa osassa niistä säädetään kansallista täytäntöönpanoa koskevan seurantakertomuksen laatimisesta, on oireellista, että näin ei ole laittoman maahanmuuton osalta. Tällä alalla on annettu neljä direktiiviä, joiden kaikkien kohdalla määräaika, jossa ne on saatettava osaksi kansallista lainsäädäntöä ja jossa kansallisista täytäntöönpanotoimista on ilmoitettava on sama eli 31. maaliskuuta 2006, mutta yhdessäkään näistä direktiiveistä ei säädetä kertomuksen laatimisesta. Sama koskee yksityisoikeuden alalla tehtävää oikeudellista yhteistyötä, sillä oikeusavusta annetussa direktiivissä 2003/8/EY ei säädetä kertomuksen laatimisesta.

62. Kertomuksen puuttumisella ei kuitenkaan ole aina samoja vaikutuksia. Vaikutukset riippuvat siitä, onko lainsäädäntövälineet hyväksytty EY:n perustamissopimuksen perusteella vai Euroopan unionista tehdyn sopimuksen VI osaston määräysten perusteella. Täytäntöönpanoa koskevat kertomukset ovat ainoat indikaattorit, joilla voidaan mitata laatua poliisiasioissa tehtävässä yhteistyössä ja rikosasioissa tehtävässä oikeudellisessa yhteistyössä käytettävien välineiden täytäntöönpanossa kansallisella tasolla. Niiden lainsäädäntövälineiden kohdalla, joiden osalta ei ole olemassa velvollisuutta ilmoittaa kansallisista täytäntöönpanotoimista, ei ole olemassa ainuttakaan mittaria, jolla voitaisiin arvioida hyväksytyn täytäntöönpanotoimen tehokkuutta. Sama pätee yhteiseen toimintaan, joka koskee osallistumista rikolliseen toimintaan. Juuri edellä mainituista syistä johtuen on päädytty ehdottamaan tämän välineen uudelleenlaatimista.

63. Tilanne on päinvastainen sellaisten yhteisön välineiden kohdalla, joiden osalta voidaan käynnistää rikkomisesta johtuva menettely. Se on silminnähtävästi tehokas keino vaikuttaa jäsenvaltioihin, jotka eivät ole hoitaneet velvoitteitaan, sillä negatiivinen julkisuus ja tarpeen vaatiessa uhkasakkojen asettaminen toimivat pelotteena. Tämä käy ilmi taulukossa 2, jossa esitetään täytäntöönpanotoimien laatua koskeva seuranta.

2.2. Eri politiikkojen seuranta[8]

2.2.1. Yleiset suuntaviivat

64. Perusoikeuksien alalta ainoastaan direktiivi 95/46/EY **henkilötietojen suojasta** on tällä hetkellä tarkastelun kohteena. Direktiivi on saavuttanut tavoitteensa, sillä se takaa kansalaisten oikeuden yksityisyyteen ja sen laadukkaan suojelun sekä poistaa henkilötietojen vapaan liikkuvuuden esteet Euroopan unionin alueella. Kaikki jäsenvaltiot ovat noudattaneet velvollisuuttaan saattaa direktiivi osaksi kansallista lainsäädäntöään. Ensimmäisestä täytäntöönpanoa koskevasta kertomuksesta ilmenee, että tulos oli **pääosiltaan tyydyttävä,** vaikka täytäntöönpanossa havaittiin myös joitakin puutteita.

65. Vuonna 2004 komissio laati arvion vuosiksi 2000–2004 tehdystä huumausainetoimintasuunnitelmasta Euroopan huumausaineiden ja niiden väärinkäytön seurantakeskuksen ja Europolin toimittamien tietojen pohjalta. Arvion

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pidätysmääräyksestä tehdystä puitepäätöksestä vuoden 2006 aikana. Näitä arviointeja ei ole otettu huomioon tässä tiedonannossa, koska ne ovat joko vanhentuneita tai liian yleisluonteisia.

8 Johdonmukaisuuden varmistamiseksi käytetty nimikkeistö on sama kuin Haagin ohjelmassa.

mukaan **huumausaineita** koskevan strategian ja toimintasuunnitelman toteuttamisen **tulokset** kansallisella tasolla ovat epätasaiset.

2.2.2. Unionin kansalaisuus

66. Komission kertomuksista ja käynnistetyistä rikkomisesta johtuvista menettelyistä saadun kokemuksen perusteella voidaan olla **tyytyväisiä** EY:n perustamissopimuksen II osan määräysten soveltamisen tuloksiin. Kaikki jäsenvaltiot ovat noudattaneet velvollisuuttaan ilmoittaa kansallisista johdetun oikeuden täytäntöönpanotoimista määräpäivänä 31. maaliskuuta 2006. Eläkeläisten, opiskelijoiden ja työelämän ulkopuolella olevien oleskeluoikeudesta annettujen direktiivien täytäntöönpano on sujunut tyydyttävästi. Samaa voidaan sanoa nykyisistä direktiiveistä, jotka koskevat oikeutta liikkua ja oleskella vapaasti jäsenvaltioiden alueella, vaikka täytäntöönpano onkin joissakin tapauksissa osoittautunut puutteelliseksi.

67. Äänioikeudesta kuntavaaleissa ja Euroopan parlamentin vaaleissa annettujen direktiivien täytäntöönpano on edistynyt tyydyttävästi, vaikka kansalaiset eivät ole käyttäneet niitä täysimääräisesti hyväkseen.

2.2.3. Turvapaikka-, maahanmuutto- ja rajapolitiikka

68. Sen lisäksi, että EURODAC-järjestelmän toiminta on osoittautunut komission raporttien mukaan hyvin tyydyttäväksi, arvioitavana on nyt yhteisen **eurooppalaisen turvapaikkajärjestelmän kehittämisen ensimmäinen vaihe**. Kuten voidaan todeta liitteenä olevasta taulukosta 2, kansallisista täytäntöönpanotoimista ilmoittamisessa ilmenee laiminlyöntejä, ja tästä voidaan jo päätellä, että täytäntöönpano ei ole vielä toivotulla tasolla.

69. Koska **laillista maahanmuuttoa** koskeva EU:n politiikka on varsin uutta, siitä ei ole vielä mahdollista laatia kokonaisarviota. Voidaan kuitenkin päätellä, että täytäntöönpano on **puutteellinen**, sillä monet jäsenvaltiot eivät ole vielä ilmoittaneet kansallisista täytäntöönpanotoimista seuraavien direktiivien osalta: direktiivi oikeudesta perheenyhdistämiseen ja direktiivi jäsenvaltioiden alueella pitkäaikaisesti oleskelevien kolmansien maiden kansalaisten asemasta. Viimeksi mainitun osalta on käynnistetty rikkomisesta johtuva menettely.

70. **Laittoman maahanmuuton** osalta ei ole käytettävissä täytäntöönpanoa koskevaa kertomusta, mutta muut indikaattorit osoittavat, että täytäntöönpano on ollut **suhteellisen tyydyttävää** hieman vanhempien lainsäädäntötekstien osalta, lukuun ottamatta erästä tiettyä jäsenvaltiota.

2.2.4. Turvallisuus

71. Järjestäytyneen rikollisuuden torjuntaa ja yhteistyötä poliisi- ja tulliasioissa koskevien lainsäädäntövälineiden täytäntöönpanoa on (puitepäätöksiä lukuun ottamatta) vaikea arvioida, koska Euroopan unionista tehdyn sopimuksen VI osaston perusteella tehdyissä sopimuksissa ja niiden pöytäkirjoissa ei velvoiteta ilmoittamaan täytäntöönpanotoimista tai laatimaan seurantakertomuksia täytäntöönpanosta kansallisella tasolla. Sopimusten ratifiointi mahdollisimman nopeasti on edelleenkin ensisijaisin tavoite.

2.2.5. Oikeus

2.2.5.1. Rikosoikeus

72. Vastavuoroisen tunnustamisen alalla tärkein lainsäädäntöväline on **eurooppalainen pidätysmääräys**. Huolimatta siitä, että puolet jäsenvaltioista oli aluksi myöhässä sen saattamisessa osaksi kansallista lainsäädäntöä, eurooppalainen pidätysmääräys on nyt **käytössä** kaikkialla Euroopan unionin alueella. Tosin joidenkin jäsenvaltioiden on vielä tehtävä lainsäädäntöönsä joitakin mukautuksia. Lisäksi useissa jäsenvaltioissa on ilmennyt perustuslaillisia ongelmia.

73. **Monet lainsäädäntöjen lähentämiseen** tähtäävät lainsäädäntövälineet ovat erittäin hyödyllisiä terrorismin torjunnassa. Täytäntöönpanon kokonaisarviointi **tuottaa** kuitenkin **pettymyksen,** vaikka komissiolla on ollut tapana laatia peräkkäisiä täytäntöönpanoa koskevia seurantakertomuksia, joiden perusteella voitaisiin havaita positiivista kehitystä. Lainsäädäntövälineiden täytäntöönpano on usein puutteellista ja monissa jäsenvaltioissa se tapahtuu myöhässä.

74. Mikään näistä laiminlyönneistä ei ole antanut aihetta käynnistää perustamissopimuksen mukaista rikkomisesta johtuvaa menettelyä.

2.2.5.2. Yksityisoikeus

75. Kahden tähän alaan liittyvän direktiivin[9] arviointi osoittautui hankalaksi**,** koska toisen täytäntöönpanon määräaika ei ollut vielä mennyt umpeen tässä tiedonannossa päätettyyn määräaikaan mennessä, joka oli 31. maaliskuuta 2006, ja toisen osalta täytäntöönpanon määräaika oli juuri umpeutunut. Ainoa käytettävissä oleva täytäntöönpanoa koskeva kertomus on oikeudenkäynti- ja muiden asiakirjojen tiedoksiannosta siviili- ja kauppaoikeudellisissa asioissa annetun asetuksen täytäntöönpanosta ja siitä voidaan päätellä, että parannuksia tarvitaan. Tästä syystä komissio on tehnyt 15. heinäkuuta 2005 ehdotuksen tämän asetuksen muuttamisesta, ja se on tällä hetkellä neuvoston ja parlamentin tarkasteltavana.

2.3. Seuranta jäsenvaltioittain

76. Seuraavat kokonaistilannetta ja kaikkia lainsäädäntövälineitä koskevat tiedot on johdettu kahdesta indikaattorista[10], jotka esitetään liitteenä 2 olevassa taulukossa. Ensimmäisessä taulukossa esitetään kunkin jäsenvaltion kansallisten täytäntööpanotoimien komissiolle ilmoittamisen laiminlyöminen, toisessa taulukossa puutteellinen tai virheellinen täytäntöönpano ja kolmannessa täytäntöönpanovajeen kokonaistilanne jäsenvaltioittain näiden molempien indikaattorien perusteella.

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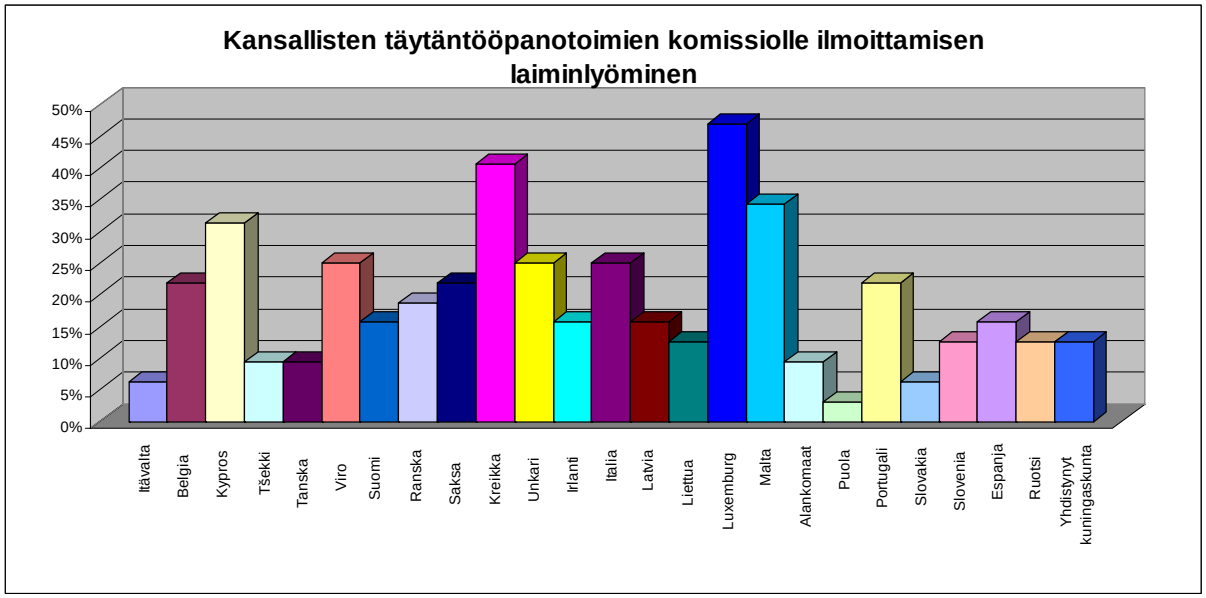
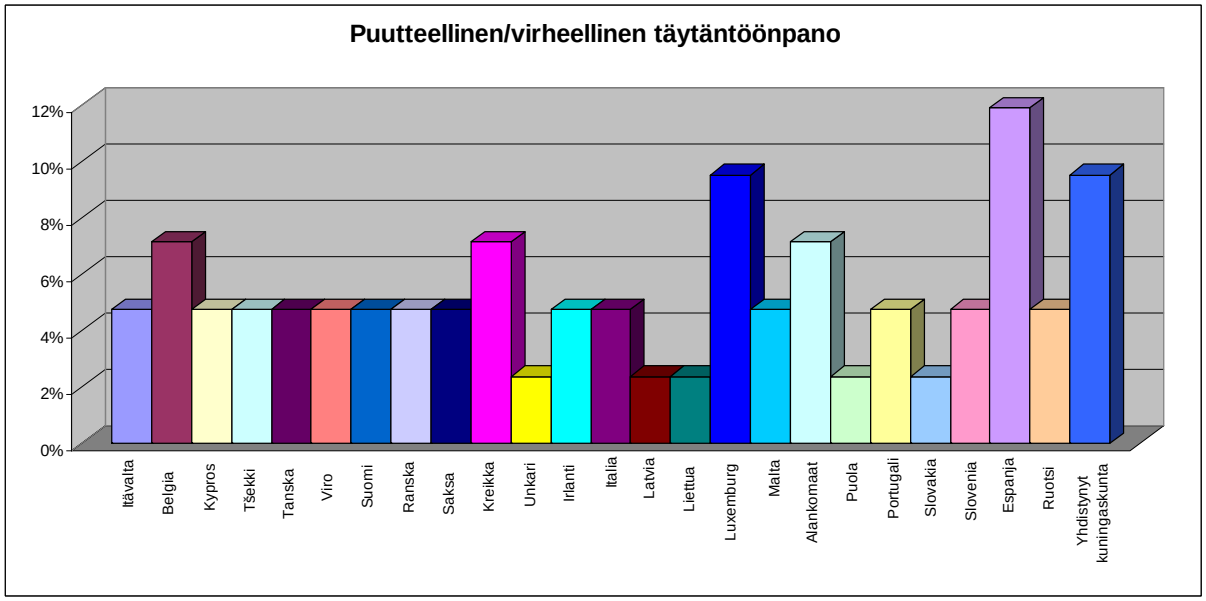
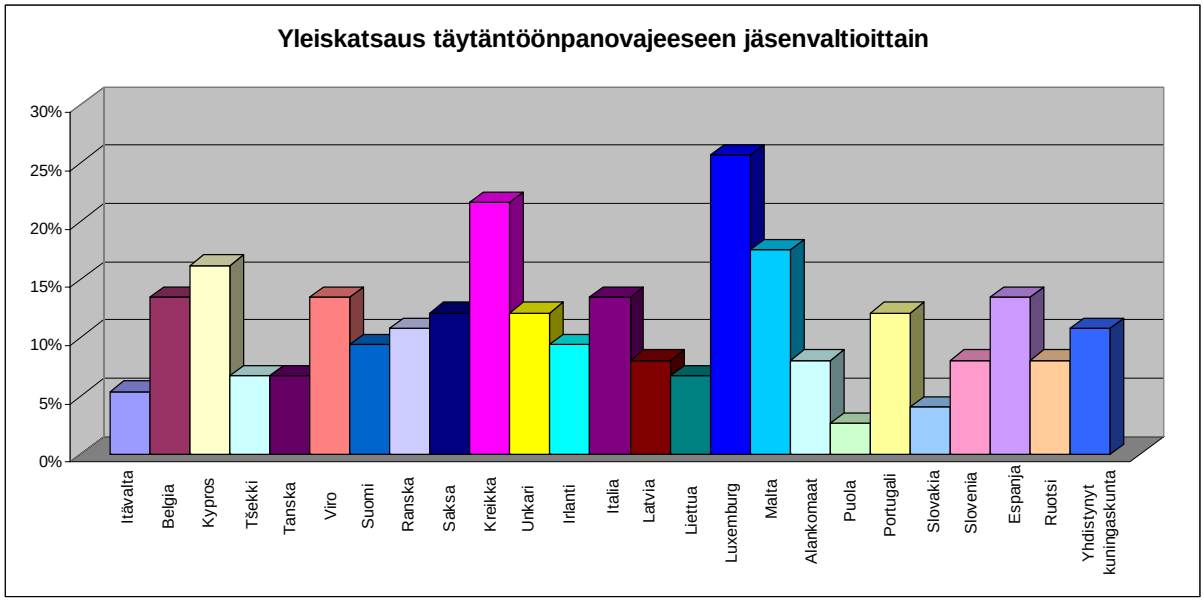
9 Oikeusavusta annettu direktiivi 2003/8/EY ja rikoksen uhreille maksettavista korvauksista annettu direktiivi 2004/80/EY.

10 Tämän tiedonannon 57-63 kohdassa tarkoitetut indikaattorit.


Kansallisten täytäntööpanotoimien komissiolle ilmoittamisen laiminlyöminen
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Itävalta
Belgia
Kypros
Tšekki
Tanska
Viro
Suomi
Ranska
Saksa
Kreikka
Unkari
Irlanti
Italia
Latvia
Liettua
Luxemburg
Malta
Alankomaat
Puola
Portugali
Slovakia
Slovenia
Espanja
Ruotsi
Yhdistynyt kuningaskunta


Puutteellinen/virheellinen täytäntöönpano
12%
10%
8%
6%
4%
2%
0%
Itävalta
Belgia
Kypros
Tšekki
Tanska
Viro
Suomi
Ranska
Saksa
Kreikka
Unkari
Irlanti
Italia
Latvia
Liettua
Luxemburg
Malta
Alankomaat
Puola
Portugali
Slovakia
Slovenia
Espanja
Ruotsi
Yhdistynyt kuningaskunta



3. PÄÄTELMÄT

77. Haagin ohjelman ensimmäisessä seurantakertomuksessa on silmiinpistävintä se kontrasti, joka vallitsee vuoden 2005 **täytäntöönpanoaikataulussa saavutetun positiivisen tuloksen ja** lainsäädäntövälineiden **kansallista täytäntöönpanoa koskevasta seurannasta saatujen paljon heikompien tulosten välillä**.

78. Haagin ohjelmassa mainittujen toimenpiteiden täytäntöönpanon etenemisestä vuonna 2005 voidaan todeta, että **toimielinjärjestelmä** toimii tyydyttävästi oikeus-, vapaus- ja turvallisuusasioiden niillä aloilla, jotka perustuvat EY:n perustamissopimukseen. *Yhteistyö yksityisoikeuden alalla* ja Euroopan *unionin kansalaisuus* ovat hyviä esimerkkejä saavutetusta edistyksestä. Mutta myös näillä aloilla yksimielisyyden vaatimus, silloin kun sitä sovelletaan, on täytäntöönpanoprosessia jarruttava tekijä, joka on osaltaan viivyttänyt Haagin ohjelmassa mainittujen ensisijaisten politiikkojen toteuttamista. Tämä koskee mm. eurooppalaista *turvapaikkajärjestelmää*. Hedelmälliseksi on puolestaan osoittautunut toimielintenvälinen vuoropuhelu yhteispäätösmenettelyn puitteissa ja sen ansiosta on päästy muutamassa kuukaudessa sopimukseen tärkeistä lainsäädäntöteksteistä, joita ovat direktiivi *tietojen säilyttämisestä****, rajaturvallisuutta koskeva säännöstö*** ja ***asetus paikallista rajaliikennettä koskevasta järjestelystä***.

79. Se sijaan niillä aloilla, joilla toiminta perustuu **Euroopan unionista tehdyn sopimuksen VI osastoon**, edistyminen on ollut hidasta monista syistä. *Poliisiasioissa ja rikosasioissa tehtävässä oikeudellisessa yhteistyössä* sovellettava yksimielisyyden vaatimus on viivyttänyt joidenkin tärkeiden toimenpiteiden täytäntöönpanoa, kuten todisteiden luovuttamismääräystä ja puitepäätöstä menettelyllisistä takeista. Jarruttava tekijä on ollut myös neuvoston epäröinti oikeusperustan valitsemiseen liittyvissä seikoissa, mikä on hidastanut täytäntöönpanoprosessia yhteisöjen tuomioistuimen 13. syyskuuta 2005 asiassa C-176/03 antamasta tuomiosta huolimatta.

80. Ensimmäinen arviointi, jossa seurataan oikeutta, vapautta ja turvallisuutta koskevan politiikan toteuttamista kansallisella tasolla, **on hajanainen ja varmasti tässä vaiheessa riittämätön.** Tämä toteamus ei millään muotoa vapauta jäsenvaltioita niiden laiminlyönteihin liittyvästä vastuusta.

81. Useat oikeutta, vapautta ja turvallisuutta koskevat politiikat ovat suhteellisen **uusia** ja tästä syystä useassa tapauksessa onkin liian aikaista arvioida politiikan toteuttamista kansallisella tasolla. Turvapaikkajärjestelmä, laiton maahanmuutto sekä vastavuoroinen tunnustaminen rikosasioissa ja yksityisoikeuden alalla ovat tällaisia aloja. Tilanne on sama myös huumeiden osalta, jossa asiaa seurataan yhdessä Euroopan huumausaineiden ja niiden väärinkäytön seurantakeskuksen kanssa.

82. Kaikkein silmiinpistävintä ovat kuitenkin **laiminlyönnit Euroopan unionista tehdyn sopimuksen VI osaston** perusteella hyväksyttyjen **lainsäädäntövälineiden** täytäntöönpanon **määrässä ja laadussa**. Esimerkiksi terrorismin torjunta, jonka seurantaa käsitellään tämän tiedonannon ensimmäisessä osassa, ei näytä toteutuvan kansallisella tasolla samalla päättäväisyydellä kuin unionin tasolla.

83. Tämä tiedonanto osoittaa, että nykyisiin puitteisiin on tehtävä parannuksia ja erityisesti niitä vaativat poliisiasioissa ja rikosasioissa tehtävässä oikeudellisessa yhteistyössä tarvittavat päätöksentekomenettelyt. Tähän tähtää myös nykyisten perustamissopimusten puitteissa samanaikaisesti tämän tiedonannon kanssa annettava tiedonanto Haagin ohjelman täytäntöönpanosta ja tulevista toimista.

EUROPEISKA GEMENSKAPERNAS KOMMISSION

Bryssel den 28.6.2006
KOM(2006) 333 slutlig

MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET OCH EUROPAPARLAMENTET

Rapport om genomförandet av Haagprogrammet 2005

{SEC(2006) 813}

{SEC(2006) 814}

MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET OCH EUROPAPARLAMENTET

Rapport om genomförandet av Haagprogrammet 2005

1. Detta meddelande är ett svar på rådets uppmaning till kommissionen att lägga fram en årlig rapport om genomförandet av Haagprogrammet och handlingsplanen för detta program (”resultattavla”)[1] och är den första rapporten av detta slag som läggs fram för 2005. Den metod som används i denna rapport kommer att följas i de årliga rapporterna för de fyra kommande åren.

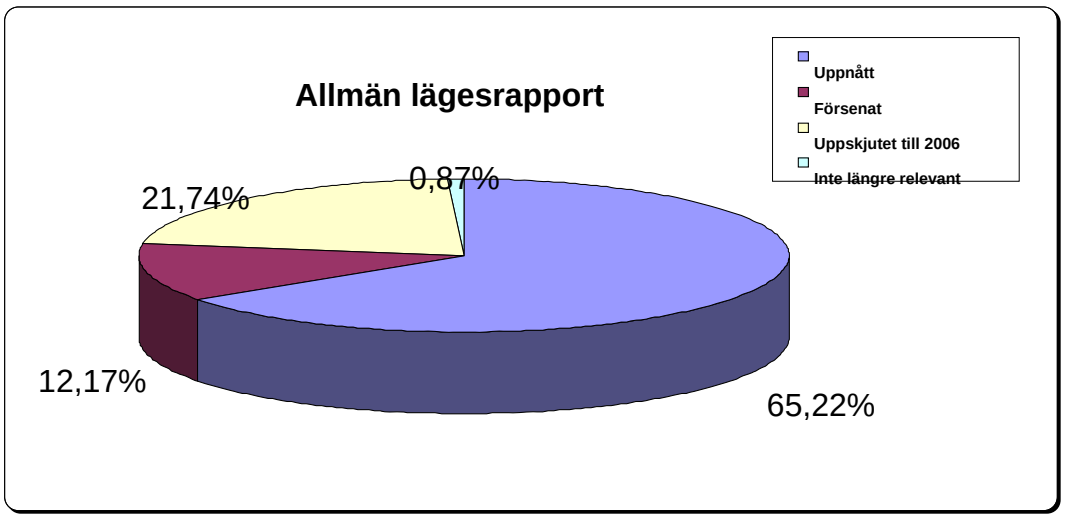
2. I likhet med resultattavlan i samband med Tammerforsprogrammet är det i ett första skede fråga om att se till att åtgärderna i Haagprogrammet antas enligt den fastställda tidsplanen, även de åtgärder som omfattas av handlingsplanen mot narkotika, strategin för den yttre dimensionen av området med frihet, säkerhet och rättvisa och handlingsplanen för bekämpning av terrorism, vilka kompletterar handlingsplanen för genomförande av Haagprogrammet. I detta meddelande redogörs för samtliga åtgärder som planerats för 2005 (första delen och bilaga 1). De åtgärder som planerats för 2006 och därefter kommer att gås igenom närmare i kommande årsrapporter.

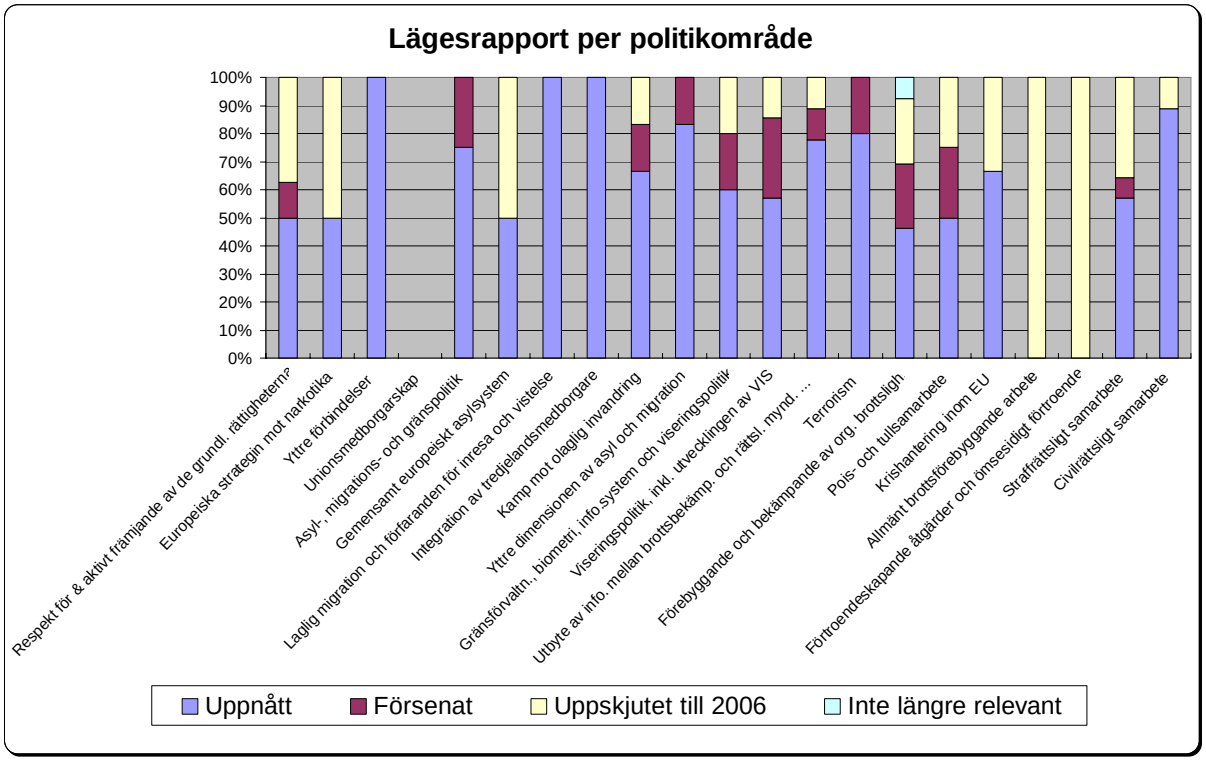
3. Förutom att det följer upp antagandet av de aktuella åtgärderna behandlar detta meddelande uppföljningen av genomförandet av detta politikområde på nationell nivå (andra delen och bilaga 2). Det är första gången det görs inom ramen för uppföljningen av politikområdet ”frihet, säkerhet och rättvisa”.

1. UPPFÖLJNING AV ANTAGANDET AV ÅTGÄRDER INOM RAMEN FÖR HAAGPROGRAMMET SOM PLANERATS FÖR 2005

4. I biofogade tabell 1 ges en lägesrapport över alla åtgärder i handlingsplanen som var planerade för 2005 eller som är regelbundna eller fortlöpande. Resultatet av översynen (se tabellen nedan) är i huvudsak positivt, även om man inte varit lika framgångsrik på alla områden.

[1] Haagprogrammet för stärkt frihet, säkerhet och rättvisa i Europeiska unionen (EUT C 53, 3.3.2005, s. 1) och rådets och kommissionens handlingsplan för genomförande av Haagprogrammet för ett stärkt område med frihet, säkerhet och rättvisa (EUT C 198, 12.8.2005, s. 1).





1.1. Allmänna riktlinjer

1.1.1. Respekt för och aktivt främjande av de grundläggande rättigheterna

5. Det som har uppnåtts på detta område är generellt tillfredsställande. Huvuddelen av de åtgärder som var planerade för 2005 har kunnat genomföras, eller håller på att genomföras under 2006, med undantag för ett förslag om att EU skall ansluta sig till konventionen om skydd för de mänskliga rättigheterna och de grundläggande friheterna, vilket förutsätter att konstitutionen träder i kraft. Kommissionen har antagit de förslag som har samband med en övergripande överenskommelse om

budgetramen för 2007–2013[2] och uppföljningen av dem är beroende av utvecklingen i samband med denna övergripande överenskommelse.

6. Kommissionens förslag om att utvidga mandatet för Europeiska centrumet för övervakning av rasism och främlingsfientlighet och att inrätta **Europeiska unionens byrå för grundläggande rättigheter** är en betydande framgång och en prioriterad fråga i Haagprogrammet.

7. Antagandet av **meddelandet om skydd av barns rättigheter** har skjutits upp till juli 2006 till följd av ett intensivt förberedande arbete och för att garantera att alla berörda intressen beaktas på bästa sätt.

8. På området för **dataskydd** avser kommissionens med sitt förslag till rambeslut om polissamarbete och straffrättsligt samarbete att komplettera de befintliga rättsreglerna. Förslaget utgör ett nödvändigt komplement till förslagen om att genomföra principen om tillgänglighet och förbättra det gränsöverskridande informationsutbytet mellan brottsbekämpande myndigheter i medlemsstaterna.

1.1.2. Den europeiska strategin mot narkotika

9. Såsom planerades i Haagprogrammet antog EU i december 2004 en **strategi mot narkotika för 2005–2012** och i juni 2005 en **narkotikahandlingsplan för 2005–2008**. Därigenom fastställdes för alla deltagande parter specifika prioriteringar, en detaljerad tidsplan för genomförandet och redskap för utvärdering och konkreta indikatorer för var och en av de 80 föreslagna åtgärderna. Handlingsplanen ger kommissionen ansvaret för uppföljningen och utvärderingen, i samarbete med Europeiska centrumet för kontroll av narkotika och narkotikamissbruk och Europol. Den första årsrapporten om genomförandet av handlingsplanen kommer att läggas fram hösten 2006.

1.1.3. Yttre förbindelser

10. EU antog i december 2005 i enlighet med handlingsplanen **en strategi för den yttre dimensionen** av området med frihet, säkerhet och rättvisa, med det särskilda syftet att främja rättsstatsprincipen, stabiliteten och säkerheten utanför EU:s gränser.

1.2. Ökad frihet

1.2.1. Unionsmedborgarskap

11. På detta område ges i Haagprogrammet prioritet åt genomförandet av direktiv 2004/38/EG om unionsmedborgares och deras familjemedlemmars rätt att fritt röra sig och uppehålla sig inom medlemsstaternas territorier, som kommer att utvärderas senare eftersom genomförandefristen nyss har löpt ut.

12. **Rapporterna om tillämpningen av direktiven** rörande rätt till bosättning för pensionärer, studerande och egna företagare som inte längre är yrkesverksamma och direktivet om rösträtt vid val till Europaparlamentet håller på att färdigställas.

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[2] Förslag till de särskilda programmen ”medborgarskap och grundläggande rättigheter”, ”bekämpning av våld (Daphne)” och ”förebyggande av narkotikamissbruk och information till allmänheten”.

1.2.2. Asyl-, migrations- och gränspolitik

13. För att förbättra samordningen av medlemsstaternas politik och öka samarbetet och det regelbundna informationsutbytet mellan medlemsstaterna och med kommissionen, har kommissionen lagt fram ett **förslag om upprättande av ett system för ömsesidigt informationsutbyte om medlemsstaternas åtgärder** rörande asyl och invandring.

14. Betydande framsteg har gjorts på det mycket viktiga området informationsinsamling för att förbättra analysen av migrationsfenomenet. Den 28 november 2005 antog kommissionen en **grönbok om det europeiska migrationsnätverkets framtid**, i syfte att samla in synpunkter från berörda parter. Samtidigt utformades ett **förslag till förordning om gemenskapsstatistik** om migration och internationellt skydd, som håller på att diskuteras.

1.2.3. Ett gemensamt europeiskt asylsystem

15. Resultaten på detta område är blandade.

16. Efter över fyra års diskussioner antogs den 1 december 2005 **direktivet om miniminormer för medlemsstaternas förfaranden för beviljande eller återkallande av flyktingstatus**, vilket avslutade den första etappen av utvecklingen av asylpolitiken. I framtiden kommer denna typ av åtgärder i princip inte att omfattas av regeln om enhällighet, utan av förfarandet i artikel 251 i EG-fördraget[3].

17. Kommissionen har påbörjat utvärderingen av de instrument som antogs under den första etappen, men det var nödvändigt att skjuta upp framläggandet av ett förslag om att bevilja personer som åtnjuter internationellt skydd ställning som varaktigt bosatta till 2006, med hänsyn till andra etappen av inrättandet av ett gemensamt europeiskt asylsystem. I början av 2006 lade kommissionen även fram ett meddelande om inrättande av de nödvändiga strukturerna för samarbetet mellan medlemsstaterna.

18. Utvärderingen av **Europeiska flyktingfonden** (första flyktingfonden) kunde inte utföras enligt planerna och fick skjutas upp till 2006.

1.2.4. Laglig migration och förfaranden för inresa och vistelse

19. Tidsplanen för 2005 har följts fullständigt.

20. På grundval av resultaten från det offentliga samrådet om **grönboken om ekonomisk migration** lade kommissionen i december 2005 fram **en strategisk plan för laglig migration** som innehåller en rad operativa och lagstiftande åtgärder som skall genomföras mellan 2006 och 2009 avseende villkoren för inresa och vistelse,

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[3] Enligt artikel 67.5 första strecksatsen, som föreskriver en övergång till detta förfarande efter första etappen. Generellt innebär antagandet av rådets beslut av den 22 december om att låta delar av de områden som omfattas av avdelning IV i tredje delen av fördraget om upprättandet av Europeiska gemenskapen regleras av förfarandet i artikel 251 i samma fördrag, att det i enlighet med vad som krävdes i Haagprogrammet i princip är möjligt att övergå till förfarandet i artikel 251 för hela politikområdet asyl, invandring och yttre gränser, utom i fråga om laglig invandring.

spridning och utbyte av information, integrationsåtgärder och åtgärder som skall genomföras i sambarbete med ursprungsländerna.

1.2.5. Integration av tredjelandsmedborgare

21. I september 2005 antogs meddelandet ”En gemensam agenda för integration – **En ram för integration av tredjelandsmedborgare inom Europeiska unionen**”, genom vilket det fastställs gemensamma grundläggande principer för en samordnad EU-ram för integration[4]. Denna ram, som godkändes av rådet (rättsliga och inrikes frågor) i december 2005, kommer att ligga till grund för framtida EU-initiativ.

1.2.6. Kamp mot olaglig invandring

22. Med inriktning på nära partnerskap med tredjeländer innebär antagandet i september 2005 av kommissionens beslut om utformningen av rapporter om verksamheten inom nätverken av sambandsmän för invandring och situationen i värdlandet rörande olaglig invandring ett användbart bidrag till förvaltningen av nätverken av sambandsmän för invandring i berörda tredjeländer.

23. Den **årliga rapport om den gemensamma politiken om olaglig invandring** som skulle läggas fram under 2005 kommer slutligen att läggas fram sommaren 2006, som en bilaga till det kommande meddelandet från kommissionen om de framtida prioriteringarna på detta område.

24. Inrättandet av ett säkrat webbaserat informationsnätverk för migrationsmyndigheter och liknande i medlemsstaterna **(ICONET)** erbjuder ett värdefullt förvaltningsverktyg. Kommissionen kommer att anordna utbildnings- och informationskurser vid medlemsstaternas kontaktpunkter för att göra nätverket fullt operativt.

25. Alla planerade åtgärder för att inrätta en effektiv politik för avvisning eller utvisning och återsändande som grundar sig på gemensamma normer och på ett närmare samarbete och ömsesidigt tekniskt bistånd har förverkligats. Kommissionen har således lagt fram ett **lagstiftningsförslag om förfaranden för återvändande**. De **förberedande åtgärderna för ekonomiskt stöd till hantering av återvändande** har påbörjats.

26. Efter det att återtagandeavtalen med Macao, Hong Kong och Sri Lanka trätt i kraft avslutades förhandlingarna med Ryssland i oktober 2005, och förhandlingarna med Albanien avslutades från EU:s sida i november 2005. Förhandlingarna med Ukraina, Turkiet, Marocko och Pakistan fortsätter.

1.2.7. Den yttre dimensionen av asyl och migration

27. På det här området gjordes anmärkningsvärda framsteg 2005.

28. När det gäller **samarbetet med tredjeländer om migrations- och asylförvaltningen**, antog EU operativa slutsatser om migrationsförvaltningen med

[4] Bland annat: respekt för individens grundläggande rättigheter och för principerna om icke-diskriminering och lika möjligheter, för vilka EU-lagstiftningen är en stabil ram.

tredjeländer och yttre förbindelser. På grundval av förslag från kommissionen antog Europeiska rådet i december 2005 en ambitiös dagordning för ett stärkt samarbete mellan medlemsstaterna och länderna i Afrika och Medelhavsområdet. Kommissionen uppmanades att samordna genomförandet av dessa prioriterade åtgärder i samarbete med medlemsstaterna och internationella organisationer. Den skall informera Europeiska rådet om detta arbete i slutet av 2006.

29. Kommissionen har föreslagit en ram för utvecklingen av **regionala EU-skyddsprogram**, vilken har mottagits väl i medlemsstaterna. Lanseringen av de första pilotprogrammen i Tanzania och i de nya oberoende staterna har dock fått skjutas upp till 2006 med hänsyn till tidsplanen för offentliggörandet av förslagsinfordran inom ramen för Aeneasprogrammet.

1.2.8. Gränsförvaltning, biometri, informationssystem och viseringspolitik

30. Även på detta område har betydande framsteg gjorts.

31. När det gäller att avskaffa kontrollerna av personer vid de inre gränserna, och i avvaktan på utvärderingen av hur den del av regelverket som inte rör Schengens informationssystem (SIS II) har genomförts i de nya medlemsstaterna, som förväntas utföras 2006, har kommissionen i enlighet med den fastställda tidsplanen lagt fram ett **förslag om rättsliga instrument rörande SIS II**.

32. När det gäller förvaltningen av de yttre gränserna efter inrättandet av gränsförvaltningsbyrån (FRONTEX) den 1 maj 2005, förväntas inga nya förslag till följd av utvärderingen av dess funktion att läggas fram före 2007. Kommissionen har dock redan bekräftat sin avsikt att lägga fram ett **förslag om att inrätta grupper med nationella experter** som kan tillhandahålla snabbt tekniskt och operativt stöd åt de medlemsstater som begär det.

33. **Förenade kungariket genomförde en del av Schengenregelverket (SIS)** den 22 december 2004. Rådets beslut om partiellt genomförande av Schengenregelverket (SIS) i Förenade kungariket kommer att antas efter det att Förenade kungariket har genomfört de nödvändiga tekniska anpassningarna.

34. Den 24 november 2005 antogs kommissionens meddelande om interoperabilitet mellan SIS II, Informationssystemet för viseringar (VIS) och EURODAC. Det är ett viktigt steg mot en sammanhängande strategi och mot antagandet av harmoniserade lösningar inom EU avseende **biometriska kännetecken och uppgifter**. I december antogs operativa slutsatser som en förberedelse av utarbetandet av miniminormer för nationella identitetskort. Förslaget om ändring av de gemensamma konsulära anvisningarna om vilka normer och förfaranden som skall tillämpas vid registreringen av biometriska kännetecken kunde dock läggas fram först 2006, eftersom diskussionerna om de nödvändiga förutsättningarna fortfarande pågick.

1.2.9. Viseringspolitik, inklusive utvecklingen av informationssystemet för viseringar (VIS)

35. Vissa av de prioriterade åtgärderna i Haagprogrammet har skjutits upp och har antagits eller kommer att antas under 2006.

36. Det gäller till exempel kommissionens förslag om nödvändiga ändringar för att ytterligare stärka viseringspolitiken samt förslaget om ändring av de gemensamma konsulära anvisningarna för viseringsavgifter.

37. I och med att kommissionen har lagt fram sitt förslag om **transitering** har framsteg kunnat göras på det området. Detsamma gäller inrättandet av en **ordning för lokal gränstrafik**, där en politisk överenskommelse uppnåddes i februari 2006 under första behandlingen.

1.3. Skärpt säkerhet

1.3.1. Terrorism: utbyte av information mellan brottsbekämpande och rättsliga myndigheter med iakttagande av en rimlig balans mellan skyddet av privatlivet och säkerhetshänsyn

38. Den 21 februari 2006 antogs Europaparlamentets och rådets **direktiv om lagring av uppgifter** som behandlats i samband med tillhandahållande av allmänt tillgängliga elektroniska kommunikationstjänster och om ändring av direktiv 2002/58/EG, sedan enighet uppnåtts under första behandlingen. Detta var bara fem månader efter det att kommissionen hade lagt fram sitt förslag, vilket var en interinstitutionell framgång och ett bevis för EU:s politiska vilja.

39. Samtidigt har de flesta åtgärder avseende **genomförandet av principen om tillgänglighet** som var planerade till 2005 genomförts. Kommissionen har sålunda lagt fram ett förslag om att etablera en princip om tillgänglighet för information som är relevant för brottsbekämpning samtidigt med ett parallellt förslag om lämpliga garantier och effektiva rättsmedel för överföringen av personuppgifter vid polisiärt och straffrättsligt samarbete, som nämnts ovan[5]. Att ett *övergripande* förslag om principen om tillgänglighet har lagts fram betyder att ett förslag som rör DNA *specifikt* har skjutits upp till 2006. I december 2005 uppnåddes enighet om ett initiativ från Sverige om förenklat uppgifts- och underrättelseutbyte mellan medlemsstaternas brottsbekämpande myndigheter. Kommissionen har lagt fram ett förslag om att ge de brottsbekämpande myndigheterna tillgång till VIS.

40. När det gäller **utbyte av passageraruppgifter** antog kommissionen den 16 juni 2006 två initiativ i syfte att inrätta en godtagbar rättslig ram för överföring av passageraruppgifter till Förenta staterna. Dessa initiativ är de första europeiska åtgärder som vidtas för att korrigera den rättsliga grunden för det avtal som ingåtts med Förenta staterna, vilket ogiltigförklarades av EG-domstolen den 30 maj 2005.

41. EU har mobiliserat sig för att **fortsätta arbetet med att utforma en övergripande strategi för kampen mot terrorism** i enlighet med den fastställda tidsplanen. Kommissionen har sålunda antagit ett beslut om finansieringen av pilotprojektet ”kamp mot terrorism”, som bland annat innebär att det skall inrättas ett informations- och kriscentrum inom generaldirektoratet för frihet, säkerhet och rättvisa. Kommissionen har också utarbetat förslag som syftar till att förbättra säkerheten vid lagring och transport av sprängämnen och säkerställa spårbarhet av industriella och

[5] Punkt 8.

kemiska prekursorer. Slutligen fastställdes i december 2005 en strategi för radikalisering och rekrytering.

42. Eftersom ingen av medlemsstaterna hade lyckats genomföra hela rambeslutet om terrorism på ett korrekt sätt och inom föreskriven tid, var det inte möjligt att påbörja en utvärdering och anpassning genom en andra rapport som planlagt.

1.3.2. Förebyggande och bekämpande av organiserad brottslighet

43. Kommissionens meddelande om **utarbetande av en strategi för bekämpande av organiserad brottslighet** är en central åtgärd som antagits enligt tidsplanen. Det måste dock konstateras att det varit nödvändigt att skjuta upp flera av de planerade åtgärderna i syfte att förbättra kunskaperna om organiserad brottslighet och andra allvarliga former av brottslighet och stärka insamlingen och analysen av uppgifter till 2006.

44. Rådets antagande av lagbestämmelser om **kampen mot förfalskning** har försenats.

45. En plan för att utforma gemensamma standarder, bästa metoder och mekanismer för att förhindra **människohandel** har däremot utarbetats inom fastställd tid.

1.3.3. Polis- och tullsamarbete

46. Arbetet med att ge **Europol** möjlighet att spela en central roll i kampen mot allvarliga former av (organiserad) brottslighet fortsatte med diskussioner i rådet (rättsliga och inrikes frågor). Detta, tillsammans med ändringarna av beslutet om inrättande av Europeiska polisakademin (**CEPOL**), inledandet av diskussionerna om fastställande av säkerhetskommitténs roll och den samordning som skall ske mellan de olika byråer (och avdelningar) som arbetar med inre säkerhet, visar på en vilja att ge ny drivkraft åt den operativa delen av polissamarbetet.

1.3.4. Krishantering inom europeiska unionen

47. Den 17 november 2005 lade kommissionen fram en grönbok om **skydd av viktig infrastruktur.** Ett lagförslag, som omfattar inrättandet av ett nätverk för varningar om hot mot viktig infrastruktur (CIWIN), kommer att läggas fram 2006, så att reaktionerna på grönboken kan beaktas.

1.3.5. Allmänt brottsförebyggande arbete

48. Efter interna överväganden om organisationen av det europeiska nätverket för förebyggande av brottslighet under 2005, kommer ett initiativ om stärkande och professionalisering av nätverket att läggas fram under 2006.

1.4. Stärkande av rättvisan

1.4.1. Förtroendeskapande åtgärder och främjande av ömsesidigt förtroende

49. Efter diskussioner med olika berörda aktörer under hösten 2005 kommer kommissionen under 2006 att lägga fram ett **meddelande om juridisk utbildning i EU**. Utbytesprogrammet för domare kommer att följas upp inom ramen för en

förberedande åtgärd 2006, innan det integreras som en del (”straffrätt”) i ramprogrammet för rättvisa och grundläggande rättigheter.

1.4.2. Straffrättsligt samarbete

50. När det gäller det fortsatta **genomförandet av principen om ömsesidigt erkännande**, har kommissionen iakttagit tidsplanen för de åtgärder som skulle genomföras 2005. Det gäller till exempel meddelandet om ömsesidigt erkännande, som förnyar den generella rättsliga ramen på detta område, lagförslag om hur fällande domar i Europeiska unionens medlemsstater skall beaktas i samband med nya brottmålsförfaranden och om organisationen av medlemsstaternas utbyte av uppgifter ur kriminalregister och uppgifternas innehåll samt rapporter om genomförandet av rambeslutet om en europeisk arresteringsorder.

51. Tyvärr har det uppstått **betydande förseningar** när det gäller antagandet av två centrala åtgärder. En politisk överenskommelse om rambeslutet om **bevisupptagning** nåddes först i juni 2006 och rambeslutet om **vissa rättssäkerhetsgarantier** håller fortfarande på att diskuteras. Inget av rambesluten antogs 2005 enligt planerna i Haagprogrammet.

52. När det gäller **tillnärmning**, antogs grönboken om behörighetskonflikter och principen om *ne bis in idem* i december 2005, vilket gav möjlighet att inleda en debatt om nödvändigheten av en gemensam åtgärd på EU-nivå, men grönboken om oskuldspresumtionen har skjutits upp. Detsamma gäller den andra rapporten om genomförandet av rambeslutet om brottsoffrets ställning i straffrättsliga förfaranden, eftersom medlemsstaterna inte hade inkommit med tillräckliga uppgifter.

1.4.3. Civilrättsligt samarbete

53. Framstegen på området för civilrättsligt samarbete har varit särskilt stora, då alla planerade åtgärder för 2005 vidtagits. Det gäller till exempel ömsesidigt erkännande, ett område som kommer att utvecklas vidare under de kommande åren, särskilt när det gäller familjerätt, till följd av grönboken om arv och grönboken om tillämplig lag och behörig domstol i mål om äktenskapsskillnad samt förslaget till förordning om underhållsskyldighet, som kommissionen har föreslagit skall antas enligt medbeslutandeförfarandet.

2. UPPFÖLJNING AV GENOMFÖRANDET PÅ NATIONELL NIVÅ

2.1. Metod

54. Detta arbete avser först och främst de rättsliga instrument som måste genomföras av medlemsstaterna, dvs. direktiv och rambeslut. Med hänsyn till de genomsnittliga tidsfristerna för genomförande går det ännu inte att göra en utvärdering av de rättsakter som planerades i Haagprogrammet, då genomförandefristen inte har löpt ut för någon av dem vid tiden för detta meddelande[6]. Det förefaller däremot relevant att i denna rapport avseende 2005 göra en global analys och utvärdering av

[6] Först på grundval av rapporterna om genomförandet av Haagprogrammet för 2007 och 2008 kan man göra en sådan utvärdering av genomförandet på nationell nivå av åtgärderna i programmet.

medlemsstaternas genomförande vid ett visst brytdatum, som i detta meddelande har fastställts till den 31 mars 2006, av de instrument som hittills har antagits på området frihet, säkerhet och rättvisa.

55. I tabellen i bilaga 2 återfinns alla instrument vars genomförandefrist har löpt ut vid tidpunkten för detta meddelande. Förutom direktiv och rambeslut omfattar tabellen även rättsliga instrument som har följts upp på nationell nivå, och där tillämpnings- eller genomförandefristen har löpt ut på dagen för antagandet av detta meddelande. Det gäller till exempel vissa förordningar eller handlingsplaner som antagits med stöd av EG-fördraget eller beslut som bygger på avdelning VI i EU-fördraget. I tabellen återfinns även artikel 22 i EG-fördraget, vars tillämpning har varit föremål för flera på varandra följande, detaljerade rapporter.

56. För att hitta en sammanhängande metod för utvärderingen av genomförandet på nationellt plan av politiken på området frihet, säkerhet och rättvisa, bör man beakta de många olika uppgifter som finns tillgängliga, beroende på om texterna har antagits på grundval av **EG-fördraget** eller **avdelning VI i EU-fördraget**.

57. En gemensam faktor är först och främst medlemsstaternas skyldighet att genomföra åtgärderna i direktiv eller rambeslut i nationell rätt och att systematiskt **meddela vilka genomgörandeåtgärder de har vidtagit** till kommissionen och/eller till rådets generaldekretariat. Respekten för denna skyldighet har därför tagits med som en av de relevanta faktorerna för utvärderingen av genomförandet på nationell nivå. Det har dock inte varit möjligt att kontrollera om skyldigheten respekterats vid den tidpunkt som anges i de berörda instrumenten, eftersom det bara är i undantagsfall som någon medlemsstat iakttar dessa tidsfrister vid genomförande av rambeslut. Det är inte uteslutet att detta kriterium kan komma att användas i framtiden när det gäller att utvärdera genomförandet på nationellt plan av åtgärderna i Haagprogrammet, men det tycktes i detta skede vara att föredra att man i detta meddelande använder sig av datumet den 31 mars 2006 som riktmärke.

58. En andra gemensam faktor, förutom denna formella skyldighet att genomföra och meddela, är medlemsstaternas skyldiga att i sak **genomföra och tillämpa EU-/EG-lagstiftningen på ett korrekt sätt**.

59. Kommissionen gör ibland den materiella bedömningen av kvaliteten på genomförandet i nationell lagstiftning när den svarar på brev från medborgare eller petitioner från Europaparlamentet. Med hänsyn till dessa faktorers art och de stora skillnaderna mellan dem, är det inte möjligt att göra en uttömmande förteckning över dem, och de har därför inte tagits med som informationskällor i den bifogade tabellen. De används dock ofta vid de övergripande analyserna i genomföranderapporterna för varje instrument.

60. Vad gäller rambeslut som antagits på grundval av avdelning VI i EU-fördraget krävs systematiskt att åtminstone en rapport från kommissionen utarbetas. Denna rapport tjänar normalt som underlag för en slutrapport från rådet, som endast i undantagsfall blir föremål för diskussion. För vissa rambeslut, där olika bestämmelser har olika genomförandefrister, utarbetas flera på varandra följande rapporter (t.ex. rambeslutet om brottsoffer). Det blir allt vanligare att kommissionen lägger fram en uppdaterad genomföranderapport (t.ex. rambesluten om en europeisk arresteringsorder och om terrorism), särskilt om de första rapporterna utarbetades före utvidgningen (t.ex.

rambeslutet om penningtvätt från 2001). Kommissionen tar ibland även initiativet att lägga fram en sådan rapport för instrument som inte föreskriver en sådan skyldighet (t.ex. beslutet om Eurojust och instrumenten rörande skydd av gemenskapens finansiella intressen). Något sådant initiativ togs inte för de första gemensamma åtgärderna, t.ex. den om deltagande i en kriminell organisation. I de gemensamma ståndpunkterna föreskrivs däremot att det liksom för rambesluten skall upprättas en rapport om genomförandet på nationell nivå[7].

61. Situationen är annorlunda för de instrument som bygger på EG-fördraget. De flesta av dessa instrument föreskriver också att en rapport över genomförandet på nationellt plan skall upprättas, men det är symptomatiskt att detta inte gäller i fråga om olaglig invandring. Inte något av de fyra direktiv som antagits på detta område, och vars frist för genomförande och skyldigheten att meddela genomförandeåtgärder löpte ut den 31 mars 2006, föreskriver att en sådan rapport skall upprättas. På området för civilrättsligt samarbete kräver på liknande sätt direktiv 2003/8/EG om rättshjälp inte heller en rapport.

62. Det faktum att det inte utarbetas någon rapport har dock olika följder beroende på om instrumentet har antagits med stöd av EG- eller EU-fördraget. Genomföranderapporterna är de enda offentliga publikationerna angående genomförandet i medlemsstaterna av instrumenten på området för straffrättsligt samarbete och polissamarbete. För de rättsakter där det inte finns någon skyldighet att meddela vilka genomförandeåtgärder som har vidtagits finns absolut ingen anvisning om hur effektiv den antagna åtgärden är. Så är till exempel fallet för den gemensamma åtgärden om deltagande i en kriminell organisation. Det är för övrigt ett av skälen till förslaget om omarbetning av det instrumentet.

63. Omvänt har, i fråga om gemenskapsrättsakterna, fördragsbrottsförfarandena en tydlig avskräckande verkan för medlemsstaterna, som om de underlåter att genomföra en rättsakt får negativ publicitet och eventuellt föreläggs vite (se uppföljningen av kvaliteten på genomförandet i tabellen i bilaga 2).

2.2. Uppföljning per politikområde[8]

2.2.1. Allmänna riktlinjer

64. På området för grundläggande rättigheter är det bara direktiv 95/46/EG om **skydd för personuppgifter** som berörs i detta skede. Direktivet har uppfyllt sitt syfte att garantera en hög skyddsnivå för medborgarnas rätt till privatliv och att avskaffa hindren för den fria rörligheten för personuppgifter inom unionen. Samtliga medlemsstater har iakttagit sin skyldighet att genomföra direktivet, **överlag tillfredsställande** enligt den första rapporten, även om några fall av felaktig tillämpning upptäckts.

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[7] Slutligen, och som ett undantag, blir vissa texter föremål för en utvärdering på nationell nivå enligt den gemensamma åtgärden från 1997. En sådan utvärdering gjordes till exempel avseende rambeslutet om en europeisk arresteringsorder under 2006. Dessa utvärderingar har inte beaktats i detta meddelande, eftersom de antingen är för gamla eller har för allmän karaktär.

[8] För enhetlighetens skull har nomenklaturen i Haagprogrammet använts.

65. Den utvärdering av handlingsplanen mot **narkotika** för 2000–2004 som kommissionen utförde 2004 på grundval av uppgifter från Europeiskt centrum för kontroll av narkotika och narkotikamissbruk (ECNN) och Europol visar på ett **blandat resultat** när det gäller tillämpningen på nationell nivå av den europeiska strategin och handlingsplanen mot narkotika.

2.2.2. Unionsmedborgarskap

66. Erfarenheterna från kommissionens rapporter och från överträdelseförfaranden visar på ett **tillfredsställande** resultat när det gäller tillämpningen av bestämmelserna i avdelning II i EG-fördraget. Samtliga medlemsstater hade generellt sett iakttagit sin skyldighet att meddela nationella åtgärder för att genomföra sekundärrätten vid brytdatumet den 31 mars 2006. Genomförandet av direktiven om rätt till bosättning för pensionärer, studerande och egna företagare som inte längre är yrkesverksamma är överlag tillfredsställande. Detsamma gäller direktiven om unionsmedborgares och deras familjemedlemmars rätt att fritt röra sig och uppehålla sig inom medlemsstaternas territorier, bortsett från några fall av felaktig tillämpning.

67. Direktiven om rösträtt vid kommunala val och val till Europaparlamentet har införlivats på ett tillfredsställande sätt, även om medborgarna inte har utnyttjat reglerna i tillräcklig utsträckning.

2.2.3. Asyl-, migrations- och gränspolitik

68. Förutom kommissionens rapporter om EURODACS funktion, som är mycket god, håller den **första etappen av utvecklingen av asylpolitiken** på att utvärderas. Som framgår av tabellen i bilaga 2 kvarstår det fortfarande vissa luckor när det gäller meddelande av genomförandeåtgärder, vilket leder till slutsatsen att genomförandet ännu inte ligger på en optimal nivå.

69. Med hänsyn till att EU-politiken på området för **laglig invandring** är så ny finns det ännu inte några rapporter som möjliggör en samlad utvärdering. Det stora antalet medlemsstater som inte har meddelat några genomförandeåtgärder avseende direktiven om familjeåterförening och om varaktigt bosatta tredjelandsmedborgares ställning, och avseende vilka överträdelseförfaranden pågår, leder dock till slutsatsen att tillämpningen är **ofullständig**.

70. Trots att det inte finns några rapporter om genomförandet på området **olaglig invandring,** visar övriga tillgängliga indikatorer på ett **relativt tillfredsställande** genomförande av de äldre texterna, med undantag för en viss medlemsstat.

2.2.4. Säkerhet

71. Bortsett från rambesluten är införlivandet av instrumenten om kampen mot organiserad brottslighet och om polis- och tullsamarbete, särskilt konventioner och protokoll till konventioner som antagits på grundval av avdelning VI i EU-fördraget, svårt att bedöma, med hänsyn till att dessa instrument inte föreskriver någon formell skyldighet för medlemsstaterna att meddela genomförandeåtgärder eller att någon rapport om det nationella genomförandet skall upprättas. Högsta prioritet är att de skall ratificeras så snabbt som möjligt.

2.2.5. Rättvisa

2.2.5.1. Straffrätt

72. Den **europeiska arresteringsordern** är ett central instrument på området för ömsesidigt erkännande och trots att ungefär hälften av medlemsstaterna inledningsvis var försenade med införlivandet är den i dag **i bruk** i hela EU, med förbehåll för att vissa medlemsstat måste vidta ytterligare åtgärder för att rätta sig fullständigt efter texten och att vissa konstitutionella problem har uppstått i flera medlemsstater.

73. När det gäller instrumenten för **tillnärmning**, varav många är relevanta för kampen mot terrorism, är den övergripande utvärderingen av genomförandet särskilt **nedslående**, även om kommissionens praxis att lägga fram flera på varandra följande utvärderingsrapporter verkar vara en positiv utveckling. Rättsakterna införlivas ofta på ett ofullständigt sätt och med betydande förseningar, beroende på medlemsstat.

74. Som fördragen ser ut i dag är det inte troligt att någon av dessa brister kommer att leda till ett överträdelseförfarande.

2.2.5.2. Civilrätt

75. Det är i detta skede svårt att utvärdera de två berörda texterna[9] eftersom genomförandefristerna för samtliga bestämmelser vid det brytdatum (den 31 mars) som använts i detta meddelande inte hade löpt ut i fråga om det ena direktivet och nyligen hade löpt ut i fråga om det andra. Av den enda rapport som i dag finns tillgänglig om tillämpningen av förordningen om delgivning i medlemsstaterna av handlingar i mål och ärenden av civil eller kommersiell natur, kan man dock dra slutsatsen att det krävs förbättringar. Kommissionen antog därför den 15 juli 2005 ett förslag om ändring av förordningen, vilket för närvarande håller på att behandlas av rådet och Europaparlamentet.

2.3. Uppföljning per medlemsstat

76. Nedanstående samlade uppgifter, som avser alla instrument tillsammans, kan härledas från de två indikatorerna[10] i tabellen i bilaga 2. De första två tabellerna nedan återger brister från medlemsstaternas sida, per medlemsstat. Den första avser bristande underrättelse om nationella genomförandeåtgärder och den andra bristande efterlevnad eller felaktig tillämpning. Den tredje tabellen återger bristerna per medlemsstat på grundval av de två indikatorerna tillsammans.

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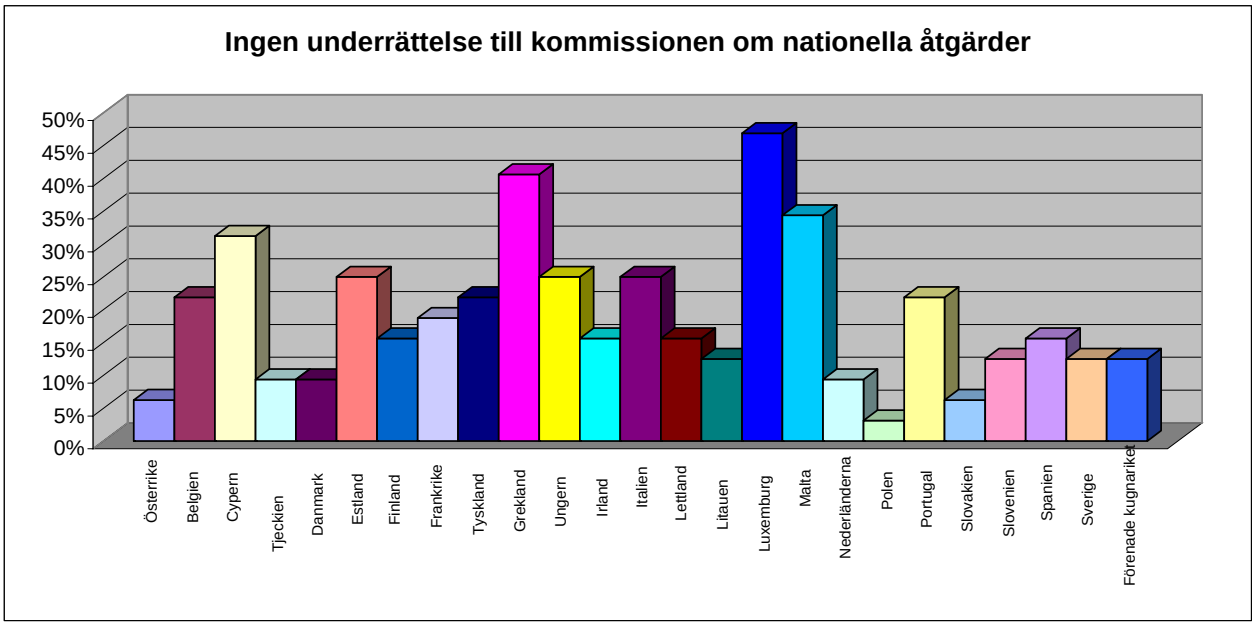
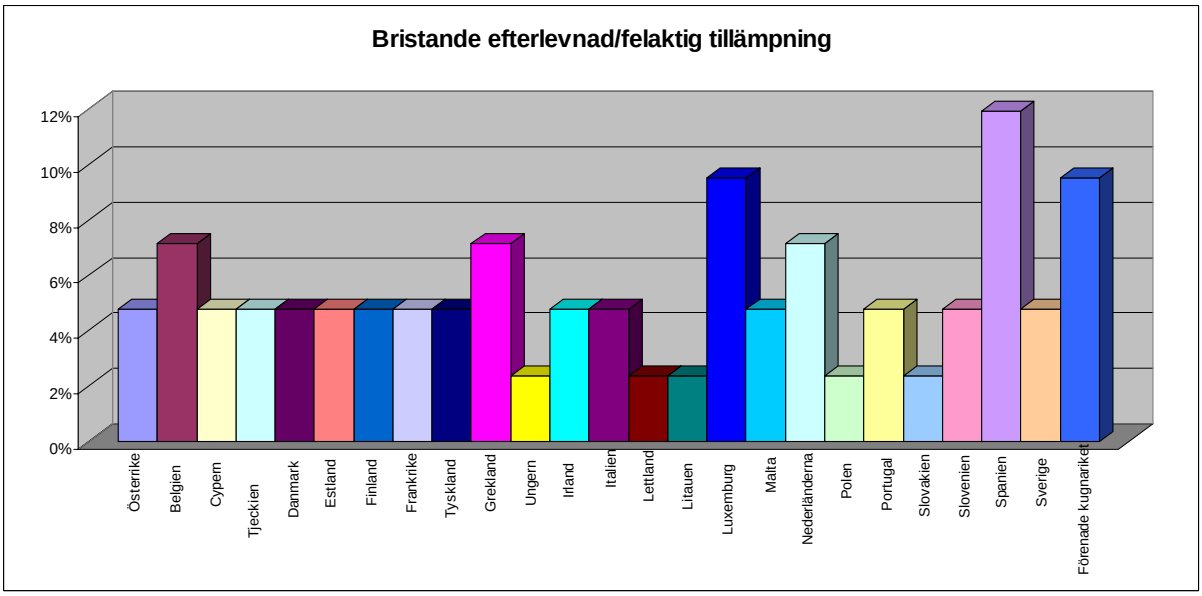
9 Direktiv 2003/8/EG om rättshjälp och direktiv 2004/80/EG om ersättning till brottsoffer.

10 Indikatorerna beskrivs i punkterna 57 till 63 i detta meddelande.


Ingen underrättelse till kommissionen om nationella åtgärder
50%
45%
40%
35%
30%
25%
20%
15%
10%
5%
0%
Österrike
Belgien
Cypern
Tjeckien
Danmark
Estland
Finland
Frankrike
Tyskland
Grekland
Ungern
Irland
Italien
Lettland
Litauen
Luxemburg
Malta
Nederländerna
Polen
Portugal
Slovakien
Slovenien
Spanien
Sverige
Förenade kungariket


Bristande efterlevnad/felaktig tillämpning
12%
10%
8%
6%
4%
2%
0%
Österrike
Belgien
Cypern
Tjeckien
Danmark
Estland
Finland
Frankrike
Tyskland
Grekland
Ungern
Irland
Italien
Lettland
Litauen
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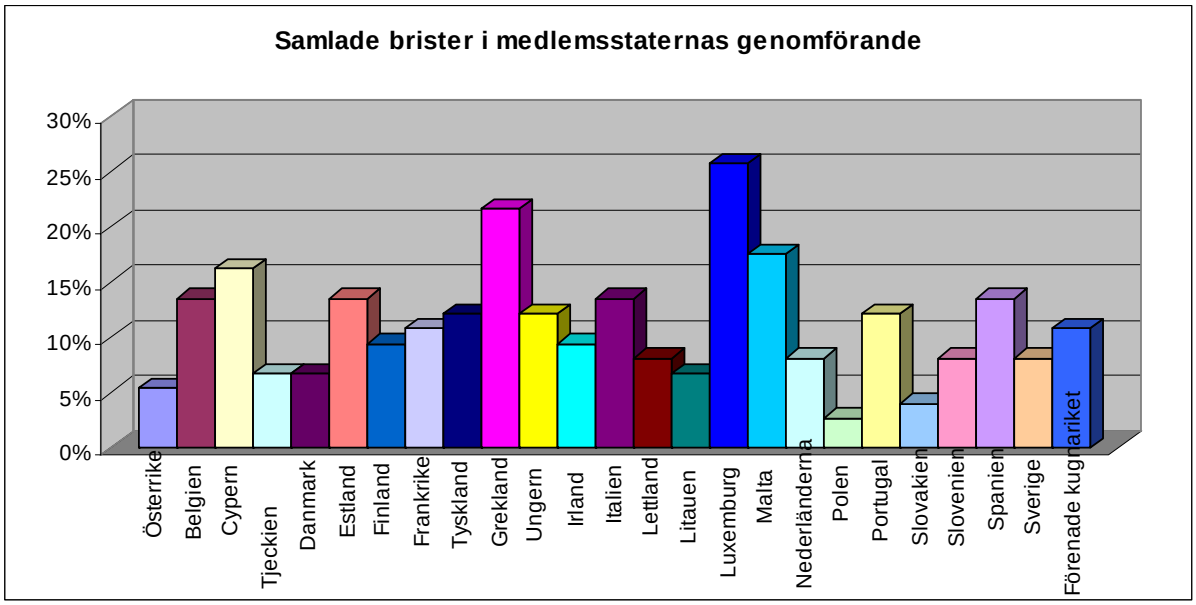
Malta
Nederländerna
Polen
Portugal
Slovakien
Slovenien
Spanien
Sverige
Förenade kungariket



3. SLUTSATS

77. Vid denna första uppföljning av Haagprogrammet är det anmärkningsvärt hur mycket det övervägande positiva resultatet i fråga om tidsplanen för antagande för 2005 skiljer sig mot det mycket mer blandade resultatet när det gäller genomförandet av de antagna rättsakterna på nationell nivå.

78. Av uppföljningen av de åtgärder som antogs med stöd av Haagprogrammet under 2005 framgår att den **institutionella mekanismen** fungerar särskilt bra på de områden av politiken för frihet, säkerhet och rättvisa som regleras av **EG-fördraget**. De framsteg som har gjorts rörande *civilrättsligt samarbete* och *medborgarskap* är ett bevis för detta. Men faktum kvarstår att även på dessa områden är det så att när det finns ett krav på enhällighet medför det att antagandeprocessen bromsas, vilket i sin tur bidrar till förseningar med att genomföra prioriterade politikområden enligt Haagprogrammet. Så var till exempel fallet för andra första etappen av inrättandet av ett gemensamt europeiskt *asylsystem*. Den interinstitutionella dialogen inom ramen för medbeslutandeförfarandet har däremot visat sig särskilt fruktbart och har gjort det möjligt att inom några månader uppnå enighet om viktiga texter, såsom direktivet om *lagring av uppgifter*, ***kodexen om gränspassage*** och förordningen om ***lokal gränstrafik***.

79. Det finns olika skäl för det **långsamma genomförandet** på de områden som omfattas av avdelning **VI i EU-fördraget**. Det faktum att det krävs enhällighet på området för *polissamarbete och straffrättsligt samarbete* har bromsat antagandet av centrala åtgärder som till exempel rambesluten om bevisupptagningsbeslut och om rättssäkerhetsgarantier. Rådets osäkerhet och tvekan i samband med val av rättslig grund är en annan källa till förseningar, som har fördröjt antagandet trots EG-domstolens dom av den 13 september 2005 i mål C-176/03.

80. Den inledande utvärderingen av åtgärderna för genomförande på nationell nivå av de olika områdena av politiken för frihet, säkerhet och rättvisa är **splittrad och i detta**

skede klart otillräcklig. Detta konstaterande fråntar dock inte medlemsstaterna ansvaret för de brister som redan noterats.

81. Med hänsyn till att vissa av politikområdena är **relativt nya** är det för övrigt ofta för tidigt att utvärdera det nationella genomförandet. Det gäller till exempel områdena för asyl, laglig invandring samt ömsesidigt erkännande inom straff- och civilrätt men även narkotikaområdet som utvärderas särskilt i samarbete med ECNN.

82. Det är dock de **kvantitativa och kvalitativa bristerna** i införlivandet av **instrumenten enligt avdelning VI i EU-fördraget** som är mest slående. EU:s beslutsamhet när det gäller kampen mot terrorism verkar till exempel inte ha någon motsvarighet på det nationella planet, vilket framgår av den första uppföljningen av detta politikområde.

83. Detta meddelande visar således att den nuvarande ramen måste förbättras, särskilt vad gäller beslutsförfarandena på området för polissamarbete och straffrättsligt samarabete. Det är syftet med meddelandet ”Genomförandet av Haagprogrammet: framtida utveckling”, som antagits parallellt med detta meddelande.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
COM(2006) 333 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Report on the implementation of the Hague programme for 2005

{SEC(2006) 813}
{SEC(2006) 814}

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Report on the implementation of the Hague programme for 2005

1. This Communication is in response to the Council's call on the Commission to submit an annual report on the implementation of the Hague programme and action plan ("scoreboard")[1] and is the first practical instance for 2005. The methodology selected will be followed in the years' annual reports for the next four years.

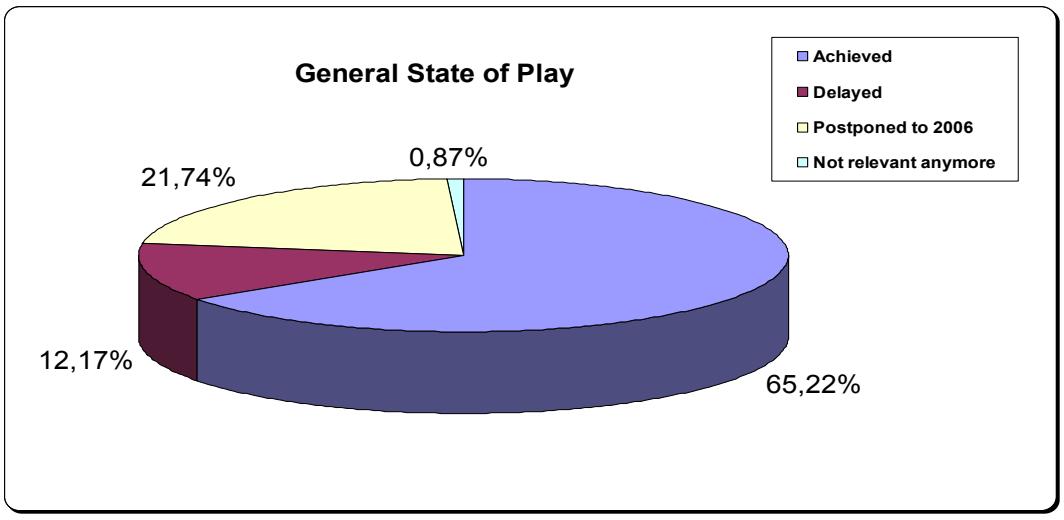
2. As with the Tampere scoreboard, the point is initially to monitor the adoption of the measures provided for in the Hague programme, including those involving the drugs action plan, the strategy on the external aspects of the area of freedom, security and justice, and the action plan on the fight against terrorism, which supplement the Hague action plan, in accordance with the set timetable. All the measures planned for 2005 are therefore reviewed in this communication. The measures programmed for 2006 and subsequent years will be examined in future annual reports (Part I and Annex 1).

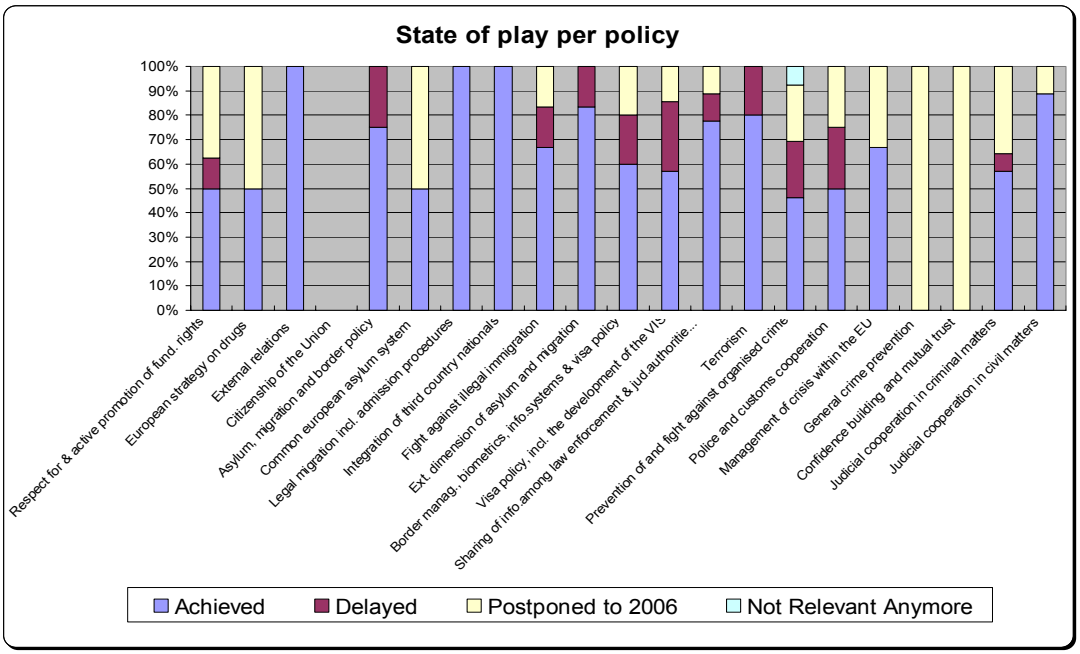
3. In addition to this monitoring of the adoption process, for the first time as part of such an exercise for Justice, Freedom and Security ("JFS") policies, this communication looks into the national implementation of these policies (Part II and Annex 2).

1. MONITORING OF THE ADOPTION OF MEASURES SCHEDULED FOR 2005 UNDER THE HAGUE PROGRAMME

4. The table annexed (1) gives the state of play on each measure scheduled for 2005 or on a regular/ongoing basis in the Hague action plan. A broadly positive assessment can be reached from the following tables, even though progress was not equivalent in all areas.

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





1.1. General guidelines

1.1.1. Respect and protection of fundamental rights

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

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

6. The Commission proposal to extend the mandate of the European Monitoring Centre on Racism and Xenophobia and to create a European Union **Fundamental Rights Agency** is a substantial achievement, of the utmost importance under the Hague programme.

7. Adoption of the **Communication on the protection of the rights of the child** was postponed to July 2006 because of the need for intensive preparatory work and to ensure that all the various interests involved are fully taken into account.

8. As regards **data protection**, the Commission proposal for a Framework Decision in the context of police and judicial cooperation in criminal matters will supplement the existing legal framework. It is the essential flanking measure for the proposals to implement the principle of availability and to improve law cross-border exchange of information between the enforcement services of the Member States.

1.1.2. European Strategy on drugs

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

1.1.3. External relations

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

1.2. Strengthening freedom

1.2.1. Union citizenship

11. Here, the Hague programme gives priority to the implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which will be the subject of a later evaluation, since its transposal deadline has only just expired.

12. The **reports on the application of Directives** on the right of residence for pensioners, students and inactive persons and on voting at European Parliament elections are being finalised.

1.2.2. Asylum, migration and border policy

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

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

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

1.2.3. A common European asylum system

15. There are mixed results here.

16. The adoption of the Directive on **minimum standards on procedures in Member States for granting and withdrawing refugee status** on 1 December 2005, after more than four years of discussions, completed the first phase of development of an asylum policy. In the future, such measures will in theory no longer be subject to the unanimity rule but will be adopted by the procedure provided for by Article 251 EC[3].

17. The Commission has begun monitoring the evaluation of the first phase instruments, but had to postpone to 2006 the presentation of a proposal concerning long-term residence status for the beneficiaries of international protection until the second phase of development of a common European asylum system. At the beginning of 2006 the Commission also presented its communication on the setting up of the structures needed for cooperation between Member States.

18. It was not possible to conduct the evaluation of the **European Refugee Fund (ERF I)** in 2005 as planned, and it had to be held over for 2006.

1.2.4. Legal migration, including admission procedures

19. The 2005 timetable was fully adhered to.

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

1.2.5. Integration of third-country nationals

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

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

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

1.2.6. Fight against illegal immigration

22. In terms of partnerships with third countries, the Commission Decision on the format for report on the activities of immigration liaison officers networks and on the situation in the host country in matters relating to illegal immigration, adopted in September 2005, will make a helpful contribution to the management of immigration liaison networks in relevant third countries.

23. The **annual report on the common policy on illegal migration** scheduled for 2005 will be presented in summer 2006 as an annex to the future Commission communication on future priorities in this respect.

24. The secure web-based Information and Coordination Network for Member States' migration management services (**ICONET**) is a valuable management tool; the Commission will organise training and awareness-raising courses for the Member States' contact points to make it fully operational.

25. All the scheduled measures for the establishment of an effective removal and repatriation policy based on common standards and on closer cooperation and mutual technical assistance were accomplished. The Commission presented a legislative proposal concerning **return procedures**. **Preparatory actions for financial support** for the management of returns were launched.

26. Lastly, after the entry into force of the **readmission** agreements with Macao, Hong Kong and Sri Lanka, negotiations with Russia were concluded in October 2005, and with Albania on the EU side in November 2005. Negotiations continue with Ukraine, Turkey, Morocco and Pakistan.

1.2.7. External dimension of asylum and migration

27. There were significant developments in 2005.

28. Regarding **cooperation with third countries in managing migration and asylum**, the Union agreed on operational conclusions on the management of migration with third countries and external relations. On the basis of Commission proposals, the December 2005 European Council adopted an ambitious agenda for enhanced cooperation between the Member States with the Africa and Mediterranean countries. The Commission is called on to coordinate the implementation of these priority actions in cooperation with the Member States and international organisations. It is to inform the European Council at the end of 2006.

29. The Commission proposed a framework for the development of EU **regional protection programmes** which was welcomed by the Member States. But it was not possible to launch the first pilot programmes in Tanzania and the new independent

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

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

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

30. There was substantial progress here too.

31. Regarding the removal of checks on persons at internal borders, pending the evaluation of the implementation of the acquis not related to the Schengen Information System (SIS II) in the new Member States, scheduled for 2006, the Commission submitted, as envisaged, a proposal on **SIS II legal instruments** in accordance with the planned timetable.

32. Regarding the management of external borders following the establishment of the External Borders Agency (FRONTEX) on 1 May 2005, new proposals in response to the evaluation of its operating procedures are not expected before 2007. The Commission already has, however, confirmed its intention of presenting a **proposal to establish teams of national experts** who can quickly provide technical and operational assistance to Member States requesting it.

33. The **Schengen acquis (SIS)** became partially applicable in the **United Kingdom** on 22 December 2004. The Council Decision on the implementation of part of the SIS by the United Kingdom will be adopted after finalisation of the necessary technical amendments in that Member State.

34. The adoption of the Commission communication relating to interoperability between SIS II, the Visa Information System (VIS) and EURODAC on 24 November 2005 was a significant step towards a coherent approach and the adoption of harmonised solutions concerning **biometric identifiers and data** in the EU. Similarly, operational conclusions were adopted in December in preparation for the adoption of minimum standards applicable to national identity cards. On the other hand, the proposal amending the Common Consular Instructions concerning standards and procedures for taking biometric data was be presented only in 2006 as discussions on the necessary preconditions are still in progress.

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

35. A number of priority measures under the Hague programme have been or will be adopted later than planned, in 2006.

36. Examples include the Commission proposal on the amendments needed to improve the visa policy and create common visa application centres and the draft amendment of the common consular instructions as regards visa rights.

37. But progress was made on **transit**, with the presentation of the Commission proposal, and on the regime of **local border traffic**, where political agreement was reached at first reading in February 2006.

1.3. Strengthening security

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

38. The fact that the **Directive on the retention of data** generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC was adopted on 21 February 2006, only five months after the presentation of the Commission proposal, following the agreement reached at first reading between Parliament and the Council, was an inter-institutional success symbolising the Union's political will.

39. Most of the actions on the implementation of the **principle of availability** scheduled for 2005 were accomplished. The Commission presented a proposal on exchange of information under the establishment of the principle of availability , with a parallel proposal on appropriate guarantees and rights of effective remedies for the transfer of personal data processed in the framework of police and judicial cooperation in criminal matters, already mentioned[5]. Following the presentation of a general proposal on the principle of availability, the adoption of the proposal specifically concerning DNA was postponed to 2006. An agreement was reached on the Swedish initiative on simplifying the exchange of information and intelligence between law-enforcement authorities of the Member States in December 2005. The Commission presented a proposal giving law-enforcement services access to VIS.

40. Concerning the **exchange of data on air passenger name records (PNR)**, the Commission adopted on 16 June 2006 two initiatives to put a legally sound framework in place for the transfer of PNR data to the United States. These initiatives are the first European answers to correct the legal basis for the Agreement with the US that was struck down by the European Court of Justice on 30 May 2006.

41. The Union made efforts to continue with the adoption of an **overall approach to combating terrorism** in line with the schedule. The Commission adopted the financing decision for the pilot project on the fight against terrorism, which provides among other things for the establishment of an information and crisis centre in DG JLS. It presented proposals aiming to improve the safe storage and transport of explosives and guarantee the traceability of industrial and chemical precursors. And a strategy as regards radicalisation and recruitment was agreed in December 2005.

42. At the same time, since all the Member States failed to complete the full and correct transposal of the Framework Decision on terrorism within the time allowed, it was not possible to launch the review and adaptation of it with the planned second implementation report.

1.3.2. Prevention of and fight against organised crime

43. The Commission communication developing a strategic concept on tackling **organised crime** is a flagship measure adopted on schedule, but many of the

[5] Paragraph 8.

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

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

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

1.3.3. Police and customs cooperation

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

1.3.4. Crisis management in the European Union

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

1.3.5. General crime prevention

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

1.4. Strengthening justice

1.4.1. Confidence building and mutual trust

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

1.4.2. Judicial cooperation in criminal matters

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

51. **Major delays**, however, sadly arose with the adoption of two flagship measures: political agreement on the Framework Decision on the **evidence warrant** was reached only in June 2006, and the one relating to certain **procedural rights** is still under discussion. Neither of them was adopted in 2005 as planned in the Hague programme.

52. As regards **harmonisation**, the Green Paper on conflicts of jurisdiction and the *ne bis in idem* principle was indeed adopted in December 2005, thus launching the debate to evaluate the need for Union action, but the Green Paper on the presumption of innocence was deferred. So was the second report on the implementation of the Framework Decision on the status of victims in criminal proceedings, the Member States having failed to supply sufficient information.

1.4.3. Judicial cooperation in civil matters

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

2. MONITORING NATIONAL TRANSPOSAL

2.1. Methodology

54. This exercise concerns first of all the legislative instruments that require transposal by the Member States – Directives and Framework Decisions. The average transposal deadline is such that it is not yet possible to monitor the instruments provided for by the Hague action plan, since at the time of writing no one of them is due to be implemented yet[6]. For the purposes of this 2005 report, however, it is worth analysing and evaluating the Member States' implementation of JFS instruments in general terms on a cut-off date which, for the purposes of this report, is 31 March 2006.

55. The table at Annex 2 covers all the instruments with a transposal deadline that had expired at the time of writing. It extends beyond Directives and Framework Decisions to include legislative instruments that have been followed up in Member States with a deadline for application or implementation that has also expired at the time of writing. This concerns certain Regulations and action plans adopted under the EC Treaty and certain decisions based on Title VI of the EU Treaty. Table 2 also covers Article 22 EC, the application of which has been covered by a series of detailed reports.

56. In the search for a consistent methodology for the purposes of evaluating the implementation of JFS policies by the Member States, it must be borne in mind that

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

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

57. One common factor is that the Member States are required to transpose the measures provided for by Directives or Framework Decisions and to **notify** the Commission or, in certain cases, the General Secretariat of the Council, of them. Compliance with the duty to notify is accordingly taken as one of the relevant factors for the purposes of evaluating national implementation. But it was found impossible to monitor compliance with the duty to act within the time scheduled in the instruments concerned since it is exceptional for the deadline to be met by one or the other Member State as regards Framework Decisions. It may still be possible to use this criterion to evaluate the monitoring of the national implementation of the measures provided for by the Hague programme/action plan in the future, but for the moment it was felt preferable to monitor compliance with the duty to notify transposal measures by 31 March 2006, the cut-off date adopted for this report.

58. The second common factor, beyond this formal transposal and notification obligation, is that Member States are required to **transpose and apply Community and Union legislation correctly** in terms of substance.

59. The Commission has opportunities to evaluate the quality of national implementation when answering letters from citizens and questions or petitions from the European Parliament. Given their nature and great diversity, it is not possible to make an exhaustive list of these elements, which are not therefore included as information sources in the table annexed (2). These elements are often, however, used and incorporated in the reports containing the overall analysis of the implementation of each instrument.

60. Framework Decisions adopted on the basis of Title VI of the EU Treaty routinely provide for at least one Commission report. This report generally serves as a base for a final report by the Council, which only rarely comes up for real discussion. Certain Framework Decisions which provide for differing deadlines for implementation are covered by successive reports (e.g. the crime victims Framework Decision). More and more often the Commission presents a fresh update report (e.g. the Framework Decisions on the European Arrest Warrant or terrorism), in particular when the first reports date from before the most recent enlargement (e.g. the 2001 Framework Decision on money-laundering). The Commission sometimes also takes the initiative of making such a report for instruments which do not oblige it to do so (e.g. the Eurojust decision or the instruments for the protection of financial interests). No such initiative was taken for the first joint actions, such as the one on participation in a criminal organisation. Common positions on the other hand, just like Framework Decisions, also provide for a report on national implementation[7].

61. The position is not quite the same for instruments based on the EC Treaty. While most of them also provide for a report monitoring national implementation, it is symptomatic that this is not the case as regards illegal immigration. Of the four

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

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

62. But the fact that there is no report does not have the same effect for instruments adopted under the EC and EU Treaties. The implementation reports are the only public record of the quality of national transposal of the instruments for police or judicial cooperation in criminal matters. For those instruments for which there is no duty to notify transposal measures, there is absolutely no indication of the effectiveness of the measures adopted. A case in point is the joint action on participation in a criminal organisation. This, incidentally, is one of the grounds for the proposal for recasting of this instrument.

63. In the case of the Community instruments, on the other hand, infringement proceedings are a clear deterrent to Member States in default, facing the risk of negative publicity and possibly even of periodic penalty payments, as can be seen from the monitoring of the quality of transposal in the table in Annex 2.

2.2. Monitoring policy by policy[8]

2.2.1. General guidelines

64. As regards fundamental rights, only Directive 95/46/EC on **personal data protection** is concerned for the moment. The Directive has met its objective of ensuring a high level of protection of the citizen's right to privacy and removing the barriers to the free movement of personal data in the Union. All the Member States complied with their transposal obligation, considered **generally satisfactory** in the first implementation report even though some cases of incorrect application were detected.

65. Moreover, the Commission's evaluation of the 2000-2004 action plan in 2004 on the basis of data provided by the European Monitoring Centre for Drugs and Drug-addiction (EMCDDA) and Europol comes to **mixed results** as regards the national application of the European strategy and action plan on **drugs**.

2.2.2. Union citizenship

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

67. Directives on voting rights at municipal and European Parliament elections have been transposed satisfactorily, even if the public make insufficient use of their rights.

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[8] For the sake of consistency, the nomenclature of the Hague action plan is followed.

2.2.3. Asylum, immigration, borders

68. Apart from the Commission reports that show very satisfactory results on the activities of EURODAC, the **first phase of the asylum system** is in the process of evaluation. As can be seen from the table in Annex 2, it can be concluded from certain persistent gaps in the notification of transposal measures that the rate of implementation is not yet ideal.

69. European policy on **legal immigration** is still in its infancy, and there are as yet no reports allowing a general evaluation. But it can be seen that application is incomplete from the significant number of Member States which have not notified measures transposing the Directives on family reunification and the status of long-term resident third-country nationals, where infringement proceedings are in motion.

70. As regards **illegal immigration**, in spite of the absence of implementation reports, the other indicators available reveal a **relatively satisfactory** transposition level of the least recent instruments, except in one Member State in particular.

2.2.4. Security

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

2.2.5. Justice

2.2.5.1. Criminal justice

72. The **European Arrest Warrant**, instrument of mutual recognition *par excellence*, despite initial transposal delays in about half the Member States, is now operational throughout the Union, subject to some efforts to be made by certain Member States to comply fully with the text, and despite constitutional difficulties in several Member States.

73. Concerning the **harmonisation** instruments, many of which are relevant to the fight against terrorism, the overall evaluation of implementation is particularly **disappointing**, even though the Commission's practice of presenting successive implementation reports reveals a positive trend. Instruments are very often incompletely transposed, and sometimes with considerable delay, depending on the Member States.

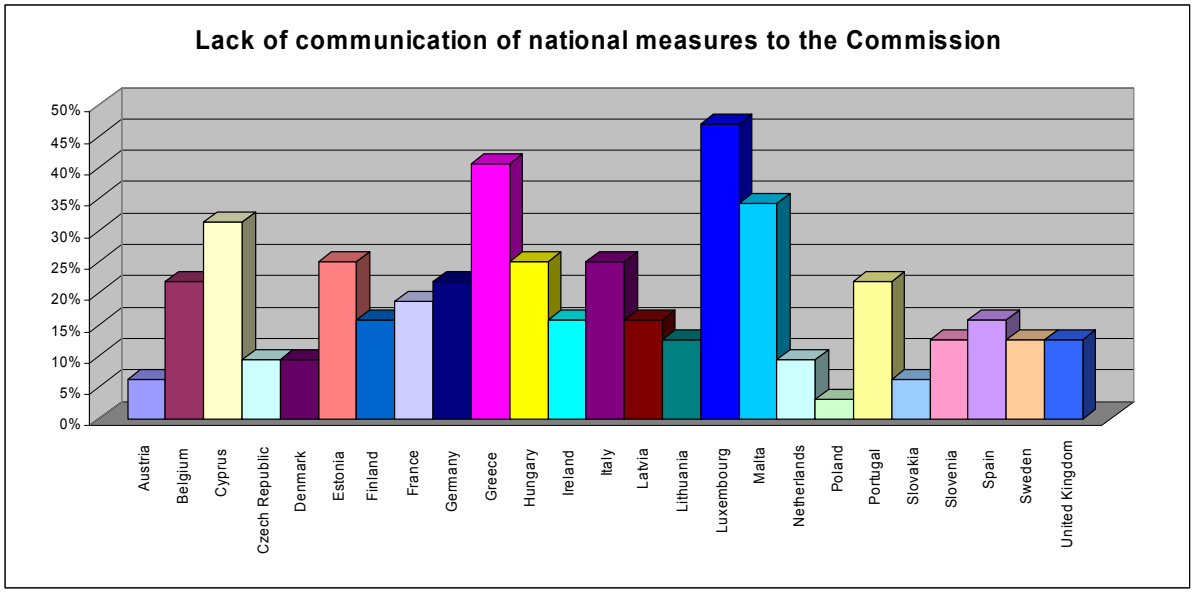
74. None of these failures is likely to give rise to infringement proceedings as the Treaties stand.

2.2.5.2. Civil justice

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

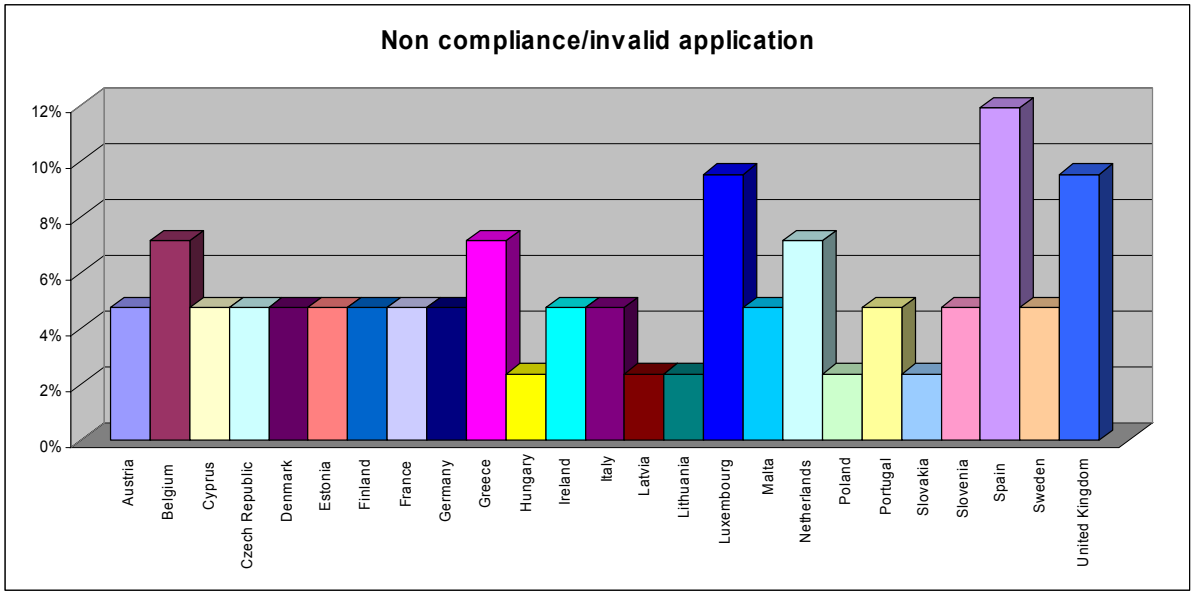
2.3. Monitoring by Member State

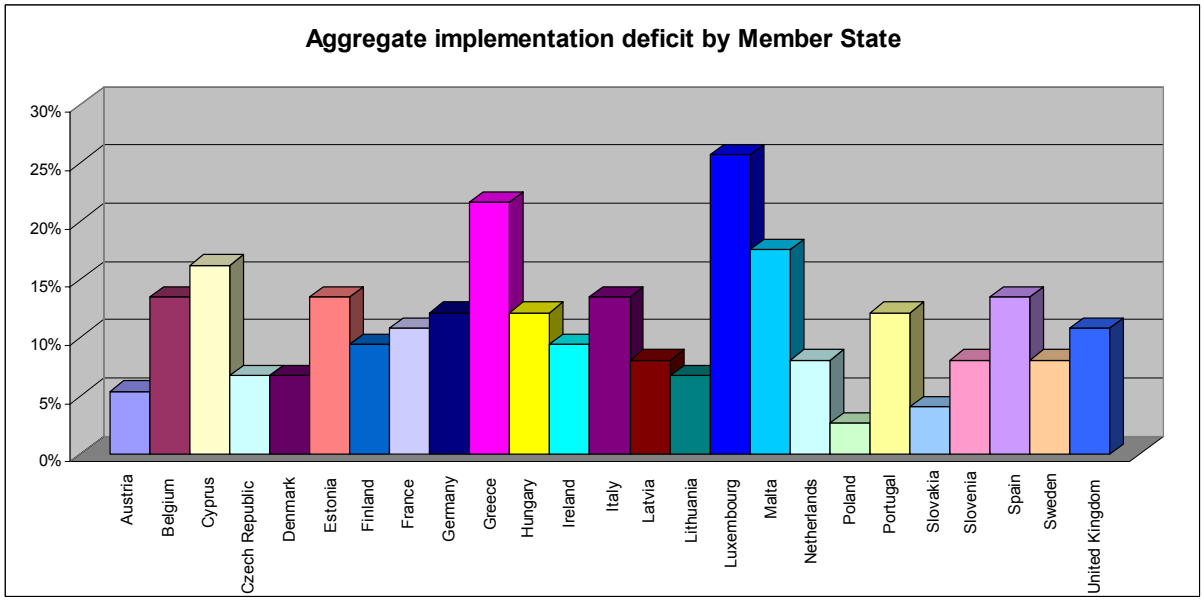
76. The following overall data, all instruments combined, can be derived from the two indicators[10] appearing in the table at Annex 2. The first two tables reflect Member States' failures to notify transposal measures and cases of incorrect transposal or application respectively. The third table gives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



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

10 Indicators described in paragraphs 57 to 63 of this Communication.





3. CONCLUSION

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

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

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

79. There are various reasons for the slow progress in matters involving **Title VI of the EU Treaty**. The unanimity requirement for *police and judicial cooperation in criminal matters* slowed the adoption of flagship measures such as the evidence warrant and the Framework Decision on procedural rights. The Council's uncertainty and hesitations regarding the choice of legal bases is another source of delay which this year again slowed down the adoption process, despite the judgment given by the Court of Justice on 13 September 2005 in Case C-176/03.

80. The very first evaluation of the monitoring of the national implementation of JFS policies appears largely **compartmental, and certainly insufficient** at this stage, though this observation should not be taken as relieving the Member States of responsibility for the shortcomings that have been observed.

81. Moreover, given that many JFS policies are still in their infancy, the evaluation of national implementation is still often premature. Such is the case for asylum, legal immigration, mutual recognition in criminal matters and civil justice, but also for drugs, where there is a specific monitoring mechanism in the EMCDDA context.

82. But the most striking **deficiencies in both quantitative and qualitative terms** regarding the general rate of transposal concern instruments under **Title VI of the EU Treaty**. For example, there is no apparent national equivalent of the Union's determination in the fight against terrorism, to which the monitoring of this policy in the first part of this communication testifies.

83. This report reveals that there is room for improvement in the existing framework, in particular regarding the decision-making process in the areas of police and judicial cooperation in criminal matters. That is the purpose pursued, on the basis of the current Treaties, by the Communication on implementing The Hague programme: the way forward, which accompanies this report.

COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 28.6.2006
COM(2006) 333 final

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPÉEN

Rapport sur la mise en œuvre du programme de La Haye pour l'année 2005

{SEC(2006) 813}
{SEC(2006) 814}

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPÉEN

Rapport sur la mise en œuvre du programme de La Haye pour l'année 2005

1. La présente communication répond à l'invitation du Conseil à la Commission de soumettre un rapport annuel sur la mise en œuvre du programme et du plan d'action de La Haye (« tableau de bord »)[1] et en constitue la première concrétisation pour 2005. La méthodologie retenue guidera les rapports annuels des quatre prochaines années.

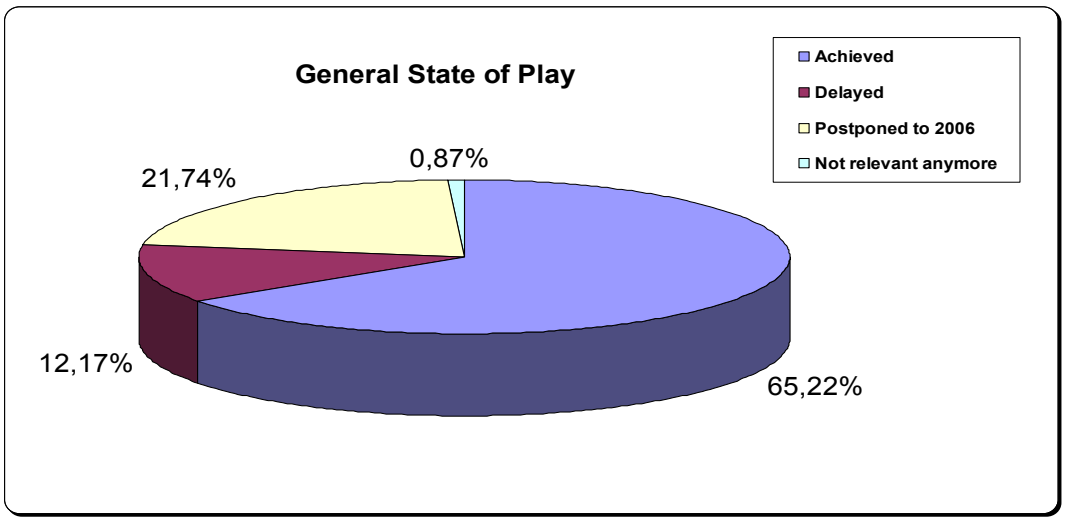
2. Comme cela avait été fait au moyen du tableau de bord du programme de Tampere, il s'agit, dans un premier temps, d'assurer le suivi de l'adoption des mesures prévues au titre du programme de La Haye, y compris celles relevant du plan d'action drogue, de la stratégie sur les aspects externes de l'espace de liberté, de sécurité et de justice, et du plan d'action sur la lutte contre le terrorisme, qui complètent le plan d'action de La Haye, selon le calendrier fixé. Dans le cadre de la présente communication, l'ensemble des mesures prévues pour l'année 2005 est donc passé en revue. Les mesures programmées pour les années 2006 et suivantes seront examinées au fur et à mesure des rapports annuels à venir (première partie et annexe 1).

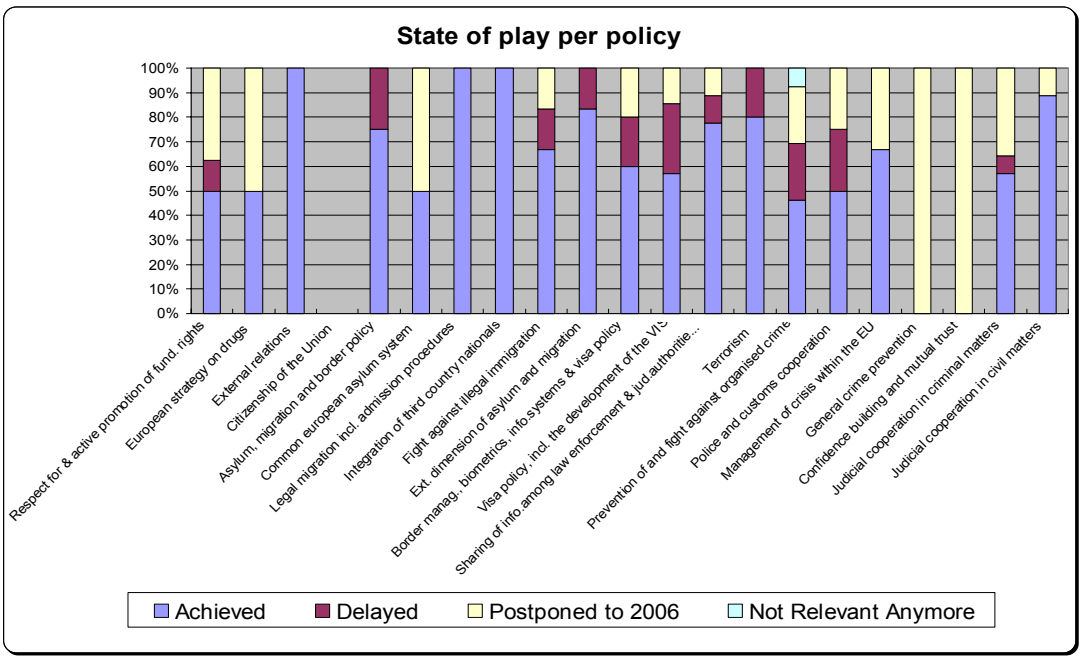
3. Au-delà de ce suivi du processus d'adoption, et pour la première fois dans le cadre d'un tel exercice pour les politiques « Justice, Liberté, Sécurité » (ci-après « JLS »), la présente communication se penche sur le suivi de la mise en œuvre de ces politiques au niveau national (deuxième partie et annexe 2).

1. SUIVI DE L'ADOPTION DES MESURES PRÉVUES EN 2005 AU TITRE DU PROGRAMME DE LA HAYE

4. Le tableau (1) en annexe dresse un état de chacune des mesures prévues au titre de l'année 2005 ou sur une base régulière/continue dans le plan d'action de La Haye. Le bilan qu'il permet de tirer, reflété dans les tableaux ci-après, est globalement positif, même si tous les domaines n'ont pas connu le même succès.

[1] Le programme de La Haye : renforcer la liberté, la sécurité et la justice dans l'Union européenne (JO C 53 du 3.3.2005, p. 1) et le plan d'action du Conseil et de la Commission mettant en œuvre le programme de La Haye visant à renforcer la liberté, la sécurité et la justice au sein de l'Union européenne (JO C 198 du 12.8.2005, p. 1).





1.1. Orientations générales

1.1.1. Respect et protection active des droits fondamentaux

5. Le niveau de réalisation dans ce domaine est globalement satisfaisant. L'essentiel des actions prévues au titre de 2005 a pu être réalisé, ou est en voie de l'être en 2006, à l'exception d'une proposition d'adhésion de l'Union à la Convention de sauvegarde des droits de l'homme et des droits fondamentaux, subordonnée à l'entrée en vigueur de la Constitution. Les propositions liées à un accord global sur le cadre financier 2007-2013 ont été adoptées comme prévu par la Commission[2] et leur suivi dépend des développements liés audit accord global.

[2] Propositions de programmes spécifiques « citoyenneté et droits fondamentaux », « combattre la violence (Daphné) » et « prévenir la consommation de drogues et informer le public ».

6. La proposition de la Commission d'étendre le mandat de l'Observatoire européen des phénomènes racistes et xénophobes et de créer une **Agence des droits fondamentaux** de l'Union européenne constitue une réalisation substantielle, prioritaire au titre du programme de La Haye.

7. L'adoption de la **communication sur la protection des droits des enfants** a été reportée à juillet 2006 suite à un intense travail préparatoire et afin de garantir la prise en compte optimale de l'ensemble des différents intérêts en présence.

8. En matière de **protection des données**, la proposition de décision-cadre présentée par la Commission au titre de la coopération policière et judiciaire en matière pénale tend à compléter le cadre normatif existant. Elle constitue le pendant indispensable des propositions destinées à mettre en œuvre le principe de disponibilité et à améliorer l'échange transfrontalier d'informations entre les services répressifs des États membres.

1.1.2. Stratégie européenne en matière de drogues

9. Ainsi que le prévoyait le plan d'action de La Haye, l'Union s'est dotée d'une **stratégie en matière de drogue 2005-2012** en décembre 2004 et d'un **plan d'action « drogue » de l'Union européenne (2005-2008)** en juin 2005, établissant, pour toutes les parties prenantes, des priorités spécifiques, un calendrier détaillé de mise en œuvre ainsi que des outils d'évaluation et des indicateurs concrets pour chacune des quelque quatre-vingts actions proposées. Le plan attribue à la Commission la responsabilité du suivi et de l'évaluation, en coopération avec l'Observatoire européen des drogues et des toxicomanies et Europol. Le premier rapport annuel sur la mise en œuvre du Plan d'action sera présenté à l'automne 2006.

1.1.3. Relations extérieures

10. Conformément au calendrier du plan d'action, l'Union s'est dotée en décembre 2005 d'une **stratégie pour la dimension extérieure** de l'espace de liberté, de sécurité et de justice, dans le but, en particulier, de promouvoir l'État de droit, la stabilité et la sécurité hors des frontières de l'Union européenne.

1.2. Renforcer la liberté

1.2.1. Citoyenneté de l'Union

11. Dans ce domaine, le programme de La Haye s'attache prioritairement à la mise en œuvre de la directive 2004/38/CE relative au droit des citoyens de l'Union et des membres de leurs familles de circuler et de séjourner librement sur le territoire des États membres, qui fera l'objet d'une évaluation ultérieure, sachant que son délai de transposition vient à peine d'expirer.

12. Les **rapports sur l'application des directives** sur le droit de séjour des pensionnés, des étudiants et des personnes inactives, et sur le droit de vote aux élections au Parlement européen sont en cours de finalisation.

1.2.2. Politique dans le domaine de l'asile, de l'immigration et des frontières

13. Afin d'améliorer la coordination des politiques nationales et d'accroître la coopération et l'échange régulier d'informations entre les États membres et avec la Commission, la Commission a présenté une **proposition relative à l'établissement d'une procédure d'information mutuelle sur les mesures des États membres** dans les domaines de l'asile et de l'immigration.

14. Dans le domaine crucial de la collecte d'informations aux fins d'améliorer l'analyse du phénomène migratoire, des progrès substantiels ont été réalisés. La Commission a adopté, le 28 novembre 2005, le **livre vert sur l'avenir du réseau européen des migrations**, destiné à recueillir l'avis des parties intéressées, et a formulé, dans le même temps, une **proposition de règlement relatif aux statistiques communautaires** sur la migration et la protection internationale, actuellement en cours de discussion.

1.2.3. Régime d'asile européen commun

15. Le bilan dans ce domaine est mitigé.

16. L'adoption, le 1er décembre 2005, après plus de quatre ans de discussions, de la **directive relative à des normes minimales concernant la procédure d'octroi et de retrait du statut de réfugié** a marqué l'aboutissement de la première phase de la mise au point d'une politique d'asile. À l'avenir, l'adoption de telles mesures ne sera en principe plus soumise à la règle de l'unanimité, mais se fera selon la procédure visée à l'article 251 TCE[3].

17. La Commission a entamé le suivi de l'évaluation des instruments de la première phase, mais a dû reporter à 2006 la présentation d'une proposition relative au statut de résident de longue durée pour les bénéficiaires d'une protection internationale en vue de la deuxième phase de développement d'un régime d'asile européen commun. C'est également au début de 2006 qu'a été présentée la communication de la Commission sur la mise en place de structures nécessaires à la coopération entre États membres.

18. L'évaluation du **Fonds européen pour les réfugiés (FER I)** n'a pu être effectuée comme prévu en 2005 et a dû être reportée à 2006.

1.2.4. Immigration légale, y compris procédures d'admission

19. Le calendrier 2005 a été parfaitement respecté.

20. Sur la base des résultats de la consultation publique sur le **livre vert relatif aux migrations économiques**, la Commission a présenté, en décembre 2005, **un**

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[3] Conformément à l'article 67, paragraphe 5, premier tiret, qui prévoit le passage à cette procédure après la première phase. D'une façon générale d'ailleurs, l'adoption par le Conseil de la décision du 22 décembre 2004 visant à rendre la procédure définie à l'article 251 TCE applicable à certains domaines couverts par la troisième partie, titre IV, dudit traité, conformément à l'exigence formulée dans le programme de La Haye, permet le passage de principe de l'ensemble de la politique dans le domaine de l'asile, de l'immigration et des frontières à la procédure d'adoption prévue au titre de l'article 251, sauf pour ce qui concerne l'immigration légale.

programme d'action relatif à l'immigration légale avec une série de mesures opérationnelles et législatives à mettre en œuvre entre 2006 et 2009, portant sur les conditions d'admission et de résidence, la diffusion et le partage d'information, les mesures d'intégration et les mesures à mettre en place en liaison avec les pays d'origine.

1.2.5. Intégration de ressortissants de pays tiers

21. L'adoption, le 1er septembre 2005, de la communication « Programme commun pour l'intégration. **Cadre relatif à l'intégration des ressortissants de pays tiers dans l'Union européenne** », marque la fixation de principes de base communs sur lesquels doit reposer un cadre européen cohérent en matière d'intégration[4]. Ce cadre, tel qu'approuvé par le Conseil JAI de décembre 2005, servira de fondement aux initiatives futures de l'UE.

1.2.6. Lutte contre l'immigration clandestine

22. Dans une perspective de partenariat avec les pays tiers, l'adoption, en septembre 2005, de la décision de la Commission relative à un modèle de rapport sur les activités des agents de liaison en matière d'immigration et sur la situation dans le pays d'accueil dans les domaines en relation avec l'immigration clandestine contribuera utilement à la gestion des réseaux de liaison en matière d'immigration dans les pays tiers concernés.

23. Prévu en 2005**, le rapport annuel sur la politique commune relative à la migration illégale** sera finalement présenté à l'été 2006 comme annexe de la future communication de la Commission sur les priorités à venir dans ce domaine.

24. La mise en place d'un réseau d'information sécurisé accessible sur le web pour les services des États membres chargés de la migration **(ICONET)** constitue un outil de gestion précieux; la Commission organisera des sessions de formation et de sensibilisation auprès des points de contacts des États membres afin de le rendre pleinement opérationnel.

25. L'ensemble des mesures attendues pour la mise en place d'une politique efficace d'éloignement et de rapatriement basée sur des normes communes et sur une coopération plus étroite et une assistance technique mutuelle a été réalisé. La Commission a ainsi présenté une **proposition législative relative aux procédures de retour**. Les **actions préparatoires en vue du soutien financier** à la gestion du retour ont été lancées.

26. Enfin, après l'entrée en vigueur des accords **de réadmission** avec Macao, Hong Kong et le Sri Lanka, les négociations avec la Russie ont été conclues en octobre 2005, de même qu'avec l'Albanie du côté de l'UE en novembre 2005. Les négociations avec l'Ukraine, la Turquie, le Maroc et le Pakistan se poursuivent.

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[4] Notamment: promotion des droits fondamentaux, absence de discrimination et égalité des chances, pour lesquels la législation de l'UE fournit un cadre solide.

1.2.7. Dimension extérieure de l'asile et de l'immigration

27. Cette dimension a connu des développements remarquables en 2005.

28. Au titre de la **coopération avec les pays tiers dans la gestion de l'immigration et de l'asile**, l'Union s'est dotée de conclusions opérationnelles sur la gestion de la migration avec les pays tiers et les relations extérieures. Sur la base de propositions de la Commission, le Conseil européen de décembre 2005 a adopté un agenda ambitieux pour une coopération renforcée entre les États membres avec les pays d'Afrique et de la Méditerranée. La Commission est invitée à coordonner la mise en œuvre de ces actions prioritaires en collaboration avec les États membres et les organisations internationales. Elle devra en informer le Conseil européen fin 2006.

29. La Commission a proposé un cadre pour le développement de **programmes de protection régionaux** de l'UE qui a été accueilli favorablement par les États membres. Le lancement des premiers programmes pilotes en Tanzanie et dans les nouveaux pays indépendants a cependant dû être reporté à 2006 en raison du calendrier de publication de l'appel à propositions au titre du programme AENEAS.

1.2.8. Gestion des frontières, biométrie, systèmes d'information et politique des visas

30. Dans ce domaine également, des progrès substantiels ont été réalisés.

31. Dans la perspective de la suppression des contrôles des personnes aux frontières intérieures, et dans l'attente de l'évaluation de la mise en œuvre de l'acquis non lié aux systèmes d'information Schengen (SIS II) dans les nouveaux États membres, prévue pour 2006, la Commission a présenté, conformément au calendrier prévu, une **proposition relative aux instruments juridiques relevant de SIS II**.

32. Concernant la gestion des frontières extérieures et après la mise en place de l'Agence des frontières extérieures (FRONTEX) le 1er mai 2005, de nouvelles propositions suite à l'évaluation de son mode de fonctionnement ne sont pas attendues avant 2007. La Commission a cependant déjà confirmé son intention de présenter une **proposition visant à créer des équipes d'experts nationaux** qui soient capables de fournir rapidement une assistance technique et opérationnelle aux États membres qui en font la demande.

33. **L'acquis de Schengen (SIS) est devenu partiellement applicable par le Royaume-Uni** le 22 décembre 2004. La décision du Conseil concernant la mise en œuvre par le Royaume-Uni d'une partie de SIS sera adoptée après finalisation des nécessaires adaptations techniques dans cet État membre.

34. L'adoption, le 24 novembre 2005, de la communication de la Commission relative à l'interopérabilité entre les SIS II, le système d'information sur les visas (VIS) et EURODAC constitue un pas significatif vers une approche cohérente et vers l'adoption de solutions harmonisées dans l'UE concernant les **identificateurs et données biométriques.** De même, des conclusions opérationnelles ont été arrêtées en décembre en préparation à la mise en place des normes minimales applicables aux cartes nationales d'identité. En revanche, la proposition modifiant les instructions consulaires communes concernant les normes et procédures d'obtention des données

biométriques n'a pu être présentée qu'en 2006 compte tenu des discussions toujours en cours sur les conditions préalables nécessaires.

1.2.9. Politique des visas, y compris élaboration du système d'information sur les visas (VIS)

35. Un certain nombre de mesures prioritaires au titre du programme de La Haye ont fait ou feront l'objet d'une adoption différée en 2006.

36. Ainsi en est-il de la proposition de la Commission sur les modifications nécessaires pour améliorer la politique des visas et créer des centres communs de demande de visa, et de la proposition de modification des instructions consulaires communes concernant les droits de visa.

37. Des progrès ont pu néanmoins être enregistrés en matière de **transit**, grâce à la présentation de la proposition de la Commission, et dans le domaine du **régime relatif au petit trafic transfrontalier**, pour lequel un accord politique en première lecture s'est fait jour en février 2006.

1.3. Renforcer la sécurité

1.3.1. Terrorisme: partage de l'information entre services répressifs et autorités judiciaires tout en trouvant un juste équilibre entre sécurité et protection de la vie privée

38. L'adoption, le 21 février 2006, suite à l'accord en première lecture dégagé entre le Parlement et le Conseil de la **directive sur la conservation des données** générées ou traitées dans le cadre de la fourniture des services de communications électroniques accessibles au public et modifiant la directive 2002/58/CE, cinq mois seulement après la présentation de la proposition de la Commission, a constitué un succès interinstitutionnel emblématique de la volonté politique de l'Union.

39. Dans le même temps, l'essentiel des actions attendues en 2005 au titre de la **mise en œuvre du principe de disponibilité** a été accompli. La Commission a ainsi présenté une proposition relative à l'établissement du principe de disponibilité des informations en matière répressive en même temps qu'une proposition parallèle relative à des garanties adéquates et à des droits de recours effectifs pour le transfert des données à caractère personnel aux fins de la coopération policière et judiciaire en matière pénale, déjà mentionnée[5]. La présentation d'une proposition *globale* sur le principe de disponibilité a conduit à reporter à 2006 l'adoption d'une proposition concernant *spécifiquement* l'ADN. Un accord s'est fait jour sur l'initiative suédoise relative à la simplification de l'échange d'informations et de renseignements entre les services répressifs des États membres en décembre 2005. La Commission a présenté une proposition donnant accès au VIS aux services répressifs.

40. Concernant **l'échange de données sur les passagers aériens (PNR)**, la Commission a adopté le 16 juin 2006 deux initiatives afin de mettre en place un cadre juridiquement acceptable pour le transfert des données PNR aux États-Unis. Ces initiatives représentent les premières mesures européennes visant à rectifier la base

[5] Paragraphe 8.

juridique de l'accord conclu avec les États-Unis, que la Cour de justice a annulé le 30 mai 2006.

41. L'Union s'est mobilisée pour **poursuivre la mise en place d'une approche globale pour lutter contre le terrorisme,** conformément au calendrier arrêté. La Commission a ainsi adopté la décision de financement du projet pilote « lutte contre le terrorisme », qui prévoit notamment l'institution d'un centre d'information et de crise à la DG JLS. Elle a par ailleurs formulé des propositions visant à améliorer la sécurité du stockage et du transport des explosifs et à garantir la traçabilité des précurseurs industriels et chimiques. Enfin, une stratégie en matière de radicalisation et de recrutement a pu être définie en décembre 2005.

42. Dans le même temps, l'ensemble des États membres ayant failli à transposer convenablement l'entièreté de la décision-cadre « terrorisme » dans les délais impartis, il n'a pas été possible d'en commencer le réexamen et l'adaptation par un deuxième rapport sur la mise en œuvre de ce texte, comme prévu.

1.3.2. Prévention de la criminalité organisée et lutte contre ce phénomène

43. Si la communication de la Commission relative à **l'élaboration d'une stratégie sur la lutte contre la criminalité organisée** constitue une mesure phare adoptée selon le calendrier prévu, force est de constater que beaucoup des mesures attendues en vue d'améliorer les connaissances sur la criminalité organisée et sur les formes graves de criminalité et le renforcement de la collecte et de l'analyse d'informations ont dû être reportées à 2006.

44. L'adoption par le Conseil du dispositif législatif relatif à la **lutte contre la contrefaçon** a été retardée.

45. En revanche, c'est conformément au calendrier prévu qu'a été élaboré un plan permettant de mettre au point des normes, des pratiques et des mécanismes communs pour prévenir la **traite des êtres humains**.

1.3.3. Coopération policière et douanière

46. Les efforts en vue de donner à **Europol** les moyens de jouer un rôle central dans la lutte contre les formes graves de criminalité (organisée) se sont poursuivis par des discussions suivies au Conseil JAI. Ils témoignent, ensemble avec les modifications de la décision créant le Collège européen de police **(CEPOL)**, le démarrage de discussions sur la définition du rôle du comité de sécurité **(COSI)** et la coordination à instaurer entre les diverses agences (et services) opérant en matière de sécurité intérieure, de la volonté de donner un nouvel élan à la dimension opérationnelle de la coopération policière.

1.3.4. Gestion des crises au sein de l'Union européenne

47. La Commission a présenté le 17 novembre 2005 un livre vert sur la **protection des infrastructures critiques.** Une proposition législative, comprenant la création d'un réseau d'alerte pour les infrastructures critiques (CIWIN) suivra en 2006, pour permettre de tenir compte des réactions suscitées par le livre vert.

1.3.5. Prévention de la criminalité en général

48. À la suite d'une réflexion interne sur l'organisation du réseau européen de prévention de la criminalité (**REPC**) entreprise en 2005, l'initiative en vue de son renforcement et de sa professionnalisation sera présentée en 2006.

1.4. Renforcer la justice

1.4.1. Instauration d'un climat de confiance et accroissement de la confiance mutuelle

49. À la suite de discussions menées à l'automne 2005 avec les différents acteurs intéressés, la Commission présentera en 2006 une c**ommunication sur la formation judiciaire dans l'UE**. Le programme d'échanges à l'intention des magistrats sera poursuivi dans le cadre d'une action préparatoire en 2006, avant d'être intégré dans la composante « justice pénale » du programme-cadre « justice et droits fondamentaux ».

1.4.2. Coopération judiciaire en matière pénale

50. Au titre de la poursuite de la **mise en œuvre du principe de reconnaissance mutuelle**, le calendrier 2005 des mesures attendues de la Commission a été respecté. Ainsi en est–il de la communication sur la reconnaissance mutuelle, qui renouvelle le cadre général en la matière, des propositions législatives relatives à la prise en compte des décisions de condamnation dans le cadre d'une nouvelle procédure pénale et à l'organisation et au contenu des échanges d'informations extraites du casier judiciaire entre les États membres, ou des rapports sur la mise en œuvre de la décision-cadre sur le mandat d'arrêt européen.

51. Des **retards importants** sont cependant à déplorer concernant l'adoption de deux mesures emblématiques : la décision-cadre sur le **mandat d'obtention des preuves** n'a fait l'objet d'un accord politique qu'en juin 2006, et celle relative à **certains droits procéduraux** est toujours en cours de discussion. Ni l'une ni l'autre n'ont été adoptées en 2005 comme prévu dans le programme de La Haye.

52. En matière de **rapprochement,** si le livre vert sur les conflits de juridictions et le *ne bis in idem*, a bien été adopté en décembre 2005, et permet de lancer le débat en vue de l'évaluation de la nécessité d'une action au niveau de l'Union, celui sur la présomption d'innocence a été reporté. Il en va de même pour le deuxième rapport sur la mise en œuvre de la décision-cadre relative au statut des victimes dans le cadre des procédures pénales, les États membres ayant failli à communiquer les informations suffisantes.

1.4.3. Coopération judiciaire en matière civile

53. Les réalisations au titre de la coopération judiciaire civile pour l'année 2005 ont été particulièrement remarquables puisque l'ensemble des actions à entreprendre a été réalisé. C'est notamment le cas en matière de **reconnaissance mutuelle,** qui devrait connaître de nouveaux développements dans les années à venir, notamment en droit de la famille, à la suite de l'adoption des livres verts sur les successions et sur les conflits de lois et de compétence en matière de divorce, ou de la proposition de

règlement relative aux obligations alimentaires, pour laquelle la Commission invite à une adoption en codécision.

2. SUIVI DE LA TRANSPOSITION AU PLAN NATIONAL

2.1. Éléments de méthodologie

54. Cet exercice concerne d'abord les instruments législatifs qui supposent une transposition par les États membres, soit les directives et les décisions-cadres. Compte tenu des délais moyens de transposition, un tel suivi des textes prévus au titre du plan d'action de La Haye n'est pas encore envisageable, puisque pour aucun d'entre eux, le délai de mise en œuvre n'est encore expiré à la date de la présente communication[6]. Il apparaît en revanche pertinent, au titre du présent exercice 2005, d'analyser et d'évaluer, sur un plan global, à une date butoir - aux fins de la présente communication, celle du 31 mars 2006 a été retenue- la mise en œuvre par les États membres des instruments adoptés dans le domaine JLS, jusqu'à maintenant.

55. Le tableau en annexe 2 reprend ainsi l'ensemble des instruments dont le délai de transposition est expiré à la date de la présente communication. Au-delà des directives et décisions-cadres, il répertorie également les instruments législatifs ayant fait l'objet d'un suivi au plan national, dont le délai d'application/de mise en œuvre est également expiré à la date d'adoption de la présente communication. C'est le cas de certains règlements ou plans d'action adoptés au titre du traité CE (TCE), ou de certaines décisions fondées sur le titre VI du traité sur l'Union européenne (TUE). Le tableau (2) reprend également l'article 22 TCE, dont l'application a fait l'objet de rapports successifs et détaillés.

56. Dans la recherche d'une méthodologie cohérente aux fins de l'évaluation de la mise en œuvre des politiques JLS au plan national, il convient de prendre en compte la diversité des données disponibles, selon que les textes aient été adoptés sur le fondement du TCE ou du titre VI TUE.

57. En facteur commun figure tout d'abord l'obligation pour les États membres, de transposer au plan national les mesures prévues au titre des directives ou des décisions-cadres et de **communiquer ces mesures de transposition** systématiquement à la Commission et/ou, selon les cas, au secrétariat général du Conseil. Le respect de cette obligation de communication a en conséquence été retenu comme l'un des facteurs pertinents aux fins de l'évaluation de la mise en œuvre au plan national. Il a fallu renoncer, cependant, à vérifier le respect de cette obligation à la date prévue par les instruments concernés, dès lors que ces délais ne sont qu'exceptionnellement respectés par l'un ou l'autre État membre en ce qui concerne les décisions-cadres. Sans exclure de retenir ce critère à l'avenir lorsqu'il s'agira d'évaluer le suivi de la mise en œuvre au plan national des mesures prévues au titre du programme/plan d'action de La Haye, il a paru préférable de s'en tenir, à ce stade, au suivi du respect de l'obligation de communication des mesures de

[6] Ce n'est qu'à partir des rapports sur la mise en œuvre du programme de La Haye pour les années 2007/2008 qu'un tel suivi de la transposition au plan national des mesures dudit programme pourra être opéré.

transposition à la date butoir du 31 mars 2006 arrêtée pour la présente communication.

58. En second facteur commun, au-delà de cette obligation formelle de transposition et de communication, les États membres sont tenus, sur le fond, à une **transposition et une application correctes de la législation de l'Union ou communautaire**.

59. L'évaluation sur le fond de la qualité de la mise en œuvre au plan national peut être parfois opérée par la Commission à l'occasion de réponses à des lettres de citoyens ou à des questions ou des pétitions du Parlement européen. Compte tenu de leur nature et de leur grande diversité, il n'est pas possible de faire une liste exhaustive de ces éléments qui ne sont donc pas repris dans le tableau en annexe comme sources d'information. Ces éléments sont cependant souvent repris et insérés dans les analyses globales effectuées par instrument que sont les rapports sur leur mise en œuvre.

60. Au titre des décisions-cadres adoptées sur le fondement du Titre VI TUE, un rapport de la Commission au moins est systématiquement prévu. Ce rapport sert le plus souvent de base à l'élaboration d'un rapport final du Conseil, qui ne donne que très exceptionnellement lieu à discussion. Certaines décisions-cadres, dont les dispositions connaissent des délais de mise en œuvre différés, font l'objet de rapports successifs (p. ex. la décision-cadre « victimes »). De plus en plus, un nouveau rapport de mise à jour est présenté par la Commission (p. ex. la décision-cadre « mandat d'arrêt européen » ou « terrorisme »), notamment lorsque les premiers rapports sont antérieurs au dernier élargissement (p. ex. la décision-cadre « blanchiment » de 2001). La Commission prend également parfois l'initiative de présenter un tel rapport pour des instruments qui ne prévoient pourtant pas une telle obligation (p. ex. la décision « Eurojust » ou les instruments « protection des intérêts financiers »). Une telle initiative n'avait pas été prise pour les premières actions communes, telle celle sur la participation à une organisation criminelle. Les positions communes prévoient en revanche elles aussi, tout comme les décisions-cadres, l'établissement d'un rapport sur la mise en œuvre au plan national[7].

61. Il n'en est pas exactement de même pour les instruments fondés sur le TCE. Si la plupart d'entre eux prévoient également un rapport sur le suivi de la mise en œuvre au plan national, il est symptomatique de relever que tel n'est pas concernant l'immigration clandestine. Des quatre directives adoptées en la matière dont le délai de transposition et l'obligation concomitante de communication des mesures nationales de transposition sont à échéance à la date butoir du 31 mars 2006, aucune ne prévoit l'adoption d'un tel rapport. De même, dans le domaine de la coopération judiciaire civile, la directive 2003/8/CE en matière « d'aide judiciaire » ne prévoit pas l'établissement d'un tel rapport.

62. L'absence de rapport n'emporte cependant pas les mêmes effets, selon qu'il s'agit d'instruments adoptés au titre du TCE ou du TUE. Les rapports sur la mise en œuvre

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[7] Enfin, et encore exceptionnellement, certains textes font l'objet d'une évaluation par les pairs au plan national au titre de l'action commune de 1997. Un tel exercice devrait ainsi être conduit pour la décision-cadre « mandat d'arrêt européen » au cours de 2006. Ces évaluations n'ont pas été prises en compte au titre de la présente communication, compte tenu soit de leur trop grande ancienneté, soit de leur caractère trop général.

sont les seules indications publiques faisant état de la qualité de la transposition au plan national des instruments de coopération policière ou judiciaire pénale. Pour ceux de ces instruments pour lesquels il n'existe pas d'obligation de communication des mesures de transposition, absolument aucune indication de l'effectivité de la mesure adoptée n'existe. Il en est ainsi de l'action commune sur la participation à une activité criminelle. C'est d'ailleurs l'un des éléments ayant motivé la proposition de refonte de cet instrument.

63. À l'inverse, dans le cas des instruments communautaires, les procédures d'infraction constituent des outils manifestement dissuasifs à l'égard des États membres défaillants, confrontés à une publicité négative et, le cas échéant, au paiement d'astreintes, ainsi qu'il ressort du suivi de la qualité de la transposition dans le tableau en annexe 2.

2.2. Suivi par politique[8]

2.2.1. Orientations générales

64. En matière de droits fondamentaux, seule la directive 95/46/CE sur la **protection des données** personnelles est concernée à ce stade. La directive a rempli son objectif d'assurer un niveau élevé de protection du droit à la vie privée des citoyens et de supprimer les barrières à la libre circulation des données personnelles au sein de l'Union. L'ensemble des États membres s'est conformé à son obligation de transposition, jugée **globalement satisfaisante** au titre du premier rapport sur la mise en œuvre, même si quelques cas de mauvaise application ont été détectés.

65. En outre, l'évaluation du plan d'action 2000-2004 réalisée par la Commission en 2004 sur la base des données fournies par l'Observatoire des drogues et des toxicomanies (OEDT) et par Europol révèle un **bilan mitigé** de l'application de la stratégie et du plan d'action européens en matière de **drogues** au niveau national.

2.2.2. Citoyenneté de l'Union

66. L'expérience tirée des rapports de la Commission et des procédures d'infraction permet de tirer un bilan **satisfaisant** de l'application des dispositions de la partie II du TCE**.** L'ensemble des États membres s'est généralement conformé à son obligation de communication des mesures nationales de transposition de droit dérivé à la date butoir du 31 mars 2006. La mise en œuvre des directives sur le droit de résidence des pensionnés, inactifs et étudiants est globalement satisfaisante. Il en va de même pour les directives actuelles relatives au droit de circuler et de séjourner librement sur le territoire d'un État membre, en dépit de quelques cas de mauvaise application.

67. Les directives « droit de vote » aux élections municipales et du Parlement européen ont donné lieu à un niveau de transposition satisfaisant, même si les citoyens l'ont insuffisamment exploité.

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[8] Dans un souci de cohérence a été reprise la nomenclature retenue au titre du plan d'action de La Haye.

2.2.3. Asile, immigration, frontière

68. En dehors des rapports de la Commission sur le fonctionnement d'EURODAC, très satisfaisant, **la première phase de procédure en matière d'asile** est en cours d'évaluation. Ainsi qu'il ressort du tableau en annexe 2, certaines lacunes persistantes de communication des mesures de transposition permettent d'ores et déjà de déduire que le niveau de mise en œuvre n'est pas encore optimal.

69. Compte tenu de la jeunesse de la politique européenne en matière **d'immigration légale**, aucun rapport ne permet à ce stade une évaluation d'ensemble. Une application **lacunaire** peut cependant être déduite du nombre important d'États membres qui n'a pas communiqué les mesures de transposition des directives « droit à la réunification familiale » et « statut des ressortissants de pays tiers résidents de longue durée » et pour lequel des procédures d'infraction sont en cours.

70. En matière **d'immigration illégale**, et en dépit de l'absence de rapports sur la mise en œuvre, les autres indicateurs disponibles font apparaître un niveau de transposition **relativement satisfaisant** des textes les moins récents, à l'exception d'un État membre en particulier.

2.2.4. Sécurité

71. En dehors des décisions-cadres, la mise en œuvre des instruments de **lutte contre la criminalité organisée et de coopération policière et douanière**, et notamment des conventions et de leurs protocoles adoptés sur la base du titre VI TUE, est difficile à évaluer, compte tenu de la nature des instruments concernés qui ne prévoient ni obligation formelle de communication de la part des États membres, ni rapport de suivi de la mise en œuvre au plan national. Leur ratification dans les plus brefs délais reste la première priorité.

2.2.5. Justice

2.2.5.1. Justice pénale

72. Instrument emblématique de reconnaissance mutuelle, le **mandat d'arrêt européen**, est, en dépit d'un retard initial de transposition de la part d'un État membre sur deux, aujourd'hui **opérationnel** dans toute l'Union, sous réserve de quelques efforts à consentir de la part de certains États membres pour se conformer pleinement au texte, et malgré certaines difficultés constitutionnelles apparues dans plusieurs États membres.

73. Concernant les instruments de **rapprochement**, dont beaucoup sont pertinents aux fins de la lutte contre le terrorisme, l'évaluation globale de la mise en œuvre est particulièrement **décevante**, même si la pratique de la Commission de présenter des rapports successifs de suivi de la mise en œuvre fait apparaître une évolution positive. Les instruments sont très souvent transposés de façon incomplète et avec parfois beaucoup de retard selon les États membres.

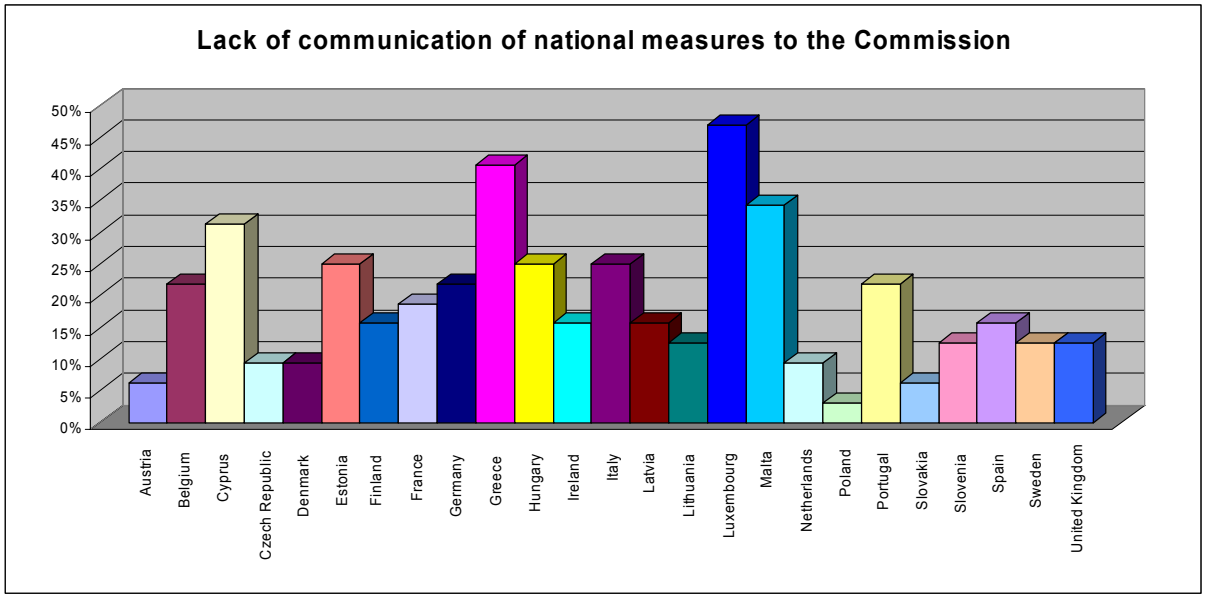
74. Aucune de ces défaillances n'est susceptible de donner lieu à une procédure d'infraction en l'état des traités.

2.2.5.2. Justice civile

75. L'évaluation se révèle **difficile** à ce stade pour les deux textes concernés[9] puisque le délai de transposition de toutes les dispositions n'est pas expiré à la date butoir du 31 mars arrêtée pour la présente Communication, pour l'un, et vient seulement d'expirer pour l'autre. Du seul rapport disponible à ce jour sur l'application du règlement relatif à la signification et à la notification dans les États membres des actes judiciaires et extrajudiciaires en matière civile et commerciale, il peut cependant être déduit qu'un certain nombre d'améliorations sont nécessaires. C'est pourquoi la Commission a adopté, le 15 juillet 2005, une proposition visant à modifier ce règlement, actuellement à l'examen au Conseil et au Parlement.

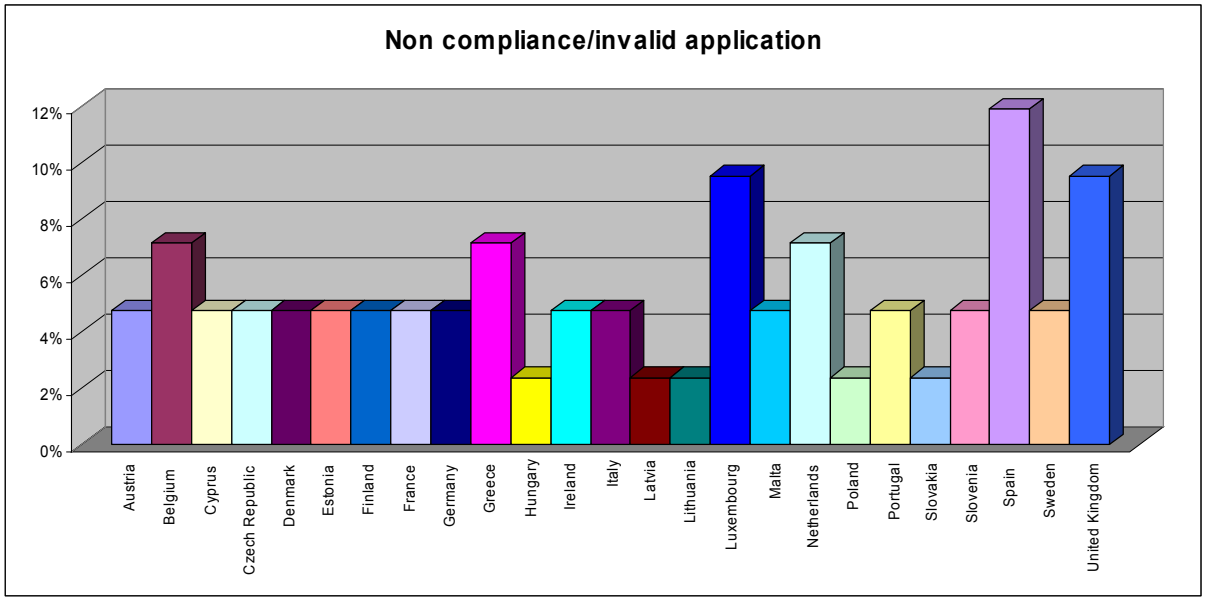
2.3. Suivi par État membre

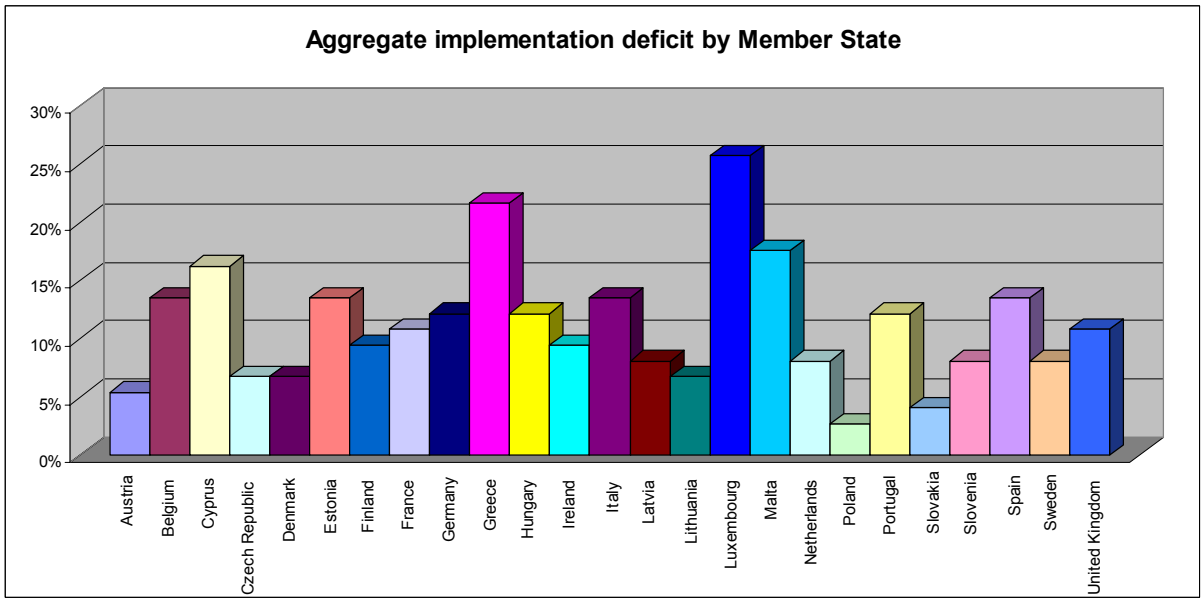
76. Les données d'ensemble suivantes, réalisées tous instruments confondus, peuvent être déduites des deux indicateurs[10] figurant dans le tableau en annexe 2. Les deux premiers tableaux ci-après reflètent les lacunes par État membre, à communiquer les mesures de transposition pour le premier, les cas de mauvaise transposition ou application pour le deuxième. Le troisième tableau ci-après reflète les lacunes par État membre au titre de ces deux indicateurs confondus.



9 Directives 2003/8/CE relative à l'aide judiciaire et 2004/80/CE relative à l'indemnisation des victimes de la criminalité.

10 Indicateurs tels que décrits aux paragraphes 57 à 63 de la présente communication.





3. CONCLUSION

77. Au terme de ce premier exercice de suivi du programme de La Haye, il est frappant de constater combien le **bilan globalement positif du calendrier d'adoption** au titre de l'année 2005 **contraste singulièrement avec celui, beaucoup plus mitigé, du suivi de la mise en œuvre au plan national** des instruments adoptés.

78. Il résulte du suivi de l'adoption des mesures prévues en 2005 au titre du programme de La Haye que le **mécanisme institutionnel** fonctionne de façon satisfaisante dans les matières JLS relevant du **traité CE**. Les progrès réalisés en matière de ***coopération judiciaire civile*** et de ***citoyenneté*** en témoignent. Il reste que, même dans ces matières, le vote à l'unanimité, lorsqu'il était prévu, a constitué un frein dans le processus d'adoption, qui a contribué sans doute à retarder la mise en place de politiques prioritaires au titre du programme de La Haye. Il en est ainsi de la première phase du régime d'***asile*** européen. À l'inverse, le dialogue inter-

institutionnel dans le cadre de la procédure de co-décision s'est avéré particulièrement fructueux et a permis de dégager un accord en quelques mois sur des textes importants comme la directive relative à la ***conservation des données***, le ***code frontières*** ou le règlement « ***petit trafic transfrontalier*** ».

79. Les **lenteurs accusées par contraste** dans les matières relevant du **titre VI TUE** ont diverses sources. L'unanimité applicable en matière de ***coopération policière et judiciaire pénale*** a freiné l'adoption des mesures phares que sont le mandat d'obtention des preuves et la décision-cadre « garanties procédurales ». Autre facteur de retard, l'incertitude et les hésitations du Conseil liées au choix de la base juridique ont cette année encore ralenti le processus d'adoption, malgré l'arrêt de la Cour de justice du 13 septembre 2005 dans l'affaire C-176/03.

80. La toute première évaluation du suivi de la mise en œuvre au plan national des politiques JLS se révèle largement **parcellaire, et certainement insuffisante à ce stade**, sans que cette constatation puisse être de nature à dédouaner les États membres des défaillances constatées

81. Compte tenu de la **relative jeunesse** d'un certain nombre de politiques JLS, l'exercice d'évaluation de la mise en œuvre au plan national est encore par ailleurs souvent prématuré. C'est le cas en matière d'asile, d'immigration légale, de reconnaissance mutuelle en matière pénale et de justice civile, mais aussi en matière de drogues où un suivi particulier en liaison avec l'OEDT existe.

82. Mais ce sont surtout les **insuffisances tant quantitatives que qualitatives** du niveau général de transposition pour les **instruments « titre VI TUE »** qui sont frappantes. A titre d'exemple, la détermination déployée au niveau de l'Union dans la lutte contre le terrorisme, dont témoigne le suivi de cette politique dans la première partie, n'apparaît pas se répercuter au plan national.

83. Il résulte ainsi de la présente communication que des améliorations doivent être apportées au cadre existant, en particulier en ce qui concerne les procédures décisionnelles dans les domaines de la coopération policière et judiciaire en matière pénale. C'est ce à quoi s'attache, à traités constants, la communication « Mise en œuvre du programme de La Haye: la voie à suivre » adoptée en parallèle.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
SEC(2006) 813

COMMISSION STAFF WORKING DOCUMENT

Annex to the

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPÉEN

Renforcer la liberté, la sécurité et la justice dans l'Union européenne : Rapport sur la mise en œuvre du programme de La Haye pour l'année 2005

{COM(2006) 333 final}

2005 implementation scoreboard – Table 2

FOLLOW-UP OF IMPLEMENTATION OF LEGAL INSTRUMENTS IN THE FIELDS OF JUSTICE, FREEDOM AND SECURITY AT NATIONAL LEVEL

2005 IMPLEMENTATION SCOREBOARD – TABLE 2

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
1. GENERAL ORIENTATIONS[4]				
1.2. Respect for and active promotion of fundamental rights				
– Protection of personal data				
Council Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals	***24 October 1998***	Report from the Commission on the implementation of the Directive of 15.5.2003[6] and	All Member States have adopted and communicated legislation under the Directive.	Non-compliance with and incorrect application of different provisions have been identified.

1 Taking into account only the instruments for which the deadlines for implementation or for entry into force had passed by the date of adoption of this Communication.

2 Excluding correspondence, complaints and petitions to the European Parliament and to the Commission.

3 At the cut-off date of 31 March 2006.

4 This table uses the same classification/titles as provided for under the Hague Action Plan.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
with regard to the processing of personal data and on the free movement of such data[5]		report prepared on behalf of the Commission on the economic evaluation of the Directive dated May 2005[7]. An in-depth analysis is being carried out. A final evaluation will be made at a later stage.		
1.4. European strategy on drugs				
The Drugs Action Plan (2000-2004) and the EU Drugs Strategy 2000-2004	***2004***	Final evaluation of the EU Drugs Strategy and Action Plan (2000-2004)[8].	Not applicable: there is no formal obligation to notify the Commission under the Action Plan[9]	On the one hand the final evaluation shows that progress has been made towards achieving the objectives of the EU Drugs Strategy 2000-2004. A large number of the

5 OJ L 281, 23.11.1995, p. 31.
6 First report on the implementation of the Data Protection Directive 95/46/EC - COM(2003) 265.
7 http://europa.eu.int/comm/justice_home/fsj/privacy/studies/index_en.htm.
8 COM(2004) 707.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
				measures proposed in the Action Plan have been or are now being carried out. On the other hand, the available data do not confirm achievement of two of the objectives of the Drugs Strategy, i.e. a considerable decrease in drug use and a substantial reduction in the availability of drugs.
The Drugs Action Plan (2005-2008) and the EU Drugs Strategy 2005-2012	***2008***	Commission annual progress review on implementation of the Action Plan by all stakeholders (Member States, Commission, OEDT, Europol). The first progress review will be presented in autumn 2006. Final evaluation is	Not applicable: there is no formal communication obligation to the Commission under the Action Plan[10].	Not known: awaiting the Commission's progress review due in autumn 2006.

9 Although, with a view to establishing the 2004 final evaluation, Member States regularly communicated information to the EMCDDA, to Europol and to the European Commission.

10 Nevertheless, Member States should regularly communicate information to the EMCDDA and to Europol.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		due in 2008.		
Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking[11]	***12 May 2006***	Report from the Commission due by 12 May 2009 under the Framework Decision.	Slovakia has adopted and communicated national transposition measures.	Not known: since the deadline for implementation had not yet expired at the time of drafting this table, no information can be given at this stage.
Council Decision 2005/387/JHA of 10 May 2005 on the information exchange, risk assessment and control of new psychoactive substances[12]	***21 May 2005***	The EMCDDA and Europol must report annually to the European Parliament, the Council and the Commission on implementation of	Not applicable: there is no formal obligation to communicate to the Commission under the Decision[13].	The March 2006 report from the EMCDDA and Europol analyses seven months of implementation and points out that in the next year of implementation new challenges are likely to emerge related to new types of substances and medicinal products.

[11] OJ L 335, 11.11.2004, p. 8.
[12] OJ L 127, 20.5.2005, p. 32.
[13] Nevertheless, Member States should communicate information to the EMCDDA and to Europol when appropriate.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		this Decision. This subject will also be covered by the annual progress reviews mentioned above.		
2. STRENGTHENING FREEDOM				
2.1. Citizenship of the Union				
Article 22 of the EC Treaty: reports from the Commission to the European Parliament, to the Council and to the Economic and Social Committee every three years on the application of		Four Commission reports on Citizenship of the Union, dated 20.12.1993[14], 27.5.1997[15], 7.9.2001[16] and 26.10.2004 (from	Not applicable.	The four Commission reports make the general point that on the whole the provisions of Part Two of the EC Treaty related to the rights of Union citizens are being applied correctly and without serious problems.

14 COM(1993) 702.
15 COM(1997) 230.
16 COM(2001) 506.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
the provisions of Part Two of the Treaty on "citizenship of the Union"		1.5.2001 to 30.4.2004)[17].		
Directives 90/364 of 28 June 1990[18], 90/365 of 28 June 1990[19] and 93/96 of 29 October 1993[20] on the right of residence of inactive persons, pensioners and students	***Implementation due by:*** ***30 June 1992,*** ***3 June 1992 and*** ***31 December 1993***[21] ***respectively***	Two Commission reports were adopted on 17.3.1999[22] (period 1992-1999) and 5.3.2003[23] (period 1999-2002). A third and last report will be adopted by the Commission in spring 2006 (period	At the current stage, all Member States have adopted and notified legislation under the Directive[24].	Application is basically satisfactory, as the declining number of complaints received by the Commission shows. Nevertheless, there are still individual cases of non-compliance or incorrect application. **Belgium** was ruled against by the Court for non-compliance with Directive 90/364 on 23 March 2006 (case C-408/03) and has not yet complied with the judgment.

17 COM(2004) 695.
18 OJ L 180, 13.7.1990, p. 26.
19 OJ L 180, 13.7,1990, p. 28.
20 OJ L 317, 18.12.1993, p. 59.
21 The three Directives will be repealed with effect from 30 April 2006 by Directive 2004/38/EC of 29 April 2004.
22 Report from the Commission to the Council and the European Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence): COM(1999) 127.
23 Second Commission report to the Council and Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (right of residence) - COM(2003) 101.
24 Italy was ruled against on 20 May 2000 (case C-424/98) for non-communication of national measures but has fulfilled its communication obligation in the mean time.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		2003-2006). Additional information has been provided by the Euro-Jus advisers' network and by the Citizens Signpost Service.		**Spain** was ruled against on 14 April 2005 (case C-157/03) and has not yet complied with the judgment. The Commission sent Spain a letter of formal notice under Article 228 of the EC Treaty on 19 December 2005.
Directive 64/221 of 25 February 1964 on the co-ordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health[25]; Directive 72/194 of 18 May 1972 extending to workers exercising the right to	***Expired***[30]	A Commission report on Directive 64/221 was adopted on 19 July 1999[31].	Communication of measures transposing Directives 72/194, 73/148, 75/34, 75/35 and 64/221 is completed.	Application of these directives is basically satisfactory, as the declining number of complaints received by the Commission shows. Nevertheless, there are still individual cases of non-compliance or incorrect application. The Commission decided to refer the **Netherlands** to the Court on 5 July 2005 for two cases of incorrect application in expulsion cases. **Germany** was brought before the Court for

[25] OJ 56, 4.4.1964, p. 850, English special edition Series I Chapter 1963-1964, p. 117.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
remain in the territory of a Member State after having been employed in that State the scope of the Directive of 25 February 1964[26]; Directive 73/148 of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services[27]; Directive 75/34 of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another				non-compliance with Directive 64/221 (case C-441/02). **Spain** was ruled against by the Court for non-compliance with Directives 73/148 and 68/360 on 14 April 2005 (case C-157/03) and has not yet complied with the judgment. **Spain** was ruled against by the Court for non-compliance with Directive 64/221 on 31 January 2006 (case C-503/03) and has not yet complied with the judgment. **Belgium** was ruled against by the Court for non-compliance with Directive 73/88 on 23 March 2006 (case C-408/03) and has not yet complied with the judgment.

26 OJ L 121, 26.5.1972, p. 32, English special edition Series I Chapter 1972(II), p. 474.
27 OJ L 172, 28.6.1973, p. 14.
28 OJ L 14, 20.1.1975, p. 10.
29 OJ L 14, 20,1,1975, p. 14.
30 The three Directives will be repealed with effect from 30 April 2006 by Directive 2004/38/EC of 29 April 2004.
31 COM(1999) 372 final.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
Member State after having pursued therein an activity in a self-employed capacity[28]; Directive 75/35 of 17 December 1974 extending the scope of Directive 64/221 to include nationals of a Member State who exercise the right to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity[29]				
Directive 2004/38 of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member	***Implementation due by 30 April 2006***	Report from the Commission expected on 30 April 2008 under the Directive.	Austria, Slovenia and Slovakia have adopted and communicated national transposing measures. **France, Germany, Spain, Finland** and **Lithuania** have adopted legislation which partially implements the Directive, but require additional	Not known: it is too early to review implementation of Directive 2004/38, as transposition at national level is not due before 30 April 2006[33].

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221, 68/360, 72/194, 73/148, 75/34, 75/35, 90/364, 90/365 and 93/96[32]			measures. **Belgium, Italy, Finland** and **Luxembourg** have informed the Commission that they will not meet the transposition deadline.	
Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals[34]	***Implementation due by 1 February 1994***	Two Commission reports were adopted on 7 January 1998[35] and on 18 December 2000[36]. Another report from the Commission is expected in the 2nd quarter of 2006.	Communication of national measures is considered satisfactory.	The Commission reports conclude that on the whole the Directive has been satisfactorily transposed by the EU-15 Member States but that citizens have made little use of their rights under the Directive; the Commission reports underline the need to improve information in this area. Implementation by the 10 Member States that joined the EU in 2004 is currently being assessed by the Commission departments.

32 OJ L 158, 30.4.2004, p.77.

33 However, meetings have already been held with Member States' experts, on 27 June 2005 and on 30 January 2006, on the state of play with the transposition measures.

34 OJ L 329, 30.12.1993, p. 34.

35 COM(1997) 731.

36 COM(2000) 843.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
Council Directive 94/80 of 19 December 1994 laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals[37]	***Implementation due by 1 January 1996***	A Commission report was adopted on 30 May 2002[38], together with two reports, dated 22 November 1999 and 22 August 2005, on granting a derogation pursuant to Article 19(1) of the EC Treaty, presented under Article 12(4) of Directive 94/80[39]. A second Commission report is due in 2008.	Communication of national measures can be considered satisfactory.	Legal implementation can be considered satisfactory. Results in practice have not been so successful, since the proportion of non-national EU citizens entered on the electoral rolls is generally rather low in the 13 Member States covered by the report[40].

37 OJ L 368, 31.12.1994, p. 38. Directive amended by Council Directive 96/30 of 13 May 1996 following the accession of Austria, Finland and Sweden (OJ L 122, 22.5.1996, p. 14).

38 COM(2002) 260.

39 COM(1999) 597 and COM(2005) 382.

40 Luxembourg and Belgium benefit from derogations permitted under the Directive.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
2.2. Asylum, immigration, Frontiers				
2.3. Common European Asylum System				
Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of the Dublin Convention[41]	***Entry into force: 15 December 2000***	Annual Commission reports were adopted on 5 May 2004[42] and 20 June 2005[43] (next one is due in July 2006).	Not applicable.	The Commission reports show very satisfactory results on the activities of EURODAC, although certain difficulties were detected on a case-by-case basis.
Council Directive 2001/55 of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a	***Implementation due by 31 December 2002***	A Commission report was due by 31 December 2004, but because of its specific nature this Directive has not been applied and no	All Member States have communicated their implementing measures, with the exception of **Luxembourg, the United Kingdom, Estonia** and **Greece**. Luxembourg was ruled against on 2 June 2005 (case C-454/04) and has not yet	**The United Kingdom** was ruled against on 23 February 2006 (case C-455/04) for non-compliance and has not yet complied with the judgment.

41 OJ L 316, 15.12.2000, p. 1.
42 SEC(2004) 557.
43 SEC(2005) 839.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
balance of efforts between Member States in receiving such persons and bearing the consequences thereof[44]		report has been drafted.	complied with the judgment. Greece was ruled against on 17 November 2005 (case C-476/04) and has not yet complied with the judgment.	
Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers[45]	***Implementation due by 6 February 2005***	A report from the Commission is due by 6 August 2006 under the Directive (publication due in the 4th quarter of 2006).	All the Member States have communicated their implementing measures, with the exception of **Germany, Greece** and **Portugal**. **Belgium, Estonia, Austria** and **Luxembourg** have partially fulfilled their communication obligation. Germany informed the Commission that national legislation is due to be adopted in June 2006. The Commission brought Greece and Portugal before the Court (cases C-72/06	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect application had been detected. Details will be given in the Commission report, due in 2006.

[44] OJ L 212, 7.8.2001, p. 12.
[45] OJ L 31, 6.2.2003, p. 18.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
			and C-75/06 respectively).	
Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national[46]	***Entry into force: 17 March 2003***	A report from the Commission is due by 17 March 2006 under the Directive (publication due in June 2006).	Not applicable.	At the cut-off date of 31 March 2006, a single case of non-compliance or incorrect application was under examination (against Greece). Details will be given in the Commission report, due in 2006.
2.4. Legal Migration Including Admission Procedures				
Council Directive 2003/86 of 22 September 2003 on the right to family reunification[47]	***Implementation and communication due by 3 October 2005***	First report from the Commission due on 3 October 2007 under the Directive.	The Netherlands, the Czech Republic, Hungary, Slovenia, Spain, Austria and Poland have fully complied with their communication obligation. Notifications by Slovakia, Latvia, France	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect application had been detected. Details will be given in the Commission report, due in 2007.

46 OJ L 50, 25.2.2003, p. 1.
47 OJ L 251, 3.10.2003, p. 12.
48 Denmark, Ireland and the United Kingdom are not bound by this Directive.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
			and Lithuania are currently being examined. **Belgium, Germany** and **Estonia** have partially fulfilled their communication obligation. **Greece, Italy, Luxembourg, Portugal, Finland, Sweden, Cyprus** and **Malta** have not yet fulfilled their obligation[48]. On 5 December 2005 the Commission sent letters of formal notice to those eight Member States that had not yet fulfilled their communication obligation.	
Council Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents[49]	***Implementation and communication by 23 January 2006***	Report from the Commission due by 23 January 2011 under the Directive.	Austria, Poland, Slovenia and Slovakia have notified their implementing measures. **Belgium** and **Lithuania** have partially fulfilled their obligation.	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect application had been detected. Details will be given in the Commission report, due in 2011.

[49] OJ L 16, 23.1.2004, p. 44.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
			Germany, Greece, Spain, France, Italy, Luxembourg, Netherlands, Portugal, Finland, Sweden, Cyprus, Estonia, Hungary, Latvia, Malta and the **Czech Republic**[50] have not yet fulfilled their obligation.	
2.6. Fight Against Illegal Immigration				
Council Directive 2001/40 of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals[51]	***Implementation and communication due by 2 December 2002***	No report provided for under the Directive.	All the EU-15 Member States[52] have communicated their implementing measures, with the exception of **Luxembourg**, which was ruled against on 8 September 2005 (case C-448/04) and has not yet complied with the judgment.	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect application had been detected.
Council Directive 2001/51 of 28 June 2001	***Implementation and***	No report provided for under the	All the Member States have communicated their implementing	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect

50 United Kingdom, Ireland and Denmark are not bound by this provision.

51 OJ L 149, 2.6.2001, p. 34.

52 Directive 2001/40/EC was not included in Annex I to the 2004 Act of Accession and the 10 "new" Member States are therefore not bound to transpose this Directive before the date when the Schengen *acquis* will fully apply to them.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985[53]	***communication due by 11 February 2003***	Directive.	measures, with the exception of **Luxembourg**, which was ruled against on 21 July 2005 by the Court of Justice (case C-449/04) and has not yet complied with the judgment.	application had been detected.
Council Directive 2002/90 of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence[54]	***Implementation and communication due by 5 December 2004***	No report provided for under the Directive.	All the Member States have communicated their implementing measures, with the exception of **Luxembourg**, which has been brought before the Court by the Commission (case C-48/2006). **Germany** has partially fulfilled its communication obligation of communication and was sent a reasoned opinion on 13 July 2005.	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect application had been detected.
Council Directive 2003/110/EC of 25	***Implementation and***	No report provided for under the	Poland, Sweden, Finland, Austria, Netherlands, Slovenia, the Czech	At the cut-off date of 31 March 2006, no cases of non-compliance or incorrect

[53] OJ L 187, 10.7.2001, p. 45.
[54] OJ L 328, 5.12.2002, p. 17.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
November 2003 on assistance in cases of transit for the purposes of removal by air[55]	***communication due by 6 December 2005***	Directive.	Republic, Estonia, Lithuania and Slovakia have communicated implementing measures. **Belgium** has partially fulfilled its communication obligation. **Germany, Greece, Spain, France, Italy, Luxembourg, Portugal, Cyprus, Hungary, Latvia** and **Malta** have not yet fulfilled their obligation[56]. On 9 February 2006 the Commission sent letters of formal notice to those Member States that had not or had not fully fulfilled their communication obligation[57].	application had been detected.

[55] OJ L 321, 6.12.2003, p. 26.

[56] The United Kingdom, Ireland and Denmark are not bound by this provision.

[57] Letters were also sent to Lithuania and Estonia, which subsequently notified their national transposition measures.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
3. STRENGTHENING SECURITY				
3.2. Terrorism[58]				
Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences[59]	***Implementation due by 30 June 2006***	No report provided for under the Decision.	Not applicable: there is no obligation to communicate national measures under the Decision.	Not known: no data available (no reports, no infringement procedures possible).
3.3. Prevention of and Fight Against Organised Crime				
Joint Action of 21 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on making it a criminal offence to	***29 December 1998***	No report provided for under the Joint Action.	Not applicable: there is no obligation to communicate national measures under the Joint Action.	Not known: no data available (no reports, no infringement procedures possible).

[58] Other legislative instruments relevant to the fight against terrorism are examined in section 4.2 "Judicial cooperation in criminal matters" (such as the Framework Decision on terrorism and the European arrest warrant).

[59] OJ L 253, 29.9.2005, p. 22. Council Decision 2005/671/JHA repealed Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (OJ L 16, 22.1.2003, p. 68).

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
participate in a criminal organisation in the Member States of the European Union[60]				
3.4. Police and customs cooperation				
Convention of 18 December 1997 on Mutual Assistance and Cooperation between customs administrations: (Naples II-Convention)[61]	Subject to adoption by the Member States in accordance with their respective constitutional requirements. The Convention has been ratified by 23 Member States so far[62]	The Customs Cooperation Working Group agreed on a number of recommendations based on a comprehensive evaluation, setting out the main findings of the questionnaire. These are partly to	Not applicable: there is no obligation to communicate national measures under the Convention.	The Convention has still not been fully implemented.

60 OJ L 351, 29.12.1998, p. 1. On 19 January 2005 the Commission presented a proposal for a Council Framework Decision on the fight against organised crime [COM(2005) 6] aimed at repealing the Joint Action.

61 OJ C 24, 23.1.1998, p. 1.

62 Italy and Malta have not ratified so far.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
	and is applicable to 19 of them[63].	be implemented at national level and partly to be taken into account in the future work of the CCWG[64].		
Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol[65]	***Implementation due by December 2005***	A Commission report has been drafted on the basis of information provided by 17 Member States (Austria, Belgium, Czech Republic, Germany, Estonia, Spain, Finland, Italy, Lithuania, Luxembourg, Latvia, Netherlands, Poland,	Seven Member States have not yet fulfilled their communication obligation: **Denmark, France, Ireland, Sweden, Cyprus, Hungary** and **Malta**.	According to the Commission report, the general level of transposition is still incomplete and further efforts are required on the part of the Member States, but a majority have largely entered into the spirit of the Common Position, mainly by feeding the Interpol STD database[67].

63 Austria, the Czech Republic, Germany, Denmark, Estonia, Spain, France, United Kingdom, Hungary, Ireland, Lithuania, Luxembourg, the Netherlands, Portugal, Sweden, Finland, Poland, Slovakia and Slovenia.

64 Document 7863/05 LIMITE ENFOCUSTOM 21, dated 11 April 2005.

65 Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		Slovenia, Slovakia and the United Kingdom[66] and should be adopted in spring 2006. It should be followed by a Council report.		
3.5. Management of crisis within the European Union				
4. STRENGTHENING JUSTICE				
4.2. Judicial cooperation in criminal matters				
– **Mutual recognition principle**				
Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender	***Implementation due by 31 December 2003***	Reports from the Commission of 23 February 2005[69] and of 24 January 2006	At this stage, all the Member States have communicated their implementing measures.	In spite of an initial delay in transposition on the part of half of the Member States (only Belgium, Denmark, Spain, Cyprus, Lithuania, Hungary, Poland, Portugal, Slovenia, Finland

66 Greece sent its reply on 12 January 2006, too late to be taken into consideration in the report.

67 According to November 2005 figures from Interpol, the number of data supplied from EU Member States to Interpol has risen from about 4.5 million to about 6.4 million.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
procedures between Member States (2002/584/JHA)[68]		(revised version concerning Italian legislation)[70]. A second report updating the first evaluation will be adopted in the 3rd quarter of 2006 in response to a request from the 2 June 2005 JHA Council. Further indications are given in the regular review of implementation of the Action Plan to		and the United Kingdom complied within the deadline), the European arrest warrant was operational throughout the Union at the time of the revised report from the Commission. According to the latest Commission report, efforts remain to be agreed on the part of certain Member States in order to comply fully with the Framework Decision, in particular by the **Czech Republic, Denmark, Estonia, Ireland, Italy, Luxembourg, Malta, Netherlands, Slovenia** and **the United Kingdom.**

68 OJ L 190, 18.7.2002, p. 1.

69 Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - COM(2005) 63 and SEC(2005) 267.

70 Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (revised version) - COM(2006) 8 and SEC(2006) 79.

71 Latest version dated 9 December 2005, JAI 445, REV 1 ADD 1 REV 1.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
		combat terrorism[71]. Moreover, a new round of mutual evaluations (peer review) on practical implementation of the European arrest warrant, based on the Joint Action of 5 December 1997, was launched by the Council in 2005 and will be conducted in the 25 Member States from 2006 to 2009.		
Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European	***Implementation due by 2 August 2005***	A report from the Commission is expected in 2006. The report from the	**Belgium, Denmark Estonia, Greece, Spain, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Portugal, Slovakia** and the	Since the date of implementation (2 August 2005), no information on legal transposition is available. Details will be given in the Commission's report, expected in 2006.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
Union of orders freezing property or evidence[72]		Council, based on the Commission's report, is due by 2 August 2006.	**United Kingdom** have not yet fulfilled their communication obligation.	
– **Approximation**				
Convention on the protection of the European Communities' financial interests (PFI) of 26 July 1995[73] and its protocols[74]	The PFI Convention, the 1st Protocol and the ECJ Protocol entered into force on 17 October 2002 following ratification by the then 15 Member States. Ratification of	The Commission took the initiative of adopting a report, on 25 October 2004, on implementation by Member States of the Convention on the protection of the European Communities' financial interests	All 15 "old" EU Member States, together with Latvia, have fulfilled their obligation to transmit to the Commission, in accordance with Article 10 of the PFI Convention (as also referred to in Article 7(2) of the 1st Protocol and Article 12(1) of the 2nd Protocol), the texts of the provisions transposing into domestic law the obligations imposed on Member States under the PFI instruments by Member	The Commission report shows that, although the level of effective criminal-law protection of the EC's financial interests has increased, none of the EU-15 Member States under scrutiny appeared to have taken all the measures needed to comply fully with the PFI instruments. Gaps and loopholes in the law which allow offences to go unpunished remain possible.

72 OJ L 196, 2.8.2003, p. 45.

73 OJ C 316, 27.11.1995, p. 49.

74 Protocol to the Convention on the protection of the European Communities' financial interests of 27 September 1996 (OJ C 313, 23.10.1996, p. 2); protocol on the interpretation, by way of preliminary rulings, by the Court of Justice of the European Communities of the Convention on the protection of the European Communities' financial interests of 29 November 1996 (OJ C 151, 20.5.1997, p. 2); and second protocol to the Convention on the protection of the European Communities' financial interests of 19 June 1997 (OJ C 221, 19.7.1997, p. 12).

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
	the 2nd Protocol by Italy and Austria is still awaited[75].	and its protocols[76].	States.	
Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (2000/383/JHA)[77]	***Implementation due by 31 December 2000 (Article 5a) and 29 May 2001 (other Articles)***[78]	Two Commission reports, dated 13 December 2001[79] and 3 September 2003[80], served as a basis for the Council reports, the latest one being dated 25	Now all the Member States have finally provided the information to the Commission.	According to the latest Commission report, legal implementation of the Framework Decision is still incomplete. When all the amendments still being drafted or adopted (**Austria, France, Luxembourg, Portugal and Spain**) enter into force, the Framework Decision will have been transposed in full into national law by all the Member States,

75 Luxembourg notified ratification of the second protocol on 13 July 2005.

76 COM(2004) 709 and SEC(2004) 1299.

77 OJ L 140, 14.6.2000, p. 1. Amended by the Council Framework Decision of 6 December 2001 amending Framework Decision 2000/383/JHA on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro (2001/888/JAI) - OJ L 329, 14.12.2001, p. 3.

78 31 December 2002 for the Council Framework Decision of 6 December 2001.

79 Report from the Commission based on Article 11 of the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro - COM(2001) 771, 13.12.2001 and SEC(2001) 1999.

80 Second Commission report based on Article 11 of the Council Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro - COM(2003) 532, 3.9.2003 and SEC(2003) 936. This report does not cover the new Article 9a of the Framework Decision on recognition of previous convictions, as inserted by Council Framework Decision 2001/888/JHA of 6 December 2001. The Member States had provided no data on this subject by the date of this report.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
		October 2004[81].		with the exception of at least one provision which does not seem to have been completely transposed by certain Member States. According to the Commission report, this concerns **Finland and Sweden** (Article 6(2)). Further clarification might also be needed on the full implementation of certain provisions, such as the liability of legal persons in the law of the **United Kingdom**.
Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings[82]	***Implementation due by 22 March 2002, 22 March 2004 (Articles 5 and 6) and 22 March 2006 (Article 10)***	The Commission's first report on implementation of all the Articles (except Articles 5, 6 and 10) was adopted on 16 February 2004[83]. The Council	At the time of the Commission report (16 February 2004), only ten Member States (Austria, Belgium, Finland, Germany, Italy, Ireland, Luxembourg, Portugal, Spain and Sweden) had sent relatively full contributions. **Denmark, Greece, France, the Netherlands** and the **United Kingdom**	The Commission report shows that, because the Commission had received no or only incomplete contributions from the Member States, it had been able to acquire only a superficial impression of the state of transposition. Nevertheless, this superficial impression does make it possible to conclude that the current state of transposition is

81 DROIPEN 25, rev.2.

82 OJ L 82, 22.3.2001, p. 1.

83 Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings of 16 February 2004 - COM(2004) 54 final/2 and SEC(2004) 102.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		report, dated 24 February 2005[84], endorses in substance the Commission's conclusions. A supplementary report was planned for new Member States. The second report (on the implementation of Articles 5 and 6), due in the last quarter of 2004, was not completed in time due to delays in answers from the Member States.	have not yet fulfilled their communication obligation. Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia and the Czech Republic have not yet been evaluated.	unsatisfactory. Despite the shortcomings it can be recognised that in certain Member States, such as France and Luxembourg, the transposition process is already in hand for some of the provisions which remain to be transposed. In addition, it must be acknowledged that some of the provisions set general aims leaving the Member States considerable room for manoeuvre. This makes it difficult for the Commission to check that the Framework Decision has been properly transposed.

[84] COPEN 137, REV 2.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		A third report on Article 10, for which the deadline for transposition is 22 March 2006, should be adopted at the beginning of 2007 at the latest. The Commission plans to present a single report combining these three reports due at the end of 2006.		
Council Framework Decision of 28 May 2001 on combating fraud and counterfeiting of non-cash	***Implementation due by 2 June 2003***	The report from the Commission of 30 April 2004[86] served as a basis for the	At the date of adoption of the latest Commission report (20 February 2006), **Luxembourg, Greece**[89], **Cyprus**[90], **Estonia, Hungary, Malta** and	The second Commission report showed that most of the Member States which had communicated their national transposition measures to the Commission were complying

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
means of payment (2001/413/JAI)[85]		Council's report of 25 October 2004[87]. The Commission adopted a second report on 20 February 2006[88].	**Slovenia**[91] had not yet fully fulfilled their communication obligation.	explicitly or, in some cases, implicitly with the Framework Decision.
Council Framework Decision of 26 June 2001 relating to money laundering, the identification, tracing, freezing or seizing and confiscation of the instrumentalities and	***Implementation due by 31 December 2002***	The report from the Commission of 5 April 2004[93] served as a basis for the report from the Council dated 25 October 2004[94]. A second report was	At the date of adoption of the Commission's second report (21 February 2006), all EU Member States had communicated their transposition measures, with the exception of **Malta**. The information provided by **Greece** is still incomplete.	The latest Commission report showed that overall transposition is satisfactory in the 24 Member States assessed. Nevertheless, no further information gave any reason to revise the unfavourable assessment in the first report concerning **Luxembourg** and **Greece**.

85 OJ L 149, 2.6.2001, p. 1.
86 COM(2004) 346 and SEC(2004) 532.
87 DROIPEN 38, rev.2.
88 COM(2006) 65 and SEC(2006) 188.
89 Greece and Luxembourg reported that their transposition legislation is before their Parliament.
90 Cyprus has not given the Commission adequate information for a full evaluation of the conformity of its legislation with the Framework Decision.
91 Estonia, Hungary, Malta and Slovenia have not replied to the Commission.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
proceeds from crime (2001/500/JAI)[92]		released on 21 February 2006[95]. It focused on transposition in the 10 new EU Member States. Further details are given in the regular review of implementation of the Action Plan to combat terrorism[96].		Minor flaws also seem to exist in Austria, Hungary and Latvia.
Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JAI)[97]	***Implementation due by 31 December 2002***	The first report from the Commission of 8 June 2004[98] served as a basis for the	At the current stage, all the EU-15 Member States have communicated their transposition measures[101], plus 5 "new" Member States (Latvia, Estonia, Poland,	The Commission's second report stated that the situation was unsatisfactory from the point of view both of implementation (at the time the report was drafted the information

92 OJ L 182, 5.7.2001, p. 1.
93 COM(2004) 230 and SEC(2004) 383.
94 DROIPEN 24, REV 2.
95 COM(2006) 72 and SEC(2006) 219.
96 Latest version dated 9 December 2005, JAI 445, REV 1 ADD 1 REV 1.
97 OJ L 164, 22.6.2002, p. 3.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		Council's report dated 25 October 2004[99]. Adoption of a second report was due in the 4th quarter of 2005, but had to be postponed for lack of information and legislative texts from Member States. Further details are given in the regular review of	Slovakia and Lithuania). **Cyprus, Hungary**[102], **Malta**[103], **the Czech Republic** and **Slovenia** have not **yet** fulfilled their communication obligation.	provided did not allow the Commission to conclude that any Member State had fully transposed the Framework Decision and there still were big gaps, as explained in the Commission's report and annex) and of the timeliness and completeness of the information provided by Member States, on which the conclusions were based.

98 Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism: COM(2004) 409, 8.6.2004 and SEC(2004) 688.

99 DROIPEN 40, rev.2.

100 Latest version dated 9 December 2005, JAI 445, REV 1 ADD 1 REV 1.

101 Which marks progress since the Commission's second report, as by the cut-off date of 15 February 2004 the Commission had received no information from **Luxembourg** and the **Netherlands** and no specific information from **Greece.**

102 Although Hungary indicated that it had adopted national measures as at 9 December 2005 (JAI 445 REV 1 ADD 1 REV 1).

103 Although Malta indicated that it had adopted national measures as at 9 December 2005 (JAI 445 REV 1 ADD 1 REV 1).

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
		implementation of the Action Plan to combat terrorism[100].		
Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA)[104]	***Implementation due by 1 August 2004***	A report from the Commission is being prepared and should be adopted by spring 2006. The report from the Council, based on the Commission's report, was due on 1 August 2005.	**Luxembourg**[105], **Portugal** and **Ireland** have not yet fulfilled their communication obligation.	Subject to the missing notifications from three Member States, preparatory work on the forthcoming Commission report suggests that the general level of implementation is quite satisfactory, although some improvements are still needed on some provisions.
Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of	***Implementation due by 5 December 2004***	A report from the Commission is being prepared and should be adopted by mid-2006. The Council's	**Greece, Ireland, Luxembourg, the Netherlands** and **Austria** have not yet fulfilled their communication obligation.	Since the date of implementation (5 December 2004), no information on legal transposition is available. Details will be given in the Commission's report, due in mid-2006.

104 OJ L 203, 1.8.2002, p. 1.

105 Luxembourg stated that it was awaiting finalisation of the discussion within the Council of Europe before implementing the Framework Decision.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
unauthorised entry, transit and residence[106]		assessment of implementation, based on the Commission's report, was due on 15 June 2005.		
Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector[107]	***Implementation due by 22 July 2005***	A report from the Commission is due in the first half of 2006. The report from the Council, to be based on the Commission's report, was due by 22 October 2005.	**Greece, Spain, Cyprus, Hungary** and **Malta** have not yet fulfilled their communication obligation[108].	Since the date of implementation (22 July 2005), no information on legal transposition is available. Details will be given in the Commission's report, due to be adopted in the first half of 2006.
Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual	***Implementation due by 20 January 2006***	A report from the Commission is expected in 2006. The report from the	So far Austria, Belgium, Denmark, the Netherlands and Spain have sent relevant information to the Commission.	Since the date of implementation (20 January 2006), no information on legal transposition is available. Details will be given in the

106 OJ L 328, 5.12.2002, p. 1.
107 OJ L 192, 31.7.2003, p. 54.
108 Although Greece and Spain have indicated that legislation is being prepared.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
exploitation of children and child pornography[109]		Council, based on the Commission's report, is due by 20 January 2008.	**Germany, Greece, France, Ireland, Italy, Luxembourg, Portugal, Finland, Sweden, the United Kingdom, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia** and **Slovenia** have not yet fulfilled their communication obligation.	Commission's report, expected in 2006.
Council Framework Decision 2004/757/JAI of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking[110]	***Implementation due by 12 May 2006***	A report from the Commission is due by 12 May 2009, which should serve as a basis for the report from the Council, due by 12 November 2009.	Not applicable: the date of implementation has not yet expired. The Commission has received no information so far.	Not yet known: the date of implementation had not yet expired at the time of drafting this table and no information is available so far.
– **Other instruments in the field of judicial cooperation in criminal matters**				
Council Framework Decision 2002/465/JHA of	***Implementation due by 1***	The Commission adopted a report on 7	**Greece**[114], **Italy**[115], **Luxembourg**[116], **Estonia** and **Slovenia** have not yet	Legal implementation of the Framework Decision is very unsatisfactory.

[109] OJ L 13, 20.1.2004, p. 44.
[110] OJ L 335, 11.11.2004, p. 8.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
13 June 2002 on joint investigation teams[111]	***January 2003***	January 2005[112], which should serve as a basis for the Council's report. Further details are given in the regular review of implementation of the Action Plan to combat terrorism[113].	fulfilled their communication obligation.	At the date of adoption of the Commission's report, Spain was the only Member State fully complying: **Belgium, Denmark, Germany, Greece, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, the United Kingdom, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Czech Republic, Slovakia** and **Slovenia** have not yet complied correctly with their transposition obligation and/or have not correctly applied the transposing legislation.

111 OJ L 162, 20.6.2002, p. 1.

112 Report from the Commission on national measures taken to comply with the Council Framework Decision of 13 June 2002 on Joint Investigation Teams: COM(2004) 858, 7.1.2005 and SEC(2004) 1725 – mentioned in OJ C 64, 16.3.2005.

113 Latest version dated 9 December 2005, JAI 445, REV 1 ADD 1 REV 1.

114 As at 9 December 2005 Greece indicated that an *ad hoc* committee of the Ministry of Justice had drafted laws to implement the Framework Decision on Joint Investigation Teams, the Eurojust Decision, the 2000 Mutual Legal Assistance Convention and the 2001 Protocol thereto as well as the Framework Decision on freezing orders. They were about to be submitted to Parliament.

115 As at 9 December 2005 Italy indicated that its draft legislation to implement the Framework Decision on Joint Investigation Teams was pending before its Parliament.

116 As at 9 December 2005 Luxembourg indicated that its draft legislation to implement the Framework Decision on Joint Investigation Teams was pending before its Parliament.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
– **Eurojust**				
Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA)[117]	***Implementation and communication are due by 6 September 2003***	A report from the Commission, although not provided for under the Decision, was adopted on 6 July 2004[118]. A second report from the Commission is due in the course of 2006. Further details are given in the regular review of implementation of	Not applicable: there is no obligation to communicate national measures under the Decision.	The Commission's report states that, at the cut-off date of 31 March 2004 chosen for this report, the level of implementation of the Eurojust Decision was far from satisfactory. Six Member States had none of the implementing legislation necessary under their national law (Belgium, Greece, Spain, Italy, Luxembourg and Finland). The remaining Member States concluded that they did not need to amend their national law. Nevertheless, all the Member States reported that, as at 31 March 2006, they had enacted legislation or, in their view, were complying with the Decision, except **Cyprus, Spain**[120]

117 OJ L 63, 6.3.2002, p. 1.

118 Report from the Commission on the Legal Transposition of the Council Decision of 28 February 2002 setting up Eurojust with a view to Reinforcing the Fight Against Serious Crime: COM(2004) 457 and SEC(2004) 884 – mentioned in OJ C 313, 18.12.2004.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		the Action Plan to combat terrorism[119]. Pending the entry into force of a new Treaty provision on Eurojust, as provided for by the Constitution, the Commission wishes to put forward further thoughts on the possible development of Eurojust and the European Judicial Network (EJN) in criminal matters. A Communication is		and **Greece**[121].

119 Latest version dated 9 December 2005, JAI 445, REV 1 ADD 1 REV 1.

120 In Spain draft legislation to implement the Eurojust Decision has been submitted to Parliament.

121 As at 9 December 2005 Greece indicated that an *ad hoc* committee of the Ministry of Justice had drafted laws to implement the Framework Decision on Joint Investigation Teams, the Eurojust Decision, the 2000 Mutual Legal Assistance Convention and the 2001 Protocol thereto as well as the Framework Decision on freezing orders. They were about to be submitted to the Greek Parliament.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
		therefore planned in the 4th quarter of 2006.		
4.3. Judicial cooperation in civil matters				
– **Mutual recognition of decisions and elimination of obstacles to the proper functioning of proceedings**				
Council Directive 2003/8 of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes[122]	***Implementation due by 30 November 2004 (all Articles except Article 3(2)(a)) or by no later than 30 May 2006 (Article 3(2)(a))***	No report from the Commission is provided for under the Directive.	All the Member States have communicated their implementing measures, with the exception of **Belgium**.	So far, no cases of non-compliance or incorrect application have been detected.
Council Directive 2004/80 of 29 April 2004 relating to	***Implementation due by 1***	A report from the Commission is due	**Greece, Italy, Latvia** and **Malta** have not yet notified their national	So far, no cases of non-compliance or incorrect application have been detected.

[122] OJ L 26, 31.1.2003, p. 41.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	**Compliance/application**
compensation to crime victims[123]	***January 2006***	by 1 January 2009 under the Directive.	implementing measures.	Details will be given in the Commission's report, expected in 2009.
Council Regulation (EC) No 1206/2001 of 28 May 2001 on cooperation between the courts of the Member States in the taking of evidence in civil or commercial matters[124]	***Entry into force: 1 July 2001. Application from 1 January 2004, except for Articles 19, 21 and 22, which will apply from 1 July 2001***	First five-yearly report is due from the Commission by 1 January 2007. A study on application of this Regulation will be launched in 2006.	Not applicable.	The first evaluation exercise will be launched in 2007.
Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments	***Entry into force on 1 March 2002***	A report from the Commission is due five years after the entry into force of this Regulation, i.e. in 2007.	Not applicable.	This Regulation reformatted and updated the 1968 Brussels Convention in a Community instrument: after years of application of this Convention, and subject to the results of the study expected in 2006, the general level of application of the Regulation can be

123 OJ L 261, 6.8.2004, p. 15.
124 OJ L 174, 27.6.2001, p. 1.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
in civil and commercial matters[125]		An evaluation of application of Regulation 44/2001 was launched in 2005. It is expected to be delivered in 2006.		considered satisfactory.
Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters[126]	***Entry into force on 31 May 2001***	The first five-yearly report from the Commission was adopted on 1 October 2004[127]. A second report is expected in 2008.	Not applicable.	The Commission's report shows that application is satisfactory as the Regulation has generally improved and expedited the transmission and service of documents between Member States.
Council Regulation (EC) No 2201/2003 of 27	Entry into force on 1 March	No later than 1 January 2012, and	Cyprus has not yet fulfilled its obligation to communicate the information required	One year after the entry into force of the Regulation, it is too early to evaluate its

125 OJ L 12, 16.1.2001, p. 1.

126 OJ L 160, 30.6.2000, p. 37. On 7 July 2005 the Commission adopted a proposal to improve the current provisions on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters. The purpose of these amendments is to speed up and streamline the procedures - COM(2005) 305.

127 COM(2004) 603 and SEC(2004) 1145.

Legal instrument[1]	Deadline for implementation/ entry into force	Reports and other in-depth analysis[2]	Current state of play[3]	
			Communication of national measures to the Commission	Compliance/application
November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 ("Brussels II bis Regulation")[128]	2005, with the exception of Articles 67, 68, 69 and 70, which will apply from 1 August 2004.	every five years thereafter, the Commission will present a report on application of the Regulation.	by the Regulation concerning central authorities and competent courts. Cyprus was sent a letter of formal notice on 19 December 2005.	application. However, it seems necessary to improve knowledge of the instrument and training for practitioners and central authorities[129].

[128] OJ L 338, 23.12.2003, p. 1.

[129] For this purpose, in 2005 the Commission published a practical guide to application of the Brussels II bis Regulation.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
SEC(2006) 814

COMMISSION STAFF WORKING DOCUMENT

Annex to the

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPÉEN
Renforcer la liberté, la sécurité et la justice dans l'Union européenne :
Rapport sur la mise en œuvre du programme de La Haye pour l'année 2005

{COM(2006) 333 final}

(Institutional scoreboard – Table 1)

FOLLOW-UP OF MEASURES PROVICED FOR UNDER THE HAGUE ACTION PLAN IN THE FIELDS OF JUSTICE, FREEDOM AND SECURITY

FOR 2005

INSTITUTIONAL SCOREBOARD – TABLE 1

No[1]	**Action under the Action Plan**	**Competent body**	**Deadline**[2]	**State of play**
1. GENERAL ORIENTATIONS[3]				
1.2 RESPECT FOR AND ACTIVE PROMOTION OF FUNDAMENTAL RIGHTS				
1.2	***- Framework Programme "Fundamental Rights and Justice" under the new Financial Perspectives***			
1.2.	*Proposal for a Decision*	Commission	2005	**√ Achieved**[5]

1 See the Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198, 12.8.2005, p. 1).

2 This table refers only to action scheduled in 2005 or for which no year is indicated in the Hague Action Plan and Programme. Action due in 2006 and thereafter will be assessed in future scoreboards.

3 This table uses the same classification/titles as provided for under the Hague Action Plan.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(a)	*establishing a specific programme on citizenship and fundamental rights*[4]			The proposal for a Council Decision establishing for the period 2007-2013 the specific programme "Fundamental rights and citizenship" as part of the general programme "Fundamental Rights and Justice" was adopted on 6 April 2005[6]. This is currently being discussed in the Council and the European Parliament.
1.2 (b)	*Proposal for a Decision establishing a specific programme on the fight against violence (Daphne) and drugs prevention and information*	Commission	2005	**√ Achieved** The proposal is part of the general programme "Fundamental Rights and Justice" adopted on 6 April 2005[7]. The two strands of this programme were split on 24 May 2006 into two different specific programmes: one on Fight against violence (Daphne) and the other one on Drugs prevention and information[8]. This split answered requests in that sense by the European Parliament, civil society organisations and most of the Member States. Both programmes are currently being discussed in the Council (Horizontal Group on Drugs and ad hoc Working Party on Fundamental Rights for Daphne) and the

4 Italics indicate a legislative measure referred to under the Hague Action Plan.

5 "Achieved", "delayed" or "postponed", refer to the actions foreseen under the Action Plan. The level of achievement of any action must be read in conjunction with the request made by the Action Plan and the correspondent Institution responsible for delivering it. For example, whether the Action Plan requests the Commission to present a proposal, the correspondent section of the present Scoreboard is classified as "achieved" when such a proposal has been eventually presented by the Commission. It does not mean the level of achievement of a policy.

6 COM(2005) 122.

7 COM(2005) 122.

8 COM(2006) 230.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				European Parliament.
1.2.	**- Accession of the European Union to the European Convention for the protection of human rights and fundamental freedoms**		Informal discussion to be started in 2005	**Delayed** Only the Constitution can provide the necessary legal basis.
1.2. (c)	*Proposal extending the mandate of the European Monitoring Centre on Racism and Xenophobia towards a Fundamental Rights Agency*	Commission	2005	**√ Achieved** The proposal for a Council Regulation establishing a European Union Agency for Fundamental Rights and the proposal for a Council Decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI of the Treaty on European Union were adopted by the Commission on 30 June 2005[9]. The first reading in the Council started in October 2005. It is hoped that the measures will be adopted in 2006 so that the Agency could be operational from January 2007.
	- Promotion and protection of women and child rights			
1.2.	Daphne II programme: 2006	Commission	2005	**√ Achieved**

[9] COM(2005) 280.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(d)	work programme			The work programme was approved at the end of December 2005. A call for proposals was issued, with a deadline of 10 February 2006.
1.2. (f)	Communication on the protection of the rights of the child	Commission	2005	**Postponed to 2006** A draft Communication is being prepared and is due for adoption by the Commission in July 2006.
	- Protection of personal data			
1.2. (g)	Communication on the follow-up measures to the Work Programme for a better implementation of the data protection Directive	Commission	2005	**Postponed to 2006** The Commission is still analysing the overall results achieved under the work programme and is still considering the best way forward to safeguard individuals' fundamental right to protection of their data, while taking care of other important interests at stake. For this reason and, in particular, because of the in-depth analysis of all national implementing measures, the Communication had to be postponed until the second half of 2006.
1.2. (h)	Communication on PETs (privacy enhancing technologies)	Commission	2005	**Postponed to 2006** The Commission is still analysing different aspects related to this issue. Because of the highly technical and evolving nature of this issue, it has required more work than initially expected, including gathering technical input from experts in the relevant field. This document is expected to be formally adopted in the second half of 2006.
1.2.	Proposal for legislation on	Commission	2005	**√ Achieved**

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(i)	the protection of personal data in the context of police cooperation and judicial cooperation in criminal matters (see point 3.1 (c))			The proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters was adopted on 4 October 2005[10]. It is being discussed in the Council (at working group level). The European Parliament is being consulted. The EDPS gave its opinion on 19 December 2005.
1.4. EUROPEAN STRATEGY ON DRUGS				
	- EU Action Plan on drugs 2005 to 2008	Commission	2005	**√ Achieved** Following endorsement by the Council of the EU Drug Strategy (2005-2012) of December 2004, the Commission adopted a Communication on an EU Drugs Action Plan (2005-2008) on 14 February 2005[11]. The EU Drugs Action Plan was adopted by the Council on 28 June 2005[12].
1.4. (a)	Continuous evaluation of the EU Action Plan on drugs 2005 to 2008	Commission	2005 (annual)	**Postponed to 2006** Given the short period of time for which the new Action Plan has been in existence, the Commission did not present an annual progress review on implementation of the Drugs Action Plan in 2005. In this context, the Commission presented to the Council (Horizontal Drugs Group) a technical "non-paper" setting out the concepts and procedures for monitoring and

10 COM(2005) 475 and SEC(2005) 1241.
11 COM(2005) 45 and SEC(2005) 216.
12 Council EU Drugs Action Plan (2005-2008) - OJ C 168, 8.7.2005, p. 1.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				evaluating the Action Plan. This document was accompanied by a table ("roadmap") indicating the data source to be used for the annual progress review for each action and its indicator. The same information has been sent to the European Parliament. The first annual progress review will be presented in autumn 2006.
1.5. EXTERNAL RELATIONS				
1.5	**- Strategy on all the external aspects of the Union policy on freedom, security and justice, based on the measures developed in the Hague programme**	Council	2005	**√ Achieved** The JHA Council adopted a Strategy for the External Dimension of JHA: Global Freedom, Security and Justice on 1 December 2005 and the General Affairs Council endorsed it on 12 December 2005.
1.5	Communication on all the external aspects of the Union policy on freedom, security and justice (contribution to the Strategy)	Commission	2005	**√ Achieved** The Commission adopted its Communication entitled "A Strategy on the external dimension of the area of freedom, security and justice: The European Commission's contribution" on 12 October 2005[13]. Together with the contribution from the Council's General Secretariat, it served as a basis for the Strategy for the External Dimension of JHA endorsed by the Council in December 2005.

[13] COM(2005) 491.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2. STRENGTHENING FREEDOM				
2.1 CITIZENSHIP OF THE UNION				
2.1. (a)	Report on the application of Directives 90/364/EEC, 90/365/EEC and 93/96/EEC on the right of residence of pensioners, students and inactive persons	Commission		**√ Achieved** The third report from the Commission to the Council and the European Parliament on the application of Directives 93/96, 90/364, 90/365 on the right of residence for students, economically inactive and retired Union citizens was adopted on 5 April 2006[14].
2.1. (b)	Report on the application of Directive 93/109/EC on the right to vote in the European Parliament elections, including in the new Member States, and, if appropriate, proposals for the amendment of the latter Directive	Commission	2005/ 2006	The draft is being finalised and should be adopted in the course of 2006.

[14] COM(2006) 156.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.2. ASYLUM, MIGRATION AND BORDER POLICY				
	- Framework Programme "Solidarity and Management of Migration Flows" under the new Financial Perspectives	Commission	2005	**√ Achieved** The four funds that have been proposed under this Framework Programme (European Refugee Fund, External Borders Fund, Fund for the Integration of Third-country Nationals and European Return Fund[15]) are currently being discussed in the Council and the European Parliament.
	- Common analysis of migratory phenomena in all their aspects (reinforcing the collection, provision, exchange and efficient use of up-to-date information and data)			
2.2. (a)	Annual reports on migration and asylum statistics		2005 (ongoing)	The statistical report for 2002 will be published in February 2006. The report for 2003 will be published in July 2006.
2.2. (b)	Adoption of an EU framework Regulation on the collection of migration and asylum statistics	Council/ Parliament	2005	**Delayed** The Commission adopted its proposal for a Regulation of the European Parliament and of the Council on Community statistics on migration and international protection on 14 September 2005[16]. It is now being negotiated under the co-decision procedure in the Parliament and the Council with a view to adoption under the Austrian Presidency.

15 COM(2005) 123 final/2 of 2 May 2005.
16 COM(2005) 375.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.2. (c)	Green Paper on the future of the European migration network	Commission	2005	**√ Achieved** The Commission presented the Green Paper on 28 November 2005[17]. The deadline for sending written contributions was 28 January 2006. A hearing of selected experts was held later on to complete the consultation process.
2.2. (d)	*Proposal for a mutual information system on migration issues*	Commission	2005	**√ Achieved** The proposal for a Council Decision on the establishment of a mutual information system concerning Member States' measures in the areas of asylum and immigration was adopted by the Commission on 10 October 2005[18]. Discussions started in the Council under the Austrian Presidency.
2.3 COMMON EUROPEAN ASYLUM SYSTEM				
2.3. (a)	*Adoption of the asylum procedures Directive*	Council/ Parliament	2005	**√ Achieved** The Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status was adopted by the JHA Council on 1 December 2005[19], following the Commission's proposal dated 20 September

17 COM(2005) 606.
18 COM(2005) 480.
19 OJ L 326, 13.12.2005, p. 13.
20 Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 final), OJ C 62 E, 27.1.2001.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				2000[20].
2.3. (b)	Conclusion of the "parallel agreements" with Denmark on "Dublin II" and "Eurodac"	Council	2005	**√ Achieved** Following the Commission's proposals[21], both the agreement with Denmark on Dublin and Eurodac and the protocol to the agreement with Norway and Iceland on Dublin, extending its application to Denmark, were signed, on 10 March and 25 June 2005 respectively. The European Parliament approved conclusion of the agreement and of the protocol on 13 December 2005. Formally adopted by the JHA Council of 21 February 2006[22].
	- Evaluation of the first phase legal instruments			
2.3. (c)	Monitoring the transposition and implementation of first phase instruments	Commission	2005 – ongoing	The deadline for transposing Directive 2003/9 on reception standards for asylum seekers expired on 6 February 2005. The Commission opened a number of infringement procedures for non-notification of the national transposition measures (in the mean time most have been closed). In the course of 2006 the Commission will produce an evaluation of the Dublin and EURODAC Regulations and a report on implementation of the Reception Standards Directive.
	- Second phase of development of a common European asylum system, establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection			

21 COM(2004) 594 final and COM(2005) 131 final.

22 OJ L 66, 8.3.2006, p. 37.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.3. (d)	*Proposal on long-term resident status for beneficiaries of international protection*	Commission	2005	**Postponed to 2006** The proposal for a Directive extending long-term status to beneficiaries of international protection is being prepared and should be adopted in the second quarter of 2006.
	- Cooperation between Member States relating to the common European asylum system, after the establishment of a common asylum procedure			
2.3. (h)	*Establishment of structures involving the national asylum services of the Member States for promoting cooperation*	Commission/ Council	2005	**√ Achieved** The Communication from the Commission to the Council and the European Parliament on "Strengthened practical cooperation - New structures, new approaches: improving the quality of decision making in the common European asylum system" was adopted on 17 February 2006[23].
2.3. (i)	Establishment of a European support office in charge of all forms of cooperation concerning a common asylum system on the basis of an evaluation	Commission		The Commission will report on the progress achieved on strengthened cooperation in the field of asylum at the end of the first phase of activities (early 2008). Based on this evaluation, a feasibility study will be carried out on the establishment of a European support office for all forms of cooperation between Member States relating to the common European asylum system.

[23] COM(2006) 67 and SEC(2006) 189.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	- Establishment of the European Refugee Fund (ERF) 2005 to 2013 to assist Member States in the processing of asylum applications and in the reception of certain categories of third-country nationals	Council		**√ Achieved** The Council Decision establishing the European Refugee Fund for the period 2005 to 2010 was adopted on 2 December 2004[24]. Action in the Member States will be implemented on the basis of a programme divided into two multi-annual phases (2005 to 2007 and 2008 to 2010). The amount for the period from 1 January 2005 to 31 December 2006 is EUR 114 million.
2.3. (j)	Final Report on the European Refugee Fund	Commission	2005	**Postponed to 2006** Postponed to summer 2006.
2.3. (k)	*Proposal for amending the European Refugee Fund decision to assist Member States in the reception of certain categories of third-country nationals*	Commission	2005	**Postponed to 2006** The proposal for a Council Decision amending the ERF II in order to provide financial support for resettlement activities and to provide better support for administrative cooperation between Member States was adopted on 24 May 2006[25].
2.3. (l)	Approvals of European Refugee Fund national multi-annual programming	Commission	2005	**Postponed to 2006** Ongoing.

[24] OJ L 381, 28.12.2004.

[25] Adaptation of COM(2005) 123 final, dated 2 May 2005, following the agreement of 17 May 2006 on the Financial Framework 2007-2013.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.4. LEGAL MIGRATION INCLUDING ADMISSION PROCEDURES				
	- Developing policy on legal migration			
2.4. (a)	Assessment and monitoring of the transposition and implementation of first phase Directives on legal migration	Commission	2005 (ongoing)	**√ Achieved** Several meetings with the Member States on the transposition and application of the existing Directives were held in the course of 2005, in particular on family reunification (2003/86/EC, applicable as of 3 October 2005) and on long-term resident status (2003/109/EC, applicable as of 26 January 2006).
2.4. (b)	Debate on Green Paper on economic migration	Commission	2005	**√ Achieved** The Green Paper on an EU approach to managing economic migration was presented on 11 January 2005[26] and the deadline for the public consultation was 15 April 2005. Debates were held at the JHA Council of February 2005 and the EMPL Council of May 2005. The Commission received more than 130 written contributions from all relevant stakeholders and a public hearing was held on 14 June 2005. The EP gave its opinion in October 2005; the EESC and the Committee of the Regions gave their opinions in May 2005.

[26] COM(2004) 811 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.4. (c)	On the basis of the outcome of the public consultation on the Green Paper on economic migration, presentation of a Policy Plan on legal migration, including admission procedures	Commission	Before end of 2005 (point 1.4 of the Hague Programme)	**√ Achieved** The Policy Plan on legal migration was adopted on 21 December 2005[27]. It is a comprehensive document containing a set of legislative and operational measures to be put forward between 2006 and 2009 on: conditions of admission and residence for economic immigrants; information building and sharing; integration measures; and measures to be enacted in cooperation with the countries of origin.
2.5. INTEGRATION OF THIRD-COUNTRY NATIONALS				
	- Establishment of a coherent European framework for integration			
2.5. (a)	Communication on a European framework for integration	Commission	2005	**√ Achieved** The Communication on "A common agenda for integration: Framework for the integration of third-country nationals in the European Union" was adopted on 1 September 2005[28]. Conclusions adopted by the JHA Council of 1-2 December 2005 supported the lines of action contained in this Communication.
	- Promotion of the structural exchange of experience and information integration[29]			

[27] COM(2005) 669 final.
[28] COM(2005) 389 final.
[29] Complementary activities are undertaken in the framework of the European employment strategy and the social inclusion process.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.5. (b)	Management of INTI preparatory actions	Commission	2005 to 2006	The Commission received 139 grant applications in response to the INTI 2005 call for proposals. The Commission has agreed to co-finance 15 new projects in connection with the call for proposals under the INTI 2005 programme to the tune of some EUR 4.3 million. A total of EUR 5 million has been set aside for 2006, the last year of the INTI programme. The 2006 call for proposals will be launched before the summer. The priorities will be determined on the basis of experience in previous years and will be consistent with the common basic principles for integration adopted by the Council and expanded on in the Commission Communication on a common agenda for integration[30].
2.5. (c)	Annual reports on immigration and integration	Commission	2005-ongoing	The 2nd annual report on immigration and integration is to be adopted before summer 2006. This report will be factual and provide an overview of the state of play in the field of integration, without any further analysis and without drawing any policy conclusions. It will take the form of a Commission staff working document. A 3rd annual report will follow.
2.6. FIGHT AGAINST ILLEGAL IMMIGRATION				
2.6.	Contribution to management	Council/	2005-	The Commission Decision on the format for report on the activities of immigration

[30] COM(2005) 389 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(a)	of immigration liaison networks in relevant third countries	Commission	ongoing	liaison officers' networks and on the situation in the host country in matters relating to illegal immigration[31] was adopted on 29 September 2005. Reports drawn up in this format will enable the Council and the Commission to evaluate the work of those networks as well as the situation with regard to illegal immigration in the third countries concerned.
2.6. (b)	Annual report on the common policy on illegal migration	Commission	2005-ongoing	**Postponed to 2006** Postponed to the second quarter of 2006 so that it can be annexed to the upcoming Commission Communication on future priorities in the fight against illegal immigration[32].
2.6. (c)	Adoption of a Commission Decision establishing a secure web-based information network for Member States' migration services (ICONET)	Commission	2005	**√ Achieved** The Commission Decision laying down detailed rules for the implementation of Council Decision 2005/267/EC establishing a secure web-based information network for Member States' migration management services (Iconet) was adopted on 15 December 2005[33]. In early 2006 Commission staff organised a meeting and training for the national contact points of Member States in order to ensure that the network could become fully operational.

[31] C(2005) 1508 final.

[32] This Communication does not stem from the Hague Programme but is an initiative of the Commission. The Communication is closely linked to the policy plan on legal migration, which sets out a range of initiatives which the Commission intends to take in the years ahead, mainly in the field of economic migration. The policy plan explicitly acknowledges that the admission of economic migrants requires further measures to combat illegal immigration more effectively in order to ensure the integrity and credibility of such an admission policy. The planned Communication will be the Commission's response to that announcement and will include, as an annex, the second annual report on the progress made in combating illegal immigration.

[33] C(2005) 5159 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.6. (d)	Proposal for the conclusion and signature of the Council of Europe Convention on action against trafficking in human beings (CAHTEH)	Commission	2005	**Delayed** The Convention was opened for signature by the Parties in May 2005. The Commission may consider presenting a proposal for signature and conclusion by the EC in due time.
2.6. (e)	Realisation by Member States of targets for reducing the informal economy as set out in the European employment strategy			The Policy Plan on Legal Migration of 21 December 2005[34] contains several measures to address the issue of illegal employment of third-country nationals. More measures will be presented in the future Communication on illegal immigration due for adoption in July 2006 (see 26 (f)). Other action provided for by the Lisbon Strategy is carried out by Member States in the context of the employment strategy and policies.
2.6. (f)	Presentation by the Commission of a report which may include instruments for fighting against illegal work	Commission		The Commission is drafting a Communication on future priorities in the field of illegal immigration which is to be adopted in July 2006.
	- Establishment of an effective removal and repatriation policy based on common standards and closer cooperation and mutual technical assistance			

[34] COM(2005) 669.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.6. (g)	*Proposal on return procedures*	Commission	2005	**√ Achieved** On 1 September 2005 the Commission tabled the proposal for a Directive on common standards and procedures in Member States for returning illegally staying third-country nationals[35]. It is due to be adopted under the co-decision procedure. The Council Working Party on Migration and Expulsion has started the first reading. The proposal was presented to the LIBE Committee of the European Parliament in November 2005.
2.6. (h)	Launching of the preparatory actions for financial support to return management	Commission	2005	**√ Achieved** The Commission adopted the preparatory actions 2005 work programme on 2 August 2005[36]. The call for proposals was published on 24 August 2005 (deadline 31 October 2005). 32 proposals for projects were received. Evaluation was finished in April 2006. 20 of them were accepted. The first contracts will be signed before summer 2006.
2.6. (i)	Appointment of a Commission Special Representative for a common readmission policy	Commission	2005	**√ Achieved** On 24 October 2005 the Commission appointed Karel Kovanda, Deputy Director-General of DG RELEX, as Special Representative for a common readmission

35 COM(2005) 391 final.

36 Preparatory actions for return management in the area of migration — Call for proposals 2005, OJ C 224, 13.9.2005, p. 11.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				policy, and Jean-Louis De Brouwer, Director in DG JFS, as Deputy SR.
2.6. (j)	Conclusion of Community readmission agreements and management of existing agreements	Commission	Timely	Agreements have entered into force with Macao, Hong Kong and, in May 2005, with Sri Lanka. Negotiations with Russia were concluded in October 2005. The Commission will submit two proposals for Council Decisions to the Council in April 2006, one authorising formal signature of the agreement, the other formally concluding the agreement on behalf of the Community. Formal signature occurred on 25 May 2006. The agreement with Albania was concluded on the EU side in November 2005. Negotiations are in progress with Ukraine, Turkey, Morocco and Pakistan. Negotiating mandates for agreements with China and Algeria were received on 28 November 2002, but formal negotiations have not yet been launched.
2.7. EXTERNAL DIMENSION OF ASYLUM AND MIGRATION				
	- Cooperation with third countries in managing migration and asylum			

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
2.7. (a)	Communication on migration and development	Commission	2005	**√ Achieved** The Communication "Migration and Development: Some concrete orientations" was presented by the Commission on 1 September 2005[37]. The Council supported the Commission to give firm shape to the orientations contained in the Communication, in particular as regards migrant remittances, diaspora and brain drain issues, and approved conclusions on migration and external relations on 21-22 November 2005.
2.7. (b)	Revised version for 2006 of the reference document of the AENEAS programme		2005	The need to revise the reference document expired as the duration of the Programme was limited to three years (2004-2006). Instead, a Communication proposing the creation of a thematic programme for the cooperation with third countries in the areas of migration and asylum, to replace the AENEAS Programme for 2007-2013, was presented on 25 January 2006[38].
2.7. (c)	Completing the integration of migration into the country and regional strategy papers for all relevant third countries	Commission	2005	**√ Achieved** Integration of migration into the regional and country strategy papers is an ongoing process and most countries had been screened by the end of 2005. In 2006 the regional strategy papers for developing countries are to be completed.
2.7. (d)	Conclusions in order to intensify Member States' cooperation in preventing	Council	2005	**√ Achieved** European Council conclusions were adopted on 15-16 December 2005.

[37] COM(2005) 390.
[38] COM(2006) 26.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	further loss of life resulting from attempts to enter the EU illegally, mainly in the Mediterranean			
	- Development of EU Regional Protection Programmes			
2.7. (e)	Plan of action for EU Regional Protection Programmes, including EU resettlement scheme	Commission/ Council	2005	**√ Achieved** The Commission adopted a Communication on Regional Protection Programmes on 1 September 2005[39]. The Council supported the approach proposed in the Commission Communication and recognised that such programmes are a first step in improving access to protection and durable solutions for those in need of international protection as quickly and as close to their home as possible. The Council supported the proposal made in the Communication that pilot Regional Protection Programmes should be considered for the Western Newly Independent States (Ukraine, Moldova and Belarus) and sub-Saharan Africa (the Communication highlighted Tanzania).
2.7. (f)	Launching pilot protection programmes	Commission	2005	**Delayed** Due to the late publication of the AENEAS call for proposals (in December 2005), the first projects to form the two pilot Regional Protection Programmes in Tanzania and the Western NIS will be selected and contracted under the AENEAS financial programme in the course of 2006. A steering committee composed of relevant Commission departments, the UNHCR, interested Member States and other

[39] COM(2005) 388 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				relevant stakeholders has been meeting since January 2006 to supervise coordination and implementation of Regional Protection Programme activities.
	- Intensified cooperation with countries of transit to enable these countries better to manage migration and to provide adequate protection for refugees			
2.7. (g)	Report on progress and achievements in asylum and migration, within the context of the European Neighbourhood Policy	Commission	2005	**√ Achieved** A Communication monitoring and evaluating the cooperation with third countries in the field of the fight against illegal immigration covering, for example, Morocco, Tunisia and Libya was presented on 27 July 2005[40].
2.8. BORDER MANAGEMENT, BIOMETRICS, INFORMATION SYSTEMS AND VISA POLICY				
	- Abolition of controls on persons at the internal borders			
2.8. (a)	*Proposal on SIS II legal instruments*	Commission	2005	**√ Achieved** The three draft legal instruments necessary for the future Schengen Information System (SIS II) were adopted by the Commission on 31 May 2005[41]. The purpose of the three proposals is to describe operation and use of SIS II.

[40] COM(2005) 352.

[41] Proposal for a Council Decision on the establishment, operation and use of the second generation Schengen information system (SIS II) (COM(2005) 230); proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen information system (SIS

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				The 1-2 June JHA Council reached a general approach on operation and use of the second generation Schengen Information System (SIS II). The European Parliament is to issue its opinion. In October 2005 the European Parliament *rapporteur* presented to the LIBE Committee two working documents explaining the existing SIS I and the changes proposed by the Commission. In December 2005 the European Economic and Social Committee endorsed the Vehicle Registration Regulation[42].
	- Establishment of an integrated management system for external borders			
2.8. (g)	"Handbook for border guards" (after adoption of the Community code on the rules governing the movement of persons across borders)			The proposal for a Regulation of the European Parliament and of the Council establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), subject to the co-decision procedure, was presented by the Commission on 26 May 2004[43]. It aims at consolidating, clarifying and developing the acquis on crossing the external and internal borders. After intensive discussions between the three institutions, a political agreement on a well-balanced text was reached in June 2005. The European Parliament voted unanimously in favour of the agreed text on 23 June 2005. The text was formally adopted by the JHA Council on 21 February 2006.

II) (COM(2005) 236); proposal for a Regulation of the European Parliament and of the Council regarding access to the second generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (COM(2005) 237).

42 CESE 1486/05.

43 Communication from Mr Vitorino. Council Regulation establishing a Community Code on the rules governing the movement of persons across borders. PO/2004/161 (2004/0127/CNS).

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				The handbook for border guards is expected to be finalised in the course of 2006.
	- Partial application of the Schengen acquis			
2.8. (j)	*Adoption of a Council Decision on the partial implementation of the Schengen acquis (SIS) by the United Kingdom*	Council	2005	**√ Delayed** The Council Decision depends on the technical preparations to be carried out by the United Kingdom, which have not yet been finalised.
	- Coherent approach and harmonised solutions in the EU on biometric identifiers and data			
2.8 (k)	*Proposal modifying the Common Consular Instructions concerning standards and procedures for taking biometric data, including the obligation to provide such data and specifying the exceptions to this obligation*	Commission	2005	**√ Achieved** The proposal for a Regulation of the European Parliament and of the Council amending the Common Consular Instructions on visas for diplomatic missions and consular posts in relation to the introduction of biometrics including provisions on the organisation of the reception and processing of visa applications was adopted by the Commission on 31 May 2006.[44]
2.8. (l)	Preparation for the development of minimum standards for national ID-	Council	From 2005 onwards	**√ Achieved** Several expert meetings were organised to work on the development of minimum

[44] COM(2006) 269 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	cards			standards, the interoperability of electronic signatures and the issuing procedures. Conclusions in the form of a resolution by the representatives of Member States meeting within the Council were adopted by the JHA Council of 1 December 2005[45]. A detailed document on minimum security standards for ID should be transmitted to the Council in the 1st half of 2006.
2.8. (m)	Preparation for the development of minimum standards for sector-specific ID-cards, if appropriate	Council	From 2005 onwards	On 14 April 2005 the Council adopted the Decision authorising Member States to ratify, in the interests of the European Community, the Seafarers' Identity Documents Convention of the International Labour Organisation (Convention 185)[46]. The Convention has already been ratified by France (27 April 2004) and Hungary (30 March 2005).
2.8. (o)	Communication on enhanced synergies between SIS II, VIS and Eurodac	Commission	2005 (Hague Programme) - 2006 (Hague Action Plan)	**√ Achieved** On 24 November 2005 the European Commission adopted a Communication to the Council and the European Parliament on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs[47]. The Communication presents different scenarios that can be considered, but does not prejudge the outcome of an essential in-depth debate which should cover aspects such as the overriding need to preserve the delicate balance between the measures envisaged and the protection of fundamental rights (with special

45 Council doc. 15000/05; Draft Conclusions of the Representatives of the Governments of the Member States on common minimum security standards for Member States' national identity cards, Brussels, 11 November 2005, 14351/05, LIMITE, ASIM 51 (EU doc. No: 14351/05).

46 2005/367/EC.

47 COM(2005) 597 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				reference to the protection of personal data), as embodied in the European Convention on Human Rights and the EU Charter of Fundamental Rights.
2.9. VISA POLICY, INCLUDING THE DEVELOPMENT OF THE VISA INFORMATION SYSTEM (VIS)				
2.9. (a)	Meetings with third countries of the positive visa list in order to ensure visa-free travel for citizens of the Member States to all those third countries in the context of the new reciprocity mechanism soon to be adopted	Commission	(Ongoing, to be combined with the review of the visa list)	The new reciprocity mechanism was adopted by the Council on 2 June 2005[48]. Meetings were held with all third countries concerned up until mid-December 2005. The report from the Commission to the Council on visa waiver reciprocity with certain third countries was adopted on 10 January 2006[49]. This report is a formal part of the visa reciprocity mechanism introduced by Council Regulation No 851/2005. The Council adopted conclusions on the report and the possible follow-up to it on 21 February 2006. The dialogue is to be continued to solve remaining cases of non-reciprocity. The Commission is to present a new report in July 2006.
2.9. (b)	*Proposals relating to the necessary amendments to further enhance visa policies and the establishment of common*	Commission	2005 (Hague Action Plan) – 2006	The proposal on a Community Code on visas, aiming at "recasting" the Common Consular Instructions, is being prepared. It is expected to be submitted in July 2006, as required in the Hague Programme.

[48] Regulation (EC) No 851/2005 of 2 June 2005 amending Council Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as regards the reciprocity mechanism (OJ L 141, 4.6.2005, p. 3).

[49] COM(2006) 3 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	application centres for visas		(Hague Programme)	
2.9. (c)	Regular review of the visa list (Regulation (EC) No 539/2001)	Commission	Regular	Commission proposal for a Council Regulation amending Regulation No 539/2001 to be adopted in the first half of 2006.
2.9. (d)	*Proposal on visa facilitation procedures for members of the Olympic Family — Turin 2006*	Commission	2005	**√ Achieved** The Commission presented a proposal on 7 September 2005[50] which was then adopted by the co-decision procedure by the European Parliament (vote in plenary on 15 November 2005) and the Council on 14 December 2005[51].
2.9. (e)	Report on the implementation of Regulation (EC) No 1295/2003 "Visa facilitation procedures for members of the Olympic Family — Athens 2004"	Commission	2005	**√ Achieved** The Commission adopted its report on 11 August 2005[52].
2.9.	*Proposal amending the Common Consular*	Commission	2005	**Delayed**

50 COM(2005) 412.
51 OJ L 334, 20.12.2005, p. 1.
52 SEC(2005) 1051.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(f)	*Instructions on visa fees*			Proposal delayed due to discussion of the French initiative on increasing visa fees, finally agreed upon at 27-28 April 2006 JHA Council and endorsed by 1-2 June JHA Council.
2.9 (g)	*Proposals on transit*	Commission	2005	**√ Achieved** On 22 August 2005 the Commission presented proposals for a decision of the European Parliament and the Council (1) establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia of certain documents as equivalent to their national visas for the purposes of transit through their territories and (2) establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory[53]. JHA Council of 1-2 June reached agreement in first reading and the texts were finally adopted under the co-decision procedure on 14 June 2006[54].
2.9. (h)	Recommendation for negotiating directives for visa waiver agreements between the EC and third countries on the conditions to move freely within the	Commission	2005 - ongoing	**Delayed** Only the Constitution can provide the necessary legal basis.

[53] COM(2005) 381 final.

[54] Decisions No 895/2006/EC and 896/2006/EC (OJ L 167, 20.6.2006, pp. 1 and 8).

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	Union for a period between three and six months			
2.9. (i)	*Adoption of a proposal establishing a regime on local border traffic*	Commission	2005	**√ Achieved** On 23 February 2005 the Commission presented a proposal laying down rules on local border traffic at the external land borders of the Member States and amending the Schengen Convention and the Common Consular Instructions[55], on which political agreement under the co-decision procedure was reached in first reading on 14 February 2006. Formal adoption is expected in the course of 2006.
2.9. (j)	Report on the operation of the Kaliningrad transit scheme	Commission	2005	**Postponed to 2006** Regulation 693/2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual[56] and Regulation 694/2003 on uniform formats for FTD and FRTD[57] have established specific, optional rules for the transit of persons between Kaliningrad and mainland Russia: no transit visa is required, only an FTD or FRTD to be issued in accordance with simplified procedures. Regulation 693/2003 requires the Commission to present a report to the European Parliament and the Council on the functioning of the FTD and FRTD transit

55 COM(2005) 56.

56 Council Regulation (EC) No 693/2003 of 14 April 2003 establishing a specific Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual, OJ L 99, 17.4.2003, p. 8.

57 Council Regulation (EC) No 694/2003 of 14 April 2003 on uniform formats for Facilitated Transit Documents (FTD) and Facilitated Rail Transit Documents (FRTD) provided for in Regulation (EC) No 693/2003, OJ L 99, 17.4.2003, p. 15.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				scheme at the latest three years after the entry into force of the decision of one Member State (Lithuania) to apply this scheme. The Commission will present this report in 2006.
2.9. (k)	Kaliningrad facility[58]	Commission/ Lithuania		Ongoing (2004-2006 programme)
2.9. (l)	Schengen facility for seven Member States	Commission/7 beneficiary Member States		Ongoing (2004-2006 programme)
2.9. (m)	Specific recommendations for negotiating directives on visa facilitation on a case by case basis with third countries in the context of the EC readmission policy, where possible and on the basis of reciprocity, with a view to developing a real partnership on migration management issues	Commission	2005 to 2009	Negotiations on an agreement between the European Community and the Russian Federation on the facilitation of issue of short-stay visas have been concluded. The draft agreements on visa facilitation and on readmission were symbolically initialled on 13 October 2005. They were formally initialled at the beginning of 2006. Signature occurred on 25 May 2006. The European Parliament will be consulted. On 26 August 2005 the Commission adopted a recommendation to the Council to authorise the Commission to open negotiations for the conclusion of an agreement between the European Community and Ukraine on the facilitation of issue of short-stay visas. The negotiating directives were adopted by the Council on 7 November 2005. The negotiations on a visa facilitation agreement with Ukraine were launched on 21-

[58] The Kaliningrad Facility will be replaced by specific provisions within the proposed External Border Fund for the period 2007 to 2013 as part of the Framework Programme "Solidarity and Management of Migration Flows".

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				22 November 2005 in parallel with the ongoing negotiations for an EC-Ukraine readmission agreement. Subsequent rounds of negotiation took place on 24-25 January and 27 February. Signature and conclusion may occur in 2006.
3. STRENGTHENING SECURITY				
	- Framework Programme "Security and Safeguarding Liberties" under the new Financial Perspectives (2005)			
3. (a)	*Proposal for a decision establishing a specific Programme on "Prevention of and fight against crime"*	Commission	2005	**√ Achieved** The proposal was adopted by the Commission on 6 April 2005[59]. The 1-2 June 2006 JHA Council reached a general approach on the text. The opinion of the European Parliament is expected after 2006 Summer time.
3. (b)	*Proposal for a decision establishing a specific programme on "Prevention, preparedness and consequence management of terrorism"*	Commission	2005	**√ Achieved** The proposal was adopted by the Commission on 6 April 2005[60]. The 1-2 June 2006 JHA Council reached a general approach on the text. The opinion of the European Parliament is expected after 2006 Summer time.

[59] COM(2005) 124 final.
[60] COM(2005) 124 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
3.1. SHARING OF INFORMATION AMONG LAW ENFORCEMENT AND JUDICIAL AUTHORITIES WHILE STRIKING THE RIGHT BALANCE BETWEEN PRIVACY AND SECURITY				
3.1. (a)	*Adoption of a legislative instrument on the retention of data processed in connection with the provision of public electronic communication services for the detection, investigation and prosecution of criminal offences*	Council/ Parliament	2005	**√ Achieved** On the basis of the Commission proposal of 21 September 2005[61], a political compromise was reached at the 2 December JHA Council and duly endorsed by the European Parliament on 14 December 2005. The Directive was formally adopted by the JHA Council of 21 February 2006[62], after receipt of the European Economic and Social Committee's opinion[63].
	- Availability principle and protection of personal data			

61 COM(2005) 438.

62 Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ L 105, 13.4.2006).

63 Opinion EESC 35/2006 of 19 January 2006.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
3.1. (b)	*Proposal on the establishment of a principle of availability of law enforcement relevant information*	Commission	2005	**√ Achieved** The Commission's proposal for a Framework Decision on the exchange of information under the principle of availability was adopted on 12 October 2005[64] and was discussed in the JHA Council on 2 December 2005..
3.1. (c)	*Proposal on adequate safeguards and effective legal remedies for the transfer of personal data for the purpose of police and judicial cooperation in criminal matters*	Commission	2005	**√ Achieved** The Commission's proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters was adopted on 4 October 2005[65] and is being discussed in the Council. The European Parliament is to be consulted and the EDPS gave an opinion on 19 December 2005[66].
3.1 (d)	*Adoption of a proposal for a Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member*	Council	2005	**√ Achieved** The JHA Council reached political agreement in December 2005 based on the Swedish legislative initiative of 4 June 2004. This should be put forward for adoption in the course of 2006.

64 COM(2005) 490.

65 COM(2005) 475 final and SEC(2005) 1241.

66 Opinion of 19 December 2005 on the Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters, http://www.edps.eu.int/legislation/Opinions_A/06-01-20_.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	States of the EU			The European Parliament gave its opinion on 7 June 2005[67].
3.1. (h)	Implementation of the principle of availability, concerning the following area: - DNA	Commission	2005	**Postponed to 2006** The proposal for a Council Decision on the exchange of DNA data has been postponed to 2006 following the presentation on 12 October 2005 and subsequent debate on the Framework Decision on the exchange of information under the principle of availability.
3.1. (k)	Definition of a policy for a coherent approach on the development of information technology to support the collection, storage, processing, analysis and exchange of information	Commission	2005	**√ Achieved** The Communication from the Commission to the Council on interoperability of European databases was adopted on 24 November 2005[68].
	- Exchange of data on PNR			
3.1. (l)	*Proposal concerning a common EU approach to the use of passenger data for border and aviation security and other law enforcement*	Commission	2005	**Delayed** The Commission's proposal is being prepared, and will need to be updated in view of the judgment of the Court of Justice of 30 May 2006 in cases C-317/04 and C-318/04

[67] Position of the Commission: C/2004/4641 of 1 December 2004.
[68] COM(2005) 597.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	purposes			
3.1. (m)	Joint review on the Air Passengers Data (PNR) Agreement with the USA	Commission	2005	**√ Achieved** A two-day joint review took place on 20 and 21 September 2005 in Washington. The report was finalised on 12 December 2005.
3.1. (n)	Completion of negotiations of PNR agreements with Canada and Australia (2005), and with other countries if necessary		2005	**√ Achieved** **(partly)** Following the Commission's proposal dated 19 May 2005[69], the negotiations with Canada were completed with the adoption of the Council International Agreement on 18 July 2005 and Commission Adequacy Decision on 6 September 2005. The agreement entered into force on 22 March 2006. The consequences of the 30 May 2006 ruling of the Court of Justice in the US PNR case will be taken into full account. Formal negotiations with Australia started on 14 December 2005 after exploratory talks[70]. The consequences of the 30 May 2006 ruling of the Court of Justice in the US PNR case will be taken into full account. The Commission adopted on 16 June 2006 two initiatives to put a legally sound framework in place for the transfer of PNR data to the United States[71]. These

[69] COM(2005) 200 final.
[70] C(2005) 2800 and C(2005) 3248.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				initiatives are the first European answers to correct the legal basis for the Agreement with the US that was struck down by the European Court of Justice on 30 May 2006. The Court ruled that the Article 95 EC-Treaty was not an appropriate legal basis for the transfer of PNR data which are essentially aiming to ensure public security and activities by public authorities in areas of criminal law. Negotiations with other countries have not yet started.
3.1. (o)	Definition of international guidelines ensuring a high degree of protection of privacy for access to PNR data in the framework of the International Civil Aviation Organisation (ICAO)			The ICAO adopted international guidelines on PNR data on 9 June 2005, taking into account the proposals from the Commission[72]. These guidelines came into force on 11 July 2005. A circular based on the decision of the ICAO management board will be published in 2006.
3.2. TERRORISM				
	- Further development of an overall approach to combat terrorism			
3.2.	Further implementation of	Commission/		The Commission adopted:

[71] Communication from the Commission to the Council: Termination of the Agreement between the European Community and the United States of America on the processing and transfer of PNR data by Air Carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection (COM(2006) 335 final)) and an EU restricted document.

[72] Staff working paper of 26 January 2004, doc. 5849/04 AVIATION 23 JAI 20 RELEX 42 USA 10 TELECOM 23.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(a)	the EU Action Plan on Combating Terrorism	Council/ Parliament		- the Decision on financing a Pilot Project on the "Fight Against Terrorism" on 15 September 2005[73]; - the decision on the use of VIS by authorities responsible for internal security on 23 November 2005[74]; - the revised Action Plan on Terrorism on 30 November 2005[75].
3.2. (c)	Reinforcement of cooperation between the competent authorities to combat terrorism through the development of specialised contact points in Member States, which will have access to all necessary information and intelligence with respect to terrorist activities involving persons, groups or entities	Commission/ Council	2005	**√ Achieved** 1) Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences, adopted by the Council on 20 September 2005[76], based on the Commission proposal of 29 March 2004[77] and the opinion of the European Parliament of 7 June 2005, provides for the establishment of contact points regarding terrorist criminal offences. 2) With a view to cooperation in the field of intelligence, on 22 December 2005 the Commission presented a proposal for a Council Decision on the transmission of information emerging from the activities of security and intelligence services with respect to terrorist offences[78], which was transmitted to the Council and the European Parliament.

73 C(2005) 3179.
74 COM(2005) 600 final.
75 SEC(2005) 1585.
76 OJ L 253, 29.9.2005.
77 COM(2004) 221 final.
78 COM(2005) 695 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
3.2. (d)	Examination of the necessity and feasibility of the setting-up of a European law enforcement network (LEN) for the fight against terrorism (2005)	Commission/ Council	2005	**√ Achieved** Member States have been asked to provide comments concerning a general approach to the creation of the Law Enforcement Network. Comments have been received and will serve as a basis for further discussions.
3.2. (e)	Communication on greater security of explosives, bomb-making equipment	Commission	2005	**√ Achieved** The Commission's Communication was adopted on 18 July 2005[79]. The first important follow-up will be a conference organised by the Commission bringing together all major stakeholders to brainstorm on a long-term plan for making explosives more secure (scheduled for the first half of 2006).
3.2. (f)	Communication of the Commission on violent radicalisation and strategy of the Council on radicalisation and recruitment	Commission	2005	**√ Achieved** The Commission's Communication, dated 20 October 2004[80], served as a basis for the Council strategy on terrorist recruitment addressing the factors contributing to violent radicalisation proposed on 21 September 2005, which was endorsed by the 1-2 December 2005 JHA Council and adopted by the General Affairs Council of 12 December 2005.
3.2. (l)	Build capacity in third countries to fight terrorism	Commission		The Commission is sustaining institutional/capacity-building measures in third countries in the fields of justice, freedom and security which, at the same time,

[79] COM(2005) 329 final.
[80] COM(2004) 698.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	and appropriate clauses on counter-terrorism in the agreements to be concluded by EU/EC with third countries			contribute to fighting against terrorism (e.g. justice, police, money-laundering, etc.). A standard counter-terrorism clause is systematically part of all agreements under negotiation or to be concluded and of the European Neighbourhood Policy Action Plans[81].
3.2. (m)	Develop public/private partnerships to improve the prevention and the fight against terrorism	Commission		A sector-specific public/private partnership was launched by a conference held on 28 and 29 November 2005 on detection and associated technologies. Cooperation in the form of public/private partnership is also continuing as part of the work on protection of critical infrastructure and intensive cooperation is expected in the second half of 2006.The conference on security of explosives scheduled for the first half of 2006 will also be a sector-specific initiative as part of a general policy being developed in the field of Public/Private Security Dialogue (PPSD). A Commission Communication on general public/private cooperation in the fight against organised crime and terrorism is scheduled for the second half of 2006.
	- Review and adaptation of EU legislation in parallel with measures to be adopted in order to combat terrorism			
3.2 (n)	Second report based on Article 11 of the Council Framework Decision of	Commission	2005	**Delayed** Adoption had to be postponed, due to lack of information and of notification of

[81] The revised Cotonou Partnership Agreement and the Joint Council-Commission Declaration on financial and technical assistance in the area of cooperation in the fight against terrorism stipulate that targeted assistance to strengthen ACP countries' ability to counter terrorism must be financed by resources other than those intended for the financing of ACP-EC development cooperation. See also Article 11a, known as the "counter-terrorism clause" inserted in the Revised Cotonou Partnership Agreement.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	13.6.2002 on combating terrorism			legislative texts by Member States.
3.3. PREVENTION OF AND FIGHT AGAINST ORGANISED CRIME				
3.3. (a)	Communication on developing a strategy on tackling organised crime	Commission	2005	**√ Achieved** The Commission adopted its Communication "Developing a strategic concept on tackling organised crime" on 2 June 2005[82]. The Communication identifies five areas of priority action in the field of organised crime: knowledge, prevention, cooperation and information exchange among law enforcement agencies, development of legislation and cooperation with third countries and international organisations. Progress on these legislative or non-legislative initiatives should be described in the mid-term implementation report to be presented by the Commission in 2007.
	- Improve the knowledge of organised and serious crime and strengthen the gathering and analysis of information			
3.3. (b)	Communication on an action plan — EU crime statistics	Commission	2005	**Postponed to 2006** The Communication will probably be adopted in the second quarter of 2006.
3.3.	Commission working paper on criminal intelligence-led	Commission	2005	**Delayed**

[82] COM(2005) 232 final and SEC(2005) 724.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(c)	law enforcement			The working paper has been delayed.
	- Strengthen prevention of organised crime			
3.3. (g)	Crime-proofing of legislation and the design of crime preventive measures into products and services	Commission	2005	**Delayed** The initiative has been delayed.
3.3. (h)	Report on the results of a study further to the Council resolution of 2001 on the contribution of civil society in finding missing or sexually exploited children	Commission	2005	**Postponed to 2006** The draft report is being prepared. Adoption postponed to 2006.
	- Strengthen tools to address financial aspects of organised crime			
3.3. (n)	Initiatives to promote use of financial investigation as a law enforcement technique and to establish common minimum training standards	Commission	2005-2007	Commission departments are working to establish minimum training standards for financial investigation. A recommendation may be considered for 2007.
3.3. (o)	Common set of training standards in financial investigation skills	Commission	2005	**Delayed** See above – this is part of the Commission initiative mentioned.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
3.3. (r)	Promotion of the establishment of criminal asset intelligence units in EU Member States	Commission/ Council	Continuous	The Commission is continuously promoting the establishment of such units. A Council decision is planned on this issue.
	- Improve legislation and review existing legal instruments where needed			
3.3. (b)	*Legislative package on the fight against counterfeiting*	Commission/ Council/ Parliament	2005	**√ Achieved** A proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights and a proposal for a Framework Decision to strengthen the criminal law framework to combat intellectual property offences was presented by the Commission on 12 July 2005[83]. The Commission then presented an amended proposal for a Directive on 26 April 2006, taking account of the judgment of the Court of 13 September 2005 (Case C-176/03)[84]. The proposals are currently being discussed in the Council.
3.3. (c)	Communication on trafficking in human beings	Commission	2005	**√ Achieved** The Commission's Communication was adopted on 18 October 2005[85]. It followed the "EU plan on best practices, standards and procedures for combating and

[83] COM(2005) 276 final.
[84] COM(2006) 168.
[85] COM(2005) 514 final.
[86] OJ C 311, 9.12.2005, p. 1.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				preventing trafficking in human beings", adopted by the JHA Council of 1 December 2005[86]. In accordance with the main objectives of this Communication, in December 2005 the Council adopted an action plan that will be the platform for further action at EU level.
3.3. (g)	Comparative study to evaluate the need for instruments to combat activities of organised crime related to fiscal fraud within EU Member States and acceding and candidate countries	Commission	2005	**√ Achieved** The study was finalised on 10 October 2005[87].
	- Improve monitoring and evaluation			
3.3. (l)	Second report based on Article 6 of the Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the	Commission	2005	**√ Achieved** The report was adopted on 21 February 2006[88].

87 Tender No JAI/D2004/04.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	proceeds of crime			
3.3. (m)	Second report based on Article 14 of the Council Framework Decision of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment	Commission/ Council	2005	**√ Achieved** The report was adopted on 20 February 2006[89].
3.3. (n)	Implementation report framework Decision "Private sector corruption"[90]	Commission/ Council	2005	**Postponed to 2006** The implementation period ended on 22 July 2005. The Commission's report to the Council was postponed to 2006 pending contributions from all Member States. It is now scheduled for the first half of 2006.
3.3. (o)	Report on the implementation of the framework Decision of 27 January 2003 on protection of the environment through criminal law[91]	Commission/ Council	2005	**No longer relevant** Action became irrelevant following the annulment of the Framework Decision by the European Court of Justice on 13 September 2005 (case C-176/03). The Commission intends to use the information communicated by the Member States so far as a basis for further improvement of its proposal for a Directive replacing the Framework Decision.

88 COM(2006) 72 and SEC(2006) 219.
89 COM(2006) 65 and SEC(2006) 188.
90 Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003).
91 Council Framework Decision 2003/20/JHA of 27 January 2003 on the protection of the environment through criminal law (OJ L29, 5.2.2003, p.55).

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
3.4. POLICE AND CUSTOMS COOPERATION				
3.4. (a)	Implementation and evaluation of the work programme concerning customs cooperation approved by the JHA Council on 30 March 2004 following the Council Resolution of 2 October 2003 on a strategy for customs cooperation	Council	2004-2006	The JHA Council took note of the mid-term review on 1 December 2005. A final report will be presented to the Council at the end of 2006.
	- Improvement of law enforcement cooperation and development of the Schengen *acquis* in respect of cross-border operational law enforcement cooperation			
3.4. (d)	*Follow-up to the Communication and proposal on improvement of law-enforcement cooperation in particular at the internal borders between Member States*	Commission	2005	**√ Achieved** On 18 July 2005 the Commission adopted a proposal for a Council Decision on the improvement of police cooperation between the Member States of the European Union, especially at the internal borders, and amending the Convention implementing the Schengen Agreement[92]. Monthly meetings of the police cooperation working group are being held.

[92] COM(2005) 317 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				.
3.4. (e)	*Communication and proposal for a Directive on improved transport safety and increased security through the creation of an area of police and judicial cooperation on the trans-European transport networks*	Commission	2005	**Delayed** May be taken up after the Commission has adopted a draft Directive on cross-border enforcement in the field of road safety, which is scheduled for 2006.
3.4. (f)	Updating of the Sirene manual	Commission	2005	**Postponed to 2006** 2nd meeting of the SIRENE Manual Committee was held in Brussels on 7 December 2005. The final text of the Manual was agreed on and endorsed at a third meeting of the SIRENE Manual Committee and is currently submitted to the Commission for adoption.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	Systematic exchange programmes for law enforcement officers' authorities			
3.4. (i)	*Adoption of a proposal aimed at amending the decision establishing CEPOL (European Police College) as a body of the Union*		2005	**√ Achieved** Following the Commission's proposal of 1 October 2004[93], the Council adopted the decision on 20 September 2005[94]. Moreover, exchanges of policemen is one of the priorities of the AGIS programme for 2006.
	- Improvement of operational cooperation			
3.4. (k)	Development of a common methodology and setting up of short-duration joint customs and police operations and/or multi-disciplinary joint teams	Council	Continuous	Two Joint Customs Operations (JCOs) were carried out during the second half of 2005 under the management of the Council's Customs Cooperation Working Group (CCWG): Operation "Roots II" - combating drug trafficking via the Balkan route - and Operation "Protect" - contributing to the fight against terrorism. The CCWG updated its JCO recommendations, monitoring the file in the light of 2004 and 2005 operations. This document provides guidance for organising JCOs. In addition, the CCWG Guide for Joint Customs Operations improves the preparatory and selection processes for JCO, ensures implementation and improves the subsequent evaluation of the operations and ensures more effective feed-back of experience gained into the selection and planning processes for future operations. In order to implement the Hague Programme and to promote the use of joint investigation teams, Member States designated national experts as contact points.

93 COM(2004) 623.
94 2005/681/JHA, OJ L 256, 1.10.2005, p. 63.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				The tasks of the national experts should be to facilitate the setting-up of a JIT by disseminating information about the legal framework and possibilities of setting up a JIT and to act as national contact points in this field for the competent authorities within the Member States.
3.4. (p)	Definition of the role of the security committee (COSI)		No later than 1 November 2006	Discussions began at the Vienna informal JHA Council meeting in January 2006 and are currently in progress.
3.4. (q)	Review and, where appropriate, further development of the customs IT systems	Council	Continuous	In 2005 the Customs Cooperation Working Group approved a detailed plan for the improvement, promotion and more widespread use of the Customs Information System (CIS). A project group was set up to explore the possibility of future development of CIS. The Commission plans a further update to the CIS system to provide a more user-friendly interface in the second half of 2006, using web-based technology.
3.4. (r)	Implement the conclusions of the Council of 19 November 2004 related to the fight against organised crime in the Western Balkans	Council		The conclusions express commitment to ongoing efforts to improve the fight against organised crime, mostly without deadlines. They also request Council bodies and the PCTF to report by the end of 2005 on implementation of the conclusions, following a report from the Multi-Disciplinary Group on Organised Crime dated June 2005. The PCTF has not yet reported back. The work on implementation of the conclusions has been and remains continuous. The Multi-Disciplinary Group has discussed implementation on numerous

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				occasions, especially through an oral report in the Group on 27 April 2005.
3.5. MANAGEMENT OF CRISIS WITHIN THE EUROPEAN UNION				
3.5 (b)	Commission decision creating a secure general rapid alert system (ARGUS) and a Commission Crisis Centre to coordinate existing alert systems	Commission	2005	**√ Achieved** The Communication "Commission provisions on "ARGUS" general rapid alert system" was adopted on 23 December 2005[95].
3.5 (c)	*Proposal creating a critical infrastructure warning information network (CIWIN)*	Commission	2005	**Postponed to 2006** Following intensive consultation with all Member States and the private sector, a Green Paper on the European Programme for Critical Infrastructure Protection, which also addresses the issue of creation of the CIWIN, was adopted on 17 November 2005. The consultation period ended on 15 January 2006. The call for tenders was published in March 2006 on the basis of the consultation process results. The evaluation committee meets in June. Adoption of the proposal wil follow in due time.
3.5	Plan on the protection of	Commission	2005	**√ Achieved**

[95] COM(2005) 662.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
(d)	critical infrastructures			**(partly)** The Green Paper on a European Programme for Critical Infrastructure Protection (EPCIP) was adopted on 17 November 2005[96]. The consultation period ended on 15 January 2006. The EPCIP policy package is due to be adopted by the Commission in September 2006.
3.6. GENERAL CRIME PREVENTION				
3.6 (a)	Strengthening and professionalising of the prevention of crime, including through the European Crime Prevention Network	Commission	2005	**Postponed to 2006** The European Crime Prevention Network adopted an internal reorganisation of the network; an initiative will be launched in 2006.
3.6 (b)	Establishment of European instruments for collecting, analysing and comparing information on crime and victimisation and their respective trends in Member States, using national			These instruments will be part of the Commission initiative on EU crime statistics mentioned under point 3.3 above.

[96] COM(2005) 576 final..

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	statistics and other sources of information as agreed indicators			
4. STRENGTHENING JUSTICE				
	- See also *Framework Programme "Fundamental Rights and Justice" under the new Financial Perspectives (2005)*			
4. (a)	*Proposal for a decision establishing a specific programme on judicial cooperation in civil and commercial matters*	Commission	2005	**√ Achieved** The proposal was adopted on 6 April 2005[97] and is currently being discussed in the European Council and the European Parliament.
4. (b)	*Proposal for a decision establishing a specific programme on judicial cooperation in criminal matters*	Commission	2005	**√ Achieved** The Commission proposal was adopted on 6 April 2005[98] The 1-2 June JHA Council reach a general approach on the text. The opinion of the European Parliament is expected after 2006 Summer time.
4.1. CONFIDENCE-BUILDING AND MUTUAL TRUST				

97 COM(2005) 122 final.
98 COM(2005) 122 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
4.1. (b)	Communication from the Commission on judicial training in EU (2005), development on the basis of the pilot project for the exchange of magistrates (2005) and of the preparatory action (2006)	Commission	2005	**Postponed to 2006** An experts meeting was held on 5 October 2005 with Member States and relevant stakeholders, including the EJTN, the Network of Council of the Judiciary and the European Network of Supreme Courts to discuss preparation of the Communication. The Communication is due to be adopted in the first half of 2006 and will focus on problems, best practices and possible solutions in this area with a view to developing a coherent strategy for training in the future. The preparatory action on the exchange programme will be continued in 2006.
4.2. JUDICIAL COOPERATION IN CRIMINAL MATTERS				
	- Pursuing the implementation of the mutual recognition principle			
4.2. (a)	Communication on mutual recognition of decisions in criminal matters and reinforcement of mutual trust between Member States	Commission	2005	**√ Achieved** The Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States was adopted on 19 May 2005[99] and transmitted to the European Council and the European Parliament.

[99] COM(2005) 195 final and SEC(2005) 641.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
4.2. (b)	White Paper on exchanges of information on convictions and the effect of such convictions in the EU	Commission	2005	**√ Achieved** The Commission adopted the White Paper on exchanges of information on convictions and the effect of such convictions in the European Union on 25 January 2005[100]. The White Paper was discussed at the JHA Council meeting on 14 April 2005 which defined the way forward in this area.
4.2. (c)	*Proposal on taking into account of convictions in the Member States of the European Union in the course of new criminal proceedings*	Commission		**√ Achieved** The Commission presented a proposal for a Council Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings on 17 March 2005[101]. Discussion at Council level has started under the Austrian Presidency..
4.2. (d)	*Proposal on the transmission to, and keeping by, the Member State of nationality of information on criminal convictions*	Commission	2005	**√ Achieved** The Commission presented the proposal for a Council Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States on 22 December 2005[102]. Discussions are in progress within the Council.
4.2. (e)	*Communication on the creation of an index of non-*	Commission	2005	**Postponed to 2006** The Commission plans to adopt a Working Paper on the feasibility of an index of

100 COM(2005) 10 final and SEC(2005) 63.
101 COM(2005) 91 final.
102 COM(2005) 690 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	EU nationals convicted in an EU Member State			third-country nationals convicted in the European Union in the first half of 2006. The Commission aims to adopt a legislative proposal later on.
4.2. (f)	*Initiative on the European Enforcement Order and the transfer of sentenced persons between Member States of the EU*	Member States	2005	**√ Achieved** The joint initiative from Austria, Finland and Sweden for a Council Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the EU was formally submitted on 19 January 2005[103]. Discussions are in progress within the Council.
4.2. (g)	*Proposal on mutual recognition of non-custodial pre-trial supervision measures*	Commission	2005	**Postponed to 2006** The Commission plans to present a proposal before the summer of 2006.
4.2. (h)	Communication on disqualification	Commission	2005	**√ Achieved** The Commission adopted a Communication on "Disqualifications arising from criminal convictions in the European Union" on 21 February 2006[104].
4.2. (i)	Reports on the implementation of the Framework Decision on the European arrest warrant and	Commission/ Council	2005-2006	**√ Achieved** The first report on implementation by 24 Member States was adopted on 23

[103] OJ C 150, 21.6.2005, p.1.
[104] COM(2006) 73.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	the surrender procedures between Member States			February 2005. A revised version to include Italy (latest implementation) was adopted on 26 January 2006[105].
4.2. (j)	*Initiative on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children*	Member States	2005	**√ Achieved** Belgium presented an initiative in October 2004[106]. Discussions are currently in progress within COPEN Council Working Group and European Parliament.
	- Approximation			
4.2. (a)	Green Paper on Conflicts of Jurisdiction and Double Jeopardy (*ne bis in idem*)	Commission	2005	**√ Achieved** The Green Paper was adopted on 23 December 2005[107]. Based on the responses to the Green Paper, a proposal for a Framework Decision on conflicts of jurisdiction and the principle of *ne bis in idem* in criminal proceedings could be presented in the second half of 2006.

105 COM(2006) 8 final.
106 Council document, 14207/04 of 5 November 2004, COPEN 133.
107 COM(2005) 696.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
4.2. (b)	Green Paper on presumption of innocence	Commission	2005	**Postponed to 2006** The Commission presented the Green Paper on presumption of innocence on 26 April 2006[108]. The Commission launched at the same time a public consultation on the presumption of innocence. Interested parties were invited to submit their comments by 9 June 2006.
4.2. (c)	Second report on the implementation of the framework decision of 15 March 2001 on the standing of victims in criminal proceedings	Commission	2005	**Postponed to 2006** Postponed, notably due to the lack of notification of national implementing measures by Member States.
	- Other instruments in the field of judicial cooperation in criminal matters			
4.2. (d)	*Initiative to facilitate the prosecution of road traffic offences*	Commission/ Member States	2005	**Delayed** The Commission is considering the case for presenting a proposal on driving disqualifications. An initiative from a Member State to facilitate the prosecution of road traffic offences may also be tabled in the course of 2006.
4.2. (f)	Further development of the European Judicial Network in criminal matters	Commission	Continuous	The Commission plans to issue a Communication on the Eurojust and the European Judicial Network (EJN) in 2006. The EJN and the Commission have collaborated on a questionnaire on *in absentia* judgments – to be distributed to the EJN contact

108 COM(2006) 174 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
				points in February 2006. The results will assist the Commission in drafting a Green Paper on in absentia judgments, scheduled for December 2006.
	- Eurojust			
4.2. (g)	Second report on the legal transposition of the Council Decision of 28 February 2002 setting up Eurojust	Commission	2005	**Postponed to 2006** The Commission intends to present the report in mid-2006 and to issue a Communication on the Eurojust and the European Judicial Network (EJN) later in 2006.
	- International Legal Order			
4.2. (j)	Active involvement of the activities of the Council of Europe and other international organisations and forums (G8, UN, OECD, OSCE, FATF) in criminal matters	Council/ Commission	2005-2009	Officials regularly attend the relevant working groups (G8; UN; OECD; OCSE; FATF).
4.2. (k)	Examination of the case for agreements between the EU and third countries on extradition	Council/ Commission	2005-2009	Discussions are under way with various countries. The Council reached an agreement on the surrender procedure between the Member States of the EU and Iceland and Norway on 27-28 April 2006.
4.2. (l)	Examination of the case for agreements between the EU	Council/ Commission	2005-2009	Discussions are under way with various countries.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	and third countries on mutual legal assistance			
4.3. JUDICIAL COOPERATION IN CIVIL MATTERS				
	- Mutual recognition of decisions and elimination of obstacles to the proper functioning of proceedings			
4.3. (a)	Green Paper on succession	Commission	2005	**√ Achieved** The Commission adopted the Green Paper Succession and wills on 1 March 2005[109]. Public consultation was concluded on 30 September 2005 (more than 60 answers were received). An experts group hearing was set up in February 2006 and is scheduled twice again before 2006. A Public hearing is scheduled on 30 November 2006.
4.3. (b)	Green Paper on conflicts of laws and jurisdiction on divorce matters (Rome III)	Commission	2005	**√ Achieved** The Commission adopted the Green Paper on 14 March 2005[110], which drew more than 60 answers. An experts group hearing was held on 6 December 2005 and an impact assessment was launched with a view to a proposal for a Regulation by July 2006.

[109] COM(2005) 65 final.
[110] COM(2005) 82 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
4.3. (c)	*Proposal on conflicts of laws regarding contractual obligations (Rome I)*	Commission	2005	**√ Achieved** The Commission presented a proposal on 15 December 2005[111]. Discussions are in progress at Council level.
4.3. (d)	*Proposal on small claims*	Commission	2005	**√ Achieved** The Commission presented a proposal for a Regulation establishing a European small claims procedure on 15 March 2005[112] and the 1-2 June 2006 JHA Council reached a general approach on the text.
4.3. (e)	*Proposals on maintenance obligations*	Commission	2005	**√ Achieved** The Commission presented a proposal on 15 December 2005[113]. Discussions are in progress at Council and Parliament level.
4.3. (m)	*Proposal for amending Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial documents in civil or*	Commission	2005	**√ Achieved** The Commission presented a proposal on 11 July 2005[114]. The 1-2 June 2006 JHA Council reached a general approach on the text.

111 COM(2005) 650 final.
112 COM(2005) 85 final.
113 COM(2005) 649 final.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	commercial matters			The European Parliament has not yet given an opinion.
	- Enhancing cooperation			
4.3. (n)	Report on the functioning of the European Judicial Network in civil and commercial matters	Commission	2005	**√ Achieved** The report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters was adopted on 16 May 2006[115]
4.3. (o)	Continued development of the European Judicial Network in civil matters and of the databases on case-law relating to European instruments		Continuous	The annual general meeting was held on 12-13 December 2005. At least 4 meetings with the contact points are scheduled in 2006. The Internet site is updated continuously. A database on the Brussels I and Brussels II Regulations will be on line in 2006.
4.3. (p)	Constant updating and improvement of the		Continuous	New contract for maintenance of the Atlas signed in 2006.

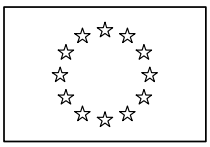
114 COM(2005) 305 final.
115 COM(2006) 203 final and SEC(2006) 579.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
	European Judicial Atlas			
4.3. (q)	EU support for networks of judicial organisations and institutions		Continuous	Contacts and collaboration are being maintained with different networks (European Network for the training of judges[116], Network of Presidents of the Supreme Courts).
4.3. (s)	Annual European day of civil justice		Continuous	Participation in different events all over Europe. Organisation of the "Crystal Scales of Justice" prize.
	- International legal order			
4.3. (b)	Proposal for the conclusion of parallel agreements with Denmark on Brussels I and service of documents	Commission	2005	**√ Achieved** The Commission presented a proposal for a decision regarding Brussels I on 15 April 2005[117] and a proposal for a decision regarding service of documents on 18 April 2005[118]. The Council reached to an agreement and the text was subsequently endorsed by the 27-28 April 2006 JHA Council.
4.3. (c)	Conclusion of negotiations on the Convention on the choice of forum	Commission, on behalf of the European Community	2005	**√ Achieved** Negotiations were concluded in June 2005. An impact assessment for the possible ratification of the Convention by the Community is being prepared.

116 OJ L 256, 1.10.2005, p. 63.
117 COM(2005) 145.
118 COM(2005) 146.

No[1]	Action under the Action Plan	Competent body	Deadline[2]	State of play
4.3. (f)	Ratification of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children			On 17 June 2003 the Commission proposed to authorise the Member States to ratify the Convention. Although general agreement was reached on the text, the proposal is blocked in the Council due to the question of geographical application to Gibraltar.
4.3 (g)	Continuation of negotiations and conclusion of international agreements relating to judicial cooperation in civil matters			- *Inter alia*, negotiations are continuing on a new "Lugano Convention (16/09/1988)". The opinion of the European Court of Justice on the extent of the Community's external competences for the new "Lugano Convention"[119] states that for the conclusion of a new Lugano Convention the Community has an exclusive competence to terminate negotiations and to prepare and present the appropriate instrument for the conclusion of the new Convention. - In addition, participation in the negotiations in progress in the Hague on a draft Convention on the recovery of child support and other forms of family maintenance. The possibility of a bilateral agreement on judicial cooperation with Russia, if Russia accepts the Commission's invitation to informal discussions on this matter, is being explored.

[119] Opinion 1/03 of 7 February 2006.



EUROOPAN YHTEISÖJEN KOMISSIO

Bryssel 28.6.2006
KOM(2006) 331 lopullinen

KOMISSION TIEDONANTO NEUVOSTOLLE JA EUROOPAN PARLAMENTILLE

Haagin ohjelman täytäntöönpano: tulevat toimet

KOMISSION TIEDONANTO NEUVOSTOLLE JA EUROOPAN PARLAMENTILLE

Haagin ohjelman täytäntöönpano: tulevat toimet

(ETA:n kannalta merkityksellinen teksti)

1. JOHDANTO

Eurooppa-neuvosto hyväksyi Haagin ohjelman ”Vapauden, turvallisuuden ja oikeuden lujittaminen Euroopan unionissa” marraskuussa 2004. Ohjelmassa vahvistetaan, että vapauden, turvallisuuden ja oikeuden alueen kehittämisellä on ollut ensisijainen asema Euroopan unionin toiminnassa Tampereella vuonna 1999 kokoontuneesta Eurooppa-neuvostosta lähtien, ja todetaan, että se kuuluu **unionin tärkeimpiin painopisteisiin** sekä yhtenä unionin keskeisenä tavoitteena että ennen kaikkea siksi, että se on EU:n **kansalaisten kannalta** merkittävä asia. Vapauden, turvallisuuden ja oikeuden alueen keskeistä asemaa korostettiin voimakkaasti myös komission Eurooppa-neuvostolle 10. toukokuuta 2006 antamassa tiedonannossa ”Euroopan kansalaisten toimintasuunnitelma”[1].

Jäsenvaltiot ja EU:n toimielimet ovat vuoden 2004 lopusta lähtien tehneet työtä varmistaakseen Haagin ohjelman täytäntöönpanon kesäkuussa 2005 hyväksytyn neuvoston ja komission toimintasuunnitelman mukaisesti.

Eurooppa-neuvosto totesi joulukuussa 2004 seuraavaa: ”*Koska ohjelman voimassaoloaika kattaa ajanjakson, jonka kuluessa perustuslakisopimus tulee voimaan, sen täytäntöönpanon tarkistus katsotaan tarpeelliseksi*”. Tästä syystä se pyysi komissiota raportoimaan vuonna 2006 ”*saavutetusta edistyksestä Eurooppa-neuvostolle […] ja ehdottamaan ohjelmaan tarvittavia lisäyksiä*”.

Vaikka perustuslakisopimus ei ole tullut voimaan, on silti tarpeen laatia ensimmäinen poliittinen **arvio** Haagin ohjelman täytäntöönpanon edistymisestä ja tehdä ehdotuksia tarvittavista tarkistuksista. Tämä tiedonanto ja sen kanssa samaan aikaan annettavat tiedonannot ”Vapauden, turvallisuuden ja oikeuden lujittaminen Euroopan unionissa: kertomus Haagin ohjelman toteuttamisesta 2005” (jäljempänä ’Plus-tulostaulu’) ja ”Arviointi EU:n politiikasta vapauden, turvallisuuden ja oikeuden alalla” ovat vastaus edellä mainittuun Eurooppa-neuvoston pyyntöön.

Tämän **laajan kokonaisuuden** tarkoituksena **ei ole** määritellä uusia painopisteitä Haagin ohjelmassa jo vahvistettujen lisäksi vaan lähinnä 1) esittää tilannekatsaus saavutetusta edistymisestä, 2) **arvioida** täytäntöönpanoastetta EU:n ja jäsenvaltioiden tasolla ja 3) esittää tulosten perusteellista arviointia.

[1] KOM(2006) 211.

Komissio on 10. toukokuuta 2005 esittämässään tiedonannossa Haagin ohjelman täytäntöönpanon **painopisteistä**[2] yksilöinyt **alat**, joilla sen näkemyksen mukaan **unionin poliittisia tavoitteita on pyrittävä edistämään** Haagin ohjelman pohjalta.

Komissio on tietoinen, että on välttämätöntä antaa **uutta vauhtia** vapauden, turvallisuuden ja oikeuden alueen kehittämiselle osana kunnianhimoista, poliittista toimintasuunnitelmaa kansalaisten hyväksi.

Komissio toivoo, että se pystyy tällä toimenpidekokonaisuudella **edistämään ja jäsentämään** jäsenvaltioiden ja muiden toimielinten kanssa Suomen puheenjohtajuuskaudella (kesäkuu-joulukuu 2006) käytävää keskustelua seuraavista asioista:

(1) komission tarpeellisiksi katsomat **uudet poliittiset aloitteet** (ks. 2 luku), jotka eivät vielä sisälly Haagin ohjelman puitteissa toteutettaviin toimiin, ja

(2) kesäkuun 2006 Eurooppa-neuvoston pyynnön mukaisesti[3] keinot vapaus-, turvallisuus- ja oikeusasioita koskevien politiikkojen **toimivuuden parantamiseksi voimassa olevien perussopimusten mukaisia mahdollisuuksia hyödyntämällä** mutta ilman, että tällä olisi vaikutusta perustuslakisopimukseen (ks. 3 luku).

Jotta vapauden, turvallisuuden ja oikeuden alueen luomisessa voitaisiin edistyä, **on lisättävä päätöksentekomenettelyjen tehokkuutta, selkeyttä ja vastuuvelvollisuutta**. Kuten käy ilmi Plus-tulostaulusta, jossa arvioidaan ensimmäistä kertaa EU:n lainsäädännön täytäntöönpanoa jäsenvaltioissa, lainsäädäntöehdotusten hyväksyminen EU:n tasolla on **erittäin pitkällinen prosessi**, jossa tietyillä aloilla saavutetaan juuri ja juuri **pienimmän yhteisen nimittäjän** taso, jolloin osa alkuperäisistä tavoitteista jää saavuttamatta.

2. HAAGIN OHJELMAN TÄYTÄNTÖÖNPANO: UUTTA VAUHTIA VAPAUDEN, TURVALLISUUDEN JA OIKEUDEN ALUEEN LUJITTAMISELLE

Edellä mainitussa rinnakkaisessa tiedonannossa esitetty Haagin ohjelman ja sitä koskevan toimintasuunnitelman täytäntöönpanon ensimmäinen arviointi Plus-tulostaulun avulla tarjoaa komissiolle mahdollisuuden eritellä ne alat, joihin unionin on kiinnitettävä erityistä huomiota ja joilla tarvitaan lisätoimia.

Tämän perusteella komissio ehdottaa seuraavien toimien toteuttamista **ennen Haagin ohjelman voimassaolon päättymistä** (2009).

2.1. Perusoikeudet ja kansalaisuus

Perusoikeudet ovat unionin keskeisiä arvoja. Komissio aikoo toiminnassaan keskittyä kaikkien ihmisten perusoikeuksien **kunnioittamisen** ja **edistämisen** tukemiseen sekä **EU:n kansalaisuuden** käsitteen kehittämiseen.

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[2] Komission tiedonanto neuvostolle ja Euroopan parlamentille: ”Haagin ohjelma: kymmenen painopistettä seuraaviksi viideksi vuodeksi – Kumppanuus Euroopan uudistamiseksi vapauden, turvallisuuden ja oikeuden alalla” - KOM(2005) 184.

[3] Kesäkuun 2006 Eurooppa-neuvoston päätelmien 10 kohta: ”Haagin ohjelman uudelleentarkastelun yhteydessä Eurooppa-neuvosto pyytää tulevaa puheenjohtajavaltiota Suomea tarkastelemaan tiiviissä yhteistyössä komission kanssa mahdollisuuksia parantaa päätöksentekoa ja toimintaa nykyisten perussopimusten pohjalta vapauden, turvallisuuden ja oikeuden alalla.”

Unionin **kansalaisuuteen** liittyy tiettyjä keskeisiä oikeuksia, kuten **vapaa liikkuvuus** unionin alueella ja **diplomaatti- ja konsuliviranomaisten antama suojelu**.

Suunnitteilla olevat toimet:

- Komissio saa yhä enemmän pyyntöjä ryhtyä toimenpiteisiin tapauksissa, joissa jäsenvaltioiden väitetään loukanneen perusoikeuksia. Komissio jatkaa perusoikeuksien kunnioittamisen seurantaa ja edistämistä Euroopan unionista tehdyn sopimuksen ja sen 7 artiklasta vuonna 2002 annetun komission tiedonannon mukaisesti[4]. Ne tarjoavat unionin toimielimille tarvittavat keinot varmistaa, että kaikki jäsenvaltiot kunnioittavat yhteisiä arvoja.

- Komissio pitää **ensisijaisena** tehtävänään sen varmistamista, että jäsenvaltiot **soveltavat asianmukaisesti** Euroopan unionin kansalaisten oikeudesta liikkua ja oleskella vapaasti jäsenvaltioiden alueella annettua Euroopan parlamentin ja neuvoston direktiiviä 2004/38/EY, joka tuli voimaan 30. huhtikuuta 2006.

- On tärkeää saada EU:ssa aikaan yhteinen tietämys ja yhteiset vaatimukset siitä, miten suojellaan niitä EU:n kansalaisia, jotka tarvitsevat apua sellaisessa kolmannessa maassa, jossa heidän kotimaallaan ei ole edustustoa. Komissio on halukas tukemaan tähän liittyvää EU:n jäsenvaltioiden virkamiesten **koulutusta**. Koulutustukea voitaisiin antaa esimerkiksi EU:n kansalaisille annettavaan konsuliapuun liittyvissä kysymyksissä.

- Parhaillaan valmistellaan myös **tiedotuskampanjoita ja -toimia**, joilla EU:n kansalaisille kerrotaan heidän oikeudestaan saada suojelua EU:n diplomaatti- ja konsuliviranomaisilta.

- Kolmansissa maissa toimivien EU:n jäsenvaltioiden edustustojen yhteisen konsuliohjeiston päivityksessä mainitaan nyt ensimmäisen kerran, että komission lähetystöt voivat osallistua EU:n kansalaisille käytännössä annettavaan kriisiapuun antamalla käyttöön logistiikkaa ja henkilöstöä[5]. Tämä parantaa jäsenvaltioiden valmiuksia palvella hätätilanteeseen joutuneita kansalaisia, ja toimintaa onkin tarkoitus kehittää edelleen. Vuoden 2006 jälkipuoliskolla on tarkoitus laatia neuvoston pääsihteeristön / ulkopolitiikan korkean edustajan ja komission yhteinen raportti konsuliyhteistyön tiivistämisestä EU:n jäsenvaltioiden välillä. Raportissa käsitellään myös yhteisten konsuliapupisteiden perustamista tietyille alueille.

- Jäsenvaltioiden Haagin ohjelman hyväksymisen yhteydessä esittämien toivomusten johdosta komissio tutkii nyt, miten seuraavia ajatuksia voitaisiin kehittää edelleen: 1) ”eurokonsulaattien” perustaminen hoitamaan yhteisiä konsulitoimintoja EU:n kansalaisia hyödyttävällä tavalla ja 2) eurooppalaisen konsulisäännöstön vahvistaminen.

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4 KOM(2003) 606.

5 Puheenjohtajavaltion selvitys ”Euroopan unionin hätätila- ja kriisivalmiuksien vahvistaminen”, jonka kesäkuun 2006 Eurooppa-neuvosto hyväksyi.

2.2. Turvapaikkajärjestelmän toinen vaihe

Yhteisen eurooppalaisen turvapaikkajärjestelmän perustaminen vaatii paljon työtä lähivuosina. Järjestelmää varten on vahvistettava **tehokkaat ja yhdenmukaiset menettelyt**, joissa kunnioitetaan Euroopan humanitaarisia perinteitä ja unionin kansainvälisiä sitoumuksia.

Suunnitteilla olevat toimet:

- **Voimassa olevan lainsäädännön arviointi**. Komissio esittää Dublin-asetuksen ja vastaanotto-olosuhteita koskevan direktiivin arvioinnin vuoden 2006 loppuun mennessä. Vähimmäisvaatimusdirektiivi puolestaan arvioidaan vuoden 2008 aikana.

- Yhteisen eurooppalaisen turvapaikkajärjestelmän toteuttamisen toisen vaiheen eri osat on tarkoitus yksilöidä **turvapaikkapolitiikkaa koskevassa vihreässä kirjassa** ja sen jälkeen vuonna 2007 laadittavassa **turvapaikkapolitiikan toimintapoliittisessa suunnitelmassa**.

- Tämän vuoden helmikuussa annetun tiedonannon[6] pohjalta on tarkoitus ryhtyä jatkotoimiin **viranomaisten välisen käytännön yhteistyön** alalla. Tavoitteena on jäsenvaltioiden turvapaikkajärjestelmien lähentäminen muun muassa luomalla koko EU:n kattava tietokanta alkuperämaatietoja varten.

2.3. Muuttoliikkeiden hallinta

Muuttoliikkeiden hallinnassa sovellettava **kokonaisvaltainen lähestymistapa** edellyttää, että kehitetään yhteinen maahanmuuttopolitiikka, jossa otetaan huomioon laillisten maahanmuuttajien tilanne unionin tasolla, **samalla** kun ryhdytään tehokkaampiin toimiin laittoman maahanmuuton, maahanmuuttajien salakuljetuksen ja ihmiskaupan, erityisesti naisten ja lasten kaupan, torjumiseksi.

Suunnitteilla olevat toimet:

- Komission tarkoituksena on laillista maahanmuuttoa koskevan toimintapoliittisen suunnitelman mukaisesti tehdä ehdotukset **Euroopan parlamentin ja neuvoston puitedirektiiviksi sekä neljäksi tiettyjä siirtotyöläisryhmiä koskevaksi Euroopan parlamentin ja neuvoston direktiiviksi** (näitä ryhmiä ovat korkeasti koulutetut työntekijät, kausityöntekijät, yhtiönsä toiseen maahan väliaikaisesti lähettämät henkilöt ja palkalliset harjoittelijat).

- Vastauksena Länsi- ja Pohjois-Afrikasta erityisesti Italiaan, Espanjaan, Maltaan, Kreikkaan ja yleensä Välimeren alueelle suuntautuvan laittoman maahanmuuton kasvuun komissio koordinoi Hampton Courtissa järjestetyssä valtion- ja hallitusten päämiesten epävirallisessa huippukokouksessa ja joulukuun 2005 Eurooppa-neuvostossa määriteltyjen **ensisijaisten toimien** toteuttamista yhdessä jäsenvaltioiden, Europolin, EU:n rajaturvallisuusviraston (Frontex) ja Yhteisen tutkimuskeskuksen kanssa. Asiaa koskeva seurantakertomus on tarkoitus antaa **vuoden 2006 loppuun mennessä**.

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[6] KOM(2006) 67.

- **Maahanmuuttopolitiikan ulkoiseen ulottuvuuteen** liittyviä toimia tehostetaan entisestään. Maahanmuuttoasiat on nivottava tiiviisti osaksi unionin suhteita alkuperä- ja kauttakulkumaihin osana muuttoliikkeitä koskevaa kokonaisvaltaista lähestymistapaa. **Maahanmuuttoon** ja **kehitysyhteistyöhön** liittyvässä työssä panostetaan näiden kahden toiminta-alan myönteisten yhteyksien lujittamiseen ja erityisesti sellaisiin kysymyksiin kuin siirtotyöläisten rahalähetykset, maahanmuuttajayhteisöjen rooli, osaamiskierto ja kiertosiirtolaisuus sekä aivoviennin vaikutusten lieventäminen lähtömaissa.

- Komissio antaa tämän vuoden heinäkuussa tiedonannon **laittomasta maahanmuutosta**. Keskeisiä aiheita ovat jäsenvaltioiden keskinäisen luottamuksen parantaminen ja niiden välisen tietojenvaihdon lisääminen muun muassa siltä osin kuin on kyse laittomien maahanmuuttajien aseman laillistamisesta, unionin alueelle pääsyä koskevan valvonnan tehostamisesta ja laittomasti oleskelevien kolmansien maiden kansalaisten työnteon estämisestä.

- Kestävän laillista maahanmuuttoa koskevan politiikan edellytyksenä ovat **yhteensovitetut kotouttamispolitiikat**, joissa otetaan asianmukaisesti huomioon niin lyhytaikainen oleskelu kuin pidempiaikaiseen toisessa maassa asumiseen liittyvät kysymykset sekä toisen ja kolmannen sukupolven keskuudessa ilmenevät ongelmat. Kotouttamispolitiikkojen täytäntöönpanoa on tarkoitus jatkaa 1. syyskuuta 2005 annetun komission tiedonannon ja joulukuussa 2005 esitettyjen neuvoston päätelmien pohjalta.

2.4. Ulkorajojen yhdennetty valvonta ja tietojärjestelmien yhteentoimivuus

Koska **henkilöt voivat liikkuvat vapaasti** unionin alueella, on alueelle pääsyä pystyttävä valvomaan. Tähän voidaan pyrkiä ulkorajojen yhdennetyn valvontajärjestelmän ja yhteisen viisumipolitiikan avulla sekä hyödyntämällä harkitusti uusia tekniikoita, muun muassa biometrisiä tunnisteita.

Suunnitteilla olevat toimet:

- Harkittavaksi otetaan Frontexin asema yhteisön ulkopuolisissa lähtö- ja kauttakulkumaissa toimivien yhteyshenkilöverkostojen maahanmuuttokysymyksissä harjoittaman yhteistyön koordinoinnissa.

- Komissio tekee tämän vuoden heinäkuussa ehdotuksen Euroopan parlamentin ja neuvoston asetukseksi kansallisista asiantuntijoista koostuvien **nopean toiminnan ryhmien** perustamisesta, niiden valtuuksista ja rahoituksesta. Nämä ryhmät toimisivat Frontexin alaisuudessa ja niiden tehtävänä olisi antaa jäsenvaltioille **teknistä ja operatiivista apua** ulkorajojen valvonnassa.

- Biometristen tietojen käyttö antaisi mahdollisuuden kerätä ja tallentaa tietoja kolmansien maiden kansalaisten **saapumisesta Schengenin alueelle ja sieltä poistumisesta**. Komissio on käynnistämässä tutkimusta, jossa arvioidaan **EU:hun saapumista / sieltä poistumista koskevan tietojärjestelmän** toteuttamiskelpoisuutta ja vilpittömässä mielessä matkustavien henkilöiden rajanylitystä helpottavan ”luotettavan matkustajan ohjelman” toteuttamista. Tutkimuksen tulokset saadaan kesäkuussa 2007.

- Voitaisiin pohtia, olisiko hyödyllistä perustaa **EU:n kansalaisille myönnettyjä matkustusasiakirjoja koskeva eurooppalainen rekisteri**.

- Komissio neuvottelee Euroopan parlamentin ja neuvoston kanssa siitä, miten eurooppalaisten **tietokantojen** tehokkuuden parantamisesta, **yhteentoimivuuden** lisäämisestä ja synergioista marraskuussa 2005 annettuun komission tiedonantoon sisältyviä ehdotuksia voitaisiin viedä eteenpäin. Näiden neuvottelujen perusteella laaditaan vuonna 2007 asiaa koskeva toimintasuunnitelma.

2.5. Vastavuoroista tunnustamista koskevien ohjelmien seuranta (yksityis- ja rikosoikeudelliset asiat)

Vastavuoroisen tunnustamisen periaate on jatkossakin unionin toiminnan kulmakivi yksityis- ja rikosoikeudellisissa asioissa. Sen pohjana on osapuolten keskinäinen luottamus toistensa oikeusjärjestelmään ja oikeuslaitokseen.

Suunnitteilla olevat toimet:

- Komissio on toukokuussa 2005 antamansa tiedonannon jälkeen tehnyt useita säädösehdotuksia edistääkseen vastavuoroisen tunnustamisen periaatteen soveltamista rikosasioissa sekä esitutkintavaiheessa että oikeudenkäynnin jälkeen. Nämä ehdotukset olisi nyt **viipymättä hyväksyttävä ja pantava täytäntöön**. Keskinäistä luottamusta olisi vahvistettava toisaalta antamalla EU:n tasolla säännöt toimivaltaristiriidoista, menettelyllisistä takeista, syyttömyysolettamasta ja todistusaineiston keruuta koskevista vähimmäisvaatimuksista ja toisaalta toteuttamalla **konkreettisia** toimia oikeusalan koulutuksen kehittämiseksi ja oikeusjärjestelmien tehokkuuden parantamiseksi.

- Vuonna 2007 on tarkoitus laatia selvitys vastavuoroista tunnustamista koskevissa neuvotteluissa ja asianomaisen periaatteen soveltamisessa esiintyvistä horisontaalisista ongelmista sekä nykyisen rikosasioissa tehtävää yhteistyötä koskevan järjestelmän puutteista, jotka voidaan korjata uusilla välineillä.

- Keskipitkällä aikavälillä on tarkoitus tarkastella nykyisten keskinäisen oikeusavun järjestelmien asteittaista **kokoamista yhtenäisiin** vastavuoroisen tunnustamisen **välineisiin**. Tämä koskisi erityisesti todisteiden hankintaa rikosoikeuden alalla.

- **Yksityisoikeudelliset asiat kattavan yhteisen oikeusalueen** perustaminen on tärkeää sekä **yrityksille** että **kansalaisille**. Yksityisoikeudellisia asioita koskevalle vastavuoroisen tunnustamisen ohjelmalle vuodelta 2000 olisi annettava uusi poliittinen sysäys, joka varmistaisi, että Amsterdamin sopimuksen voimaantulosta alkanut kehitys jatkuu ja johtaa ohjelman päätökseen saattamiseen Haagin toimintasuunnitelman mukaisesti. Komissio esittää mm. ehdotukset tarvittaviksi lainsäädäntötoimiksi, joiden avulla saatetaan loppuun eksekvatuurimenettelyn poistaminen siviili- ja kauppaoikeudellisissa asioissa. Lisäksi se esittää vihreitä kirjoja tuomioiden täytäntöönpanon tehostamisesta. Komissio aikoo myös esittää useita **perheoikeuden** alaan liittyviä uusia välineitä, jotka koskettavat kansalaisten jokapäiväistä elämää, kuten avio- ja avoparien testamentti- ja perimysoikeuteen liittyvät kysymykset.

- Kansalaisten **oikeussuojakeinojen** parantaminen on vapauden, turvallisuuden ja oikeuden alueen lujittamiselle todellinen haaste. Ensimmäiseksi komissio aikoo esittää siviili- ja kauppaoikeuden alan Euroopan oikeudellisen verkoston perustamisesta tehdyn neuvoston päätöksen muuttamista niin, että verkosto voidaan tuoda lähemmäs kansalaisia ja oikeusalan toimijoita ja tehostaa sen toimintaa edelleen.

2.6. Terrorismin ja järjestäytyneen rikollisuuden torjunnassa tarvittavien tietojen saanti

Terrorismin ja vakavan rikollisuuden vastaisissa toimissa tarvittavia tietoja on voitava toimittaa esteettä EU:n sisärajojen yli. Toimivaltaisten viranomaisten toiminta eri puolilla EU:ta näiden tietojen käsittelemiseksi tukee kansallisia ja unionin tason pyrkimyksiä parantaa koko EU:n valmiuksia ehkäistä ja torjua terrorismia ja vakavaa rikollisuutta.

Haagin ohjelmassa komissiota pyydettiin laatimaan vuoden 2005 loppuun mennessä säädösehdotus nk. **saatavuusperiaatteen** toteuttamiseksi 1. tammikuuta 2008 mennessä[7]. Komissio teki ehdotuksen saatavuusperiaatetta koskevaksi neuvoston puitepäätökseksi lokakuussa 2005.

Jäsenvaltioiden välisen tietojenvaihdon on koskettava rikosoikeuden alalla myös **rikosrekisteritietoja**. Nykyisessä järjestelmässä, joka perustuu vuodelta 1959 olevaan eurooppalaiseen yleissopimukseen keskinäisestä oikeusavusta rikosasioissa, on **vakavia puutteita**. Komissio on jo tehnyt säädösehdotuksia, joiden tavoitteena on ottaa käyttöön rikosrekisteritietojen vaihtoon tarkoitettu tietokonepohjainen järjestelmä. Sen avulla voitaisiin parantaa keskinäistä ymmärtämystä ja helpottaa EU:n alueella annettuja tuomioita koskevien tietojen jakamista. Jäsenvaltioille annettavalla taloudellisella tuella helpotetaan kansallisten rikosrekisterien verkottamista.

Uusia aloitteita tuskin tarvitaan tässä vaiheessa. On erittäin tärkeää, että komission jo tekemät (ja tulossa olevat) säädösehdotukset **hyväksytään ja pannaan täytäntöön nopeasti**. Näin voidaan varmistaa saatavuusperiaatteen **täysimääräinen soveltaminen** ja koko EU:n kattavan rikosrekisterijärjestelmän **tehokas kehittäminen ja toteutus**.

Komission vakaa käsitys on, että poliisiyhteistyön ja oikeudellisen yhteistyön alalla on tietojenvaihdon kehittämisen ohella välttämätöntä panostaa myös **tietosuojan** kehittämiseen. Komissio katsoo, että rinnan edellä mainittujen aloitteiden kanssa on annettava oikeudellisesti sitovat säännökset tietosuojasta, jotta voidaan varmistaa henkilötietojen suojan korkea taso kaikissa jäsenvaltioissa. Komissio on pahoillaan, että sen lokakuussa 2005 esittämän ehdotuksen käsittely ei ole edennyt, ja katsoo, että neuvoston olisi hyväksyttävä se pikimmiten.

2.7. Terrorismin ja järjestäytyneen rikollisuuden torjunta sekä Europolin tulevaisuus

Terrorismi ja järjestäytynyt rikollisuus ovat **jatkuvana uhkana** myös tulevaisuudessa. Unionin on jatkossakin pyrittävä parhaansa mukaan hyödyntämään ainutlaatuista

[7] Haagin ohjelmassa mainittu tietojen saatavuuden periaate edellyttää, että jäsenvaltion viranomaisten on tietyin edellytyksin annettava toisen jäsenvaltion viranomaisille lainvalvontatarkoituksiin tarvittavat tiedot. ”YOS-ulkosuhdealan strategia:

mahdollisuuttaan edistää Euroopan laajuisten toimintamallien toteuttamista. Tähän se voi pyrkiä panostamalla tietämyksen lisäämiseen ja tiiviiden yhteyksien luomiseen kaikkien sidosryhmien kanssa sekä auttamalla jäsenvaltioita ja lainvalvonta- ja oikeusviranomaisia näiden päivittäisessä työssä tämän uhan torjumiseksi.

Komissio katsoo, että jäsenvaltioiden välisen **operatiivisen yhteistyön** ja **keskinäisen luottamuksen** lisääntyessä on aika laatia yhteinen sisäisen turvallisuuden strategia, joka perustuisi eri toimielimissä parhaillaan tehtävään työhön terrorismin torjunnan ja elintärkeiden infrastruktuureiden suojelun alalla.

Suunnitteilla olevat toimet:

- Komissio tekee piakkoin ehdotuksen **elintärkeiden infrastruktuureiden suojaamista** koskevaksi ohjelmaksi, jossa on otettu huomioon vuodesta 2005 käynnissä olleen laajan kuulemismenettelyn tulokset. Myöhemmin tänä vuonna komissio tekee ehdotuksen neuvoston päätökseksi **elintärkeiden infrastruktuureiden varoitusjärjestelmän** perustamisesta saatuaan asiaa koskevan toteutettavuustutkimuksen alustavat tulokset.

- Komissio harkitsee parhaillaan muutosten tekemistä terrorismia koskevaan neuvoston puitepäätökseen. Tarkoituksena on täsmentää terrorismiin **yllyttämisen** määritelmää ja tehdä rangaistavaksi **pomminvalmistukseen liittyvän asiantuntemuksen** levittäminen.

- Komissio aikoo antaa **bioterrorismia** koskevan tiedonannon tämän vuoden loppuun mennessä.

2.7.1. Europolin tulevaisuus

Europol pyrkii parantamaan jäsenvaltioiden lainvalvontaviranomaisten tehokkuutta ja yhteistyötä terrorismin ja järjestäytyneen rikollisuuden torjunnassa helpottamalla jäsenvaltioiden välistä tietojenvaihtoa ja keräämällä ja analysoimalla näitä tietoja. Europolin tuoma lisäarvo perustuu yhä siihen, että se pystyy tukemaan rikostutkimuksia tarjoamalla korkealaatuisia tiedustelutietojen analyysipalveluita.

Komissio katsoo, että Europolia varten tarvitaan **joustavampi oikeusperusta**, jotta sen toiminnan parantamiseen tähtäävät poliittiset päätökset voitaisiin panna täytäntöön ilman tarpeettomia viivytyksiä. Myös Europolin toiminnan valvontaa ja tarkastusta Euroopan parlamentin toimesta on kehitettävä **avoimuuden ja demokraattisen vastuun lisäämiseksi**. Samalla on kuitenkin **varmistettava** operatiivisten tietojen ja menettelyjen **luottamuksellisuuden säilyminen**.

Suunnitteilla oleva toimi:

- Komissio harkitsee parhaillaan mahdollisuutta tehdä ehdotus neuvoston päätökseksi, jolla **korvattaisiin** voimassa oleva Europol-yleissopimus ja tehostettaisiin viraston toimintaa.

2.8. Vapauden, turvallisuuden ja oikeuden alueen rahoituskehys

Yhtenä keskeisenä edellytyksenä Haagin ohjelmassa vahvistettujen poliittisten tavoitteiden saavuttamiselle on se, että niitä varten varataan **riittävästi rahoitusta**. Tämä on otettu huomioon rahoituskehyksestä äskettäin tehdyssä sopimuksessa, jossa myönnetään **lisävaroja** vapaus-, turvallisuus- ja oikeusasioihin liittyville politiikoille. Vuonna 2007 näillä aloilla aletaan soveltaa uusia rahoituksen vahvistavia puiteohjelmia. Niillä tulee olemaan strateginen asema unionin ja jäsenvaltioiden tukemisessa.

Yhteisön talousarviosta maksettavalla lisärahoituksella tuetaan **yhteisen vastuun oikeudenmukaista jakamista** alueella, jolla ei ole sisärajoja, siltä osin kuin on kyse turvapaikka- ja maahanmuuttoasioista sekä ulkorajojen valvonnasta ja operatiivisesta yhteistyöstä (tämä koskee erityisesti yhteispartiointia ja yhteisiä palautuslentoja). EU:n rahoituksella edistetään terrorismin ja järjestäytyneen rikollisuuden torjuntaa koskevien yhteisten toimintamallien kehittämistä siten, että tavoitteena pidetään oikeuden alueen turvaamista. Jäsenvaltioiden toivotaan hyödyntävän kaikki uuden rahoituskehyksen tarjoamat mahdollisuudet ja tekevän pitkälle tähtääviä ja yksityiskohtaisia ehdotuksia, joista käy erityisesti ilmi EU:n tasolla toteutettavien toimien tuoma lisäarvo.

2.9. Vapauden, turvallisuuden ja oikeuden alueen ulkoinen ulottuvuus

Oikeus- ja sisäasioiden neuvosto vahvisti joulukuussa 2005 kaikkien aikojen ensimmäisen strategian vapauden, turvallisuuden ja oikeuden alueen ulkoista ulottuvuutta varten[8]. **Strategiassa** määritellään joukko ensisijaisia aihealueita sekä niihin liittyvät täytäntöönpanomenetelmät. Komissio on parhaillaan **toteuttamassa** strategian **keskeisiä osatekijöitä**, joihin kuuluvat muun muassa yhteinen vapauden, turvallisuuden ja oikeuden alue **Venäjän** kanssa, Ukrainan kanssa tehdyn oikeus- ja sisäasioita koskevan toimintasuunnitelman tarkistaminen, muiden maiden kanssa tehtävät EU:n naapuruuspolitiikkaa koskevat toimintasuunnitelmat ja etenkin jatkuva **yhteistyön syventäminen Yhdysvaltojen kanssa**.

EU pyrkii yhteistyössään kolmansien maiden kanssa edistämään **oikeusvaltioperiaatteen** noudattamista, mutta tämä **vie aikaa**. Tästä syystä komission ja jäsenvaltioiden olisi keskityttävä EU:n strategian **täytäntöönpanoon eikä niinkään sen uudistamiseen tai ajantasaistamiseen**. Ensisijaiset aihealueet ja maantieteelliset painopisteet on määritelty selkeästi, joten strategiaa olisi nyt alettava **tosiasiallisesti soveltaa**, jotta siitä voitaisiin saada tuloksia. Vapauden, turvallisuuden ja oikeuden alalla voidaan edistyä vain, jos sekä jäsenvaltiot että komissio **toimivat aktiivisesti** ja tekevät yhteistyötä koordinoidulla tavalla. Länsi-Balkania ja Afganistanista peräisin olevia huumausaineita koskevat toimenpidesuunnitelmat ovat osoitus tällaisen yhteistyön tärkeydestä. Komissio laatii joulukuuhun 2006 mennessä **seurantakertomuksen**, jossa selostetaan pääpiirteittäin strategian täytäntöönpanon edistymistä vuoden 2005 lopusta lähtien tehdyn työn pohjalta. Muita vapauden, turvallisuuden ja oikeuden alueen ulkoiseen ulottuvuuteen liittyviä tärkeitä välineitä ovat takaisinottoa ja viisumien myöntämisen helpottamista koskevat sopimukset, jollaiset on tähän mennessä tehty EU:n keskeisten kumppanimaiden, mm. Venäjän, kanssa. Komissio jatkaa työtä tällä alalla.

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[8] ”Maailmanlaajuinen vapaus, turvallisuus ja oikeus”. Tämä strategia perustuu komission 12. lokakuuta 2005 antamaan tiedonantoon KOM(2005) 491.

2.10. Vapaus-, turvallisuus- ja oikeusasioihin liittyvien politiikkojen täytäntöönpano ja arviointi

Ottaen huomioon Haagin ohjelmassa ja sitä koskevassa toimintasuunnitelmassa saamansa toimeksiannon, nykyisten seuranta- ja arviointimekanismien **hajanaisuuden** ja tarpeen jakaa kaikille sidosryhmille **kattavia tietoja** politiikan täytäntöönpanosta ja saavutetuista tuloksista komissio katsoo, että **nyt on** aika aloittaa **johdonmukaisen ja kattavan mekanismin** luominen EU:n vapauden, turvallisuuden ja oikeuden alalla harjoittamien politiikkojen arvioimiseksi **yhteistyössä** jäsenvaltioiden ja EU:n toimielinten kanssa.

Tätä mekanismia, jonka puitteissa asianomaisten politiikkojen **täytäntöönpanoa seurataan**[9] ja **saavutettuja tuloksia arvioidaan** vuosittain, selostetaan rinnakkaisessa tiedonannossa ”Arviointi EU:n politiikasta vapauden, turvallisuuden ja oikeuden alalla”.

3. VAPAUDEN, TURVALLISUUDEN JA OIKEUDEN ALUETTA KOSKEVAN PÄÄTÖKSENTEKOPROSESSIN PARANTAMINEN

3.1. Vapauden, turvallisuuden ja oikeuden alueella toistuvasti esiintyvät ongelmat

Vapaus-, turvallisuus- ja oikeusasioihin liittyvät politiikat ovat selvästi **kansalaisia kiinnostavia ja heidän kannaltaan merkittäviä asioita**. Tämä on käynyt äskettäin ilmi K-suunnitelman (kansanvalta, kuunteleminen ja keskustelu) yhteydessä käydyistä keskusteluista sekä tehdyistä mielipidemittauksista. Euroopan kansalaiset haluavat EU:n toimivan tehokkaammin erityisesti järjestäytyneen rikollisuuden ja terrorismin torjumiseksi mutta myös maahanmuuttovirtojen hallinnan ja ulkorajojen valvonnan alalla.

Asian merkittävyydestä huolimatta edistyminen on hidasta ja vapauden, turvallisuuden ja oikeuden alan politiikkojen valmistelussa EU:n tasolla esiintyy **toistuvasti ongelmia**, jotka jumiuttavat prosessia. Tämän tiedonannon kanssa samaan aikaan annettavassa tiedonannossa esitetty Haagin ohjelman ensimmäinen vuotuinen tarkastelu osoittaa, että nämä ongelmat johtuvat pääasiassa **päätöksentekoprosessin** erityispiirteistä.

Rikosasioissa tehtävää poliisiyhteistyötä ja oikeudellista yhteistyötä koskevat päätökset edellyttävät edelleen yksimielisyyttä jäsenvaltioilta. Niiden yhteydessä sovelletaan **erityistä oikeudellista kehystä** (Euroopan unionista tehdyn sopimuksen VI osasto), joka perustuu nk. **kolmannen pilarin menetelmään**.

- Menetelmällä on seuraavat erityispiirteet: **erityiset säädöslajit** (yhteiset kannat, puitepäätökset, päätökset ja yleissopimukset), jotka hankaloittavat täytäntöönpanoa,
- Euroopan parlamentin riittämätön toimivalta **lainsäädäntöprosessissa**,
- **yksimielisyyden** vaatimus, joka usein johtaa siihen, että asioista sovitaan pienimmän yhteisen nimittäjän tasolla,

[9] Asiasta tarkemmin tämän tiedonannon kanssa samaan aikaan annettavassa tiedonannossa ”Vapauden, turvallisuuden ja oikeuden lujittaminen Euroopan unionissa: kertomus Haagin ohjelman toteuttamisesta 2005”.

- jaettu aloiteoikeus kaikkien 25 jäsenvaltion kanssa, mikä ei ole omiaan edistämään todellista ”eurooppalaista ulottuvuutta” eikä jäsenvaltioiden vastuuta lainsäädäntöaloitteistaan, sillä niiden osalta ei edellytetä vaikutusten ennakkoarviointia,

- Euroopan yhteisöjen tuomioistuimen **rajoitettu toimivalta** (rikkomismenettelyt eivät ole mahdollisia, ennakkoratkaisut edellyttävät jäsenvaltion suostumusta – tähän mennessä suostumuksensa on antanut 25 jäsenvaltiosta 14 – ja tämä mahdollisuus voidaan rajata jäsenvaltion korkeimpiin tuomioistuimiin),

- yhteisön oikeuden saattamista osaksi kansallista lainsäädäntöä ja sen asianmukaista täytäntöönpanoa on vaikea valvoa, koska tällä alalla ei ole virallisia rikkomismenettelyjä.

Viimeaikaiset keskustelut neuvostossa ovat osoittaneet, että EU:ssa on yhä vaikeampaa edetä mm. sellaisilla aloilla kuin **vastavuoroinen tunnustaminen rikosasioissa** ja **poliisiyhteistyö**.

Viime vuoden kesäkuussa oikeus- ja sisäasioiden neuvosto pääsi yhteisymmärrykseen **eurooppalaista todisteiden luovuttamismääräystä** koskevasta komission ehdotuksesta vasta äärimmäisen pitkällisten neuvottelujen tuloksena ja pienimmän yhteisen nimittäjän pohjalta, mikä on turhauttavaa paitsi komission myös useimpien jäsenvaltioiden kannalta. Lisäksi se **vaikeuttaa** vastavuoroisen tunnustamisen periaatteen soveltamista, joka on sekä Tampereen että Haagin ohjelmien mukaan unionin toiminnan kulmakivi oikeudellisen yhteistyön alalla.

Kolmeen vuoteen ei ole tapahtunut edistystä myöskään kaikkialla EU:ssa sovellettavien **menettelyllisiä oikeuksia** koskevien vähimmäisvaatimusten alalla; tällaisiin oikeuksiin kuuluu esimerkiksi pidätetyn oikeus tulkin apuun. Keskustelut säädöksestä, jonka nojalla rasismiin ja muukalaisvihaan liittyvät rikokset määriteltäisiin kaikkialla Euroopassa samalla tavoin ja niistä määrättäisiin samanlaiset seuraamukset, eivät myöskään ole edenneet lainkaan kahteen vuoteen. Nyt on tosin joitakin merkkejä siitä, että ne voitaisiin avata uudelleen.

Myöskään keskustelu komission ehdotuksesta, jonka nojalla laajennettaisiin mahdollisuuksia **valtioiden rajat ylittävien tutkintaoikeuksien ja syytetoimien** käyttöön, eivät ole edenneet.

Vastaavia toistuvia ongelmia liittyy myös vapauden, turvallisuuden ja oikeuden alan ”yhteisöpolitiikkoihin” (EY:n perustamissopimuksen IV osasto), sillä myös niiden osalta yhteisöjen tuomioistuimen toimivaltaan antaa **ennakkoratkaisuja** liittyy tiettyjä erityispiirteitä (EY:n perustamissopimuksen 68 artikla) ja **laillista maahanmuuttoa** ja **perheoikeutta** koskevat päätökset on edelleen tehtävä yksimielisesti. Esimerkkinä **laillisen maahanmuuton** alalta voidaan mainita komission vuonna 2001 esittämä direktiiviehdotus kolmansien maiden kansalaisten maahantulosta ja oleskelusta ammattitoiminnan harjoittamista varten; ehdotus ei edennyt, koska hyväksyminen edellyttää yksimielisyyttä. Komissio on hiljattain ottanut asian uudelleen esille laatimalla aiheesta vihreän kirjan ja sen pohjalta joulukuussa 2005 esitetyn toimintasuunnitelman. Tällä hetkellä on kuitenkin vaikea ennustaa, miten asia tulee etenemään, koska alalla sovelletaan edelleen yksimielisyyden vaatimusta.

Euroopan yhteisöjen tuomioistuimen toimivaltuuksien osalta on olemassa riski, että erittäin tärkeät ja arkaluonteiset asiat kuten oikeussuojan saatavuus tai turvapaikkaoikeudet eivät ole kaikkialla Euroopassa yhtäläisen oikeudellisen valvonnan kohteena tai että niitä ei sovelleta yhdenmukaisesti.

3.2. Ratkaisu nykyisiin vaikeuksiin: *siirtymäväylälausekkeet*

Komissio katsoo, että Haagin ohjelman täytäntöönpanoa koskevan ensimmäisen tarkastelun yhteydessä on hyvä **käynnistää uudelleen aktiivinen keskustelu** siitä, miten **EU:n päätöksentekomenettelyjä voitaisiin kehittää** ja vapaus-, turvallisuus- ja oikeusasioita koskevan lainsäädännön arviointia ja täytäntöönpanoa parantaa. Tämä edellyttää **voimassa olevien perussopimusten tarjoamien mahdollisuuksien mahdollisimman tehokasta hyödyntämistä**.

Komissio katsoo, että voimassa olevien perussopimusten täysimääräinen soveltaminen antaisi mahdollisuuden parantaa entisestään **tuloksellisuutta** ja **johdonmukaisuutta** aloilla, joilla EU:n tasolla toteuttavien toimien katsotaan yleisesti tuovan **lisäarvoa** ja joilla kansalaiset nimenomaan toivovat EU:n toimia, koska haluavat – kuten käy ilmi tuoreen Eurobarometrin tuloksista – **lisää suojelua ja turvallisuutta**.

Lisäksi komissio toteaa 10. toukokuuta 2006 antamassaan tiedonannossa, että perussopimuksia mahdollisimman tarkoin hyödyntämällä voidaan luoda tarvittavat edellytykset Haagin ohjelman **kunnianhimoisten tavoitteiden** saavuttamiselle ja mahdollistaa sen **täysimääräinen täytäntöönpano**. Voimassa olevissa perussopimuksissa määrätään mahdollisuudesta ratkaista 3.1 jaksossa tarkoitetut ongelmat soveltamalla Euroopan unionista tehdyn sopimuksen 42 artiklaan ja EY:n perustamissopimuksen 67 artiklan 2 kohdan toiseen luetelmakohtaan sisältyviä ”**siirtymäväylälausekkeita**”.

Euroopan unionista tehdyn sopimuksen 42 artiklan mukaan komissiolla (tai jäsenvaltiolla) on aloiteoikeus ehdottaa, että toiminta sopimuksen 29 artiklassa tarkoitetuilla aloilla (**terrorismin ja rikollisuuden torjunta lainvalvonnan ja rikosasioissa tehtävän oikeudellisen yhteistyön keinoin**) kuuluu EY:n perustamissopimuksen IV osaston soveltamisalaan, jolloin siihen sovelletaan samaa institutionaalista kehystä kuin muihinkin vapauden, turvallisuuden ja oikeuden alan ”yhteisöpolitiikkoihin”. Neuvoston on tehtävä päätös Euroopan unionista tehdyn sopimuksen 42 artiklan soveltamisesta **yksimielisesti** Euroopan parlamenttia kuultuaan ja jäsenvaltiot puolestaan hyväksyvät päätöksen **valtiosääntönsä asettamien vaatimusten mukaisesti**.

EY:n perustamissopimuksen 67 artiklan 2 kohdan toinen luetelmakohta antaa neuvostolle mahdollisuuden päättää yksimielisesti Euroopan parlamenttia kuultuaan, että **lailliseen maahanmuuttoon** sovelletaan **yhteispäätösmenettelyä**. Näin Euroopan parlamentti voisi harjoittaa asianmukaista demokraattista valvontaa.

EY:n perustamissopimuksen 67 artiklan 2 kohdan toisessa luetelmakohdassa edellytetään, että neuvosto Euroopan parlamenttia kuultuaan mukauttaa yksimielisesti perustamissopimuksen 68 artiklassa olevia määräyksiä yhteisöjen tuomioistuimen toimivallasta. Tätä varten olisi tehtävä päätös siitä, että yhteisöjen tuomioistuimen **toimivalta antaa ennakkoratkaisuja** vapauden, turvallisuuden ja oikeuden alan ”yhteisöpolitiikkoihin” liittyvissä asioissa saatetaan vastaamaan tuomioistuimen toimivaltaa EY:n muiden politiikkojen yhteydessä. Tämä vahvistaisi yhteisöjen tuomioistuimen asemaa[10].

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[10] Vaikka siirtymäaika päättyi 1. toukokuuta 2004, neuvosto ei ole vielä ryhtynyt toimiin EY:n perustamissopimuksen 68 artiklan määräysten mukauttamista koskevan velvoitteensa täyttämiseksi. Tästä syystä komissio antaa Euroopan parlamentille ja neuvostolle tämän tiedonannon ohella tiedonannon myös tästä nimenomaisesta aiheesta.

Komissio katsoo, että **siirtymäväylälausekkeet** ovat keino, jonka avulla unioni ja jäsenvaltiot voivat saavuttaa vapauden, turvallisuuden ja oikeuden alueen päätöksentekomenettelyjen parantamista koskevan kunnianhimoisen tavoitteensa.

Siirtymäväylälausekkeiden soveltamisen todellinen hyöty on siinä, että se antaisi mahdollisuuden soveltaa tämän alan politiikkoihin nk. **yhteisömetodia**, jonka avulla on voitu **parantaa päätöksentekomenettelyjen tehokkuutta, selkeyttä ja vastuuvelvollisuutta**. Paras esimerkki yhteisömetodin eduista on se, että Euroopan parlamentti ja neuvosto hyväksyivät äskettäin komission ehdotuksen viestintätietojen säilyttämistä koskevaksi direktiiviksi vain kolme kuukautta sen jälkeen, kun komissio oli tehnyt asiaa koskevan ehdotuksen.

Soveltamalla yhteisömetodia saavutettaisiin seuraavat edut:

- voitaisiin parantaa lainsäädäntömenettelyjen tehokkuutta, selkeyttä ja vastuuvelvollisuutta;
- voitaisiin käyttää yleisemmin **yhteisön säädöksiä** (nykyisten perussopimusten mukaisesti asetuksia, direktiivejä ja päätöksiä);
- toimivalta antaa säädöksiä **yhteispäätösmenettelyn** nojalla toisi kansalaiset mukaan päätöksentekoon demokraattisesti valittujen Euroopan parlamentin jäsenten välityksellä;
- säädösehdotukset saisivat ”eurooppalaisen ulottuvuuden”, kun aloiteoikeus niiden tekemiseen olisi komissiolla ja niistä laadittaisiin tehokas vaikutustenarviointi;
- **määräenemmistöpäätökset** edistäisivät yhteisymmärrystä ja korkeatasoisten tulosten saavuttamista;
- luotaisiin edellytykset asianmukaiselle oikeudelliselle vuoropuhelulle kansallisten oikeuslaitosten kanssa **ennakkoratkaisumekanismin** avulla ja kansallisen täytäntöönpanon valvonnalle **rikkomismenettelyn** avulla.

Lisäksi olisi erittäin tärkeää soveltaa siirtymäväylälausekkeita oikeudellista ja poliisiyhteistyötä koskevissa asioissa, jotta ensimmäiseen ja kolmanteen pilariin kuuluvien asioiden välinen rajanveto voidaan ratkaista; kyseessä ei suinkaan ole mikään hypoteettinen ongelma, kuten yhteisöjen tuomioistuimen **viimeaikaiset ratkaisut** selkeästi osoittavat (ks. **ympäristörikoksia** ja **matkustajarekistereitä** koskevat asiat). Jos näitä asioita voitaisiin käsitellä **saman oikeudellisen kehyksen** puitteissa, oikeusvarmuus ja tehokkuus varmasti lisääntyisivät.

Erityisesti Euroopan unionista tehdyn sopimuksen 42 artiklassa sallitaan tietty **joustavuus** niiden äänestysehtojen määrittämisessä, joita sovelletaan sopimuksen VI osastosta siirretyillä aloilla. Komissio katsoo, että nyt olisi yhdessä jäsenvaltioiden ja EU:n toimielinten kanssa aloitettava keskustelu siitä, miten Euroopan unionista tehdyn sopimuksen 42 artiklan tarjoamia **mahdollisuuksia** voitaisiin **parhaiten hyödyntää**.

4. PÄÄTELMÄT

EU:n kansalaiset vaativat EU:lta toimia, joilla Euroopasta saataisiin turvallinen paikka elää. Unionin on pystyttävä reagoimaan nopeasti varmistaen kuitenkin samalla, että kansalaisten yksilönvapauksia kunnioitetaan.

Unionilta ja jäsenvaltioilta vaaditaan yhteistyötä tähän haasteeseen vastaamisessa, sillä terrorismi ja järjestäytynyt rikollisuus eivät kunnioita rajoja eivätkä menettelyjä. Haagin ohjelman täytäntöönpano ja jatkokehittäminen on yhteinen tavoite, jonka saavuttaminen edellyttää tehokasta päätöksentekoa ja selviä poliittisia painopisteitä.

Samalla kun määritellään seuraavat toimet **Euroopan yhdentymisen edistämiseksi** vapauden, turvallisuuden ja oikeuden alalla, olisi myös jatkettava **päätöksentekomenettelyjen tehostamista**. Komission näkemyksen mukaan tämä on ainoa kestävä tapa edistyä tällä politiikanalalla.

Komission tarkoituksena on Haagin ohjelman täytäntöönpanon edistymistä koskevan arvionsa perusteella käynnistää **yhdessä** EU:n muiden toimielinten ja jäsenvaltioiden kanssa **keskustelu** siitä, miten vapauden, turvallisuuden ja oikeuden alan poliittisia tavoitteita voitaisiin viedä eteenpäin EU:n kansalaisten odotuksia vastaavalla tavalla ja samalla parantaa vapauden, turvallisuuden ja oikeuden alueen toimintaa.

Riippuen niiden **keskustelujen tuloksista**, joita tulevalla Suomen puheenjohtajuuskaudella käydään voimassa olevien sopimusten hyödyntämisen eduista, **komissio on valmis tekemään aloitteita** Euroopan unionista tehdyn sopimuksen 42 artiklan ja EY:n perustamissopimuksen 67 artiklan 2 kohdan toisen luetelmakohdan perusteella[11].

[11] Tällä ei ole vaikutusta siihen aloitteeseen, joka sisältyy edellä alaviitteessä 6 tarkoitettuun komission tiedonantoon.

EUROPEISKA GEMENSKAPERNAS KOMMISSION

Bryssel den 28.6.2006
KOM(2006) 331 slutlig

MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET OCH EUROPAPARLAMENTET

Genomförandet av Haagprogrammet: framtida utveckling

MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET OCH EUROPAPARLAMENTET

Genomförandet av Haagprogrammet: framtida utveckling

(Text av betydelse för EES)

1. INLEDNING

Haagprogrammet för stärkt frihet, säkerhet och rättvisa i Europeiska unionen antogs av Europeiska rådet i november 2004. Genom programmet bekräftades att EU sedan Europeiska rådet i Tammerfors 1999 lägger stor vikt vid området med frihet, säkerhet och rättvisa och att det ligger **högt bland EU:s prioriteringar** – inte bara för att det är ett av unionens grundläggande mål, utan framför allt för att det är en **central angelägenhet för EU:s medborgare**. Kommissionens meddelande till Europeiska rådet, ”En agenda för EU-medborgarna” av den 10 maj 2006 bekräftade denna prioritet med kraft[1].

Sedan slutet av 2004 har medlemsstaterna och EU:s institutioner arbetat för att säkerställa att programmet genomförs i enlighet med den handlingsplan som rådet och kommissionen antog i juni 2005.

Europeiska rådet anförde i december 2004 att ”*[e]ftersom programmet kommer att löpa under den period då det konstitutionella fördraget träder i kraft, anses det vara lämpligt att göra en översyn av dess genomförande.* Kommissionen uppmanades därför att under 2006 rapportera ”*till Europeiska rådet om de framsteg som har gjorts och lägga fram förslag om nödvändiga tillägg till programmet*”.

Trots att det konstitutionella fördraget inte har trätt i kraft är det nödvändigt att göra en första politisk **bedömning** av de framsteg som har gjorts när det gäller genomförandet av Haagprogrammet och att föreslå nödvändiga ändringar. Detta meddelande och de parallella meddelandena ”Stärkt frihet, säkerhet och rättvisa i Europeiska unionen: rapport om genomförandet av Haagprogrammet 2005” (nedan: ”resultattavla plus”) och ”Utvärdering av EU:s politik för frihet, säkerhet och rättvisa” är ett svar på denna uppmaning från Europeiska rådet.

Syftet med detta **omfattande paket** är alltså **inte** att identifiera nya prioriteringar jämfört med dem som redan fastställts i Haagprogrammet utan endast att 1) gå igenom vilka framsteg som gjorts, 2) **bedöma** situationen när det gäller genomförandet på EU-nivå och på nationell nivå och 3) föreslå en grundlig utvärdering av resultaten.

På grundval av de **politiska prioriteringar** som fastställdes för genomförandet av Haagprogrammet i kommissionens meddelande av den 10 maj 2005[2], har kommissionen

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1 KOM(2006) 211.

2 Meddelande från kommissionen till rådet och Europaparlamentet – Haagprogrammet: Tio prioriteringar för de kommande fem åren. Partnerskapet för förnyelse i EU när det gäller frihet, säkerhet och rättvisa - KOM(2005) 184.

identifierat de **områden** där den anser det vara nödvändigt att **föra EU:s politiska agenda framåt** på grundval av Haagprogrammet.

Kommissionen är medveten om att det finns ett brådskande behov av att hitta en **ny drivkraft** på området för frihet, säkerhet och rättvisa som en del av en ambitiös, policyinriktad agenda för medborgarna.

Kommissionen vill med detta åtgärdspaket **stimulera och strukturera** diskussionerna med medlemsstaterna och de övriga EU-institutionerna under det finska ordförandeskapet (juli–december 2006) om

(1) **nya politiska initiativ** som den anser nödvändiga (se avsnitt 2), förutom de som redan håller på att genomföras inom ramen för Haagprogrammet, och

(2) möjliga sätt att få politiken för frihet, säkerhet och rättvisa att **fungera bättre genom de olika möjligheter som de nuvarande fördragen erbjuder**, utan att därmed föregripa det konstitutionella fördraget (se avsnitt 3), i enlighet med uppmaningen från Europeiska rådet vid dess möte i juni 2006[3].

För att ytterligare framsteg skall kunna göras med skapandet av ett område med frihet, säkerhet och rättvisa behövs **effektivare och ansvarsfulla beslutsförfaranden som är öppna för insyn**. Som framgår av ”resultattavla plus”, där det för första gången gjordes en bedömning av genomförandet av EU-lagstiftning på nationell nivå, tar det **extremt lång tid** att anta lagförslag på EU-nivå och på vissa områden når resultaten nätt och jämnt upp till den **minsta gemensamma nämnaren** utan att lyckas uppnå vissa av de ursprungliga målsättningarna.

2. GENOMFÖRANDET AV HAAGPROGRAMMET: EN NY DRIVKRAFT FÖR ATT STÄRKA OMRÅDET MED FRIHET, SÄKERHET OCH RÄTTVISA

Genom den första bedömning av genomförandet av Haagprogrammet och dess handlingsplan som gjorts genom ”resultattavla plus”, som läggs fram i det parallella meddelande som det hänvisas till ovan, kan kommissionen identifiera vilka områden unionens arbete behöver inriktas på och vilka ytterligare insatser som behöver göras.

Med resultattavlan som grund lägger kommissionen fram följande förslag till åtgärder som bör genomföras **innan Haagprogrammet löper ut** (2009).

2.1. Grundläggande rättigheter och medborgarskap

De grundläggande rättigheterna tillhör unionens centrala värderingar. Kommissionen kommer att inrikta sina insatser på **respekt** för och **främjande** av de grundläggande rättigheterna för alla människor och på att vidareutveckla begreppet **EU-medborgarskap**.

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[3] Punkt 10 i ordförandeskapets slutsatser från juni 2006: ”Europeiska rådet uppmanar det kommande finländska ordförandeskapet att i samband med översynen av Haagprogrammet i nära samarbete med kommissionen undersöka möjligheterna att förbättra beslutsfattandet och insatserna inom området frihet, säkerhet och rättvisa på grundval av de befintliga fördragen.”

EU-medborgarskapet medför en rad mycket viktiga rättigheter, bland annat rätten att **röra sig fritt** inom EU och rätten till **diplomatiskt och konsulärt skydd**.

Följande åtgärder planeras:

- Kommissionen tar emot ett växande antal förfrågningar om att vidta åtgärder mot påstådda kränkningar av de grundläggande rättigheterna från medlemsstaters sida. Kommissionen kommer att fortsätta sitt arbete att övervaka och främja de grundläggande rättigheterna i enlighet med EU-fördraget och kommissionens meddelande från 2002 om artikel 7 i EU-fördraget[4], som ger EU-institutionerna möjlighet att se till att medlemsstaterna respekterar de gemensamma värderingarna.

- Kommissionen kommer att lägga högsta **prioritet** vid att se till att medlemsstaterna **korrekt genomför** Europaparlamentets och rådets direktiv 2004/38/EG om unionsmedborgares och deras familjemedlemmars rätt att fritt röra sig och uppehålla sig inom medlemsstaternas territorier, som trädde i kraft den 30 april 2006.

- Det är viktigt att utveckla gemensamma kunskaper och gemensamma normer på EU-nivå om hur man skall skydda EU-medborgare som behöver hjälp i ett tredjeland där deras hemland inte är respresenterat. Kommissionen är beredd att bidra till **utbildning** för tjänstemän i EU:s medlemsstater. Det kan till exempel vara fråga om utbildningsstöd i frågor som rör konsulärt skydd för EU-medborgare.

- Parallellt håller åtgärder för **kommunikations- och informationskampanjer** riktade till EU-medborgare om deras rätt till diplomatiskt och konsulärt skydd på att förberedas.

- De uppdaterade gemensamma konsulära anvisningarna för EU-medlemsstaternas beskickningar i tredjeländer ger för första gången kommissionens delegationer en pragmatisk stödroll vad gäller tillhandahållande av logistik och personal i en konsulär kris[5]. Genom detta förstärks medlemsstaternas möjligheter att betjäna medborgare som behöver hjälp och dessa möjligheter kommer att utvecklas ytterligare. En gemensam rapport från generalsekreteraren/den höge representanten och kommissionen om ett närmare konsulärt samarbete mellan EU-medlemsstaterna, inbegripet avdelningar för ömsesidigt konsulärt bistånd i på förhand identifierade regioner, planeras att läggas fram under andra halvåret 2006.

- Till följd av förfrågningar från flera medlemsstater i samband med antagandet av Haagprogrammet kommer kommissionen att överväga hur man kan vidareutveckla tankarna på att 1) skapa ”Eurokonsulat” som skall dela gemensamma konsulära funktioner även till förmån för EU-medborgare och 2) ta fram en europeisk konsulär kodex.

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4 KOM(2003) 606.

5 Ordförandeskapets rapport ”Förstärkande av Europeiska unionens förmåga till katastrof- och krishantering”, som godkändes av Europeiska rådet i juni 2006.

2.2. Utveckling av andra etappen av asylsystemet

Det kommer att behövas mycket arbete under de kommande åren för att inrätta ett **gemensamt europeiskt asylsystem med effektiva, harmoniserade förfaranden** som respekterar Europas humanitära tradition och EU:s internationella förpliktelser.

Följande åtgärder planeras:

- **Utvärdering av den befintliga lagstiftningsramen**. I slutet av 2006 kommer kommissionen att lägga fram en utvärdering av Dublinförordningen och av mottagningsvillkorsdirektivet. Skyddsdirektivet kommer att utvärderas 2008.

- En **grönbok om asylpolitiken**, åtföljd 2007 av en **strategisk plan för asylpolitiken,** kommer att redogöra närmare för de olika stegen i den andra etappen av inrättandet av det gemensamma europeiska asylsystemet.

- På området för **praktiskt samarbete mellan förvaltningar** kommer efter det meddelande som antogs i februari i år[6] ytterligare åtgärder att vidtas i syfte att göra medlemsstaternas asylsystem mer likartade, särskilt genom att skapa en EU-omfattande databas för information om ursprungsländer.

2.3. Migrationsförvaltning

En **helhetsmetod** för migrationsförvaltning innebär att man utvecklar en gemensam invandringspolitik som tar itu med situationen för lagliga invandrare på EU-nivå **parallellt** med åtgärder för att effektivare ta itu med olaglig invandring och för att stärka kampen mot människosmuggling och människohandel, särskilt med kvinnor och barn.

Följande åtgärder planeras:

- Förutom den strategiska planen för laglig migration avser kommissionen att lägga fram förslag till **ett ramdirektiv av Europaparlamentet och rådet och fyra direktiv av Europaparlamentet och rådet om olika typer av migrerande arbetstagare** (högutbildade arbetstagare, säsongsarbetare, företagsinternt utstationerad personal och avlönade praktikanter).

- Till följd av den ökande olagliga invandringen från Väst- och Nordafrika, som i första hand påverkar Italien, Spanien, Malta, Grekland och Medelhavsområdet, samordnar kommissionen tillsammans med medlemsstaterna, Europol, Frontex och Gemensamma forskningscentret genomförandet av de **prioriterade insatser** som identifierades vid det informella mötet mellan stats- och regeringscheferna i Hampton Court och vid Europeiska rådets möte i december 2005. En lägesrapport skall enligt planerna läggas fram **i slutet av 2006**.

- Arbetet med den **yttre dimensionen av migration** kommer att stärkas ytterligare. Migrationsfrågor måste vara en integrerad del av EU:s yttre förbindelser med ursprungs- och transitländer och utgöra en del av en övergripande migrationsstrategi. Mera specifikt är arbetet med **migration** och **utveckling**

[6] KOM(2006) 67.

inriktat på att förstärka de positiva kopplingarna mellan dessa två frågor, med särskild inriktning på frågor som migranters penningöverföringar, utflyttade befolkningsgruppers roll, kunskapsspridning och cirkulär migration liksom frågan om att minska kunskapsflykten från ursprungsländerna.

- Kommissionen kommer att lägga fram ett meddelande om **olaglig invandring** i juli i år. Att öka det ömsesidiga förtroendet och informationsutbytet mellan medlemsstaterna, bland annat om legalisering av olagliga invandrare, att förbättra tillträdeskontrollen till territoriet och att bekämpa anställning av olagligt bosatta tredjelandsmedborgare kommer att tas upp som prioriterade frågor.

- En hållbar politik för laglig invandring kräver en **samordnad integrationspolitik** som är särskilt utformad för såväl korta vistelser som långsiktig bosättning och för problem som uppstår i andra och tredje generationerna. Som en uppföljning av kommissionens meddelande av den 1 september 2005 och rådets slutsatser från december 2005 kommer genomförandet av integrationspolitiken att fortsätta.

2.4. Integrerad förvaltning av de yttre gränserna och interoperabilitet mellan informationssystem

Ett område där **människor rör sig fritt** kräver att tillträdet till EU:s territorium kontrolleras, genom av ett integrerat förvaltningssystem för de yttre gränserna, en gemensam viseringspolitik och en förnuftig användning av ny teknik, t.ex. biometriska kännetecken.

Följande åtgärder planeras:

- Frontex roll kommer att beaktas i samband med samordningen av sambandsinsatser på migrationsområdet mellan befintliga nätverken av sambandsmän i ursprungs- och transitländerna.

- Kommissionen kommer i juli att lägga fram ett förslag till Europaparlamentets och rådets förordning om inrättande av, befogenheter för och finansiering av **”snabbinsatsenheter”** med nationella experter som under Frontex överinseende skall lämna **tekniskt och operativt bistånd** till medlemsstaterna när det gäller kontroll och övervakning av de yttre gränserna.

- I synnerhet användningen av biometriska uppgifter skulle göra det möjligt att samla in och lagra **information om tredjelandsmedborgares inresa/utresa** till/från **Schengenområdet**. Kommissionen håller på att lansera en studie för att bedöma genomförbarheten av ett **informationssystem om inresa till/utresa från EU** och genomförandet av ett ”program för betrodda resenärer” som skall göra det lättare för resenärer med ärliga avsikter att passera gränsen. Resultaten av studien kommer att finnas tillgängliga i juni 2007.

- Idén att införa ett **europeiskt register över resehandlingar** som utfärdats till EU-medborgare kan undersökas närmare.

- Kommissionen kommer att diskutera med Europaparlamentet och rådet hur man skall fortsätta arbetet med de specifika förslagen i kommissionens meddelande från november 2005 om större effektivitet, förbättrad **interoperabilitet** och

synergieffekter mellan EU:s **databaser**. På grundval av dessa diskussioner kommer en handlingsplan att läggas fram 2007.

2.5. Uppföljning av programmen för ömsesidigt erkännande (inom civil- och straffrätt)

Inom både civilrätten och straffrätten kommer **principen om ömsesidigt erkännande** även i fortsättningen vara en hörnsten i EU:s politik. Ömsesidigt erkännande bygger på att staterna hyser ömsesidigt förtroende för varandras rättssystem.

Följande åtgärder planeras:

- Sedan kommissionen lade fram sitt meddelande i maj 2005 har den lagt fram flera lagförslag för att stärka genomförandet av principen om ömsesidigt erkännande i straffrättsliga frågor, både före och efter rättegång. Dessa olika initiativ bör nu **snabbt antas och genomföras**. Det ömsesidiga förtroendet behöver stärkas dels genom EU-omfattande regler om behörighetskonflikter, rättssäkerhetsgarantier, oskuldspresumtionen och miniminormer för inhämtande av bevis, dels genom **konkreta** insatser för att förbättra domarutbildningen och göra rättssystemen effektivare.

- En studie över de horisontella problem som uppstår vid förhandlingar om och tillämpningen av principen om ömsesidigt erkännande kommer att läggas fram 2007. Den kommer även att ta upp luckor i det nuvarande systemet för straffrättsligt samarbete som kan åtgärdas genom nya instrument.

- På medellång sikt kommer man att överväga en gradvis **konsolidering** i **särskilda instrument** för ömsesidigt erkännande av de nuvarande mekanismerna för ömsesidig rättslig hjälp, särskilt i fråga om bevisupptagning inom straffrätten.

- Inrättandet av ett **enda civilrättsligt område** är av avgörande betydelse för både **näringsliv** och **medborgare**. Programmet för ömsesidigt erkännande inom civilrätten från 2000 bör drivas på för att säkerställa att den dynamik som har byggts upp sedan Amsterdamfördraget trädde i kraft bibehålls, så att programmet kan färdigställas enligt vad som anges i handlingsplanen för Haagprogrammet. Kommissionen kommer i synnerhet att föreslå de lagstiftningsåtgärder som krävs för att avskaffa exekvatur för civilrättsliga avgöranden och kommer även att lägga fram en grönbok om effektivare verkställighet av domar och beslut. Kommissionen kommer vidare att föreslå flera nya instrument på det **familjerättsliga** området, som berör medborgarna i deras dagliga liv, till exempel i fråga om gifta och ogifta pars arvsrättigheter och egendomsförhållanden.

- Att underlätta för medborgarna att få **tillgång till domstolsprövning** är en verklig utmaning i samband med konsolideringen av det europeiska området med frihet, säkerhet och rättvisa. Som en första åtgärd kommer kommissionen att lägga fram ett förslag till ändring av rådets beslut om inrättande av ett europeiskt rättsligt nätverk på privaträttens område, för att bringa det närmare medborgare och praktiserande jurister och göra det ännu effektivare.

2.6. Tillgång till information som behövs för att bekämpa terrorism och organiserad brottslighet

Information som behövs för att bekämpa terrorism och allvarlig brottslighet bör kunna passera de inre gränserna inom EU utan hinder. De behöriga myndigheternas bearbetning av relevant information i hela EU kommer att vara ett stöd för åtgärder på nationell nivå och på EU-nivå för att förbättra EU:s kapacitet att förebygga och bekämpa terrorism och allvarlig brottslighet.

I Haagprogrammet uppmanades kommissionen att senast före utgången av 2005 lägga fram lagstiftning för genomförande av ”**principen om tillgänglighet**”, som skall börja tillämpas den 1 januari 2008[7]. Kommissionen lade i oktober 2005 fram ett förslag till rådets rambeslut om principen om tillgänglighet.

Informationsutbytet mellan medlemsstaterna på det straffrättsliga området måste utvidgas så att det även omfattas **kriminalregister**. Det nuvarande systemet, som bygger på den europeiska konventionen om inbördes rättshjälp i brottmål från 1959, har **allvarliga brister**. Kommissionen har redan lagt fram lagförslag som syftar till att införa ett datoriserat system för informationsutbyte om kriminalregister, vilket skulle öka den ömsesidiga förståelsen och underlätta den ömsesidiga kunskapen om fällande domar inom EU. Medlemsstaterna kommer att få finansiellt stöd för att underlätta uppbyggnaden av nätverk för nationella kriminalregister.

Några nya initiativ behövs förmodligen inte i detta skede. Det är av avgörande betydelse att de befintliga (och kommande) lagförslag som kommissionen har lagt fram eller kommer att lägga fram **antas och genomförs snabbt**, så att det kan säkerställas att principen om tillgänglighet **tillämpas fullt ut** och att det EU-omfattande systemet för kriminalregister **inrättas och genomförs effektivt**.

Kommissionen är övertygad om att det är oumbärligt att man parallellt med processen för informationsutbyte arbetar vidare med **uppgiftsskydd** på området för polissamarbete och straffrättsligt samarbete. Kommissionen anser att de initiativ som nämns ovan måste åtföljas av rättsligt bindande lagstiftning om uppgiftsskydd, som garanterar en hög skyddsnivå för personuppgifter i alla medlemsstater. Kommissionen beklagar att arbetet kring det förslag som den lade fram i oktober 2005 inte har gått framåt och anser att det är av avgörande betydelse att rådet antar förslaget snabbt.

2.7. Kampen mot terrorism och organiserad brottslighet, samt Europols framtid

Terrorism och organiserad brottslighet kommer att fortsätta att vara ett **ständigt hot** under de kommande åren. EU måste fortsätta att särskilt vinnlägga sig om att visa vilken unik kapacitet unionen har att driva på politiken på Europanivå, genom att bygga upp kunskaper och nära kontakter med alla berörda parter och genom att hjälpa medlemstater och brottsbekämpande myndigheter och domstolar i deras dagliga kamp för att anta denna utmaning.

Eftersom det **operativa samarbetet** och det **ömsesidiga förtroendet** mellan medlemsstaterna ökar, anser kommissionen att det är dags att utveckla en **strategi för inre säkerhet,** som bör

[7] Principen om tillgänglighet i den betydelse den ges i Haagprogrammet innebär att information som ett brottsbekämpande organ i en medlemsstat behöver för att utföra sina uppgifter skall ställas till förfogande av en annan medlemsstat, på vissa villkor.

bygga vidare på det pågående interinstitutionella arbetet med kampen mot terrorism och skydd för viktig infrastruktur.

Följande åtgärder planeras:

- Kommissionen kommer snart att lägga fram ett förslag till ett program om **skydd för viktig infrastruktur** som kommer att bygga på det omfattande samråd som pågått sedan 2005. Senare i år kommer kommissionen att lägga fram ett förslag till rådsbeslut om ett **nätverk för varning om hot mot viktig infrastruktur**. Det kommer att bygga på de preliminära resultaten från studien om genomförbarhet av ett sådant nätverk.

- Kommissionen överväger ändringar i rådets rambeslut om terrorism för att förbättra definitionen av **anstiftan** till terrorism och straffbelägga spridning av **kunskaper om bombtillverkning**.

- Kommissionen avser att lägga fram ett meddelande om **bioterrorism** före slutet av året.

2.7.1. Europols framtid

Europols uppgift är att göra medlemsstaternas brottsbekämpande myndigheter effektivare i deras kamp mot terrorism och organiserad brottslighet och öka samarbetet dem emellan, genom att underlätta informationsutbytet mellan medlemsstaterna och samla in och analysera sådan information. Europols mervärde ligger i att den kan stödja utredningar genom att tillhandahålla högkvalitativa analyser av kriminalunderrättelser.

Kommissionen anser att Europol behöver en **mer flexibel rättslig grund**, eftersom politiska beslut för att förbättra dess funktion i så fall kan genomföras utan onödiga fördröjningar. Det kommer också att bli nödvändigt att förbättra Europaparlamentets överinseende och kontroll över Europols verksamhet, för att öka **öppenheten och den demokratiska ansvarigheten**, samtidigt som det säkerställs att operativa upplysningar och förfaranden är **konfidentiella**.

Följande åtgärd planeras:

- Kommissionen överväger att lägga fram ett förslag till rådets beslut om att **ersätta** den nuvarande Europolkonventionen för att förbättra dess operativa effektivitet.

2.8. Budgetplanen på området för frihet, säkerhet och rättvisa

En av de nödvändiga förutsättningarna för att de politiska målsättningar som sattes upp i Haagprogrammet skall kunna uppnås är att dessa målsättningar åtföljs av **adekvata ekonomiska medel**. I den överenskommelse om budgetplanen som nyligen ingicks erkänns detta behov och **mer medel** tilldelas politiken på området för frihet, säkerhet och rättvisa. De nya programmen inom ramen för budgetplanen kommer att påbörjas 2007. De kommer att spela en strategisk roll när det gäller att bistå EU och medlemsstaterna.

Ökade ekonomiska anslag ur gemenskapens budget kommer att användas för att stödja en **rättvis fördelning av det kollektiva ansvaret** inom ett område utan gränser i fråga om asyl, invandring, gränssamarbete och operativt samarbete (särskilt i form av gemensamma patruller och gemensamma flygningar för återsändande). EU-finansiering kommer att göra det lättare

att utveckla gemensamma angreppssätt i kampen mot terrorism och organiserad brottslighet och när det gäller att bibehålla ett europeiskt rättsligt område. Medlemsstaterna uppmanas att fullt ut utnyttja de möjligheter som den nya budgetramen ger genom att lägga fram ambitiösa och relevanta förslag till projekt som visar på mervärdet av insatser på EU-nivå.

2.9. Den yttre dimensionen av frihet, säkerhet och rättvisa

I december 2005 godkände rådet (rättsliga och inrikes frågor) den allra första strategin för den yttre dimensionen av området med frihet, säkerhet och rättvisa[8]. I **strategin** anges en rad temainriktade prioriteringar och mekanismer som kan användas för att möta utmaningen. Kommissionen håller nu på att **genomföra nyckelinslagen** i strategin, exempelvis genom det gemensamma området med frihet, säkerhet och rättvisa med **Ryssland**, den reviderade handlingsplanen avseende rättsliga och inrikes frågor för Ukraina och handlingsplanerna inom ramen för den europeiska grannskapspolitiken samt, inte minst, genom **samarbetet med USA, som ständigt fördjupas**.

Det **tar tid** att göra framsteg med **rättsstatsprincipen** i samarbetet med tredjeländer. Kommissionen och medlemsstaterna bör därför fokusera på att **genomföra snarare än att förnya eller uppdatera** EU-strategin. De temainriktade och geografiska prioriterade frågorna har fastställts klart och tydligt och strategin bör nu **tillämpas effektivt** för att ge resultat. I området med frihet, säkerhet och rättvisa kan framsteg bara göras genom ett **aktivt bidrag** från såväl medlemsstaterna som kommissionen, och genom att de arbetar tillsammans på ett samordnat sätt. Utarbetandet av de åtgärdsinriktade dokumenten i fråga om västra Balkan respektive narkotika från Afghanistan visar hur värdefullt ett sådant samarbete är. På grundval av det arbete som har utförts sedan slutet av 2005 kommer kommissionen att lägga fram en **lägesrapport** i december 2006 som går igenom hur strategin har tillämpats. Andra viktiga instrument som rör den yttre dimensionen av frihet, säkerhet och rättvisa är avtalen om återtagande och förenklade viseringsförfaranden, som hittills med framgång har ingåtts med viktiga partnerländer till EU, t.ex. Ryssland. Kommissionen kommer att fortsätta sitt arbete på detta område.

2.10. Genomförande och utvärdering av politiken på området för frihet, säkerhet och rättvisa

Med beaktande av det **mandat** som kommissionen fått genom Haagprogrammet och dess handlingsplan, den **splittrade situationen** när det gäller befintliga mekanismer för övervakning och utvärdering och behovet av att lämna **omfattande information** till alla berörda parter angående genomförandet och resultaten av politiken, anser kommissionen att **det är dags** att arbeta för att inrätta en **enhetlig och omfattande mekanism för utvärdering** av EU-politiken på området för frihet, säkerhet och rättvisa, i en anda av **partnerskap** med medlemstaterna och EU-institutionerna.

En sådan mekanism, som kommer att omfatta den årliga **övervakningen av genomförandet**[9] och **utvärderingen av resultaten** av politiken, beskrivs i det parallella meddelandet om ”Utvärdering av EU:s politik för frihet, säkerhet och rättvisa”.

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[8] ”En strategi för den yttre dimensionen av RIF: Frihet, säkerhet och rättvisa för alla”, som bygger på kommissionens meddelande av den 12 oktober 2005 - KOM(2005) 491.

[9] Som beskrivs närmare i meddelandet ”Stärkt frihet, säkerhet och rättvisa i Europeiska unionen: rapport om genomförandet av Haagprogrammet 2005”, som läggs fram parallellt med detta meddelande.

3. FÖRBÄTTRA BESLUTSFÖRFARANDET PÅ OMRÅDET FÖR FRIHET, SÄKERHET OCH RÄTTVISA

3.1. Återkommande problem på området frihet, säkerhet och rättvisa

Politiken för frihet, säkerhet och rättvisa är något som verkligen **berör och har betydelse för medborgarna**, vilket har framgått av debatterna i samband med initiativet Plan D (som i demokrati, dialog och debatt) och av opinionsundersökningar. EU:s medborgare vill att EU skall bli effektivare, särskilt när det gäller kampen mot organiserad brottslighet och terrorism, men även på områden som förvaltning av migrationsströmmarna och kontroll av de yttre gränserna.

Trots detta starka intresse går arbetet långsamt och utvecklingen av politiken på området frihet, säkerhet och rättvisa på EU-nivå är förenad med **återkommande problem** som ofta leder till att arbetet blockeras. Den första årliga uppföljningen av Haagprogrammet, som presenteras i det parallella meddelandet, har visat att dessa problem främst har att göra med **beslutsprocessen**.

Beslut om, i synnerhet, **polissamarbete och straffrättsligt samarbete** måste fortfarande godkännas av alla medlemsstater och fattas med enhällighet. Dessa frågor regleras av en **särskild ram** (avdelning VI i EU-fördraget), som tillämpar den så kallade **”tredjepelarmetoden”**, som har följande kännetecken:

- **Särskilda rättsaktstyper** (gemensamma ståndpunkter, rambeslut, beslut och konventioner), vilket komplicerar genomförandet.

- Europaparlamentet har otillräckliga befogenheter i **lagstiftningsprocessen**.

- **Enhällighet** används, vilket ofta leder till överenskommelser som är begränsade till minsta gemensamma nämnaren.

- Kommissionen delar initiativrätten med var och en av de 25 medlemsstaterna, vilket inte främjar vare sig en genuin ”europeisk dimension” eller att medlemsstaternas lagstiftningsinitiativ präglas av ansvarighet, eftersom dessa inte blir föremål för någon konsekvensbedömning på förhand.

- EG-domstolen har en **begränsad roll** (ingen behörighet för överträdelseförfaranden eller förhandsavgöranden om inte medlemsstaterna godtar det – vilket 14 av 25 har gjort hittills – och det finns en möjlighet att begränsa möjligheten att begära förhandsavgöranden till högsta nationella instans).

- Det saknas formella överträdelseförfaranden som säkerställer korrekt genomförande och tillämpning.

Diskussioner i rådet nyligen har faktiskt visat att det är mycket svårt för EU att göra framsteg på områden som t.ex. **ömsesidigt erkännande inom straffrätten** och **polissamarbete**.

I juni förra året kunde rådet (rättsliga och inrikes frågor) slutligen nå enighet om kommissionens förslag om ett **europeiskt bevisupptagningsbeslut**, men enighet nåddes först efter mycket långa förhandlingar och endast om minsta gemensamma nämnaren, vilket inte är tillfredsställande för vare sig kommissionen eller flertalet medlemsstater och får **negativa**

konsekvenser för tillämpningen av principen om ömsesidigt erkännande, som enligt Tammerfors- och Haagprogrammen skall vara en hörnsten i EU:s politik på området rättsligt samarbete.

Några framsteg har inte heller gjorts under de tre senaste åren angående miniminormer för **rättssäkerhetsgarantier** som skall vara tillämpliga i hela EU, t.ex. att den som blir gripen eller anhållen skall ha rätt till en tolk. Även diskussionerna om en text som syftar till att definiera och fördöma brott som bygger på **rasism och främlingsfientlighet** på samma sätt över hela Europa är helt blockerade och har legat på is i nästan två år, även om det på senare tid funnits vissa tecken på att de skulle kunna tas upp på nytt.

Slutligen har diskussionerna om ett förslag från kommissionen om att i större utsträckning tillåta **utredningar och lagföring över nationsgränserna** inte gått framåt.

Sådana återkommande svårigheter är också tydliga på de områden av politiken för frihet, säkerhet och rättvisa som ”överförts till gemenskapsrätten” (avdelning IV i EG-fördraget), där särskilda regler kvarstår i fråga om EG-domstolens behörighet att meddela **förhandsavgöranden** (artikel 68 i EG-fördraget) och där beslut om **laglig invandring** och **familjerätt** fortfarande fattas med enhällighet. När det gäller **laglig invandring** ledde till exempel diskussionerna om kommissionens förslag från 2001 till ett direktiv om tredjelandsmedborgares rätt till inresa och vistelse för anställning inte till framgång på grund av regeln om enhällighet. Kommissionen har nyligen återupplivat denna fråga i en grönbok och en handlingsplan lades fram i december 2005, men det är i dag svårt att förutse vad denna debatt kommer att leda till om regeln om enhällighet fortsätter att tillämpas på detta område.

När det gäller **EG-domstolens behörighet** finns det en risk för att mycket viktiga och känsliga frågor inte omfattas av samma domstolskontroll eller enhetliga tillämpning i hela Europa. Det gäller till exempel tillgång till domstolsprövning och asylrättigheter.

3.2. Lösning på återkommande problem: *”övergångsklausulerna”*

Kommissionen anser att det är ett lämpligt tillfälle att i samband med den första översynen av genomförandet av Haagprogrammet **på nytt ta upp** och **stimulera diskussionerna** om hur man kan **förbättra beslutsfattandet i EU** och hur lagstiftningen på området frihet, säkerhet och rättvisa bättre kan utvärderas och genomföras. När man gör detta måste man **använda de möjligheter som erbjuds i de nuvarande fördragen på bästa sätt.**

Kommissionen anser att om de nuvarande fördragen genomförs fullt ut ökar detta **effektiviteten** och **enhetligheten** på områden där **mervärdet** av insatser på EU-nivå är allmänt erkänt och uttryckligen efterfrågas av medborgarna, som vill ha **mer skydd och säkerhet**, vilket nyligen bekräftades av den senaste Eurobarometern.

Kommissionen anser vidare, som den anförde i sitt meddelande av den 10 maj 2006, att man genom att använda de nuvarande fördragen fullt ut kan skapa de nödvändiga förutsättningarna för att uppnå de **ambitiösa målen** i Haagprogrammet och **genomföra** detta program **fullständigt.** De nuvarande fördragen öppnar en möjlighet att lösa de problem som nämns i avsnitt 3.1, genom användningen av de så kallade **”övergångsklausulerna”** i artikel 42 i EU-fördraget och artikel 67.2 andra strecksatsen i EG-fördraget.

Artikel 42 i EU-fördraget föreskriver en rätt för kommissionen (eller en medlemsstat) att ta initiativ till att föreslå att en åtgärd inom de områden som avses i artikel 29 i EU-fördraget

(**bekämpande av terrorism och annan brottslighet genom åtgärder på områdena polissamarbete och straffrättsligt samarbete**) skall omfattas av avdelning IV i EG-fördraget och regleras av samma institutionella ram som andra områden av politiken för frihet, säkerhet och rättvisa som ”överförts till gemenskapsrätten”. Rådet fattar beslut om användningen av artikel 42 i EU-fördraget med **enhällighet**, efter att ha hört Europaparlamentet. Besluten antas i enlighet med **medlemsstaternas konstitutionella bestämmelser**.

Enligt artikel 67.2 andra strecksatsen i EG-fördraget kan rådet efter att ha hört Europaparlamentet enhälligt besluta att **laglig invandring** skall regleras av **medbeslutandeförfarandet**, vilket säkerställer en lämplig demokratisk kontroll av Europaparlamentet.

Artikel 67.2 andra strecksatsen kräver att rådet, med enhällighet och efter att ha hört Europaparlamentet, beslutar att anpassa bestämmelserna i artikel 68 i EG-fördraget om domstolens behörighet. Detta bör göras genom ett beslut om att domstolens **behörighet att lämna förhandsavgöranden** inom de områden av politiken för frihet, säkerhet och rättvisa som ”överförts till gemenskapsrätten” skall vara densamma som för andra områden av gemenskapspolitiken, vilket säkerställer en starkare roll för EG-domstolen[10].

Kommissionen anser att **övergångsklausulerna** är det verktyg som ger unionen och medlemsstaterna möjlighet att uppnå det ambitiösa målet att strama upp beslutsfattandet på området frihet, säkerhet och rättvisa.

Tillämpningen av övergångsklausulerna skulle ge ett verkligt mervärde om ”**gemenskapsmetoden**” tillämpades på politiken för frihet, säkerhet och rättvisa, eftersom denna metod har visat sig leda till **större effektivitet, större öppenhet, större demokrati och större ansvarighet**. Det bästa exemplet på fördelarna med ”gemenskapsmetoden” är att Europaparlamentet och rådet nyligen antog kommissionens förslag om lagring av kommunikationsuppgifter, som man nådde enighet om redan tre månader efter kommissionens förslag.

Genom att tillämpa ”gemenskapsmetoden” kan följande fördelar uppnås:

- Större effektivitet, öppenhet och ansvarighet i lagstiftningsförfarandena.
- **Gemenskapens rättsakter** används generellt (förordningar, direktiv och beslut enligt de nuvarande fördragen).
- Demokratiskt valda representanter för EU-medborgarna ges genom Europaparlamentet lagstiftande befogenheter genom medbeslutande.
- Genom kommissionens initiativrätt garanteras att lagstiftningsförslagen har en ”europeisk dimension” och att effektiva verktyg för konsekvensbedömning används.

[10] Med hänsyn till att rådet trots att övergångsperioden löpte ut den 1 maj 2004 ännu inte har börjat arbetet med att fullgöra sin skyldighet att anpassa bestämmelserna i artikel 68 i EG-fördraget, lägger kommissionen parallellt med detta meddelande fram ett särskilt meddelande för Europaparlamentet och rådet i den frågan.

- Både konsensus och resultat med hög kvalitet främjas av **beslutsfattande med kvalificerad majoritet**.

- En adekvat rättslig dialog med de nationella domstolarna säkerställs genom **förfarandet för förhandsavgöranden** och en övervakning av genomförandet i medlemsstaterna genom **överträdelseförfarandet**.

Användningen av övergångsklausulerna i frågor som rör polissamarbete och rättsligt samarbete skulle helt klart vara av vikt för frågan om avgränsningen mellan första och tredje pelarna. Detta är långt ifrån en hypotetisk fråga, vilket framgår tydligt av **avgöranden** från EG-domstolen **nyligen** (i målen om **miljöbrott** respektive **passageraruppgifter**). Om dessa frågor reglerades av en **enda rättslig ram** skulle det med säkerhet leda till större rättssäkerhet och effektivitet.

Särskilt artikel 42 i EU-fördraget medger en viss **flexibilitet**, nämligen i fråga om vilka omröstningsregler som skall gälla på områden som överförs från avdelning VI i EU-fördraget. Kommissionen anser att en reflektion och diskussion bör inledas med medlemsstaterna och EU-institutionerna för att kunna **använda** de olika **möjligheterna** i artikel 42 **på bästa sätt**.

4. SLUTSATSER

Europas medborgare vill att EU skall vidta de åtgärder som krävs för att göra Europa till en säker plats att leva på. EU måste kunna svara på detta krav snabbt och samtidigt garantera att medborgarna kan utnyttja sina individuella rättigheter.

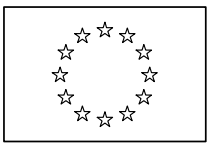
EU och medlemsstaterna måste anta denna utmaning gemensamt, eftersom terrorism och organiserad brottslighet inte hejdas av gränser eller procedurer. Det är ett gemensamt mål att vidareutveckla Haagprogrammet, och detta kräver att det finns ett effektivt beslutsfattande och tydliga politiska prioriteringar.

Arbetet med att identifiera kommande åtgärder för att **föra den europeiska integrationen framåt** på området frihet, säkerhet och rättvisa och **effektivisera beslutsförfarandena** bör ske parallellt. Kommissionen anser att detta är det enda hållbara sättet att nå framgång på detta politikområde.

Kommissionen avser att på grundval av sin lägesbedömning av genomförandet av Haagprogrammet **inleda en diskussion** i **partnerskap** med övriga EU-institutioner och medlemsstaterna om hur man kan gå vidare med den politiska agendan på ett sätt som svarar mot EU-medborgarnas förväntningar och leder till att området med frihet, säkerhet och rättvisa fungerar bättre.

På grundval av **resultatet av reflektionen och diskussionerna** under det kommande finska ordförandeskapet, är **kommissionen beredd att ta initiativ** enligt artikel 42 i EU-fördraget och artikel 67.2 andra strecksatsen i EG-fördraget[11].

[11] Utan att detta påverkar det särskilda initiativ som kommissionen tar i det meddelande som avses i fotnot 6 ovan.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
COM(2006) 331 final

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[1].

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.

[1] COM(2006) 211.

On the basis of the **policy priorities** identified for the implementation of Hague Programme in its Communication of 10 May 2005[2], 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[3], 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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[2] 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.

[3] 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[4], 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[5]. 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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4 COM(2003) 606.

5 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[6], 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

[6] 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[7]. 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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[7] 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[8]. 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**[9] 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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[8] "Strategy for the external dimension of JHA: Global freedom, security and justice", drawing on the Commission's Communication COM(2005) 491, 12.10.2005.

[9] 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 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 "communitaurised" 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 "communitaurised" 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 "communitaurised" 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[10].

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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[10] 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 hypothetic as r**ecent 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.

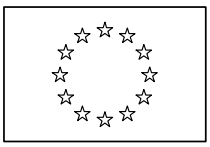
The Union and the Member States must respond together to this challenge because terrorism and organised crime do not respect borders or procedures. Implementing and developing further The Hague Programme is a common goal, which imposes effective decision-making and clear political priorities.

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 is 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, t**he Commission is ready to take initiatives** under Article 42 TEU and Article 67(2), second indent, TEC[11].

[11] Without prejudice to the specific initiative taken in the Commission's communication referred to in footnote 6 above.



COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 28.6.2006
COM(2006) 331 final

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPEEN

Mise en œuvre du programme de La Haye: la voie à suivre

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPEEN

Mise en œuvre du programme de La Haye: la voie à suivre

(Texte présentant de l'intérêt pour l'EEE)

1. INTRODUCTION

Le programme de La Haye intitulé «Renforcer la liberté, la sécurité et la justice dans l'Union européenne» a été adopté par le Conseil européen de novembre 2004. Il a réaffirmé l'importance que l'Union européenne attache, depuis le Conseil européen de Tampere de 1999, à l'espace de liberté, de sécurité et de justice, en en faisant l'une des **principales priorités de l'Union** - non seulement parce qu'il s'agit de l'un de ses objectifs fondamentaux, mais aussi, et surtout, parce que cet espace est au centre des **intérêts des citoyens** de l'Union européenne. La communication de la Commission au Conseil européen intitulée «Un projet pour les citoyens – Produire des résultats pour l'Europe» du 10 mai 2006 a réaffirmé avec force cette priorité[1].

Depuis la fin de 2004, les États membres et les institutions européennes ont conjugué leurs efforts pour assurer la mise en œuvre de ce programme, conformément au plan d'action du Conseil et de la Commission adopté en juin 2005.

Aux termes des conclusions du Conseil européen de décembre 2004, «*étant donné que le programme couvrira une période durant laquelle le traité constitutionnel entrera en vigueur, un suivi de sa mise en œuvre est jugé opportun*». À cet effet, le Conseil européen a invité la Commission à lui présenter en 2006 «*un rapport sur les progrès réalisés et à proposer les ajouts nécessaires dans le programme*».

Le traité constitutionnel n'étant pas entré en vigueur, une première **évaluation** politique des progrès accomplis dans la mise en œuvre du programme de La Haye et une proposition d'ajustements restent nécessaires. La présente communication ainsi que les communications parallèles intitulées «Renforcer la liberté, la sécurité et la justice dans l'Union européenne: rapport sur la mise en œuvre du programme de La Haye pour l'année 2005» (ci-après, le «tableau de bord Plus») et «Évaluation des politiques de l'Union européenne en matière de liberté, de sécurité et de justice» constituent la réponse de la Commission à l'invitation du Conseil européen.

Cet **ensemble complet** de documents **n'a** donc **pas** pour objectif de définir de nouvelles priorités par rapport à celles fixées dans le programme de La Haye, mais il vise principalement à (1) dresser un bilan des progrès réalisés, (2) **apprécier** l'état d'avancement de la mise en œuvre au niveau national et au niveau de l'UE, et (3) proposer une évaluation approfondie des résultats obtenus.

[1] COM(2006) 211.

Sur la base des **priorités politiques** définies pour la mise en œuvre du programme de La Haye dans sa communication du 10 mai 2005[2], la Commission a mis en évidence les **domaines** dans lesquels elle estime nécessaire de **faire progresser le projet politique de l'Union** en se fondant sur le programme de La Haye.

La Commission reconnaît qu'il est urgent d'insuffler une **nouvelle dynamique** à l'espace de liberté, de sécurité et de justice, dans le cadre d'un ambitieux programme de travail à finalité politique, élaboré à l'intention des citoyens.

En présentant cet ensemble de mesures, la Commission souhaite **encourager et structurer** le débat qui se tiendra avec les États membres et les autres institutions au cours de la présidence finlandaise du Conseil (de juillet à décembre 2006) portant sur

(1) les **nouvelles initiatives politiques** qu'elle juge nécessaires (voir point 2), outre celles déjà mises en œuvre au titre du programme de La Haye, et

(2) comme demandé par le Conseil européen de juin 2006[3], les possibilités d'**améliorer le fonctionnement** des politiques en matière de liberté, de sécurité et de justice **en recourant aux possibilités offertes par les traités actuels**, sans devancer le traité constitutionnel (voir point 3).

Progresser sur la voie de la création d'un espace de liberté, de sécurité et de justice implique des **procédures décisionnelles plus efficaces, plus transparentes et plus responsables**. Comme l'a montré le «tableau de bord Plus», qui évalue pour la première fois la mise en œuvre de la législation de l'UE au niveau national, l'adoption de propositions législatives à l'échelon de l'UE **est extrêmement longue**, et dans certains domaines, les résultats obtenus correspondent à peine au **plus petit dénominateur commun**, sans parvenir à rencontrer tous les objectifs initiaux.

2. MISE EN ŒUVRE DU PROGRAMME DE LA HAYE: UNE NOUVELLE DYNAMIQUE POUR RENFORCER L'ESPACE DE LIBERTE, DE SECURITE ET DE JUSTICE

Une première évaluation de la mise en œuvre du programme de La Haye et de son plan d'action sous la forme du «tableau de bord Plus», présentée dans la communication parallèle susmentionnée, permet à la Commission de dresser la liste des domaines sur lesquels le travail de l'Union doit se focaliser et dans lesquels il est nécessaire de consentir des efforts supplémentaires.

C'est en se fondant sur cette première évaluation que la Commission présente les propositions d'action suivantes, à mettre en œuvre **avant le terme du programme de La Haye** (2009).

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2 Communication de la Commission au Conseil et au Parlement européen: «Le programme de La Haye: Dix priorités pour les cinq prochaines années Un partenariat pour le renouveau européen dans le domaine de la liberté, de la sécurité et de la justice» - COM(2005) 184.

3 Aux termes du point 10 des conclusions du Conseil européen de juin 2006, «Dans le cadre de l'examen du programme de La Haye, le Conseil européen demande à la Finlande, qui assurera la prochaine présidence de l'UE, d'étudier, en étroite collaboration avec la Commission, les possibilités d'améliorer le processus décisionnel et les actions dans le domaine de la liberté, de la sécurité et de la justice, sur la base des traités existants».

2.1. Droits fondamentaux et citoyenneté

Les droits fondamentaux sont au cœur des valeurs de l'Union. La Commission concentrera son action sur le **respect** et la **défense** des droits fondamentaux pour tous et approfondira la notion de **citoyenneté de l'UE**.

La **citoyenneté** européenne confère un certain nombre de droits essentiels tels que le droit de **libre circulation** à l'intérieur de l'Union et le droit à une **protection diplomatique et consulaire**.

Les actions envisagées sont les suivantes:

- La Commission reçoit un nombre croissant de demandes d'intervention à la suite d'allégations de violation des droits fondamentaux par les États membres. Elle continuera de veiller au respect des droits fondamentaux et d'en assurer la promotion conformément au traité sur l'Union européenne (traité UE) et à sa communication de 2002 sur l'article 7 du traité UE[4], qui donnent aux institutions européennes les moyens de faire en sorte que tous les États membres respectent les valeurs communes.

- La Commission accordera la **priorité** absolue au contrôle de la **bonne transposition** par les États membres de la directive 2004/38/CE du Parlement européen et du Conseil relative au droit des citoyens de l'Union de circuler et de séjourner librement sur le territoire des États membres, entrée en vigueur le 30 avril 2006.

- Il importe de développer des connaissances et des normes communes au niveau de l'Union relatives au mode de protection des citoyens de l'Union qui nécessitent une assistance sur le territoire d'un pays tiers où leur État d'origine n'est pas représenté. La Commission souhaite contribuer aux **activités de formation** destinées aux fonctionnaires des États membres de l'UE, notamment sous forme d'une aide à la formation dans des domaines liés à la protection consulaire des citoyens de l'UE.

- Parallèlement, des **actions de communication** et des **campagnes d'information**, destinées aux citoyens de l'UE, sur leur droit à une protection diplomatique et consulaire sont en cours d'élaboration.

- Les lignes directrices actualisées en matière de protection consulaire destinées aux missions des États membres présentes dans des pays tiers prévoient, pour la première fois, que les délégations de la Commission jouent un rôle de soutien pratique en fournissant des moyens logistiques et du personnel en cas de crise consulaire[5]. Cela renforce les capacités existantes des États membres de l'UE à se porter au secours du citoyen qui en aurait besoin et sera développé plus avant. Un rapport commun du Secrétariat Général/Haut Représentant et de la Commission portant sur une coopération consulaire plus étroite entre les États membres de

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4 COM(2003) 606.

5 Rapport de la présidence sur le «Renforcement des capacités de réaction de l'UE en cas d'urgence ou de crise», approuvé par le Conseil européen de juin 2006.

l'UE, y compris sur des aspects d'assistance consulaire mutuelle pour ce qui est de régions pré-identifiées, est prévu pour la deuxième moitié de 2006.

- À la suite des demandes exprimées par les États membres lors de l'adoption du programme de La Haye, la Commission étudiera la manière de faire progresser les projets liés à (1) la mise en place d'activités dans le cadre d'«euro-consulats» afin de partager des fonctions consulaires communes, également au profit des citoyens de l'UE, et (2) la définition d'un code consulaire européen.

2.2. Réalisation de la deuxième phase du régime d'asile

Dans les années à venir, des efforts soutenus seront nécessaires pour créer un **régime d'asile européen commun doté de procédures efficaces et harmonisées** respectant la tradition humanitaire européenne et les obligations internationales de l'Union.

Les actions envisagées sont les suivantes:

- **Évaluation du cadre législatif existant**. D'ici la fin de l'année 2006, la Commission présentera l'évaluation du règlement «Dublin» et de la directive relative à des normes minimales pour l'accueil des demandeurs d'asile, la directive relative aux conditions requises devant quant à elle faire l'objet d'une évaluation en 2008.

- Un **Livre vert sur la politique d'asile**, suivi en 2007 d'un **programme d'action concernant la politique d'asile**, précisera les différentes étapes de la deuxième phase de réalisation du régime d'asile européen commun.

- À la suite de la communication adoptée en février de cette année[6], d'autres mesures seront prises en ce qui concerne la **coopération pratique entre administrations** afin de rapprocher les régimes d'asile des États membres, notamment en créant une base de données européenne sur les pays d'origine.

2.3. Gestion des migrations

Une **approche globale** de la gestion des migrations passe par la mise en place d'une politique commune en matière d'immigration, réglant au niveau de l'Union la question des migrants en situation régulière, **parallèlement** à l'adoption de mesures visant à résoudre plus efficacement le problème de l'immigration clandestine et à améliorer la lutte contre le trafic illicite de migrants et la traite des êtres humains, notamment des femmes et des enfants.

Les actions envisagées sont les suivantes:

- À la suite du Programme d'action relatif à l'immigration légale, la Commission entend présenter des propositions concernant **une directive-cadre du Parlement européen et du Conseil et quatre directives du Parlement européen et du Conseil relatives à certaines catégories de travailleurs migrants** (travailleurs hautement qualifiés, travailleurs saisonniers, personnes détachées au sein de leur entreprise et stagiaires rémunérés).

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[6] COM(2006) 67.

- En raison de l'augmentation de l'immigration clandestine en provenance d'Afrique du Nord et de l'Ouest et touchant, en premier lieu, l'Italie, l'Espagne, Malte, la Grèce et les pays du bassin méditerranéen, la Commission coordonne, avec les États membres, EUROPOL, FRONTEX et le Centre commun de recherche, la mise en œuvre des **actions prioritaires** définies lors de la réunion informelle des chefs d'État ou de gouvernement de Hampton Court et lors du Conseil européen de décembre 2005. Un rapport d'activité devrait être publié **d'ici la fin de l'année 2006**.

- Il est prévu de renforcer les actions relatives à la **dimension externe des migrations**. Les questions de migration doivent faire partie intégrante des relations extérieures de l'Union avec les pays d'origine et de transit, dans le cadre d'une approche globale des migrations. En particulier, les mesures prises en matière de **migration** et de **développement** portent principalement sur le renforcement des liens positifs entre ces deux éléments, l'accent étant mis sur des questions telles que les transferts de fonds des migrants, le rôle des diasporas, la circulation des cerveaux et les migrations circulaires, ainsi que sur l'atténuation des répercussions de la fuite des cerveaux sur les pays d'origine.

- La Commission présentera en juillet de cette année une communication sur l'**immigration clandestine**. Le renforcement de la confiance mutuelle et des échanges d'informations entre États membres, notamment sur les régularisations des clandestins, l'amélioration du contrôle de l'accès au territoire et la lutte contre l'emploi de ressortissants de pays tiers en séjour irrégulier, figureront parmi les priorités.

- La mise en place de politiques durables en matière de migration légale exige **une coordination des politiques d'intégration**, conçues pour régler les problèmes posés par les courts séjours comme par les installations à long terme, ainsi que les difficultés rencontrées par les deuxième et troisième générations de migrants. Dans le droit fil de la communication de la Commission du 1er septembre 2005 et des conclusions du Conseil de décembre 2005, la mise en œuvre des politiques d'intégration sera poursuivie.

2.4. Gestion intégrée des frontières extérieures et interopérabilité des systèmes d'information

Un espace de **libre circulation des personnes** exige de contrôler l'accès au territoire de l'Union, au moyen d'un système intégré de gestion des frontières extérieures, d'une politique commune des visas et de l'utilisation judicieuse des nouvelles technologies, notamment des identifiants biométriques.

Les actions envisagées sont les suivantes:

- Le rôle de FRONTEX sera pris en considération lors de la coordination des opérations de liaison dans le domaine des migrations entre les réseaux de liaison existant actuellement dans les pays tiers de départ et de transit.

- La Commission présentera en juillet de cette année une proposition de règlement du Parlement européen et du Conseil sur la création, les prérogatives et le financement d'«**équipes de réaction rapide**» composées d'experts nationaux qui,

sous l'égide de FRONTEX, fourniront une **assistance technique et opérationnelle** aux États membres pour le contrôle et la surveillance des frontières extérieures.

- En particulier, l'utilisation de données biométriques devrait permettre de recueillir et de stocker des **informations sur l'entrée et la sortie** des ressortissants de pays tiers à l'intérieur et hors de l'**espace Schengen**. La Commission lance une étude, dont les résultats seront disponibles en juin 2007, afin d'évaluer la faisabilité d'un **système d'information sur les entrées et sorties à l'intérieur et hors de l'UE**, ainsi que la mise en œuvre d'un «programme destiné aux voyageurs de confiance» permettant aux voyageurs de bonne foi de passer plus facilement la frontière.

- L'idée de mettre sur pied un **registre européen des documents de voyage** délivrés aux citoyens de l'UE pourrait être explorée.

- La Commission examinera avec le Parlement européen et le Conseil la manière de faire avancer les propositions spécifiques figurant dans sa communication de novembre 2005 sur l'amélioration de l'efficacité, ainsi que le renforcement de l'**interopérabilité** et des synergies entre les **bases de données** européennes. Sur la base de ces discussions, un plan d'action sera présenté en 2007.

2.5. Suivi des programmes de reconnaissance mutuelle (en matière civile et en matière pénale)

Dans le domaine du droit civil et du droit pénal, le **principe de la reconnaissance mutuelle** demeurera la pierre angulaire des politiques de l'Union. La reconnaissance mutuelle repose sur la confiance mutuelle dans les systèmes juridiques et judiciaires des autres États membres.

Les actions envisagées sont les suivantes:

- À la suite de sa communication de mai 2005, la Commission a présenté plusieurs propositions législatives visant à améliorer l'application du principe de reconnaissance mutuelle en matière pénale avant comme après le procès. Ces différentes initiatives devraient à présent être **rapidement adoptées et mises en œuvre**. La confiance mutuelle doit être renforcée grâce à la définition de dispositions, applicables dans toute l'UE, en matière de conflits de compétences, de garanties procédurales, de présomption d'innocence et de normes minimales pour l'obtention d'éléments de preuve, d'une part, et grâce à des actions **concrètes** visant à améliorer la formation des magistrats ainsi que l'efficacité des systèmes judiciaires, d'autre part.

- Une étude des problèmes horizontaux survenant dans le cadre de la négociation et de l'application du principe de reconnaissance mutuelle, ainsi que des lacunes du système actuel de coopération en matière pénale auxquelles de nouveaux instruments permettraient de remédier, sera présentée en 2007.

- À moyen terme, les travaux porteront sur une **consolidation progressive**, dans des **instruments uniques** de reconnaissance mutuelle, des mécanismes actuels d'entraide judiciaire, notamment pour ce qui est de l'obtention d'éléments de preuve dans le domaine pénal.

- La création d'un **espace unique de justice civile** est fondamentale pour les **entreprises** comme pour les **citoyens**. Il convient de donner un nouvel élan politique au programme de reconnaissance mutuelle en matière civile (présenté en 2000) afin de ne pas briser la dynamique amorcée depuis l'entrée en vigueur du traité d'Amsterdam, ce qui permettrait de mener à bien le programme prévu dans le plan d'action de La Haye. La Commission proposera en particulier les mesures législatives devant être prises afin de supprimer totalement l'exequatur pour les décisions en matière civile et commerciale, et présentera aussi des livres verts sur l'amélioration de l'efficacité de l'exécution des décisions judiciaires. Elle proposera en outre plusieurs nouveaux instruments dans le domaine du **droit de la famille**, qui concerne les citoyens dans leur vie quotidienne, par exemple en matière de successions et de droits patrimoniaux des couples mariés et non mariés.

- La simplification de **l'accès à la justice** pour les citoyens est un véritable défi dans le cadre de la consolidation de l'espace européen de liberté, de sécurité et de justice. La Commission prendra une première mesure en proposant de modifier la décision du Conseil portant création du réseau judiciaire européen en matière civile afin de le rapprocher des citoyens et des praticiens du droit et de le rendre encore plus efficace.

2.6. Accès aux informations nécessaires à la lutte contre le terrorisme et la criminalité organisée

Les informations nécessaires à la lutte contre le terrorisme et les formes graves de criminalité devraient pouvoir franchir sans entraves les frontières intérieures de l'UE. Le traitement des informations utiles par les autorités compétentes à travers l'UE appuiera les efforts déployés au niveau national et au niveau de l'Union afin de renforcer les capacités de l'ensemble de l'UE de prévenir et de combattre le terrorisme et les formes graves de criminalité.

Dans le programme de La Haye, la Commission a été invitée à formuler des propositions législatives pour la fin de 2005 afin de mettre en œuvre le «**principe de disponibilité**», de sorte que celui-ci puisse s'appliquer à partir du 1er janvier 2008[7]. La Commission a présenté, en octobre 2005, une proposition de décision-cadre du Conseil relative à l'échange d'informations en vertu du principe de disponibilité.

L'échange d'informations entre les États membres dans le domaine de la justice pénale doit s'étendre aux **casiers judiciaires**. Le système actuel, qui s'appuie sur la convention européenne d'entraide judiciaire en matière pénale de 1959, présente de **graves imperfections**. La Commission a déjà présenté des propositions législatives en vue de mettre en place un système informatisé d'échange d'informations sur les casiers judiciaires, qui améliorerait la compréhension mutuelle et faciliterait l'échange d'informations au sujet des condamnations prononcées au sein de l'UE. Une aide financière sera apportée aux États membres afin de faciliter la mise en réseau des casiers judiciaires nationaux.

De nouvelles initiatives sont probablement inutiles à ce stade. Il est d'une importance capitale que les propositions législatives que la Commission a présentées (ou présentera) soient

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[7] Le principe de disponibilité, tel que décrit dans le programme de La Haye, prévoit que tout agent des services répressifs d'un État membre qui a besoin de certaines informations dans l'exercice de ses fonctions peut les obtenir des services d'un autre État membre, moyennant le respect de certaines conditions.

rapidement adoptées et mises en œuvre, afin de garantir la **pleine application** du principe de disponibilité et d'assurer **l'efficacité du développement et de la mise en œuvre** du système européen d'échange d'informations sur les casiers judiciaires.

La Commission est intimement convaincue que, parallèlement aux progrès accomplis en matière d'échange d'informations, il est indispensable d'aller de l'avant pour ce qui est de la **protection des données** dans le domaine de la coopération policière et judiciaire. Elle estime que les initiatives susvisées doivent aller de pair avec une législation juridiquement contraignante en matière de protection des données, assurant un niveau élevé de protection des données personnelles dans tous les États membres. Elle regrette l'absence de progrès sur la proposition qu'elle a présentée en octobre 2005, et elle estime que le Conseil devrait l'adopter sans tarder.

2.7. Lutte contre le terrorisme et la criminalité organisée et avenir d'Europol

Le terrorisme et la criminalité organisée continueront de constituer une **menace constante** dans les années à venir. L'Union devra rester particulièrement vigilante dans la démonstration de sa capacité unique à faire avancer les politiques au niveau européen, en développant ses connaissances et en établissant des contacts étroits avec toutes les parties concernées, ainsi qu'en aidant les États membres, les services répressifs et les autorités judiciaires dans leur action quotidienne pour relever ce défi.

Compte tenu du renforcement de la **coopération opérationnelle** et de la **confiance mutuelle** entre les États membres, la Commission estime qu'il est temps d'élaborer une **stratégie concertée en matière de sécurité intérieure**, sur la base des travaux interinstitutionnels en cours dans le domaine de la lutte contre le terrorisme et de la protection des infrastructures critiques.

Les actions envisagées sont les suivantes:

- La Commission présentera prochainement une proposition de programme sur la **protection des infrastructures critiques**, fondée sur le vaste exercice de consultation qu'elle a engagé depuis 2005. Dans le courant de l'année, sur la base des résultats préliminaires d'une étude sur la faisabilité du **réseau d'alerte concernant les infrastructures critiques**, la Commission soumettra une proposition de décision du Conseil dans ce domaine.

- La Commission envisage de modifier la décision-cadre du Conseil relative à la lutte contre le terrorisme, afin d'améliorer la définition de l'**incitation** à commettre des actes terroristes et de sanctionner la diffusion des **connaissances nécessaires à la fabrication de bombes**.

- La Commission entend présenter une communication sur le **bioterrorisme** d'ici à la fin de l'année.

2.7.1. L'avenir d'Europol

Europol a pour vocation d'améliorer l'efficacité et la coopération des services répressifs des États membres dans la lutte contre le terrorisme et la criminalité organisée, en facilitant l'échange d'informations entre les États membres et en collectant et analysant ces informations. La valeur ajoutée d'Europol continue de résider dans sa capacité à soutenir le

travail d'enquête en fournissant des analyses de qualité des renseignements disponibles en matière criminelle.

La Commission estime qu'une **base juridique plus souple** est nécessaire à Europol pour que les décisions politiques visant à améliorer son fonctionnement puissent être mises en œuvre dans les meilleurs délais. Il faudra également améliorer le contrôle des activités d'Europol par le Parlement européen, afin d'accroître la **transparence et la responsabilité démocratique**, tout en **garantissant la confidentialité** des informations et procédures opérationnelles.

L'action envisagée est la suivante:

- La Commission envisage de présenter une proposition de décision du Conseil **remplaçant** la convention Europol existante, afin d'améliorer son efficacité opérationnelle.

2.8. Perspectives financières dans l'espace de liberté, de sécurité et de justice

L'une des principales conditions préalables à la réalisation des objectifs politiques fixés par le programme de La Haye est de disposer de **ressources financières suffisantes** à cette fin. Le récent accord sur les perspectives financières, qui a tenu compte de ce besoin, a affecté **davantage de crédits** aux politiques en matière de liberté, de sécurité et de justice. En 2007, les nouveaux programmes-cadres financiers seront opérationnels. Ils joueront un rôle stratégique d'assistance à l'Union et aux États membres.

Le concours financier accru du budget communautaire servira à soutenir un **partage équitable des responsabilités collectives** dans un espace sans frontières en ce qui concerne l'asile, l'immigration et la coopération frontalière et opérationnelle (patrouilles communes et vols de retour communs notamment). Dans la lutte contre le terrorisme et la criminalité organisée et pour le maintien d'un espace de justice, le financement de l'Union européenne facilitera encore l'émergence d'approches communes. Les États membres sont invités à profiter pleinement des possibilités offertes par le nouveau cadre financier, en présentant des propositions ambitieuses et précises concernant des projets qui démontrent la valeur ajoutée de l'action au niveau de l'Union européenne.

2.9. Dimension externe de l'espace de liberté, de sécurité et de justice

En décembre 2005, le Conseil «Justice et affaires intérieures» a approuvé la toute première stratégie relative à la dimension externe de l'espace de liberté, de sécurité et de justice[8]. Cette **stratégie** définit une série de priorités thématiques ainsi que des mécanismes de mise en oeuvre. La Commission **met à présent en œuvre les principaux éléments** de cette stratégie par le biais, par exemple, de l'espace commun de liberté, de sécurité et de justice avec la **Russie**, le plan d'action justice et affaires intérieures remanié avec l'Ukraine, ainsi que les plans d'action de la politique européenne de voisinage avec d'autres pays, et surtout en ne cessant d'**approfondir la coopération avec les États-Unis**.

Les progrès en matière de renforcement de l'**État de droit**, dans le cadre de notre coopération avec les pays tiers, **prennent du temps**. C'est pourquoi la Commission et les États membres doivent se concentrer sur **la mise en œuvre** de la stratégie de l'Union européenne **plutôt que**

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[8] «Stratégie relative à la dimension externe de l'espace de liberté, de sécurité et de justice», communication de la Commission COM(2005) 491 du 12.10.2005.

sur son renouvellement ou son actualisation. Les priorités thématiques et géographiques ayant été définies clairement, il convient à présent d'**appliquer effectivement** cette stratégie pour produire des résultats. Dans l'espace de liberté, de sécurité et de justice, des progrès ne sont possibles que si les États membres et la Commission **participent activement** et travaillent de concert. L'élaboration des documents opérationnels concernant respectivement les Balkans occidentaux et le trafic de drogue en provenance d'Afghanistan démontre la valeur de cette coopération. Sur la base des actions engagées depuis la fin de 2005, la Commission fera d'ici à décembre 2006 **rapport sur l'état d'avancement** de la mise en œuvre de cette stratégie. Les accords de réadmission et de facilitation de visa, d'ores et déjà conclus à ce jour avec succès avec des pays partenaires clés de l'UE, tel que la Russie, figurent également parmi les instruments importants dans le domaine liberté, sécurité et justice avec une dimension extérieure. La Commission poursuivra son action dans ce domaine.

2.10. Mise en œuvre et évaluation des politiques en matière de liberté, de sécurité et de justice

Compte tenu du **mandat** donné à la Commission par le programme de La Haye et son plan d'action, du **morcellement** des mécanismes de contrôle et d'évaluation existants, et de la nécessité de fournir à toutes les parties concernées des **informations détaillées** sur la mise en œuvre et les résultats des politiques, la Commission considère que **le moment est venu** de s'employer à mettre en place un **mécanisme cohérent et global d'évaluation** des politiques de l'Union en matière de liberté, de sécurité et de justice, dans un esprit de **partenariat** avec les États membres et les institutions européennes.

Ce mécanisme, qui assurera annuellement le **suivi de la mise en œuvre**[9] de ces politiques et l'**évaluation de leurs résultats**, est décrit dans la communication parallèle à la présente communication, intitulée «Évaluation des politiques de l'Union européenne en matière de liberté, de sécurité et de justice».

3. AMELIORATION DU PROCESSUS DECISIONNEL DANS L'ESPACE DE LIBERTE, DE SECURITE ET DE JUSTICE

3.1. Difficultés récurrentes dans l'espace de liberté, de sécurité et de justice

Les politiques en matière de justice, de liberté et de sécurité **préoccupent au plus haut point nos concitoyens**, comme l'ont récemment montré les débats menés dans le cadre du Plan D (comme démocratie, dialogue et débat) ainsi que les sondages d'opinion. Nos concitoyens souhaitent que l'Union européenne devienne plus efficace non seulement dans la lutte contre la criminalité organisée et le terrorisme, mais aussi dans la gestion des flux migratoires et le contrôle des frontières extérieures.

Malgré ce vif intérêt, les progrès sont lents et l'élaboration des politiques en matière de justice, de liberté et de sécurité au niveau de l'Union européenne se heurte à des **difficultés récurrentes** menant à de nombreux blocages. Le premier rapport annuel sur la mise en œuvre du programme de La Haye, présenté dans la communication parallèle, a démontré que ces difficultés sont principalement liées à la particularité du **processus décisionnel**.

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[9] Tel qu'il est décrit dans la communication intitulée «Renforcer la liberté, la sécurité et la justice dans l'Union européenne: Rapport sur la mise en œuvre du programme de La Haye pour l'année 2005» et présentée parallèlement à la présente communication.

Les décisions concernant la **coopération policière et judiciaire en matière pénale**, notamment, requièrent toujours l'unanimité des États membres. Ce domaine relève d'un **cadre particulier** (titre VI du traité UE), qui applique la **méthode du «troisième pilier»**, caractérisée par:

- des **instruments législatifs spécifiques** (positions communes, décisions-cadres, décisions et conventions) qui compliquent encore sa mise en œuvre;
- des pouvoirs insuffisants conférés au Parlement européen dans le cadre du **processus législatif**;
- une prise de décision à l'**unanimité**, ce qui aboutit souvent à des accords sur le plus petit dénominateur commun;
- un **droit d'initiative partagé** avec chacun des 25 États membres, ce qui ne favorise ni l'émergence d'une véritable «dimension européenne», ni l'exercice de la responsabilité des initiatives législatives des États membres, qui ne sont pas soumises à une analyse d'impact ex ante, et
- un **rôle limité** de la Cour de justice (exclusion des procédures d'infraction; décisions préjudicielles soumises à l'exercice d'un «*opt in*», ce qui concerne à ce jour 14 des 25 États membres, et possibilité de se limiter aux juridictions nationales les plus élevées).
- l'absence de procédures formelles d'infraction permettant de garantir une transposition et une mise en œuvre correctes.

En fait, les discussions menées au Conseil ont récemment montré qu'il était très difficile de progresser au niveau de l'Union européenne dans des domaines tels que la **reconnaissance mutuelle en matière pénale** et la **coopération policière**.

En juin dernier, le Conseil Justice et affaires intérieures n'a finalement pu parvenir à un accord sur la proposition de **mandat européen d'obtention de preuves**, présentée par la Commission, qu'au bout de négociations extrêmement longues et que sur la base du plus petit dénominateur commun, ce qui n'est satisfaisant ni pour la Commission ni pour la plupart des États membres et a une **incidence négative** sur l'application du principe de reconnaissance mutuelle, qui tant dans le programme de Tampere que dans celui de La Haye constitue la pierre angulaire des politiques de l'Union en matière de coopération judiciaire.

Aucun progrès n'a été réalisé non plus ces trois dernières années en ce qui concerne l'adoption de normes minimales pour les **droits procéduraux** applicables dans toute l'Union européenne, tels que le droit à un interprète en cas d'arrestation. Les discussions sur un texte définissant les **infractions à caractère raciste et xénophobe** et condamnant ces infractions de manière uniforme dans toute l'Europe sont également complètement bloquées et gelées depuis près de deux ans, même si certains signes récents laissent penser qu'elles pourraient à présent reprendre.

Enfin, les discussions au sujet d'une proposition de la Commission destinée à autoriser davantage d'**enquêtes et de poursuites transfrontalières** n'ont pas progressé.

Ces difficultés récurrentes touchent également les politiques «communautarisées» en matière de liberté, de sécurité et de justice (titre IV du traité CE), qui conservent leur spécificité en ce qui concerne la compétence de la Cour de justice en matière de **décisions préjudicielles** (article 68 du traité CE) et dans lesquelles l'**immigration légale** et **le droit de la famille** font toujours l'objet de décisions à l'unanimité. Pour ce qui est de l'**immigration légale**, par exemple, les discussions sur la proposition de directive présentée par la Commission en 2001 et relative aux conditions d'entrée et de séjour des ressortissants d'États tiers à des fins d'emploi n'ont pas abouti du fait de l'application de cette règle de l'unanimité. En décembre 2005, la Commission a de nouveau soulevé cette question en présentant un Livre vert et son plan d'action, mais il est aujourd'hui difficile de savoir où ce débat aboutira, si la règle de l'unanimité continue de s'appliquer dans ce domaine.

S'agissant de la **compétence de la Cour de justice des Communautés européennes**, des matières hautement importantes et sensibles telles que l'accès à la justice ou le droit d'asile risquent de ne pas bénéficier du même contrôle juridictionnel ou d'une application uniforme dans toute l'Europe.

3.2. Résolution des difficultés actuelles: les «clauses passerelles»

La Commission estime que le premier bilan de la mise en œuvre du programme de La Haye constitue un moment opportun pour **relancer** et **favoriser** le débat sur la manière d'**améliorer le processus décisionnel de l'Union** ainsi que l'évaluation et la mise en œuvre de la législation en matière de de liberté, de sécurité et de justice. Il convient à cette fin d'**utiliser au mieux les possibilités offertes par les traités actuels**.

La Commission considère que la pleine mise en œuvre des traités actuels permettrait d'améliorer l'**efficacité** et la **cohérence** dans les domaines où la **valeur ajoutée** de l'action au niveau de l'Union européenne est largement reconnue et explicitement réclamée par nos concitoyens qui, ainsi que l'ont confirmé les résultats du dernier sondage Eurobaromètre, demandent **davantage de protection et de sécurité**.

En outre, comme il ressort de sa Communication du 10 mai 2006, la Commission est d'avis que c'est en faisant pleinement usage des traités actuels que l'on créera les conditions nécessaires à la réalisation des **objectifs ambitieux** du programme de La Haye et que l'on permettra sa **mise en œuvre complète**.

Les traités actuels prévoient la possibilité de surmonter les difficultés visées au point 3.1 en recourant aux **«clauses passerelles»** contenues à l'article 42 du traité UE et à l'article 67, paragraphe 2, deuxième tiret, du traité CE.

L'article 42 du traité UE prévoit que le droit d'initiative de la Commission (ou d'un État membre) pour proposer des actions dans les domaines visés à l'article 29 du traité UE (**lutte contre le terrorisme et la criminalité au moyen d'actions dans le domaine de la coopération policière et judiciaire en matière pénale**) relève du titre IV du traité CE et est soumis au même cadre institutionnel que les autres politiques en matière de justice, de liberté et de sécurité «communautarisées». Le Conseil décide à l'**unanimité**, après consultation du Parlement européen, de l'application de l'article 42 du traité UE. Il recommande l'adoption de cette décision conformément aux **règles constitutionnelles des États membres**.

L'article 67, paragraphe 2, deuxième tiret, du traité CE permet au Conseil, statuant à l'unanimité après consultation du Parlement européen, de décider de rendre la **procédure de**

codécision applicable aux **migrations légales**, garantissant ainsi l'exercice d'un véritable contrôle démocratique par le Parlement européen.

L'article 67, paragraphe 2, deuxième tiret, du traité CE fait obligation au Conseil, statuant à l'unanimité après consultation du Parlement européen, d'adapter les dispositions de l'article 68 du traité CE relatives aux compétences de la Cour de justice. Pour ce faire, le Conseil devrait décider d'aligner la **compétence** de cette dernière **en matière de décisions préjudicielles** dans le cadre des politiques en matière de justice, de liberté et de sécurité «communautarisées» sur celle qui est prévue dans le cadre des autres politiques communautaires, garantissant ainsi un rôle renforcé de la Cour de justice[10].

La Commission estime que les **clauses passerelles** constituent un outil dont l'Union et les États membres doivent se servir pour atteindre l'objectif ambitieux consistant à améliorer la prise de décision dans l'espace de liberté, de sécurité et de justice.

La véritable valeur ajoutée des «clauses passerelles» consisterait à appliquer la **méthode «communautaire»** aux politiques dans ce domaine, méthode qui a montré qu'elle pouvait apporter **plus d'efficacité, plus de transparence, et plus de responsabilité**. L'adoption récente par le Parlement européen et le Conseil de la proposition de directive concernant la conservation des données relatives aux communications, présentée par la Commission trois mois auparavant seulement, constitue le meilleur exemple des avantages que présente la méthode «communautaire».

L'application de la méthode «communautaire» présente les avantages suivants:

- accroissement de l'efficacité, de la transparence et de la responsabilité des procédures législatives;
- généralisation des **instruments législatifs communautaires** (règlements, directives et décisions en vertu des traités actuels);
- reconnaissance des pouvoirs législatifs de codécision des représentants des citoyens de l'UE démocratiquement élus au Parlement européen;
- garantie de l'existence d'une "dimension européenne" dans les propositions législatives au travers du droit d'initiative de la Commission, de l'utilisation d'outils d'études d'impact effectifs et de la pleine implication du Parlement européen au moyen de la procédure de co-décision;
- soutien du consensus, mais aussi des réalisations de grande qualité au moyen du **vote à la majorité qualifiée**;
- garantie d'un dialogue judiciaire adéquat avec les juridictions nationales grâce au **mécanisme de renvoi préjudiciel**, et du suivi de la mise en œuvre de la législation par les États membres grâce à la **procédure d'infraction**.

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[10] Étant donné que malgré l'expiration de la période de transition le 1er mai 2004, le Conseil ne s'est toujours pas conformé à l'obligation qui lui incombe d'adapter les dispositions de l'article 68 du traité CE, la Commission adresse au Parlement européen et au Conseil, parallèlement à la présente communication, une communication consacrée à cette question.

En outre, le recours aux clauses passerelles dans les domaines de la coopération judiciaire et policière serait certainement essentiel pour résoudre le problème de la délimitation entre les premier et troisième piliers, qui est loin d'être hypothétique comme l'ont clairement montré les **arrêts récents** de la Cour de justice (dans les affaires concernant **des infractions au droit de l'environnement** et le transfert des données des dossiers **passagers**). Il ne fait aucun doute que l'application d'un **cadre juridique unique** à la résolution de ces questions devrait accroître la sécurité juridique et renforcer l'efficacité.

L'article 42 du traité UE confère, en particulier, une certaine souplesse, notamment en ce qui concerne la définition de la procédure de vote à appliquer dans les domaines passés du titre VI du traité UE au titre IV du traité CE. La Commission considère qu'un travail de réflexion et des discussions doivent être engagés avec les États membres et les institutions européennes en vue d'utiliser au mieux les différentes possibilités offertes par l'article 42.

4. CONCLUSIONS

Les citoyens européens demandent instamment à l'Union européenne de prendre les mesures qui s'imposent pour faire de l'Europe un territoire sûr. L'Union doit être capable de réagir rapidement, tout en veillant à ce que les citoyens européens puissent exercer leurs libertés individuelles.

C'est ensemble que l'Union et les États membres doivent relever ce défi, parce que le terrorisme et la criminalité organisée ne connaissent ni règles ni frontières. La mise en œuvre et la poursuite du programme de La Haye constituent un objectif commun exigeant une prise de décision efficace et des priorités politiques claires.

Il convient parallèlement de définir les prochaines étapes à franchir pour **faire avancer l'intégration européenne** en matière de liberté, de sécurité et de justice ainsi que la **rationalisation des procédures décisionnelles**. De l'avis de la Commission, il s'agit là de l'unique manière de véritablement progresser dans ce domaine politique.

Sur la base de son appréciation de l'état d'avancement de la mise en oeuvre du programme de La Haye, la Commission entend **engager un débat**, **en partenariat** avec les autres institutions européennes et les États membres, sur la manière de faire avancer les politiques en matière de liberté, de sécurité et de justice, afin de répondre aux attentes des citoyens européens et d'améliorer le fonctionnement de l'espace de liberté, de sécurité et de justice.

Sur la base des **résultats du travail de réflexion et des discussions** qui seront menés durant la prochaine présidence finlandaise du Conseil sur les avantages découlant de l'utilisation des traités actuels, **la Commission est prête à prendre des initiatives** en vertu de l'article 42 du traité UE et de l'article 67, paragraphe 2, deuxième tiret, du traité CE[11].

[11] Sans préjudice de l'initiative spécifique prise dans la communication de la Commission visée à la note de bas de page 6 ci-dessus.

EUROOPAN YHTEISÖJEN KOMISSIO

Bryssel 28.6.2006
KOM(2006) 332 lopullinen

KOMISSION TIEDONANTO NEUVOSTOLLE JA EUROOPAN PARLAMENTILLE

Arviointi EU:n politiikasta vapauden, turvallisuuden ja oikeuden alalla

{SEC(2006) 815}

KOMISSION TIEDONANTO NEUVOSTOLLE JA EUROOPAN PARLAMENTILLE

Arviointi EU:n politiikasta vapauden, turvallisuuden ja oikeuden alalla

1. JOHDANTO

1. Haagin **ohjelmassa** (vuodelta 2004)[1] todetaan, että ”kaikkien toimenpiteiden täytäntöönpanon ja niiden vaikutusten arviointi on Eurooppa-neuvoston mielestä olennaisen tärkeää unionin toiminnan tehokkuuden kannalta”. Haagin ohjelman toteutusta koskevassa **toimintasuunnitelmassa** (vuodelta 2005)[2] vahvistetaan poliittinen kehys Euroopan unionin toiminnalle vapauden, turvallisuuden ja oikeuden alalla seuraavien viiden vuoden ajaksi. Toimintasuunnitelman mukaan komissio antaa vuonna 2006 **yleisen tiedonannon** kyseistä toimintaa koskevan arviointimekanismin laatimisesta.[3]

2. Valtion- ja hallitusten päämiehet olivat määrittäneet täytäntöönpanon arvioinnin yhdeksi **keskeisistä välineistä** sen varmistamiseksi, että unionin ja sen jäsenvaltioiden saavuttamat merkittävät tulokset vapauden, turvallisuuden ja oikeuden alueen kehittämisessä pannaan asianmukaisesti täytäntöön ja että niitä tarkistetaan tarvittaessa jatkuvasti, jotta ne vastaisivat **Euroopan kansalaisten tosiasiallisiin odotuksiin**.

3. Kun Haagin ohjelmassa korostetaan arvioinnin merkitystä, tarkoituksena on (1) **parantaa tapaa, jolla politiikka, ohjelmat ja välineet** määritetään yksilöimällä niiden toteutuksessa kohdattavia ongelmia ja esteitä, (2) antaa järjestelmällisempiä sääntöjä **taloudellisesta vastuusta ja politiikan arvioinnista**, (3) edistää **hyvien käytäntöjen** omaksumista ja **vaihtoa** sekä (4) osallistua unionin yhteisen **arviointikulttuurin kehittämiseen**.

Ottaen huomioon (1) Haagin ohjelmassa ja sitä koskevassa toimintasuunnitelmassa saamansa **tehtävän**, (2) nykyisten seuranta- ja arviointimekanismien **hajanaisuuden** ja (3) tarpeen jakaa kaikille sidosryhmille **kattavia tietoja** politiikan täytäntöönpanosta ja saavutetuista tuloksista komissio katsoo, että **nyt on aika** aloittaa **johdonmukaisen ja kattavan mekanismin** luominen EU:n vapauden, turvallisuuden ja oikeuden alalla harjoittaman politiikan **arvioimiseksi yhteistyössä** jäsenvaltioiden ja EU:n toimielinten kanssa.

Mekanismin puitteissa **seurataan** politiikan **täytäntöönpanoa** (ks. lähemmin tiedonanto ”Vapauden, turvallisuuden ja oikeuden lujittaminen Euroopan unionissa –

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1 Brysselissä marraskuussa 2004 pidetyn Eurooppa-neuvoston kokouksen puheenjohtajan päätelmien liite 1.

2 Neuvoston ja komission toimintasuunnitelma vapauden, turvallisuuden ja oikeuden lujittamiseen Euroopan unionissa tähtäävän Haagin ohjelman toteuttamiseksi (EUVL C 198, 12.8.2005, s. 1).

3 Toimintasuunnitelman mukaan on annettava myös tiedonanto Euroopan unionin oikeusasioiden alalla harjoittaman politiikan järjestelmällisestä ja puolueettomasta arvioinnista keskinäisen luottamuksen vahvistamiseksi puuttumatta millään tavalla oikeuslaitoksen riippumattomuuteen. Komissio antaa myöhemmin tämän vuoden aikana tiedonannon, jossa tätä kysymystä käsitellään yksityiskohtaisemmin tässä tiedonannossa vahvistettujen yleisperiaatteiden mukaan.

Kertomus Haagin ohjelman täytäntöönpanosta vuonna 2005", jäljempänä 'Plus-tulostaulu')[4] ja **arvioidaan saavutettuja tuloksia**.

[4] KOM(2006) 333.

2. ARVIOINNIN KÄSITE

4. On tehtävä ero täytäntöönpanon seurantaa ja arviointia koskevien periaatteiden välillä:

   - **Täytäntöönpanon seuranta** koostuu politiikan harjoittamisessa saavutettujen tulosten tarkastelusta.

   - Arvioinnista vuonna 2000 annetussa komission tiedonannossa[5] **arviointi** määritellään seuraavasti: ”*toimenpiteitä koskevien päätelmien teko tulosten ja vaikutusten sekä niiden tarpeiden perusteella, jotka toimenpiteillä pyritään tyydyttämään*”. Arvioinnin päätarkoituksena on antaa poliittisille päättäjille palautetta suunnitellun ja toteutetun toiminnan vaikutuksista ja tehokkuudesta.

5. Komissio tulkitsee toimintasuunnitelmassa tarkoitetun mekanismin välineeksi, jolla seurataan vapauden, turvallisuuden ja oikeuden alalla harjoitetun politiikan täytäntöönpanoa ja arvioidaan sen konkreettisia tuloksia. Tässä merkityksessä arviointi menee politiikan täytäntöönpanon seurantaa pitemmälle ja rakentuu sen varaan tutkimalla täytäntöönpanon vaikutuksia jäljempänä kuvaillulla tavalla. Tämä on Haagin ohjelman mukaista, sillä *”kaikkien toimenpiteiden täytäntöönpanon ja niiden vaikutusten arviointi”* kattaa sekä varsinaisen täytäntöönpanon seurannan että toteutettujen toimenpiteiden tulosten arvioinnin.

6. Komissio ehdottaa tämän perusteella johdonmukaista ja kattavaa pakettia, joka rakentuu kahden pilarin varaan: ne ovat nk. Plus-tulostaulu täytäntöönpanon seurantaa varten ja tässä tiedonannossa ehdotettu **arviointimekanismi**.

7. Tämän tiedonannon mukainen mekanismi perustuu kyseiseen laajaan määritelmään. Komission näkemyksen mukaan kyseisen mekanismin pitäisi mahdollistaa kokonaisvaltaisen käsityksen muodostaminen vapauden, turvallisuuden ja oikeuden alalla saavutettujen tulosten määrästä ja laadusta. Mekanismia käytettäisiin Haagin ohjelmassa vahvistettujen periaatteiden puitteissa. Tämän pitäisi viime kädessä parantaa poliittista päätöksentekoa, kun päätöksentekoprosessin aikana voidaan entistä enemmän ottaa huomioon arvioinnin tuloksiin perustuva järjestelmällinen palaute.

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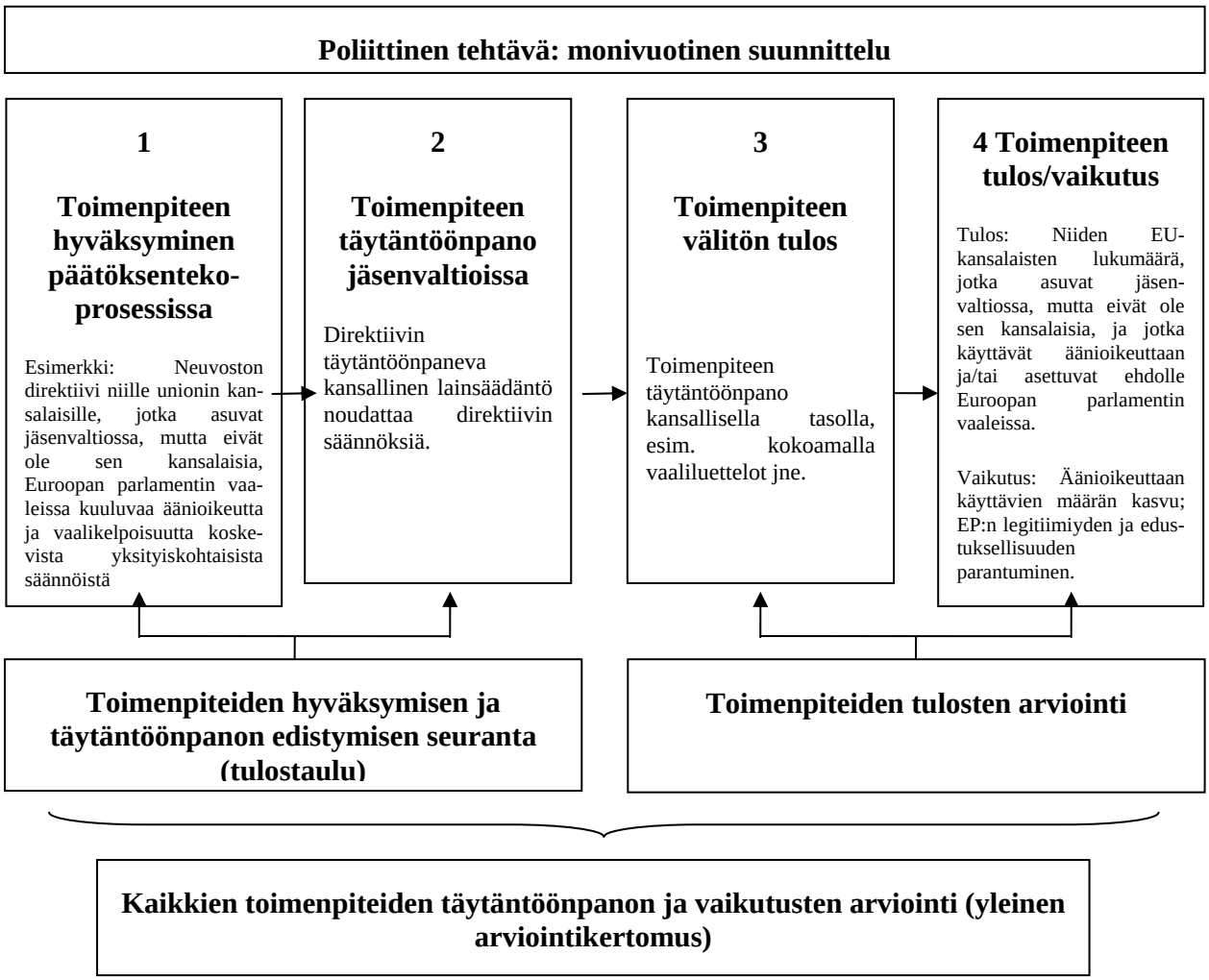
[5] SEC(2000) 1051.

Kaavio 1: Arviointi päätöksentekoprosessin eri vaiheissa



3. ARVIOINTI EU:N POLITIIKASTA VAPAUDEN, TURVALLISUUDEN JA OIKEUDEN ALALLA – TULEVIA HAASTEITA

3.1. Monitahoisia ja kunnianhimoisia poliittisia päämääriä ja järjestelyitä

8. Vapaus, turvallisuus ja oikeus on yksi EU:n **politiikan monipuolisimmista aloista.** Kyseiselle politiikalle asetettuihin tavoitteisiin sisältyy erittäin ajankohtaisia kysymyksiä: henkilöiden vapaa liikkuvuus, terrorismi ja järjestäytynyt rikollisuus, oikeudellinen ja poliisiyhteistyö sekä turvapaikka- ja maahanmuuttopolitiikka. Kaikkien näiden toimien yhteydessä on noudatettava samalla tinkimättömästi perusoikeuksia ja edistettävä unionin kansalaisten oikeuksia. Kansalliseen itsemääräämisoikeuteen liittyvät näkökohdat edellyttävät usein kompromissiratkaisuja EU:n tasolla tai vaikeuttavat toimenpiteiden toteuttamista. Nämä lähtökohdat on sen vuoksi otettava huomioon uudessa arviointimekanismissa.

9. Tätä monitahoista ja kunnianhimoista tavoiteasettelua mutkistavat entisestään lainsäädäntökehykseen toisinaan liittyvät epävarmuustekijät sekä päätöksentekoon ja täytäntöönpanon valvontaan liittyvien menettelyiden moninaisuus.

Mukautuakseen näihin monitahoisiin lähtökohtiin ehdotetun arviointimekanismin on oltava progressiivinen ja siihen on sisällytettävä mahdollisuus **jatkuvaan kehittämiseen ja vahvistamiseen**.

3.2. Aikataulu

10. Komissiolle vapauden, turvallisuuden ja oikeuden alalla annetun erityisaseman ja kyseisellä alalla noudatettavan päätöksentekoprosessin vuoksi eri toimintatavoille on usein laadittava omat **aikataulunsa** ennen kuin niiden kehittäminen voidaan käynnistää ja ne voidaan ottaa täysimääräisesti käyttöön. Oikean arviointivaiheen yksilöiminen **kullekin yksittäiselle politiikanalalle** edellyttää sen vuoksi **tapauskohtaista lähestymistapaa**. Vaikka välittömät ja välivaiheen tulokset otetaan huomioon kaikilla politiikanaloilla, käytännön vaikutusten arviointi voi olla vaikeampaa joillakin aloilla (esim. huumausaine- ja maahanmuuttopolitiikan aloilla).

Ehdotetussa arviointimekanismissa pitäisi olla **riittävästi joustovaraa** eri politiikanalojen arvioimiseksi eriytetysti ja perusteellisesti sen mukaan, kuinka pitkälle niiden kehittäminen ja vahvistaminen on edennyt.

Sen vuoksi näyttää siltä, että ainakin ensimmäisessä vaiheessa on aiheellista keskittyä välittömiin ja välivaiheen tuloksiin. Arviointimekanismin pitkän aikavälin tavoitteeksi on viime kädessä asetettava politiikan kokonaisvaikutusten kartoittaminen.

3.3. Toimielinten ja sidosryhmien osallistuminen

11. Toinen vapauteen, turvallisuuteen ja oikeuteen liittyvä ainutlaatuinen näkökohta on politiikan vaikutus sidosryhmiin. Tällä alalla käytettävässä arviointimekanismissa on otettava huomioon **sidosryhmien odotukset ja prioriteetit** sekä erityisesti se, että joillakin politiikanaloilla, kuten terrorismin ja järjestäytyneen rikollisuuden alalla, **tarvitaan luottamuksellisuutta**.

12. **Kumppanuus**periaatteen mukaisesti komissio **kuulee** jäsenvaltioita ja EU:n toimielimiä sekä **keskustelee niiden kanssa** arviointikertomuksen laadinnan aikana ja sen jälkeen. Jäsenvaltioita ja EU:n toimielimiä kehotetaan sen vuoksi nimittämään **yhteyspisteitä**, joiden tehtävänä on helpottaa vuoropuhelua komission kanssa. Arviointikertomus[6] on **julkinen,** ja se osoitetaan jäsenvaltioille ja EU:n toimielimille.

13. Neuvosto ja jäsenvaltiot sekä komissio ovat ehdotetun arviointimekanismin tärkeimmät toimijat. Euroopan parlamentti toimii tiiviissä yhteistyössä niiden kanssa institutionaalisten toimivaltuuksien ja velvoitteiden mukaisesti. Myös kansalliset parlamentit osallistuvat säännöllisesti annettavien kertomusten arviointiin.

14. Alueiden komitea ja Euroopan talous- ja sosiaalikomitea ovat mukana arviointimekanismin valmistelussa ja toteutuksessa EY:n perustamissopimuksen kattamilla aloilla. Arviointikertomukset toimitetaan automaattisesti komiteoille sen jälkeen kun ne on hyväksytty.

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[6] Vrt. 30 kohta.

15. Mekanismissa varataan tärkeä rooli myös virastoille, kuten Euroopan perusoikeusvirastolle, Euroopan huumausaineiden ja niiden väärinkäytön seurantakeskukselle (EMCDDA), Europolille, Eurojustille ja Euroopan unionin jäsenvaltioiden operatiivisesta ulkorajayhteistyöstä huolehtivalle virastolle. Ne toimittavat arviointiprosessiin saatavilla olevat tiedot ja analyysit. Lisäksi komissio pyytää niiltä kannanottoja arviointikertomuksista.

16. Kansalaisyhteiskunnan panos arviointiprosessiin on erittäin tärkeä. Komissio huolehtii siitä, että kansalaisyhteiskunnan näkemykset otetaan huomioon, ja luo asianmukaiset mekanismit, joiden avulla kansalaisyhteiskunta voi osallistua vapauden, turvallisuuden ja oikeuden alalla harjoitetun politiikan arviointiin.

Ehdotettuun arviointimekanismiin olisi sisällytettävä **avoimia kuulemismekanismeja**, joita voitaisiin käyttää myös tietojen keruuseen ja tarkistamiseen.

3.4. Tilastotietojen saatavuus

17. Tilastotietojen[7] ja niiden edellyttämän analysointikapasiteetin saatavuus on arviointimekanismin kehittämisen **keskeinen osatekijä**. Joidenkin toimintojen (esim. huumepolitiikan) alalla tilastointi on kehitetty pitkälle, kun taas toisilla, kuten rikollisuuden ja rikosoikeuden aloilla[8] tarvitaan vielä lisätyötä. Sen arvioimiseksi, helpotetaanko vai vaikeutetaanko politiikalla ajan mittaan olemassa olevia tarpeita, ja viime kädessä myös päätelmien tekemiseksi politiikan vaikutuksista tarvitaan tilastotietoja niiden tarpeiden kehittymisestä, joihin vapauden, turvallisuuden ja oikeuden alalla harjoitettavalla politiikalla pyritään vastaamaan. Parannettavaa olisi tilastotietojen laadussa, saatavuudessa ja analysoinnissa. Euroopan huumausaineiden ja niiden väärinkäytön seurantakeskuksen (EMCDDA), Europolin, Eurojustin ja myöhemmin toimintansa aloittavan Euroopan perusoikeusviraston työskentelyllä on tässä suhteessa erityisen suuri merkitys. Myös tutkimushankkeet ja -verkostot edistävät tämän tavoitteen saavuttamista.

Samanaikaisesti ehdotetun arviointimekanismin perustamisen kanssa on sen vuoksi parannettava vapautta, turvallisuutta ja oikeutta koskevien **tilastotietojen laatua, saatavuutta ja analysointia**.

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7 Yhteisön tilastojen tuotantoa säännellään yhteisön tilastoista annetulla neuvoston asetuksella. Yhteisön tilastojen laadintaa koskevat toimet toteutetaan yhteisön tilasto-ohjelman ja siihen liittyvien vuosiohjelmien mukaisesti sekä noudattaen Euroopan tilastoja koskevien käytännesääntöjen periaatteita.

8 Komissio aikoo tätä varten vahvistaa EU:lle suunnitelman rikollisuuden ja rikosoikeuden mittaamista koskevan kattavan ja johdonmukaisen strategian kehittämiseksi. Tavoitteena on viime kädessä kehittää yhteisön tilastot, jotka perustuvat yhdenmukaistettuihin määritelmiin ja tiedonkeruu- ja raportointijärjestelyihin.

4. ARVIOINTI EU:N POLITIIKASTA VAPAUDEN, TURVALLISUUDEN JA OIKEUDEN ALALLA – STRATEGISTA ARVIOINTIMEKANISMIA KOSKEVA EHDOTUS

4.1. Arviointimekanismin kuvaus

18. Vapauden, turvallisuuden ja oikeuden alalla käyttöön otettavaksi **ehdotettu strateginen arviointimekanismi perustuu** EU:n muilla politiikanaloilla saavutettuihin **kokonaistuloksiin**. Mekanismi on tarkoitus rakentaa liitteessä 2 kuvailtujen **nykyisten käytäntöjen** varaan, ja erityisesti rahoitusohjelmien tapauksessa on tarkoitus käyttää nykyisten arviointivaatimusten mukaan kerättyjä tietoja. Myös muilla osa-alueilla, joilla on jo saatavilla tietoja, kiinnitetään erityishuomiota jo saatavilla olevien tietojen käyttöön ja **toimien päällekkäisyyden välttämiseen**.

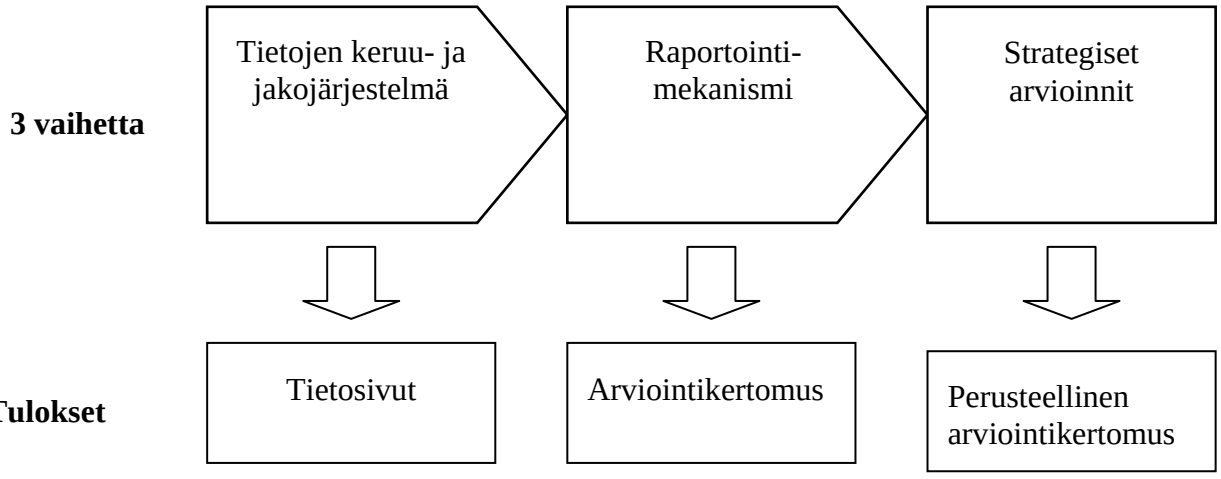
19. Ehdotetaan, että otetaan käyttöön **kolmivaiheinen progressiivinen** mekanismi:

(1) Ensiksi perustetaan tietojen keruu- ja jakojärjestelmä.

(2) Toisessa vaiheessa otetaan käyttöön **raportointimekanismi** kyseisten tietojen kokoamista, käyttöä ja analysointia varten.

(3) Kolmannessa vaiheessa lisätään kohdennetut **perusteelliset strategiset arvioinnit**.

Kaavio 2: Mekanismin kolme vaihetta



20. Mekanismi kattaa vapauden, turvallisuuden ja oikeuden alalla harjoitettavan politiikan kaikki osa-alueet.[9]

21. Arviointikertomukset[10] toimitetaan neuvostolle ja Euroopan parlamentille sekä myös Euroopan talous- ja sosiaalikomitealle ja alueiden komitealle. Ne asetetaan

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[9] Ehdotetun mekanismin kolmannessa vaiheessa voitaisiin edelleen käyttää liitteessä 2 olevassa 2.3.2 kohdassa kuvailtua vertaisarviointimekanismia. Nykyisen toimielinjärjestelmän kehittymisestä riippuen komissio voisi hallinnoida kyseistä mekanismia myöhemmässä vaiheessa. Komissio täydentää mekanismia joka tapauksessa Euroopan unionista tehdyn sopimuksen VI osaston soveltamisalaan kuuluvilla aloilla laatimillaan perusteellisilla strategisilla arvioinneilla.

[10] Vrt. 30 kohta.

mahdollisesti saataville myös laajemmin muun muassa tätä varten järjestettävissä yleisötapahtumissa.

22. Asettamalla entistä enemmän painoarvoa arviointien tulosten raportoinnille ja jakamiselle mekanismissa pyritään viime kädessä edistämään tulosten konkreettista käyttöä päätöksentekoprosesseissa.

23. Mekanismi on komission nykyisten arviointiohjeiden ja arviointia koskevien yleisperiaatteiden mukainen.

4.1.1. Tietojen keruu- ja jakojärjestelmä

24. Tietojen keruu- ja jakojärjestelmä perustuu **tietosivuihin** (yksi kustakin politiikanalasta), joiden täyttäminen on jäsenvaltioiden toimivaltaisten viranomaisten tehtävä. Aloilla, joista on jo saatavilla tietoa vastaavassa muodossa, komissio **täyttää** mahdollisuuksien mukaan tietosivut **ennakkoon**. Tietosivuista järjestetään samaan aikaan **kuulemiskierros** asianomaisten sidosryhmien[11] ja kansalaisyhteiskunnan edustajien keskuudessa. Kuulemiset järjestetään kullakin politiikanalalla erikseen, ne perustuvat **toiminnassa oleviin verkostoihin** ja kuulemismekanismeihin ja niissä otetaan asianmukaisesti huomioon tiettyjä aloja koskevat luottamuksellisuusvaatimukset.

25. Tietosivuilla ilmoitetaan kunkin alan **kokonaistavoite** ja **pääasialliset välineet** (lainsäädäntö- ja muut kuin lainsäädäntövälineet sekä rahoitusvälineet) sen saavuttamiseksi. Mekanismissa olisi esitettävä selkeä yleiskatsaus **saavutuksista**.

26. Tietosivuilla esitellään myös kutakin politiikanalaa koskevia **indikaattoreita**. Nämä liittyvät selkeästi kyseisen politiikanalan kokonaistavoitteeseen. Tietosivut ovat erottamaton osa **kuulemisprosessia**, joka järjestetään tämän tiedonannon julkaisemisen jälkeen ja saatetaan päätökseen yhteistyössä jäsenvaltioiden kanssa. Tämän tiedonannon liitteessä 1 on esimerkkejä ehdotetuista tietosivuista.

27. Komissio aikoo pyytää kutakin jäsenvaltiota nimittämään kansalliset **yhteyspisteet**. Yhteyspisteillä on tärkeä rooli vastausten koordinoinnissa kansallisella tasolla ja ne työskentelevät yhteistyössä komission yksiköiden kanssa.

28. **EU:n lainsäädännön** tapauksessa tietosivuilla käytetyissä indikaattoreissa ja luokitusjärjestelmässä keskitytään lainsäädännön käytännön soveltamisesta saatuihin konkreettisiin tuloksiin eikä siihen, miten EU:n lainsäädäntö on saatettu osaksi kansallista lainsäädäntöä tai mitkä ovat sen vaikutukset kansallisiin oikeusjärjestelmiin. Viimeksi mainitut ovat Plus-tulostaulun pääasiallisia arviointikohteita, sillä siinä arvioidaan säädösten saattamista osaksi kansallista lainsäädäntöä ja täytäntöönpanoa eikä niinkään niiden varsinaisten tavoitteiden saavuttamista.

29. EU:n **rahoitusohjelmien** osalta tietosivut on laadittu sellaisten **aiempien täytäntöönpano- ja arviointikertomusten** perusteella, jotka on annettu varainhoitoasetuksessa ja asianomaisessa oikeusperustassa säädettyjen velvoitteiden

[11] Ks. jakso 3.3.

täyttämiseksi. Tietosivuilla pyydetyt tiedot rahoitusohjelmista ovat todennäköisesti jo saatavilla, joten jäsenvaltioilta tarvittaneen hyvin vähän lisätietoja.

4.1.2. Raportointimekanismi

30. Saatuaan tietosivut ja kuultuaan eri sidosryhmiä komissio vahvistaa saamansa tiedot ja laatii **arviointikertomuksen**, jossa se esittää tiedoista laatimansa yhteenvedon ja analysoi niitä. Arviointikertomuksessa esitetään myös **menettelytapoja koskevia suosituksia** tietojen kattamista politiikanaloista.

31. Tarkoituksena on arvioida politiikkaa, jota on harjoitettu vapauden, turvallisuuden ja oikeuden alalla EU:n tasolla, sekä kartoittaa alat, jotka soveltuvat **perusteelliseen strategiseen arviointiprosessiin**.

4.1.3. Strategiset arvioinnit

32. Arviointikertomuksen ja lisäkuulemisten jälkeen jotkin **valikoidut alat** voidaan ottaa **perusteellisten strategisten arviointien** kohteiksi. Arviointien tarkoituksena on tuottaa tarvittaessa hyödyllistä ja ajankohtaista tietoa kullakin politiikanalalla tehtäviä päätöksiä varten.

33. Strategisten arviointien olisi tuotava lisäarvoa liitteessä 2 kuvailtuihin nykyisiin käytäntöihin muun muassa:

(a) keskittymällä **politiikanaloihin** (tai yhtenäisiin alaryhmiin) eikä niinkään yksittäisiin välineisiin (esimerkiksi yhteisen maahanmuuttopolitiikan arviointiin);

(b) analysoimalla tietyllä politiikanalalla käytössä olevien eri välineiden **johdonmukaisuutta** (esim. kuinka rahoitusohjelmat tukevat ja helpottavat EU:n lainsäädännön täytäntöönpanoa tietyllä alalla);

(c) tutkimalla, kuinka tietyllä politiikalla edistetään vapauden, turvallisuuden ja oikeuden alueen perustamista koskevan **kokonaistavoitteen** saavuttamista;

(d) määrittämällä, kuinka kyseisen yleistavoitteen saavuttamisessa on **edistytty** kokonaisuutena tarkasteltuna; sekä

(e) arvioimalla vapauden, turvallisuuden ja oikeuden alalle asetetun kokonaistavoitteen saavuttamista (esimerkiksi perusoikeuksien turvaaminen).

4.2. Arviointitiheys ja seuranta

34. Määrätty arviointitiheys mahdollistaa edistymisen säännöllisen seurannan ja vertailun. Aikataulun osalta ehdotetaan, että arviointi (tietosivut ja arviointikertomus) toteutettaisiin **kaksi kertaa viiden vuoden välein**. Komissio käyttää mahdollisimman laajasti jo saatavilla olevia tietoja.

35. Ehdotuksessa otetaan huomioon se, että mekanismi:

(a) olisi otettava **säännölliseen käyttöön**;

(b) ei saisi olla liian raskas;

(c) ei edellytä vuotuista käyttöä, sillä siinä keskitytään hitaasti kehittyvien tulosten sekä keskipitkän aikavälin tietojen seurantaan;

(d) olisi sovitettava yhteen **aiempien** strategisten ja monivuotisten suunnitelmien kanssa.

36. Ehdotettu aikataulu mahdollistaisi erityisesti sen, että neuvosto ja komissio voivat käyttää arviointikertomusten tuloksia arvioidakseen tarvetta strategisen lisäohjelman laatimiseen vuonna 2009 Haagin ohjelman voimassaolon päättymisen jälkeen.

37. Arviointikertomuksen julkaiseminen kahden tai kolmen vuoden välein mahdollistaa mekanismin mukauttamisen ajallisesti viiden vuoden kiertoon. Tämä helpottaa arvioinnin tulosten laajempaa ja strategisempaa käyttöä päätöksenteossa. Siirtymäkausi kattaa vuodet 2006–2007 (ks. taulukko jäljempänä).

38. Jotta arviointi voidaan sovittaa yhteen Plus-tulostaulun kanssa, tietosivut on tarkoitus lähettää jäsenvaltioille vuoden 2006 lopulla ja arviointikertomus pyritään julkaisemaan samaan aikaan toisen Plus-tulostaulun kanssa vuoden 2007 puolivälissä.

Aikataulu	**Plus-tulostaulu (PT)**	**Tarkastelumekanismi**	**Toimintasuunnitelma**
2005			Haagin toimintasuunnitelma hyväksytään
2006	PT + 1		Täytäntöönpanon väliarviointi (vuoden 2006 loppu)
2007	PT + 2	Arviointikertomus 1	Ensimmäinen tarkistus
2008	PT + 3		
2009	PT + 4	Arviointikertomus 2	
2010	PT + 5		Haagin ohjelman voimassaolo päättyy
2011	PT + 6		
2012	PT + 7	Arviointikertomus 3	
2013	PT + 8		
2014	PT + 9	Arviointikertomus 4	

(Siirtymäkausi on merkitty harmaalla)

39. Liitteenä olevassa vaikutusarvioinnissa on arvio **jäsenvaltioille aiheutuvista lisähallintokuluista**. Jäsenvaltioita kannustetaan pyrkimään komission tuella

tietojen vertailukelpoisuuteen ja paikkansapitävyyteen. Eräiden oikeudellisten välineiden viimeaikaisesta arvioinnista saatu kokemus osoittaa, että politiikkaa koskevat perustiedot eivät aina ole yhdenmukaisia eivätkä paikkansapitäviä. Neuvoston tai komission tapauskohtaisia arviointeja vapauden, turvallisuuden ja oikeuden alalla harjoitetusta politiikasta voidaan käyttää lisätietolähteinä.

40. Tämä tiedonanto käynnistää **keskipitkän aikavälin prosessin**. Ehdotetun mekanismin ja tietosivujen esitystapa mahdollistaa niiden kommentoimisen ja parantamisen osana tämän tiedonannon jatkotoimia. Tätä varten järjestetään laaja kuulemismenettely, johon sisältyy muun muassa syksyllä pidettävä kuulemistilaisuus.

41. Mekanismia **arvioidaan** viiden vuoden kuluttua, jolloin tehdään päätös siihen mahdollisesti tehtävistä muutoksista ja parannuksista. Arvioinnissa tarkastellaan kaaviossa 2 esitettyjä tuloksia. Arvioinnissa käytetään vertailukohtana 3 jaksossa mainittuja tavoitteita.

5. PÄÄTELMÄT

42. Komissio katsoo nykytilanteen ja Haagin ohjelman myötä saamansa toimeksiannon perusteella, että on tarpeen ottaa käyttöön **johdonmukainen ja kattava** mekanismi vapauden, turvallisuuden ja oikeuden alalla toteutettavan EU:n politiikan **arviointia varten.** Mekanismin on oltava **progressiivinen** ja siinä on otettava huomioon **jatkuvasti kehittyvä institutionaalinen ja oikeudellinen kehys**. Näin voidaan edistää ja tehostaa vapauden, turvallisuuden ja oikeuden alalla harjoitettavaa politiikkaa.

43. Mekanismi tarjoaa keinot koota yksittäisten arviointien tulokset johdonmukaiseksi kokonaisuudeksi, josta voidaan välittää tietoa poliittisille päätöksentekijöille asianmukaisella tasolla. Ehdotetun mekanismin avulla poliittiset päättäjät saavat myös **relevanttia tietoa** riittävän ajoissa voidakseen kehittää sopivia jatkotoimia Haagin ohjelmalle, jonka voimassaolo päättyy vuonna 2009.

44. Komissio ja neuvosto huolehtivat ehdotetun mekanismin toteutuksesta institutionaalisten toimivaltuuksiensa mukaisesti ja tiiviissä yhteistyössä Euroopan parlamentin kanssa. Arviointimekanismin tehokas kehittäminen ja käyttö edellyttävät EU:n toimielinten ja jäsenvaltioiden **yhdenmukaistettua toimintaa** ja **kokonaisvaltaista sitoutumista**. Myös kansallisilla viranomaisilla on keskeinen rooli tässä suhteessa.

45. Arviointimekanismin tarkoituksena on tehostaa unionin harjoittamaa toimintaa ja tukea **parempaa sääntelyä ja EU:n toiminnan avoimuutta** koskevien strategisten tavoitteiden saavuttamista.

ANNEX 1

Factsheet of JLS policies

POLICY AREA: EXTERNAL BORDERS, VISA POLICY AND FREE MOVEMENT OF PERSONS
Factors influencing evaluation mechanism: well established policy area, 1st pillar activities, there is a strong consensus amongst stakeholders for EU level action; there is a mix of instruments (legislative activities, co-operation activities, programme funding, functioning Community Agency, IT systems); possible to construct evaluation indicators, but might be hard to measure outcomes and results and causal links in practice. Methods to evaluate controls at borders are improving, including available administrative information and statistics. Some constraints on fully independent evaluation. There are strong interlinkages between the instruments within the ABB activity and strong potential for 'thematic' evaluation examining instruments in parallel.
Policy sub-area 1: External borders
Objectives: Develop an integrated external border management system Ensure uniform high standards of border checks and border surveillance at EU external borders Reduce number of illegal cross border movements of people Further 'burden sharing' in management of external borders
Policy sub-area level indicators: The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of all third country national border crossings into EU (*Source: Commission - Eurostat statistics on asylum and migration*) The difference between the numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of

all third country national border crossings into EU through the most permeable and least permeable border. Note that this indicator would require to define the most and least permeable EU border. The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally (*Source: Commission - Eurostat statistics on asylum and migration*) The proportion of all resource commitments to external border management originating in countries without EU external borders *(Source: MS)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS.

European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX)	Improvement of operational cooperation between Member State authorities Increased competences of border guards	Co-operation with Agency and responses to good practice, training and other advice.	Operational cooperation *Measured by:* Number of joint operations and pilot projects carried out *(Source: Agency)* Development of risk analysis *Measured by:* Number of risk analyses carried out *(Source: Agency)* Increased training *Measured by*: Number of border guards trained Number of training courses and	Improvement of border control *Measured by:* Effective joint operations *(Source: Agency)* Increased intelligence *Measured by:* Use of risk analyses by national services *(Source: MS)* Better trained border guards *Measured by:* Use of newly acquired skills *(Source: MS)*	Improved resource deployment at external borders (due to better intelligence) Reduced permeability of external borders (due to better trained staff)	Difficult to assess causality of intervention. Evaluation methods – case studies, follow up surveys. EU leading the evaluation. (Other EU Agency evaluations have tended to be process rather than impact oriented)

			seminars offered *(Source: Agency)*			
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national authorities To improve the overall efficiency of national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted *(Source: Commission)*	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed by July 2006.

	administrations in their tasks					
Teams of national experts	Further objectives of FRONTEX agency: Better deployment of resources in circumstances requiring special assistance Increased competences of border guards	Secondment of experts to teams.	Provision of technical and operational assistance. *Measured by:* number of assignments carried out by teams *(Source: Agency)*	Improved practice in border surveillance. *Measured by:* use of results of teams' work in border surveillance and efficiency of teams work *(Source: Agency and MS)*	Reduced permeability of external borders (due to assistance to staff) Facilitated legitimate travel	Evaluation methods – case studies, qualitative analysis.
Policy sub-area 2: Visa policy and free movement of persons						
Objectives: Prevent illegal immigration and threats to public order Reduce time taken and costs of acquiring visas for legitimate travellers. Reciprocation with third countries on visa waivers. Reduce number of visas given to travellers who become overstayers and illegal migrants Abolish controls at internal EU borders						

Policy sub-area level indicators:

The average time taken from application to receipt of (a particular class of) visa *(Source: MS, VIS)*

The average costs (fees) for (a particular class of) visa *(Source: MS, VIS)*

The number of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission)*

The total population of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission*)

The number of EU internal border crossings that are subject to controls *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Common application centres (for Schengen countries)	Render the reception of visa applications more efficient through a better allocation of resources. Reduce costs in relation to capturing of biometrics. Harmonisation of reciprocal	Commitment to the centres. Participation in setting up the centres.	Number of centres established and MS involved *(Source: MS).* Number of visas issued through the centres *(Source: MS).*	Increased efficiency of providing visa services. *Measured by:* time taken to issue visas *(Source: MS)* *(Source: MS).* Improved use of visa related	Reduced costs to visa applicants. Reduced costs to administrations. Increased bone fide travel.	Evaluation method – efficiency analysis. Potential evaluation leadership from the MS and use of peer review process.

	procedures by MS			information *(Source: MS).*		
Visa Information System	Improve the implementation of the common visa policy by the exchange of visa data between Member States, in order to prevent visa shopping, to facilitate the fight against fraud, checks on visas, to assist in the identification of illegal immigrants, to facilitate the application of the Dublin II Regulation and to contribute to the prevention of threats to internal security.	Implementation at the national level, including the development/adaptation of national systems.	Number of number of visas refused, annulled, revoked, processing times *(Source: Commission).* Availability rate *(Source: Commission)*	Retention and sharing of data from visa applications and related decisions. *Measured by:* number of entries in VIS *(Source: Commission).* Measured: number of analyses conducted using VIS data *(Source: Commission).*	Improvement of application procedures, of checks at the external borders and within the Schengen territory, of the application of the Dublin II Regulation, of the identification of illegal immigrants and of the detection of fraud. Facilitated legitimate travel.	Monitoring and evaluation, by the Commission at EU level.
The reciprocity mechanism (Council Regulation	To ensure EU citizens can travel without a visa to all third countries whose nationals	Co-operation with the Commission, information sharing on bilateral dialogue with	Number of third countries who have waived visa requirements for EU nationals	Improved reciprocity measured by percentage of decrease of non-	Facilitated legitimate travel for EU travelers	Diplomatic efforts on EU level vis-à-vis third countries concerned.

851/2005)	don't need a visa to travel to the EU.	third countries	*(Source: Commission)*	reciprocity cases Improved dialogue and diplomatic contacts with third countries		The first Report of the Commission on reciprocity in visa waivers was adopted on 10 January 2006
Council Regulation on a Border code	To implement common rules governing the movement of persons across borders, to include both rules on checks at external borders and rules on the removal of checks on persons at internal borders and the reintroduction of such checks in certain circumstances. To improve integrated border management	Application in MS that apply the Schengen acquis	Harmonisation of rules governing the movement of persons at internal and external borders *(Source: Commission)*	Improved border management and control	Improved control of external borders Facilitated travel within the Schengen acquis	This regulation was adopted recently – February 2006.

POLICY AREA: CITIZENSHIP AND FUNDAMENTAL RIGHTS
Factors influencing evaluation mechanism: Relatively new policy area in JLS (although the citizenship policy as such is an established area in the EC/Commission activities), 1st pillar activities, a combination of instruments (legislation, funding programmes, new Community Agency). The nature of the instruments and their objectives leads to reliance on qualitative evaluation methods. However, there is scope for further improvements to the information base through surveys and the development of statistics. The objectives within the policy area are wide ranging and the sub policy areas as defined below are not distinct. There is some scope for evaluating sub sets of instruments in parallel.
Policy sub-area 1: Citizenship of the Union
Global objectives: Increase awareness of Union citizens of their rights and of the ways these can be enforced Decrease any obstacles for the enjoyment of their rights by Union citizens, in particular of the right to free movement and residence Increase participation of EU citizens in democratic life in the Union Facilitate the diplomatic and consular protection offered to the Union citizens in third countries
Policy sub-area level indicators: Levels of citizens' awareness of their rights and mechanisms of redress *(Source: Surveys and Eurobarometer reports)* Instances of right to free movement and residence hindered *(Source: complaints made to Commission)* Rates of voting registration and participation – percentage of increase/decrease *(Source: Member States)* Number of citizens standing for election to public office – percentage of increase/decrease *(Source: Member States)*

Instances of use and complaints from EU citizens over levels of consular protection *(Source: Member States)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Directive 2004/38/EC on free movement and residence	Clarify and simplify existing Community law in field	Transposition into national legal systems	Relevant national laws adopted in line with Directive provisions and notified the Commission by 30.4.2006 together with a table of conformity. *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the Directive *(Source: Commission)*	Facilitated free movement and residence	Evaluation leadership by the EU. Would benefit from strong involvement of MS in evaluation
Community legislation on the EP elections and on the right of non-national Union citizens' electoral rights in their country of residence	Ensure that the EP elections are conducted according to the basic principles of democratic elections Ensure the participation of non-national Union citizens to the EP elections and to the	Transposition into national legal systems	Relevant national laws adopted in line with provisions of Community law and notified to the Commission *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the legislation *(Source: Commission)*	EP elections carried out democratically. Non-national Union citizens participate in the elections on the same conditions as nationals in EP elections and in municipal	

	municipal elections				elections.	
Fundamental Rights and Citizenship programme (part Citizenship)	Improve awareness of citizenship of the Union and related rights Encourage citizens to participate to actively to democratic life	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring system)*	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Dissemination of good practice in voter education and activation. *Measured by:* level of awareness of Programme's outputs *(Source: MS)*	Improved awareness of Union citizenship and related rights amongst EU citizens. Increased participation in democratic life.	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.
Policy sub-area 2: Fundamental Rights						
Global objectives: Increase the awareness of fundamental rights amongst citizens. (This concerns the rights as protected on European Union and national level including the relevant regional and international instruments.) Decrease instances of breaches of fundamental rights (including breaches of privacy, personal data protection and protection from violence against						

children, women and youth)

Reduce the instances of racism, anti-semitism and xenophobia

Establish a Fundamental Rights Agency (from EUMC)

Increase number of participants in and their commitments to civil society

Policy sub-area level indicators:

Levels of citizens' awareness of fundamental rights *(Source: Surveys and Eurobarometer reports)*

Instances of breaches of fundamental rights, especially as a result of EU interventions (including breaches of privacy, personal data protection and protection from violence against children, women and youth) *(Source: Commission and FR Agency)*

Instances of racism, anti-semitism and xenophobia *(Source: FR Agency)*

Time commitments of population to participation in civil society *(Source: MS)*

Number of civil society organisations in NMS since accession *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Relevant provisions of the Treaties on European Union and on European Community	Ensure that the EU institutions and the Member States fully respect fundamental rights	Compliance of the national legislation and practices with the fundamental rights	Community legislation as well as implementing national laws adopted in compliance with the Treaty	Correct application of rights and principles contained in the Treaty *Measured by:* number of court	Decreased level of breaches of FR Increased protection of rights of citizens	

				cases/complaints resulting from the legislation *(Source: Commission*		
Fundamental Rights and Citizenship programme (part Fundamental Rights)	Improve awareness of FR as protected on European and national level Improve research base Improve intensity and quality of interfaith and intercultural dialogue in MS Improve tolerance in the EU Improve quality of civil society organisations Improve rule of law Decrease breaches	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring* system)	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Improved awareness of FR amongst EU citizens Stronger civil society in the MS	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.

	of FR in MS					
Preparatory action to support civil society in the NMS in areas of rule of law, democracy, FR, media pluralism, fight against corruption.	Improve quality of civil society organisations in NMS Improved rule of law in NMS Improve democracy in NMS Decrease breaches of FR in NMS	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of beneficiaries reached *(Source: programme monitoring system)*	Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Stronger civil society in the NMS	Clear intervention logic but difficult to measure outcomes and impacts, in part because of the scale and scope of the underlying objectives. Strong involvement of MS in evaluation
Daphne II programme	Reduce violence against children, adolescents and women	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of good practices identified *(Source: programme monitoring system)*	Increased awareness of the issues in wider society *(Source: public opinion surveys, Commission)* Adoption of good practice in tackling violence *(Source: MS).* Better intelligence	Reduced violence against children, adolescents and women	Evaluation leadership by the EU. Major problems of data reliability at the level of impacts.

			Number of 'beneficiaries' and victims reached *(Source: programme monitoring system)*	base. *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Number of knowledge and practitioner communities created *(Source: Commission).* Number of improved facilities for victims *(Source: programme monitoring system)*		
Fundamental Rights Agency	Improve the availability, quality, and comparability of information on respect and promotion of FR.	Participation in Agency's activities	Provision of data and analyses of FR. *Measured by:* number of analytical outputs *(Source: Agency)*	Better intelligence base. Measured by: use of analytical results by policy makers *(Source: Agency and Commission)*	Decreased level of breaches of FR	Evaluations of EU agencies have tended to focus on process issues. Whilst objectives are clear it will be difficult to assess

	Improve co-ordination between stakeholders Improve public awareness of their FR		Number of reporting activities *(Source: Agency).* Number of networks of stakeholders supported *(Source: Agency).*	Better co-ordination of activities. Increased public awareness *(Source: public opinion surveys, Agency and Commission).*		causality and measure the impacts of the agency.
Data Protection Directive	Facilitate the free movement of personal information within the EU Protect rights of individuals Conclude agreements with third countries	Transposition of Directive into national legal systems Establishment of National Data Protection Supervisory authorities	Relevant national laws adopted pursuant to the Directive provisions *(Source: MS and Commission)*	Application of rules and provisions contained in the law. *Measured by:* - Appropriate enforcement mechanisms and remedies available to ensure respect for the law and assistance to individuals through: a) Judicial remedies b) Intervention of data protection	Facilitated movement of personal information within the EU Harmonised protection of individuals at a high level (both inside the EU and in third countries for personal data transferred from the EU)	Evaluation leadership by the EU but in partnership with MS

				supervisory authority (ex officio or following complaints) *(Source: MS)*		

POLICY AREA: COORDINATION IN THE FIELD OF DRUGS

Factors influencing evaluation mechanism: Activities in this policy area are cross pillar and cover a variety of areas, including health, police cooperation, information, evaluation and coordination.

The EU Drug Action Plan and EU Drug Strategy are very important documents endorsed by the Council as the basic policy framework for all drugs issues within the EU and within the context of the EU's external relations. They cover all activities in this policy area and provide the guidelines for all Member States to implement the objectives and actions they contain into national policy. The Action Plan takes its lead from the objectives of the EU Drug Strategy and translates these objectives into 80 concrete actions. It concentrates on the two major aspects of drug policy, demand reduction and supply reduction, and also covers a number of cross-cutting themes: international cooperation, research, information and evaluation. It includes actions within EU competence (public health, precursor control, money laundering and development aid) as well as close cooperation between Member States and partnerships with international organisations.

The Action Plan furthermore covers monitoring and evaluation and includes assessment tools and indicators for each action. The actions covered by the Action Plan are subject to an annual progress review by the Commission's services. Evaluation in this area is already well-established through the methods and indicators developed during the evaluation of the previous EU Drugs Strategy and Action Plan. Reliable data is available from the European Monitoring Centre on Drugs and Drug Addiction, Europol and the Commission. As with other policies relating to complex, global socio-political issues, the evaluation of the impacts of EU drug policy is a problematical and sensitive matter due to the multiple factors that have to be taken into account and for which there may not be reliable data by their very nature (e.g. figures for trafficking in illicit drugs are always rough estimates; corruption caused by trade in drugs is hidden, etc.).

Objectives:

To significantly reduce the prevalence of drug use among the population and to reduce the social harm and health damage caused by the use of and trade in illicit drugs, and to strengthen international cooperation (EU Action Plan on Drugs 2005-2008)

Policy-level indicators:

The EU Action Plan contains the major legal instruments such as the Council Decision on the information exchange, risk assessment and control of new psychoactive substances, or the Framework Decision on penalties for drug trafficking. It also contains the assessment tools and indicators required for the evaluation process of these instruments and all other actions. These have been drawn up in cooperation with the

EMCDDA and Europol, who will help the Commission to keep track of implementation.

On this basis the Commission will publish an Annual Progress Review and if necessary propose adjustments. Responsibility for implementation of actions and deadlines are clearly indicated in the Plan. To keep implementation on track, targets whose deadlines have passed or are unlikely to be met will be subject to recommendations for their implementation or identification of failure to implement. The Commission will carry out an impact assessment in 2008 in view of proposing a second Action Plan for 2009-2012. A final evaluation of the Strategy and the Action Plans will be carried out by the Commission in 2012. These evaluations will go beyond the strict confines of the Action Plan and will include, on the basis of the work of the EMCDDA and Europol, a general view of the evolution of the drugs situation in Europe.

POLICY AREA: COMMON IMMIGRATION AND ASYLUM POLICIES
Factors influencing evaluation mechanism: New policy area. 1st pillar activities. Interventions include legislation, programmes and cooperation activities. Good, comparable data is required and is planned. MS consensus about broad aims but not at individual instrument level. Impacts of these instruments on third-countries, and in particular development countries, to be considered.
Policy sub-area 1: Common European Asylum System
Objectives: To establish a common asylum procedure and uniform status, To facilitate practical and collaborative cooperation,

To address pressures on asylum systems and reception capacities.						
Policy sub-area level indicators: Number of asylum seekers applying for asylum in Member States other than the country of first entry *(Source: Eurodac)* Instances of MS breaching minimum defined standards *(Source: Commission)* Differences in standards of reception between Member States *(Source: Commission)* Differences between Member States with regard to the average time taken to determine the outcome of an application for asylum *(Source: MS and Commission)* Comparison of asylum acceptance rates among Member States[12] *(Source: Commission - Eurostat)* Differences in the level of capacity per Member State (asylum systems and reception facilities) relative to needs *(Source: Member States)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for	To reduce 'asylum shopping' To increase responsibility sharing among	Adoption of measures implementing the Regulation at national level	Number of take back requests *(Source: Commission – Eurostat)* Number of applicants sent to another Member State *(Source:*	Decreased delay in the examination of claims and attribution of responsibility *Measured by:*	Increased sharing of responsibility Greater efficiency and effectiveness in implementing decisions on transfers	Numbers are available through Eurodac which allows for an assessment of trends. Evaluation of the 'Dublin

[12] Asylum acceptance rates can at the moment only be roughly estimated with the data currently available, as asylum decisions in one year often relate to applications made in earlier years.

determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national)	MS. To increase efficiency by granting MS a realistic period in which to implement decisions on transfers.		*Commission – Eurostat)* Number of multiple claims *(Source: Commission – Eurostat)* Number of registered irregular entrants *(Source: Commission – Eurostat)* Proportion of cases dealt within country of entry *(Source: Commission – Eurostat)*	*a*verage delay of examination before and after implementation of the Regulation *(Source: MS)* Decreased delay to implement decisions on transfers *Measured by:* average delay of transfer before and after *(Source: MS)*	Reduction of persons making multiple claims	System' will be ready in June 2006.
Eurodac	To facilitate application of the Dublin Regulation by identifying asylum seekers and persons who have entered the EU irregularly. To determine whether a	Member States to send required data to central unit.	Efficiency of the system *Measured by:* Number of records per Member State *(Source: Eurodac)* Number of successful and rejected transactions recorded in the system *(Source:*	Increased number of asylum applications being examined in the first country of asylum/entry *Measured by:* Percentage rate of change before	Improved efficiency in applying the Dublin Regulation	Difficult to judge whether MS use system correctly and systematically. Some scope for peer review but there could be constraints on independent evaluation. Evaluation is

	foreign national has previously claimed asylum in another MS.		*Eurodac)*	and after introduction of the system *(Source: MS)* Reduction of persons making multiple claims *Measured by:* Percentage rate of change before and after *(Source: MS)*		underway of the 'Dublin system' which considers both the Regulation and Eurodac.
Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the	To ensure a minimum level of protection in all Member States for those in need of protection. To guarantee the rights of persons qualifying for refugee status or subsidiary protection status To reduce	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of Member States achieving minimum standards or above *(Source: Commission)*	Reduction of false claims *Measured by:* Number of unfounded cases *(Source: MS)* Improved protection *Measured by:* Numbers granted refugee and subsidiary	Guarantee of a minimum level of protection across the EU Approximation of rights granted to refugees Reduction in disparities between legislation and practice Reduction of secondary movements	Common standards difficult to achieve as Directive allows scope for interpretation

content of the protection granted)	disparities between MS' legislation and practice. To limit secondary movements. To prevent false claims.			protection status *(Source: MS)* Improved access to rights *Measured by:* Increased numbers of refugees accessing education, services, employment, appropriate accommodation, integration programmes *(Source: MS)*	Fewer false claims Improved integration	
Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers)	Ensure a dignified standard of living to asylum seekers across the EU. Address applicants special needs.	Transposition into national legal systems	Improved facilities *Measured by:* Expenditure on the improvement of reception facilities *(Source: MS)* Improvement of equal standards across the EU	Improved standard of living for asylum seekers *Measured by:* Number of asylum seekers living in appropriate	Approximation of standards of living for asylum seekers across the EU Improved facilities and services for asylum seekers Improved socio-vocational integration	Common standards difficult to achieve as Directive allows scope for interpretation. Evaluation due at the end of 2006.

	Ensure equal standards across the EU. Limit secondary movements.		*Measured by:* Numbers of MS achieving minimum standards or above *(Source: Commission)*	accommodation *(Source: MS)* Number of asylum seekers accessing services *(Source: MS)* Number of asylum seekers accessing employment and vocational activities *(Source: MS)* Number of specific provisions for applicants with special needs *(Source: MS)*	of asylum seekers Reduction of secondary movements	
ERF II	Support and encourage efforts in receiving refugees and displaced persons	Disbursement rate/amount spent per year	Increased reception capacity *Measured by:* Numbers of projects implemented per type of action *(Source: MS)*	Increased balance of effort among MS M*easured by:* The proportion of all resource commitments	Improved reception standards and conditions Increased access of asylum seekers to health, housing, education, services and	Indicators have been developed in the context of the final evaluation.

	Foster solidarity among MS Promote balance in the efforts to receive asylum seekers Promote the social, economic and cultural integration of target groups Promote voluntary return		Number of beneficiaries (per country of origin and target group) per type of action *(Source: MS)* Number of reception places *(Source: MS)* Increased capacity of services to asylum seekers *Measured by:* Number and type of services available*(Source: MS)* Number of beneficiaries receiving education and training *(Source: MS)* Increased voluntary returns *Measured by:* Number of voluntary returns *(Source: MS)*	*(Source: MS)* Increased social, economic and cultural integration of target groups M*easured by:* Percentage of persons per target group and activity able to apply new skills (i.e. percentage of persons who benefited from vocational training in employment)	labour market Fairer and more effective asylum procedures (including return) An improved balance in effort to receive asylum seekers	

Policy sub-area 2: Legal and illegal migration						
Objectives: To establish admission procedures capable of responding to fluctuating demands for migrant labour						
Policy sub-area level indicators: Skill shortages in vocations and professions *(Source: Commission - Eurostat, MS Labour Force Surveys, EEO)* Employment rates amongst migrant groups *(Source: Commission - Eurostat, MS Labour Force Surveys)* Estimation of the numbers of migrants overstaying the duration of their work permits *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Family reunification Directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification)	Determine conditions for the exercise of the right to family reunification by TCNs.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Improved efficiency of procedures *Measured by:* Number of family members reunited *(Source: MS)* Reduced length of process: average delay before and after *(Source: MS)*	Facilitated procedures for family reunification Protection of right to family life	Common standards difficult to achieve as Directive allows scope for interpretation.

Directive on status of TCNs as long-term residents	Approximate national laws by creating a single status. Ensure equal treatment of TCNs throughout the EU.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Equal treatment of TCNs *Measured by:* Numbers granted/refused status *(Source: MS)* Increased number of TCNs accessing employment, education and training (rate of increase) *(Source: MS)* Increased mobility of TCNs *Measured by:* Number of TCNs moving from one MS to another *(Source: Commission)*	Approximation of national laws Equal treatment and application of uniform rights for TCNs across the EU Improved mobility of TCNs Improved integration of TCNs	Common standards difficult to achieve as Directive allows for scope for interpretation

Directive on the admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary service	To promote Europe as a world centre of excellence for studies and vocational training by promoting the mobility of TCNs to the Community for the purpose of studies The approximation of the Member States' national legislation on conditions of entry and residence	Transposition into national legal systems.	Approximation of national legislation *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Increased mobility of TCNs to the Community for the purposes of study/vocational training *Measured by:* Numbers granted entry for study/vocational training/voluntary service *(Source: MS)*	Approximation of national laws Improved mobility of TCNs for study, vocational and volunteer purposes	Common standards difficult to achieve as Directive allows for scope for interpretation
Policy sub-area 3: Integration of third-country nationals						
Objectives: To prevent the isolation of certain groups and achieve successful integration of Third Country Nationals and their descendents To fight discrimination against legally residing Third Country Nationals						

To promote the exchange of experience and information						
Policy sub-area level indicators: Instances of discrimination *(Source: FR Agency, MS)* Employment rates of third country nationals *(Source: Commission - Eurostat, MS)* Employment rates of second generation migrants *(Source: SOPEMI Report, MS)* Relative income levels of third country nationals *(Source: Commission - Eurostat, MS)* Proportion of third country nationals living in poverty *(Source: Commission - Eurostat, MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
INTI preparatory actions (integration of TCNs)	Promote new and innovative ways of integrating immigrants. To encourage co-operation between MS and the creation of transnational partnerships and networks.	Disbursement rate/amount spent per year	Successful implementation REFINE *Measured by:* Numbers of projects and activities implemented and average sums of money involved *(Source: MS + Commission)* Number of TCNs	Identification of new and innovative practices Exchange of information and best practices promoted among EU MS Transnational networks and dialogue between	Increased cooperation among MS through networks and cooperation activities Increased dialogue with civil society Enhanced integration of TCNs Development and promotion of a European framework	Integration policies are implemented mainly at regional and local levels in MS. Differences exist among MS in terms of numbers of migrants and integration

	Enhance empowerment of migrants. Promote dialogue with civil society.		benefiting from projects Increased cooperation *Measured by:* Number of transnational networks set up *(Source: MS + Commission)* Number of new integration models identified and exchanged among MS	stakeholders supported among MS	approach on integration of TCNs	experience. Potential impacts may not be significant considering that this is a small fund with very diverse projects. Final evaluation is planned for 2007.
Policy sub-area 4: External dimension of asylum and migration						
Objectives: Assist third countries in migration management, intensify MS cooperation to manage migration flows and prevent humanitarian crises, integrate migration into third country relations, develop policies that link migration, development cooperation and humanitarian assistance, intensify cooperation with third countries on southern and eastern border of EU						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Numbers of legal migrants by third country *(Source: Commission - Eurostat)* Numbers of illegal migrants by third country intercepted crossing an external border *(Source: Commission – Eurostat)* Numbers of visa overstayers by third country intercepted *(Source: MS)*						

Numbers of asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum seekers returning to country of origin /other third country *(Source: MS)* Number of victims of trafficking from third countries *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Programme for financial and technical assistance to third countries (AENEAS)	Give specific and complementary financial and technical aid to third countries in order to support their efforts to improve the management of migratory flows Develop legislation in third countries on legal immigration and international protection	Not applicable (action is at Community level)	Successful implementation *Measured by;* Number of information campaigns organised on advantages of legal migration/consequences of illegal migration in third countries *(Source: Commission)* Number of returnees benefiting from reintegration programmes *(Source: Commission)*	Development of legislation in third countries *Measured by:* New legislation passed in third countries on legal and illegal migration *(Source: Commission)* Decreased number of illegal migrants entering the EU *Measured by:*	Improved management of migration flows Decrease in illegal migration and trafficking Increased awareness in third countries on advantages of legal migration/consequences of illegal migration Successful reintegration of returnees	High number of external factors to the programme influence impact indicators. Causality links difficult to establish. As action is at Community level, MS will not contribute to evaluation. May be difficult to evaluate as this is a new area which is also

	Raise public awareness in third countries on advantages of legal migration and consequences of illegal migration Establishment in third countries of preventive policy in the fight against illegal migration Readmission and durable reintegration of returnees			rate of decrease *(Source: Commission)*		highly political. A Communication on the future of the AENEAS fund was adopted in January 2006.
Policy sub-area 5: Return and re-admission						
Objectives: To establish an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Proportion of failed asylum seekers (and illegal migrants) who are repatriated *(Source: MS)*						

Numbers returned to countries subsequently deemed unsafe within a period of two years *(Source: MS)* Numbers (of labour market age) in employment in country of origin 12 months after being subject to return						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Preparatory actions for Return Management	To support efforts made by MS to improve the organisation and implementation of integrated return management and specific measures in the area of return management To increase knowledge and capabilities in the area of return management To develop co-operation between MS with respect to	Disbursement rate/amount spent per year	Number of actions implemented relating to the introduction and improvement of the organisation and implementation of integrated return management *(Source: Commission)* Number of actions implemented relating to the introduction and improvement of specific measures in the area of return management *(Source: Commission)* Number of actions implemented relating to the increase of knowledge and capabilities in the area of return management	Increased number of returnees *Measured by:* rate of increase *(Source: MS and Commission)* Reduction in cost of detaining illegal migrants *Measured by:* rate of reduction *(Source: MS and Commission)*	The strengthening of efforts made by Member States at improving the organisation and implementation of integrated return management Improved organisation and implementation of integrated return management Increased knowledge and capabilities in return management Increased cooperation between MS and countries of return with respect to return management	

	return management as well as co-operation with countries of return To promote sustainable return, thereby avoiding secondary movements		*(Source: Commission)*		Reduction in illegal migrants living in the Member States (overstayers) Increased removal of illegal third country nationals Decrease secondary movements Improved return conditions	
Re-admission agreements	To facilitate the readmission to their own country of persons residing without authorisation in a Member State. To combat illegal immigration To improve the effectiveness of return	(These are reciprocal agreements between the EU and third countries.)	Successful implementation of the agreements *Measured by:* Number of persons readmitted to third countries covered by the agreements	Increased number of returnees *Measured by:* rate of increase *(Source: Commission and MS)* Reduction in cost for detaining illegal migrants *Measured by:* rate of reduction *(Source: MS)*	Decrease in illegal immigration Improved effectiveness of return procedures	Agreements have been signed with Hong Kong, Macao, Albania, Sri Lanka and Russia. Others are currently being negotiated.

	procedures					
Policy sub-area 6: Horizontal issues						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Proposed mutual information procedure on planned national asylum and immigration measures	Enhance mutual information of national immigration and asylum policies between MS policy-makers	Cooperation by MS	Successful implementation of procedure *Measured by:* Number of national measures submitted through the system Number of responses generated to requests for information *(Source: MS + Commission)* Meetings organised *(Source: MS + Commission)*	Increased knowledge of other Member State policies and measures	Anticipation of effects of changes to other national policies Better understanding of other national contexts could lead to an enhancement of the possibilities for harmonisation	Procedure yet to be implemented. Implementation could start in 2007.
European Migration Network	Provide the Community and MS with objective,	Organisation of activities at national level by national contact	Successful implementation of network	Better and faster access to information on migration and	Increased knowledge and understanding of the migration phenomenon at	Proposal and impact assessment due by September

	reliable and comparable information on migration and asylum.	points	*Measured by:* Number of products produced *(Source: MS + Commission)* Number of meetings and conferences held *(Source: MS + Commission)* Number of networks set up at national level *(Source: MS)*	asylum Increased knowledge of issues at national level Increased information sharing between actors	Member State and EU level Increased capacity to "anticipate" migratory developments	2006 for a Council Decision on the future EMN.
Proposed Regulation on Community statistics on migration and international protection	Improve the statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.	Adoption of measures at national level	Successful implementation of Regulation *Measured by:* Increased proportion of statistical data items supplied according to the harmonised definitions as opposed to national definitions *(Source: MS)* Increased proportion of statistical data items directly based on	Increased availability of data Improvement to quality and comparability of data between Member States *Measured by:* Improvements in the completeness, timeliness and degree of harmonization of	Improved analyses of data Improved statistical knowledge	Regulation will probably be adopted in 2006. First reference year for the statistics will be 2008.

			appropriate data sources as opposed to statistical estimations *(Source: Commission - Eurostat))*	migration and asylum data supplied to the Commission - Eurostat *(Source: Commission – Eurostat)*		
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed in July 2006.

	authorities To improve the overall efficiency of national administrations in their tasks		*(Source: Commission)*			

POLICY AREA: ESTABLISHING A GENUINE EUROPEAN AREA OF JUSTICE IN CRIMINAL AND CIVIL MATTERS

Factors influencing evaluation mechanism:

The policy area includes both first pillar (civil justice) and third pillar (criminal justice) matters. The main instruments are legislation including the introduction of new legal instruments and activities to stimulate judicial cooperation. Evaluation should cover the implementation of mutual recognition instruments and the various flanking (confidence building) measures that make mutual recognition possible. The potential to identify the causal links between the interventions and the achievement of objectives is greater within civil matters than criminal matters. Information on the scale and nature of the relevant (cross border) civil and criminal matters is however poor. The instruments in both sub policy areas are potentially reinforcing. The classification of the instruments within the civil matters sub policy area relate to both process (cooperation and procedures) and to substantive problems addressed by the instruments (cross border disputes and breakdown of international marriages). There is also a miscellaneous sub category. The achievement of a European area of justice in criminal matters may be constrained by continued variations in definitions of crimes and penalties. Several of the instruments mentioned under civil matters are 'forthcoming'. They are included however because they illustrate aspects of the evaluation challenges in this policy area. The Judicial training instrument is relevant to both sub policy areas. There are close links between the instruments and objectives of the policy sub area 2 Criminal matters, and the objectives and activities in the policy area: law enforcement cooperation, prevention and fight against organised crime. Also, it should be noted that adjustments to the indicators put forward in criminal matters may take place in light of the implementation of the forthcoming Action Plan on statistics in the field of crime and criminal justice (see more expanded reference on page 49).

Policy sub-area 1: Civil matters

Objectives:

To increase mutual recognition and enforcement of judicial decisions

To establish clear rules on jurisdiction and applicable law

To reduce the costs of resolving cross border disputes

To increase the likelihood that cross border disputes are resolved

To reduce the likelihood of cross border disputes arising

To reduce the negative consequences of breakdowns in 'international' marriages and prevent child abduction						
Policy sub-area level indicators: Number of mutually recognised judicial decisions Average costs (of different types) of cross-border disputes Number of cross-border cases not resolved Spouses' (perceptions of) costs of international divorces The number and amount of cross-border maintenance claims not paid *Source: MS*						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Horizontal cooperation activities						
Specific programme 'Civil justice' (Framework Programme 2007-2013 Fundamental Rights and Justice)	To increase mutual confidence of judicial actors. To increase instances of mutual recognition. To reduce application of	Participation in and support for cooperation programme.	Number of meetings, workshops. Numbers of legal, judicial and administrative authorities involved in cooperation.	Increased knowledge of Member States legal and judicial systems in civil matters. Measured by: Levels of knowledge	Mutually recognised decisions acted upon/ enforced. Increased legal certainty. Improved access to justice.	Establishing causal links between the interventions and outcomes and impacts will be problematic

	intermediate procedures.		*Source: programme monitoring system*	amongst relevant authorities *(Source: MS surveys)*	Decreased costs and time spent in accessing justice due to disparities in civil law and civil procedures.	
European judicial network in civil and commercial matters	To improve and facilitate co-operation in civil justice matters To facilitate access to justice and information To reduce costs of access to information on international and European law and national judicial systems by EU nationals (and therefore increase access).	Participation in and support for cooperation programme.	Meetings, publications website. Numbers of legal actors involved in cooperation. *Source: Network management reports (Source: Commission)*	Hits and usage of website (*Source: Commission*)	Improved access to justice and quality of advice on cross (internal) border issues. Improvement of judicial cooperation between MS and courts	Establishing causal links between the interventions and outcomes and impacts will be problematic
Rules on procedures						
Regulation on jurisdiction and the recognition	To harmonise national rules of conflict of	Implementation	Harmonised Community rules	Simpler and quicker procedures to recognise and	Better and quicker access to justice	Clear intervention logic

and enforcement of judgements in civil and commercial matters (Brussels I 44/2001)	jurisdiction To simplify procedures for recognition and enforcement of judgements from MS		(*Source: MS reporting to Commission)*	enforce the judgements Measured by: Length of time taken to recognise and enforce the judgements *(Source: MS)*	Prevent conflict of jurisdiction	
Regulation on taking evidence in civil and commercial matters (1206/2001)	To improve, simplify and speed up procedures for taking evidence between the courts of different MS	Implementation	Establishment of facilitated cross-border procedures between courts in different MS for taking evidence (*Source: MS reporting to Commission)*	Quicker and more efficient judicial procedures Measured by: Length of time taken to take evidence between courts *(Source: MS)*	Better and quicker access to justice	Clear intervention logic.
Regulation on the service of documents in civil and commercial matters (Regulation 1348/2000)	To increase efficiency and speed in judicial procedures To improve and expedite the transmission of	Implementation	Establishment of common rules on transmission of judicial and extrajudicial documents between	Quicker and more efficient judicial procedures Measured by: Length of time taken to transmit	Better and quicker access to justice Quicker judicial procedures	Clear intervention logic.

	documents between MS		MS(*Source: MS reporting to Commission)*	the documents and enforce judgements *(Source: MS)*		
Directive on legal aid in cross-border disputes (Council Directive 2003/8/EC)	To guarantee adequate level of legal aid in cross-border disputes through establishing minimum common standards between MS	Implementation	Minimum common standards relating to legal aid in cross-border disputes (*Source: MS reporting to Commission)*	Adequate levels of legal aid in cross-border disputes *(Source: MS)*	Improved access to justice, especially of vulnerable groups	Clear intervention logic.
Resolution of cross border disputes						
European payment order (forthcoming)	To reduce the costs and time taken to make payments. To increase the number of cross-border orders for payment	Implementation	Numbers of cross-border orders for payment made	Reduction of intermediate procedures	Reduced costs and time of litigation in cross-border cases concerning uncontested pecuniary claims. Improved access to justice. Facilitated recovery of cross-border debts	Establishing causal links between the interventions and outcomes and impacts will be problematic. Proposal yet to be adopted.

European enforcement order for uncontested claims (Regulation 805/2004)	To enable quick and efficient enforcement of an uncontested claim between MS	Implementation	Number of applications of European enforcement order in EU MS (*Source: MS*)	Quicker and more efficient enforcement of uncontested claims in another MS Measured by: Length of time needed to enforce such a claim *(Source: MS)*	Reduced costs and time in such cross-border cases Improved access to justice	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on Alternative Dispute Resolution (ADR)	To reduce the costs of dispute resolution To facilitate recourse to mediation by improving legal certainty	Implementation	More possibilities and better awareness of possibilities for ADR	More attempts to use ADR	Reduced costs of dispute resolution More disputes resolved without going to court	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on small claims	To facilitate cross-border access to justice for small claims To reduce the costs and time taken to resolve	Implementation	Application of Small Claims Procedure in the 25 EU MS (*Source: MS*)	Increased number of small claims pursued. (*Source: MS*)	More small claims resolved. Increased legal certainty. Increased access to justice.	Proposal yet to be adopted.

	small claims. To increase the number of legitimate small claims made.					
Marriage and divorce law						
Instrument on maintenance obligations	To improve and simplify enforcement procedures of maintenance obligations. To enhance cooperation. To clarify what is applicable (non-conflicting) law	Implementation	Application of Regulation in maintenance obligations proceedings in 25 EU MS (*Source: MS*)	Reduction of intermediate procedures. Reduced cases of forum shopping Increased cooperation between legal professionals / competent authorities in the Member States (*Source: MS*)	Increased legal certainty Better informed decisions Mutually recognised decisions acted upon/ enforced. Facilitated recovery of debts (maintenance for creditors)	Instrument is at the Council discussion stage. Establishing causal links between the interventions and outcomes and impacts will be problematic. Evaluation requires good data from the Member States.
Regulation on jurisdiction and recognition and enforcement of judgements in matrimonial	To harmonise rules of jurisdiction To enable automatic	Implementation	Establishment of harmonised rules on jurisdiction (*Source: MS*)	Quicker and more efficient recognition and enforcement of judgements	Better access to justice Better protection of citizens in case of divorce	Evaluation requires good data from the Member States.

matters and parental responsibility (Brussels II, 2201/2003)	recognition and enforcement of judgements between MS			Measured by: Length of time taken to recognise and enforce a judgement (*Source: MS*)	Facilitated visiting rights for parents Better protection of children's' rights	
Various						
Instrument on the conflict of laws in the area of contractual obligations (Rome I).	To reduce costs associated with differences regarding non-contractual obligations To increase party autonomy and flexibility To increase legal certainty for consumers and internal market	Implementation	Numbers of cross-border disputes settled Application of conflict of law rules in the MS (*Source: MS*)	Improved mutual trust between judicial authorities Faster procedures. (*Source: MS*)	Reduced uncertainty. Reduced costs. Facilitated mutual recognition of international contracts	Proposal in discussion stage.
Proposal for a regulation on the law applicable to non-contractual obligations (Rome	To harmonise rules on non-contractual obligations	Implementation	Provision of a set of community rules Application of	Improved mutual trust between judicial authorities Faster procedures.	Reduced legal uncertainty. Better access to justice	Establishing causal links between the interventions and outcomes and impacts

II, COM(2003) final)	To increase legal certainty		rules in the MS (*Source: MS*)	(*Source: MS*) Increased legal certainty for victims of damages and perpetrators of torts	Reduced costs of accessing justice	will be problematic
Regulation on insolvency proceedings (1346/2000)	To improve efficiency and effectiveness of cross-border insolvency proceedings To prevent shopping for a more favourable legal position	Implementation	Provision of a set of community rules Application of rules in the MS (*Source: MS*)	More efficient and effective cross-border insolvency proceedings Prevention of shopping for a more favourable legal position Measured by: Time taken for proceedings Perceptions of shopping amongst legal professionals (*Source: MS, surveys*)	Better access to justice Reduced costs of accessing justice Better resolution of cross border insolvencies Better cooperation between courts and administrators of insolvency	Clear intervention logic
Directive on	To facilitate better	Implementation	Co-operation	Better access to	Better access to	Clear intervention logic

compensation to crime victims (2004/80/EC)	access for victims to compensations where crime was committed in another MS To establish a compensation mechanism in such cases		mechanism between MS set up (*Source: MS*)	compensation to victims of crimes in cross-border situations (*Source: MS*)	justice Better compensation for victims of cross-border crime in Europe	
Policy sub-area 2: Criminal matters (Justice)						
Objectives: To promote mutual recognition To increase confidence and other conditions leading to mutual recognition To reduce differences in the definition of crimes. In particular, to explore common definitions and procedures for human trafficking and cross border crimes To reduce differences in detention and trial procedures To improve taking of evidence To reduce differences in penalties To speed up cross border arrest and surrender procedures To facilitate cross border management, freezing and confiscation of criminal assets To protect victims of crime						

Policy sub-area level indicators:

Number of mutually recognised judicial decisions

Extent of mutual confidence: proportion of officials in national administrations who have high confidence in other MS systems (measured by surveys of national authorities)

Level of awareness of judicial actors of other MS systems

Number of definitions of crimes approximated

Number of reduced differences in detention and trial procedures and definition of penalties

Length of cross-border arrest and surrender procedures

Size of criminal assets frozen and confiscated in cross-border cases

Source: MS

Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
European arrest warrant and the surrender procedures between Member States (Council Framework Decision of 13 June 2002on the	To facilitate and expedite surrender procedures in respect of persons wanted for trial and sentenced persons between Member States	Transposition	Numbers of arrest warrants issued, executed and refused Numbers of persons surrendered and of persons received from other Member	Faster and simpler surrender procedures *Measured by:* Average duration of surrender procedures (*Source: MS*)	Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence	Requires good data from MS. MS must actively participate in evaluation.

European arrest warrant and the surrender procedures between Member States (2002/584/JHA))			States and numbers of persons consenting to surrender. (Source: MS)		between judicial authorities. Increased security and safety within the EU	
Instrument on the execution of orders freezing property or evidence (Council Framework Decision 2003/577/JHA of 22 July 2003)	To facilitate recognition and execution of freezing orders issued by a judicial authority of another Member State	Transposition	Number of freezing requests issued and executed (Source: MS)	Increased efficiency and effectiveness of freezing orders *Measured by:* Faster procedures to freeze assets Increased use of procedures to freeze assets Increased speed of national procedures as a consequence of freezing order Improved access to evidence obtained/ Improved recovery of assets	Increased efficiency of procedures; increased mutual confidence between judicial authorities. Decreased levels of organised crime (*Source: Europol reports*)	Requires good data from MS.

				(Source: MS)		
Instrument on the application of the principle of mutual recognition to financial penalties (Council Framework Decision 2005/214/JHA of 24 February 2005)	To facilitate the enforcement of financial penalties imposed by judicial or administrative authorities in a Member State other than the State in which the penalties were imposed.	Transposition	Number of decisions and issued and executed *(Source: MS)*	Faster and more effective procedures to ensure enforcement of financial penalties Measured by: Average length of procedures *(Source: MS)*	Dissuasive effect to potential criminals and decreased level of financial crime Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	Requires good data from MS. Difficult to measure causal links between outcomes and impacts
Instrument on the exchange of information extracted from the criminal record (Council Decision 2005/876/JHA of 21 November 2005)	To improve exchanges of information on criminal records between Member States	Voluntary compliance	Number of requests sent , number of replies sent -for the purpose of criminal proceedings, and - for other purposes Respect of	Improved knowledge available to sentencing authorities about the convicted person's full European criminal record. Improved circulation of information on criminal records for other purposes (e.g.	Dissuasive effect to potential criminals and hence decreased levels of crime Increased visibility of mutual recognition, better knowledge of each other's	Requires good data from MS. Difficult to measure causal links between outcomes and impacts

			deadlines *(Source: MS*)	employment) Improved quality of information on criminal records from abroad in the Member State of nationality *(Source: MS)*	judicial systems and increased mutual confidence between judicial authorities. More appropriate and better informed sentencing decisions	
Instrument on the standing of victims in criminal proceedings (Council Framework Decision of 15 March 2001)	To assist victims before or after criminal proceedings	Transposition	Application of rules the instrument *(Source: MS)*	Better information for victims on legal advice and on their rights, protection for vulnerable victims and more appropriate methods of obtaining evidence Improved situation for victims in relation to criminal proceedings *(Source: MS)*	Raised awareness of victims' rights amongst practitioners *Measured by MS surveys* Better access to justice	Requires good data from MS.
Framework programme on police and judicial	Help legal practitioners, law enforcement	Commitments to AGIS projects	*Number of activities promoting training and expert*	Development of instruments, strategies and	Improved operational procedures and	Transnational cooperation activities normally require

cooperation in criminal matters (AGIS)	officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Participation	*mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *(Source: Commission)*	approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	qualitative approaches to evaluation taking account of varying contexts.
Flanking measures in place						
The European Judicial Network (Joint Action of 29 June 1998 adopted by the Council)	To improve judicial cooperation between Member States through direct contacts between judicial	Designation of national contact points	Regular meetings, creation and updating of specific tools (website, "fiches belges", atlas and SOLON legal	Increased efficiency of procedures and better communication between judicial authorities. Measured by:	Improved functioning of mutual recognition instruments, better knowledge of each other's	

	authorities		glossary) Number of cases in which the EJN is involved. *(Source: EJN and Member States)*	Average duration of procedures, analysis of outcomes of proceedings, perceptions of ECJ as a communication tool *(Source: EJN and Member States)*	judicial systems and increased mutual confidence between judicial authorities.	
Eurojust (Council Decision of 28 February 2002)	Better co - ordination of investigation and prosecution of serious cross-border crime	Appointment of national experts to Eurojust	Immediate access to information about legal systems from a practitioner of the nationality of the Member States in question. Measured by: number of cases where Eurojust is used Establishment of the coordination role. Establishment of Eurojust as a potential arbiter of conflicts of	Increased efficiency of procedures and better communication between prosecutors and judicial authorities. Measured by: Average duration of procedures, analysis of outcomes of proceedings *(Source: Eurojust and MS)*	Increased cross border prosecution rates and improved efficiency (evidence gathering, mutual information exchange on procedural matters) Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased	

			jurisdiction. Establishment of Eurojust as peporting authority for problems with European Arrest Warrants. (*Source: Eurojust and MS)*		mutual confidence between judicial authorities.	
Joint investigation teams (Council Framework Decision of 13 June 2002)	To facilitate, expedite and improve investigations in cross border cases	Transposition	Setting up of joint investigation teams Number of cases investigated by such teams (Source: MS)	Efficient gathering of evidence in cross border cases Measured by: Average duration of cross-border case reaching the court (Source: MS)	Increased range of judicial cooperation tools. Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	

Horizontal instrument for both Sub Policy area 1 (Civil matters) and Sub Policy area 2 (Criminal matters)						
Judicial training	To improve knowledge of relevant EU instruments among legal practitioners To enhance mutual understanding of legal systems among judges and prosecutors To co-ordinate national judicial training programmes To promote better language skills among European legal practitioners	Participation in training activities	Organisation of training activities *Measured by:* Training programmes offered, number of participants benefiting from training on EU matters) *(Source: Commission. Participant feedback)*	In evaluating the success of this policy, regard must be had to the effective use of available EU funding. Increased number of judicial training activities, increased coordination between national judicial training programmes, development of the European Judicial Training Network. *Measured by:* Quality of training activities, number of participants in exchanges Improved knowledge of European and international instruments amongst judges and prosecutors (Source: MS	Increased understanding of mutual recognition Promotion of a European judicial culture.	

				Interviews with law enforcement and judicial actors)		

5.1. POLICY AREA: LAW ENFORCEMENT COOPERATION AND PREVENTION OF AND FIGHT AGAINST GENERAL ORGANISED CRIME

Factors influencing evaluation mechanism: Policy based on the TEU Title VI (third pillar). Activities include legislation, including the approximation of crimes and penalties and cooperation measure. Establishing causal links between the EU interventions and the ultimate objective of reducing crime is always likely to be problematic. The current factsheet intends to facilitate the assessment of the implementation of EU instruments in this area. Full fledged evaluation will require substantial improvements in the quality and availability of statistical information in the field of crime and criminal justice. The forthcoming Action Plan in this field (to be adopted by the Commission in July 2006) will address these issues and put forward concrete proposals, including carrying out an inventory and setting-up an expert group. In this context, this factsheet and the indicators included therein will necessarily be adjusted and improved in the light of the implementation of the Action Plan, and could be used as a starting point for discussions in this field.

Policy sub-area 1: Crimes and Sanctions (i.e. legislation to fight organised (cross border) crime and terrorism)

Objectives:

To combat:

- Terrorism
- Smuggling and trafficking of human beings,
- Sexual exploitation, racism and xenophobia,
- Financial and economic crime,
- Environmental crime,
- Illicit trafficking in goods,
- Organised crime and cyber crime.

To reduce the financial resources available to those involved in organised crime To criminalise active and passive corruption
Policy sub-area level indicators: Numbers and trends of successful prosecutions for (S*ource: UN crime and criminal justice trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*): • Smuggling and trafficking of human beings, • Sexual exploitation, • Financial and economic crime, • Environmental crime, • Illicit trafficking in goods (including firearms), Numbers of successful prosecutions for organised crime (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*) Numbers of prosecutions for active and passive corruption (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*) Perception of levels of active and passive corruption (S*ource: Transparency International survey)* Numbers of crimes subject to EU interventions and instruments (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*)

Main instrument	Objectives	Implementation at national level	Indicators/evaluation questions			Specific issues /comments
			Immediate results	Outcomes	Impacts	
Terrorism						
Council Framework Decision (FD) of 13 June 2002 on combating terrorism (2002/475/JHA)	To approximate the definition of terrorist offences, and penalties and sanctions in all MS To establish jurisdictional rules to ensure that offences are prosecuted To apply specific measures for victims of terrorist offences	Implementation of FD	Application of FD provisions. *Measured by:* The number of definitions of offences, penalties and sanctions approximated Number of measures applied for victims of terrorist offences *(Sources: MS)*	Number of terrorists prosecuted as a result of FD	Reduced instances of terrorist activities Improved help to victims of terrorism	Difficult to assess the causal links between outputs, outcomes and impacts
Pilot project on victims of terrorism	To help the victims of terrorist acts and/or their relatives to	Implementation of projects	Number of beneficiaries assisted through psychological	Improved cooperation and exchange Increased research	Improved social and psychological support to victims of	

	recover by means of social or psychological support provided by organisations and/or their networks. To raise the awareness of the European public against the terrorist threat, so that the traditional fight against terrorism through police and judiciary measures can be complemented by public opinion condemning terrorism in all its forms.		support Number of special training programmes organised Number of social integration programmes organised for victims Number of special medical programmes created Number of events and information campaigns organised	on the situation of victims of terrorist acts Creation of reception centres for victims	terrorist attacks Increase awareness of the European public	
Pilot project on prevention, preparedness and	To combat terrorism	Implementation of projects	Number of studies carried out	Development of capabilities for the management of	Improved expertise on	

response to terrorist attacks	To improve the security of citizens		Number of expert networks set up	crises Exchange of experience and best practice	terrorism Increased exchange of expertise Increased cooperation with international partners	
Smuggling and trafficking of human beings						
Council Framework Decision (FD) 2002/629/JHA of 19 July 2002 on combating trafficking in human beings	Reduce human trafficking	Implementation of FD	Application of FD provisions. *Measured by:* Number of detentions resulting from FD *(Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced trafficking in human beings Reduction in damage to victims of trafficking	Identifying cases specifically linked to FD may be problematic
Sexual exploitation						
Council frameword decision (FD) 2004/68/JHA of 22 December 2003 on	Reduce sexual exploitation of children. Reduce child	Implementation of FD	Application of FD provisions. *Measured by:* Number of	Successful prosecutions resulting from FD *(Source: MS)*	Reduced sexual exploitation of children. Indicated for example by reductions in	Identifying cases specifically linked to FD may be

combating the sexual exploitation of children and child pornography	pornography.		detentions resulting from FD *(Source: MS)*		numbers of complaints. Reduced child pornography. Indicated for example by reduction in number of illicit websites and other outlets.	problematic
Financial and economic crime						
Council Framework Decision (FD) of 22 July 2003 criminalising corruption in private sector	Criminalise active and passive corruption	Implementation of FD	Application of FD provisions. *Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced corruption in private sector. (*Source: Transparency International surveys*)	
FD on money laundering and counterfeiting of	Criminalise fraud involving any form of non-	Implementation of FD	Application of FD provisions.	Successful prosecutions resulting from FD	Reduced money laundering and counterfeiting of	

non-cash payments	cash means of payment in all MS		*Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	*(Source: MS)*	non-cash payments *(Source: national criminal justice statistics)*	
Illicit trafficking in goods						
Proposal for a regulation on import/export licensing system for firearms	Reduce firearms trafficking. Harmonize the regime for import and export of firearms.	Establishment of the system	Application of the regulation *Measured by:* Numbers of arms licensed *(Source: MS)*	Increased control over imports and exports of firearms *Measured by:* perceptions of law enforcement agencies *(Source: MS)*	Reduced firearms trafficking Reduced use of illicit firearms	Clear intervention logic (forthcoming) The instrument is relevant to borders policy area.
Organised crime						
Council Framework Decision 2001/500/JHA	Approximate definitions, incriminations and sanctions	Implementation of FD	Application of rules and provisions contained in FD	Assets frozen and confiscated. *Measured by*:	Reduced money laundering Reduced crime	Regular monitoring reports from the Commission

of 26 June 2001 relating to money laundering, identification, tracing, freezing or seizing and confiscation of the instrumentalities and proceeds from crime	Improve mutual legal assistance in the investigation and prosecution of this type of crime		*Measured by:* Instances of suspicious transactions reported to entities subject to reporting obligations Penalties resulting from FD Prosecutions resulting from FD Reduction of the differences in maximum penalties among MS *(Source: MS, Commission)*	Effective judgments pronounced Amounts frozen and confiscated *(Source: MS)*	*Measured by:* Perceptions of law enforcement agencies.	Identifying cases specifically linked to the FD may be problematic (This instrument might fit better under financial crime although it is about enacting penalties and might better fit under Justice criminal matters. Evaluation need to be done in combination with the third money laundering directive).
Proposal for a FD on fight against organised crime (2005)	Harmonise the definition of offences and penalties Facilitate	Implementation of FD	Application of rules and provisions contained in FD. *Measured by:* Better harmonised	Increased judicial co-operation *Measured by:* Trials and successful	Reduced organised crime *Measured by*: Perceptions of law enforcement	Difficult to measure impacts Identifying cases specifically

	cooperation between judicial authorities and coordinate their activities.		definition of offences and penalties. Instances of judicial cooperation *(Source: MS, Commission)*	prosecutions resulting from FD *(Source: MS)*	agencies.	linked to the FD may be problematic (This too might better fit under Justice criminal matters policy area)
Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. (April 2004)	Reduce organised crime participation in illegal migration and human trafficking Facilitate victims giving evidence against suspected criminals	Implementation of Directive	Application of rules and provisions contained in Directive *Measured by* Instances of residence permits issued *(Source: MS)*	More victims testifying against suspected criminals Successful prosecution of suspected criminals *(Source: MS)*	Reduced organised crime participation in illegal migration and human trafficking *Measured by*: Perceptions of migration and law enforcement agencies.	This instrument is relevant to borders policy area. (It does not fit easily in this sub category.)

Policy sub area 2: Cooperation and exchange of information to enforce the law.
(The architecture of the instruments in this sub policy area is such that the instruments should be reinforcing. Capturing these synergies in evaluation work would be of value)
Objectives: To increase cooperation between police and customs authorities of MS To increase cooperation of MS police and customs authorities with Europol To develop and improve use of 'intelligence led law enforcement' and Joint Investigation Teams To encourage exchange of experiences on best practice on investigative techniques To improve the quality of Member States law enforcement data with the assistance of Europol
Policy sub-area level indicators: Number of formal joint investigations Number of informal joint investigations Number of successful prosecutions resulting from joint investigations (formal and informal) Number of successful prosecutions resulting from the adoption of best practice investigative techniques Extent of mutual confidence: proportion of officials in national administrations/law enforcement authorities who have confidence in other MS systems (measured by surveys of national authorities) Periods of time (person days) on (trans-national) exchanges of staff *Source: MS*

Main instrument	Objectives	Implementation at national level	Indicators/evaluation questions			Specific issues /comments
			Immediate results	Outcomes	Impacts	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS. Evaluation will be very difficult.
Common position on the	To prevent and combat serious	Exchange of data with Interpol	Number of data records forwarded to	Enhanced cooperation	Decreased illicit	

exchange of data with Interpol on passports	and organised crime including terrorism through improved cooperation between MS' law enforcement authorities and between them and such authorities in third Countries by exchanging passport data with Interpol	through database on stolen travel documents	Interpol	between law enforcement authorities	activities	
Task Force of Police Chiefs	Create conditions for cooperation	Participation of police chiefs (or alternates)	Cooperation activities. *Measured by*: Meetings held Informal contacts Formal cooperation agreements *(Source: MS)*	Mutual cooperation *Measured by*: Instances of cooperation Perceptions of participants *(Source: MS)*	Sustained cooperation *Measured by*: Instances of cooperation arising indirectly and at lower levels. Decrease in criminal	By its nature a difficult instrument to evaluate in its own right.

					activities *Measured by:* Number of arrests, prosecutions, and convictions	
Europol	Promote cooperation between MS law enforcement agencies	Provision of information, application and use of information received from Europol or via bilateral cooperation initiated by Europol	Cooperation activities *Measured by* Strategic analyses undertaken, Instances of exchange of intelligence. Use of formal joint investigation teams Use of informal joint investigation teams Number of investigations informed. *(Source: Europol*	Better law enforcement *Measured by*: Trials resulting from exchanges of intelligence and cooperation. Successful prosecutions resulting from exchanges of intelligence and cooperation. *(Source: MS and Europol)*	Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Evaluation needs to acknowledge the real constraints on multilateral police cooperation (issues of confidentiality and credit for solving cases) and the potentially weak links between police cooperation and reductions in crime. Evaluation work has included peer reviews

			and perceptions of participating MS and law enforcement agencies).			
CEPOL	Improve likelihood of (transnational) cooperation. Improve competences of trainees.	Commitment to EU level training	EU level Training activities *Measured by:* Number of police officers trained Number of courses offered *(Source: CEPOL, including potential follow up survey of trainees.)*	Improved cooperation *Measured by*: Resulting instances of cooperation between individual officers. Resulting instances of cooperation between agencies Resulting improved investigations. Resulting detentions and prosecutions *(Sources: MS Law enforcement agency records, judicial records)*	Increased competence in cross border level practice Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Identifying causal links with impacts will be especially difficult. An report on the operation and future of CEPOL was published in January 2006.

Framework programme on police and judicial cooperation in criminal matters (AGIS)	Help legal practitioners, law enforcement officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Commitments to AGIS projects Participation	*Number of activities promoting training and expert mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	Development of instruments, strategies and activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *Source: Commission)*	Improved operational procedures and approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	Transnational cooperation activities normally require qualitative approaches to evaluation taking account of varying contexts.

Policy sub area 3: Crime Prevention

Objectives:

To reduce instances of (cross border organised) crime

To establish European instruments for collecting, analysing and comparing information on crime and victimisation.

To provide better information on trends in crime in Member States

Policy sub-area level indicators:

Numbers of successful prosecutions of cross border organised crime

The frequency with which EU level statistics are collected (benchmark: annually)

The level of reliability of data (for example, number of definition changes), also indicated by the levels of confidence in data by key actors (*source: regular surveys*)

Consistency of data between Members States (for example, numbers of definition variations), indicated the levels of confidence in data by key actors (*source: regular surveys*)

Source: Commission, MS

Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Forum on organised crime prevention	Better exchange of information Creation of a	Active participation from MS	Coordination and cooperation of activities	Better and increased information base Better legal and	Reduced crime	Difficult to measure causal links

	Platform of expertise		*Measured by*: Meetings and seminars held Studies undertaken etc. *(Source: Commission)*	other instruments *Measured by:* Application and dissemination of information and best practices exchanged *(Source: MS)*		
European crime prevention network	Provide expertise and knowledge in developing effective crime prevention measures	Active participation from MS	Network Activities *Measured by* Meetings, Exchange of information Identification and propagation of good practice. Copies/hits on good practice and recommendations. (Source: Commission)	Application of Network Knowledge *Measured by*: Uptake of recommendations Improved policy making processes *(Source: MS via Consultations)*	Improved policies and practices with respect to crime prevention Reduced crime	Difficult to measure causal links
EU action plan	Provide better	Active	Availability of	Application of	Better informed	Difficult to

on EU statistics on crime and criminal justice	information base on EU crime trends, levels and on victimisation as well as on criminal justice.	participation from MS	information on crime and criminal justice covering EU *Measured by:* Availability, coverage and comparability o data. *(Source: Commission)*	improved information *Measured by*: Dissemination of information to EU and MS policy makers Citation of statistics in policy documents *(Source: Commission and MS)*	policy making at EU level. Better informed policy making at MS level.	measure causal links Statistical information is not available Instrument underpins evaluation of other instruments as it should improve statistics available at the EU level
Action plan on public-private partnerships	Establish public-private partnerships at EU level to tackle multinational organised crime and terrorism	Active participation from MS	Implementation of Action plan Creation of a EU level Platform for public-private partnership against organised crime and terrorism *Measured by* Reports from old and new partnership structures to the	Increased co-operation between public and private sector *Measured by:* Number of co-operation activities *Source: Commission: Follow up studies of specific partnerships)*	Reduced level of damage from organised crime and terrorism	Process evaluation could be appropriate

			platform Effective participation in the work of the Platform and new partnerships Composition of partnerships established *(Source: Commission)*			
Policy sub area 4: Management of crises[13] with cross border effects						
Objectives: Reduce detrimental cross border impacts of crises						

[13] With particular regard to preparedness and response to terrorist attacks.

Policy sub-area level indicators: Number of cross border crises reported in press/media Number of cross border crises involving EU crisis management						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Setting up of integrated and co-ordinated EU crisis-management arrangements in the Commission and the Council	Increase the level of preparedness to tackle cross-border crises within the EU	Active participation from MS in the structures to be established	Establishment of integrated and co-ordinated structures at the EU level *Measured by:* Assessments of MS capacities Training and joint exercises conducted Operational plans established *(Source: MS administrative records)*	Increased level of preparedness for cross border crises *Measured by:* Actual responses to crises Results of 'Exercises' undertaken. *(Source: MS Potential stakeholder surveys)*	Reduced impacts of such crises	There are likely to be particular difficulties in establishing the counter factual with respect to this instrument. Impacts may only be assessed sometime following emergencies. Some scope for peer review

ANNEX 2

Current practice for monitoring and evaluating EU policies on freedom, security and justice

1. MONITORING

1.1. The Tampere scoreboard

The Tampere European Council in 1999 invited the Commission to compile a **scoreboard** to keep implementation of policies on freedom, security and justice under continuous review. The scoreboard would specifically keep track of progress made with implementation of the measures and compliance with the deadlines set in the Amsterdam Treaty, the Vienna Action Plan and the Tampere programme. In response, the Commission produced its first scoreboard in March 2000, followed by regular updates every six months taking into account the objectives set by the European Councils in Laeken (2001), Seville (2002) and Thessaloniki (June 2003). The last Tampere scoreboard was presented in June 2004, marking the end of the first five-year period (1999-2004).

The scoreboards indicated the objectives and deadlines set at Tampere and in each case the responsibilities assigned to launch, advance and complete the process. To provide a clear view of the progress made in each area, the scoreboard showed the outstanding proposals and initiatives presented, progress in Council and European Parliament proceedings and the work planned. A specific section of the scoreboard focused on transposition of the instruments adopted.

1.2. Reviewing implementation of EU legislation

1.2.1. Instruments adopted under the EC Treaty

Implementation by the Member States of Community legislation concerning free movement of persons, visas, asylum, immigration, judicial cooperation in civil matters and citizens' rights adopted under the European Community Treaty is monitored by the Commission. If a Member State fails to comply with its legislative obligations, the Commission can then initiate infringement proceedings under Article 226 of the EC Treaty and may bring the matter before the Court of Justice.

Apart from normal application of the monitoring mechanism under Articles 226 of the EC Treaty, monitoring implementation of the instruments adopted under Title IV of the EC Treaty is not systematic, although it is usual practice. For example, none of the four directives adopted on illegal migration provides for a monitoring report by the Commission.

Some reports, such as the evaluation of the derogation for issuing visas to members of the Olympic family[14], go beyond mere analysis of implementation and contain information on

[14] Report on the functioning of the derogation system introduced by Regulation 1295/2003 regarding measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens (SEC(2005) 1051). This report was written by the Commission on the basis of information provided by the Greek authorities.

results. There are other examples concerning instruments adopted under Title II of the Treaty, such as reports[15] relating to free movement of Union citizens or reports[16] on their electoral rights in municipal and European Parliament elections.

1.2.2. Instruments adopted under Title VI of the Treaty on European Union

In the case of instruments adopted under Title VI of the EU Treaty concerning police and judicial cooperation in criminal matters, there is **no equivalent compliance mechanism** allowing the Commission to exercise its institutional powers as guardian of the Treaties.

For all Framework Decisions adopted by the Council, it is compulsory for Member States to transmit a detailed set of national implementing measures to the Commission and to the Council. Based on this information, the Commission then issues a report (e.g. 2002 Framework Decision on combating terrorism[17]). allowing the Council to debate the need for further measures in the field concerned. The Council generally expresses its position in a final report.

For some Framework Decisions, the Commission repeats or updates its monitoring exercise (e.g. "Victims" Framework Decision[18]).

Similarly, the Commission systematically monitors common positions and issues a monitoring report on national implementing measures. The Commission has also taken the initiative to issue specific reports on certain Council Decisions imposing no monitoring obligation such as those relating to Eurojust[19]

This monitoring exercise deals only with the **legal transposition** aspect and rarely includes details on the **practical implementation of instruments**. Such assessments of legal transposition answer the following questions: are the implementing measures effective, correct and in line with the Framework Decision? Are they clear and do they provide legal certainty? Do they fully apply the instrument and comply with the time limit for transposition?

In some cases this exercise has been backed up by an initial assessment of practical implementation in the Member States and of the tangible results of the national legislation. For example, in the case of the Framework Decision on the European Arrest Warrant[20], some

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15 Reports from the Commission to the Council and the European Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (Right of residence), COM(1999) 127 final and COM(2003) 101 final.

16 Reports on the application of Directive 93/109/EC: Right of EU citizens residing in a Member State of which they are not nationals to vote in European Parliament elections, COM(97) 731 final and COM(2000) 843, or Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2002) 260 final.

17 Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, COM(2004) 409 final, 8.6.2004.

18 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

19 Report from the Commission on the legal transposition of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, COM(2004) 457 final, 6.7.2004.

20 Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (COM(2005) 63 final), p.2, paragraph 2: *"The evaluation criteria adopted by the Commission for this report are, firstly,*

of the practical results of the implementing measures were included in the monitoring report, such as the question of effectiveness and rapidity of surrender. The Commission's report also included some preliminary figures, such as the number of warrants issued or the average time taken to execute a warrant, which mainly illustrated the difficulty of obtaining adequate statistics in this field.

1.3. Information-gathering mechanisms on policy implementation

1.3.1. Existing mechanisms

Following the call by the 2001 Laeken European Council to set up an enhanced exchange of information in the field of immigration and asylum, the Commission launched an information and consultation procedure with a **"Committee on Immigration and Asylum"** (CIA) at its heart. The CIA is made up of experts from the Member States but also frequently provides a forum for representatives of civil society, such as European social partners and the UNHCR, to present their views on pertinent immigration and asylum issues.

In the field of integration, the "**National Contact Points on Integration**" (NCP) play an important role in monitoring progress across policy fields and in ensuring that integration efforts at national and EU level support each other. They convey key results to the CIA.

A **European Migration Network** (EMN) was set up in 2002 as a preparatory measure in response to the need to improve exchanges of information on all aspects of migration and asylum. Its primary objective is to provide the Community and the Member States with objective, reliable and comparable information in these fields by systematically collecting and storing existing data and information from Member States and carrying out national and European level analysis. At present, the EMN consists of national contact points designated by the Member States.

1.3.2. Mechanisms in preparation

In the field of asylum, a Communication[21] on strengthened practical cooperation proposed bringing into operation a **system for sharing expertise**, resources and knowledge between key stakeholders, as a tool for strengthening common approaches to implementation of the first-stage legislative instruments of the European asylum system, building - amongst others - on existing mechanisms, such as the EURASIL group.

In September 2005 the Commission tabled a proposal for a **Regulation on Community statistics on migration and international protection**. The Regulation will improve statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.

In October 2005 the Commission tabled a proposal for a Council Decision on the establishment of a **mutual information procedure on national measures** taken in the areas of asylum and immigration which could affect other Member States. The proposal is based on

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the general criteria normally used nowadays to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposal), and, secondly, criteria specific to the arrest warrant, principally the fact that it is a judicial instrument, its effectiveness and its rapidity."

[21] COM(2006) 67 final.

the recognition that the absence of border checks in the Schengen area and the gradual development of common EU immigration and asylum policies require timely exchanges of information and discussion of national measures taken on asylum and immigration.

1.4. Monitoring implementation of The Hague Programme

The Hague Multi-Annual Programme (2005-2009) and the Action Plan implementing it invited the Commission to present an **annual report on implementation** of these two instruments to the Council (the "Scoreboard plus").

The "Scoreboard plus" will aim predominantly at assessing proper and adequate transposition of the legislative acts adopted and effective implementation of the measures agreed. In concrete terms, "Scoreboard plus" will assess the outcome of both (a) the **significant political progress** achieved at the point of adoption at EU level and (b) **implementation at national level of measures** related to freedom, security and justice.

This structure will bring visibility to monitoring and provide a comprehensive overview of implementation of the Action Plan, meeting the requirements of the European Council in The Hague Programme. It will increase transparency and visibility and improve and facilitate implementation. The **first "Scoreboard plus"** is presented **in parallel** to this Communication, one year after adoption of the Action Plan implementing The Hague Programme.

2. EVALUATION

This section briefly describes the state of play with evaluation in the field of freedom, security and justice, depending on the subject-matter: (1) **programmes,** (2) **legislation** or (3) **policies**[22]**.** Evaluations on freedom, security and justice mainly focus on **individual policy instruments**, be they legislative or financial. As in other areas, evaluation of policies (defined as a coherent set of instruments serving the same coherent objective) is **still developing**. As a consequence, evaluation activities are currently very diverse (internal or external evaluations, annual progress reports, peer reviews, etc.) and very different in scope. This results in a **lack of comparable evaluation** results across policies and of a true overview of the results achieved in establishing an Area of Freedom, Security and Justice.

The evaluation mechanism put forward in this Communication aims at tackling this issue. It provides a **platform** for exhaustive presentation and comparability of existing evaluation results, and identification of any information gaps. Whilst taking into account the fact that evaluation is more advanced for some activities than others, it will allow the establishment of a **common set of minimum evaluation requirements** across the different policies.

2.1. Evaluation of Community programmes

Evaluation of **programmes** is **well developed** within the Commission, including in the area of freedom, security and justice, where major programmes such as the European Refugee

[22] Evaluations of agencies and external bodies have not been included, for example the evaluation of the draft Council Decision transforming the European Police College (CEPOL) into an EU body, the evaluation of the European Monitoring Centre for Drugs and Drug Addiction and the evaluation of the functioning of the European Judicial Network (EJN) in civil and commercial matters.

Fund, AGIS and DAPHNE are regularly evaluated[23]. Available evaluation results demonstrate that whilst the immediate results of funding programmes are easily identified and measured, their longer-term effects are sometimes more difficult to grasp. In this context, the Commission proposals for the 2007-2013 programmes on freedom, security and justice establish a better link between the programmes' specific objectives and the overall political objectives. This will have an impact on the evaluation framework for these programmes, in particular through assessment of their consistency with other instruments (legislative or other) in the same field.

2.2. Evaluation of legislation

Contrary to the evaluation of programmes, evaluation of **legislation** is a **more recent** development in the case of freedom, security and justice. Recent examples include the evaluation of the European Arrest Warrant[24] (2005), the economic evaluation of the Data Protection Directive[25] (2005) and the on-going evaluations of the Directive on minimum standards for the reception of asylum-seekers[26] and of the Brussels I Regulation[27]. Also, the introduction of impact assessments of EU legislation has led to systematic *ex-ante* appraisal, which should greatly facilitate further interim and/or *ex-post* evaluation. In this context, systematic scrutiny of legislative proposals and other draft instruments to ensure that they are compatible with the Charter of Fundamental Rights should serve the same purpose[28].

2.3. Evaluation of policies

2.3.1. Mechanism for Schengen evaluation

The Schengen evaluation system, first established in the intergovernmental Schengen framework and then integrated into the European Union framework[29], assesses correct implementation of the Schengen *acquis* by participating Member States through a peer review mechanism, including visits to Member States. It has issued restricted reports, given details of cases of non-compliance with existing rules and practices and made further recommendations. This mechanism applies to both Community and third pillar measures.

When internal border controls with and between new EU Member States are lifted, the Commission will submit a "*proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism*", as requested by The Hague Programme.

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23 The results of these evaluations are available online at: http://europa.eu.int/comm/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm.

24 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

25 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

26 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers.

27 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

28 SEC(2001) 380/3, COM(2005) 172.

29 Decision 26 DEF 1998 of the Schengen Executive Committee.

2.3.2. Mechanism for the fight against organised crime

Joint Action 97/827/JHA, adopted by the Council on 5 December 1997, established a mechanism for evaluating the application and implementation at national level of international undertakings in the **fight against organised crime**[30]. Two rounds of evaluation have already been completed and two others are ongoing. The first round focused on mutual legal assistance in criminal matters, on which a report was subsequently released on 1 August 2001[31]. The second assessed instruments dealing with law enforcement and drug trafficking. Finally, the third and fourth rounds, not yet completed, are evaluating exchanges of information and intelligence between the Member States and Europol and the European Arrest Warrant respectively. The 1997 mechanism is operated by teams of experts designated by Member States, assisted by the General-Secretariat of the Council, with the involvement of the Commission. It is based on **study visits** and allows an in-depth examination of how instruments or policies are working in practice.

The Commission believes that although this mechanism has proved **useful and effective**, it nevertheless has some **shortcomings**, in particular the total duration of the process, the scope limited to only matters related to organised crime and the limited dissemination of the evaluation results.

2.3.3. Mechanism for the fight against terrorism[32]

Following the conclusions of the extraordinary meeting of the Justice and Home Affairs Council on 20 September 2001, the Council set up a procedure for peer assessment of national anti-terrorist arrangements in the framework of international cooperation between Member States. The first round of evaluations started in 2003 and focused on exchanges of information. Evaluation teams are made up of national experts and their reports are confidential.

2.3.4. Evaluation of the EU Action Plan on Drugs

In 2004 the Commission carried out the final evaluation of the EU Drugs Strategy and Action Plan on Drugs for 2000-2004[33], in cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol. The evaluation exercise provided an **overview of the drugs situation in the European Union** over the reference period. The Strategy and the Action Plan included a wide range of drug-related measures, mainly within the competence of the Member States. Their impact on the drug situation in the European Union could not be considered, mainly because the EU Strategy and Action Plan failed to establish impact indicators.

The EU Action Plan on Drugs for 2005-2008 takes into account the evaluation of the preceding Action Plan and has been designed from the outset to facilitate full evaluation. Accordingly, it clearly allocates responsibilities for each action and includes specific assessment tools, indicators and schedules for implementation. The Action Plan provides for

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30 For further information see: http://europa.eu.int/scadplus/leg/en/lvb/l33053.htm.

31 Final report on the first evaluation exercise - mutual legal assistance in criminal matters (2001/C 216/02).

32 Council Decision 2002/996/JHA of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.

33 COM(2004) 707.

the Commission to present annual reviews of implementation of the Plan plus a final evaluation in 2008, with a view to preparing the next Plan. The **first annual progress** review will be presented in **autumn 2006.**

2.3.5. Mechanism for evaluating respect of fundamental rights

The **European Monitoring Centre on Racism and Xenophobia** studies the extent and development of the phenomena of racism, xenophobia and anti-Semitism and analyses their consequences and effects. Its findings are presented in annual reports. Once established, the Agency on Fundamental Rights, with its wider mandate, is expected to play a key role in evaluating respect of fundamental rights.

The **network of fundamental rights experts** was created by the European Commission in 2002 in response to a recommendation in the European Parliament's report[34] on the state of fundamental rights in the European Union. The network assesses the fundamental rights situation through an annual report, on the basis of an **analysis of the legislation, the case-law and the administrative practice** of the national authorities of the Member States and in the institutions of the Union. The reference points for the evaluation are the rights set out in the European Union's Charter of Fundamental Rights. The results are published annually (so far, in 2003, 2004 and 2005).

[34] 2000/2231(INI).

ANNEX 3

Glossary

Activity: A coherent area of action with objectives and resources. In other words, "Activities" consist of well-defined and delimited measures to which inputs are allocated and converted into outputs.

The policy for the development of an Area of Freedom, Security and Justice has been divided into different Activity-Based Management (ABB) activities such as:

– Activity 1802 “External borders, visa policy and free movement of persons”,

– Activity 1803 “Common immigration and asylum policies”,

– Activity 1804 “Citizenship and fundamental rights”,

– Activity 1805 “Law enforcement cooperation and prevention of and fight against general organised crime”,

– Activity 1806 “Establishing a genuine European area of justice in criminal and civil matters”,

– Activity 1807 “Coordination in the field of drugs”.

Evaluation: “Judgement of interventions according to their results, impacts and the needs they aim to satisfy”[35]. It is a process undertaken by the Commission in order to identify what can be learned for policy and planning.

***Ex ante/ex post* evaluation**

Ex ante evaluation: Evaluation performed before implementation of a measure. For the purposes of the Commission, *ex ante* evaluation is defined as a process that supports the preparation of proposals for new or renewed Community activities. Its purpose is to gather information and carry out analyses that help to define objectives and to ensure that these objectives can be met, that the instruments used are cost-effective and that reliable subsequent evaluation will be possible.

Intermediate (or mid-term) evaluation: Evaluation performed during implementation of a measure. If the evaluation extends throughout the period of implementation, this is also called "on-going evaluation". This type of evaluation critically appraises the first outputs and results, in order to assess the quality of monitoring and implementation of the measure. The main focus is to help to prepare adjustments and reprogramming and to provide input for the preliminary deliberations on the future of the measures.

Ex post evaluation: Evaluation conducted either on or after completion of a measure. The main interest is overall assessment of the measure, in particular by analysing the impact

[35] Communication on Evaluation (SEC(2000) 1051): http://europa.eu.int/comm/budget/evaluation/keydocuments_en.htm.

achieved and examining its efficiency. The objective is to understand the reasons for success or failure and the sustainability of the results and impact. It also tries to draw conclusions that can be applied generally to other measures.

Impact: A general term used to describe the effects of a measure on society. Impact can be either positive or negative and foreseen or unforeseen. Initial effects are called outcomes/results, whilst impact is usually longer-term.

Impact assessment: Impact assessment is about examining the likely economic, social and environmental impact of the Commission's proposals. It identifies and assesses the issue at stake and the objectives pursued. It identifies the main options for achieving the objectives and analyses their likely impact. It outlines the advantages and disadvantages of each option as well as synergies and trade-offs.

Indicators: A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Output indicators are normally straightforward. Impact indicators may be more difficult to obtain, and it is often appropriate to rely on indirect indicators as proxies. Indicators can be either quantitative or qualitative.

Monitoring: A continuous process of examining delivery in terms of adoption and implementation of different measures, especially legislation. It is not to be confused with programme monitoring, which consists of examining the delivery of programme outputs to the intended beneficiaries. Evaluation, on the other hand, is carried out at a discrete point in time, and consists of an in-depth study. Monitoring generates data which can be used in evaluations.

Outcomes/results: The intermediate effects of a measure.

Policy: A set of activities, which may differ in type (programmes, measures, procedures, laws or rules) and beneficiaries or target groups, directed towards common general objectives or goals. Unlike projects and programmes, a policy is not usually delimited in terms of time or budget.

Policy area: Within the EU the concept *policy* may designate various scope and levels of complexity, ranging from an overall Commission strategy or objective over a policy area to an ABB-activity. In this context, a policy will normally embrace a range of instruments At Commission level, the ABB-activities (215 altogether) have been grouped into some 30 policy areas, closely identifiable with Directorates-General. This Communication deals with policy area 18: Freedom, security and justice.

Policy instruments: A set of techniques by which public authorities attempt to ensure support and to effect or prevent social change. In this sense, there is a strong emphasis on the dynamic evolving nature of policies, with individual policy instruments being added, withdrawn or redesigned over time. The variety of available policy instruments includes, for example, legislation such as regulations or directives and may involve resource commitments, for example in the form of operational programmes; they also include Communications, action plans, etc. However, policy instruments differ significantly in the way in which they bring about results and impacts and the timescales over which these can be expected.

Programme: A set of organised but often varied actions (a programme may encompass several different projects, measures and processes) directed towards achieving specific objectives, often with a definite time schedule and budget.

EUROPEISKA GEMENSKAPERNAS KOMMISSION

Bryssel den 28.6.2006
KOM(2006) 332 slutlig

MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET OCH EUROPAPARLAMENTET

Utvärdering av EU:s politik för frihet, säkerhet och rättvisa

{SEK(2006) 815}

MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET OCH EUROPAPARLAMENTET

Utvärdering av EU:s politik för frihet, säkerhet och rättvisa

1. INLEDNING

1. I Haagprogrammet (2004)[1] anges följande: ”Enligt Europeiska rådets åsikt är det ytterst viktigt för effektiviteten i unionens åtgärder att genomförandet och effekterna av samtliga åtgärder utvärderas”. **Handlingsplanen** för genomförande av Haagprogrammet (2005)[2] innehåller de politiska ramarna för Europeiska unionens åtgärder för frihet, säkerhet och rättvisa under de närmaste fem åren. I handlingsplanen fastställs också att kommissionen under 2006 skall lägga fram ett allmänt **meddelande** med förslag till ett system för utvärdering av EU:s politik på detta område[3].

2. Stats- och regeringscheferna har fastställt att en utvärdering av genomförandet är **ett av de viktigaste redskapen** för att se till att de viktiga resultaten av EU:s och medlemsstaternas arbete när det gäller att utveckla ett område med frihet, säkerhet och rättvisa utnyttjas på bästa sätt och ses över kontinuerligt så att **EU-medborgarnas förväntningar** uppfylls.

3. I Haagprogrammet understryks vikten av utvärdering i syfte att 1) **förbättra rutinerna för utarbetande av politiska riktlinjer, program och instrument** genom att identifiera de problem och hinder man stött på vid genomförandet, 2) fastställa mer systematiska regler för **ekonomiskt ansvar och kontroll av politiken**, 3) främja information och **utbyte av god praxis** och 4) **bidra till utvecklingen mot en utvärderingskultur** i hela EU.

Med beaktande av 1) det **mandat** kommissionen fått genom Haagprogrammet och dess handlingsplan, 2) den **splittrade situationen** när det gäller befintliga system för övervakning och utvärdering och 3) behovet att lämna **omfattande information** till alla berörda parter angående genomförandet och resultatet av politiken, anser kommissionen att **det nu är dags** att arbeta för ett **enhetligt och övergripande system** för utvärdering av EU:s politik för frihet, säkerhet och rättvisa, **i samarbete med** medlemsstaterna och EU:s institutioner.

Detta system kommer att även att omfatta **övervakning av genomförandet** (som beskrivs i meddelandet om stärkt frihet, säkerhet och rättvisa i Europeiska unionen:

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1 Bilaga 1 till ordförandeskapets slutsatser från Europeiska rådets möte i Bryssel i november 2004.

2 Rådets och kommissionens handlingsplan för genomförande av Haagprogrammet för ett stärkt område med frihet, säkerhet och rättvisa (OJC 198, 18.2.2005, p.1).

3 Enligt handlingsplanen krävs det även en systematisk, objektiv och opartisk utvärdering av genomförandet av EU:s politik på det rättsliga området i syfte att förstärka det ömsesidiga förtroendet samtidigt som rättsväsendets oberoende respekteras. Senare i år lägger kommissionen fram ett annat meddelande där denna fråga behandlas ingående enligt de allmänna principer som fastställs i detta meddelande.

rapport om genomförandet av Haagprogrammet 2005, nedan kallat ”resultattavlan för framsteg”)[4] och **utvärdering av resultaten**.

[4] KOM(2006) 333.

2. UTVÄRDERINGSBEGREPPET

4. Det är viktigt att skilja mellan övervakning av genomförandet och utvärdering.

- **Övervakning av genomförandet** innebär att man ser hur långt man kommit med genomförandet av politiken.

- I kommissionens meddelande om utvärdering från 2000[5] definieras **utvärdering** som *en bedömning av (offentliga) åtgärder utifrån resultat, effekter och de behov som måste tillfredsställas*. Huvudsyftet med en utvärdering är att ge beslutsfattare information om vilken genomslagskraft och effekt den verksamhet har haft som planerats och genomförts.

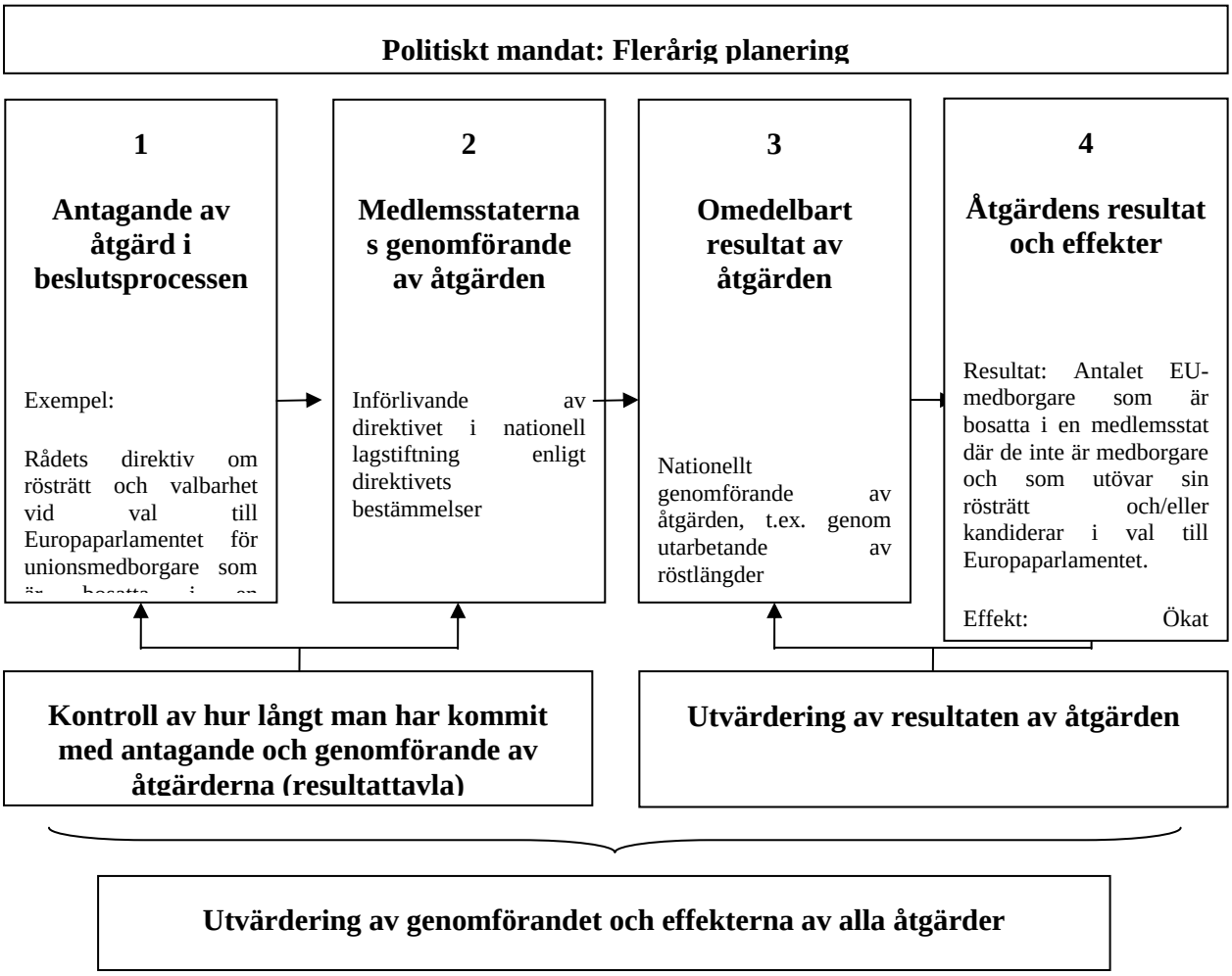
5. Kommissionen ser det system som nämns i handlingsplanen som ett sätt att övervaka genomförandet och utvärdera de konkreta resultaten av politiken för frihet, säkerhet och rättvisa. I detta sammanhang har begreppet utvärdering en vidare betydelse och kompletterar övervakningen av genomförandet med en undersökning av effekterna av genomförandet, enligt beskrivningen nedan. Detta ligger i linje med Haagprogrammet eftersom den *utvärdering av genomförandet och effekterna av samtliga åtgärder* som nämns där omfattar både övervakningen av själva genomförandet och utvärderingen av resultaten av de åtgärder som vidtagits.

6. Det är mot denna bakgrund som kommissionen föreslår ett sammanhängande och omfattande åtgärdspaket som vilar på två pelare: ”Resultattavlan för framsteg” för att övervaka genomförandet och det **utvärderingssystem** som föreslås i detta meddelande.

7. Det system som presenteras här bygger på denna breda definition som enligt kommissionen gör det möjligt att fullständigt förstå omfattningen och kvaliteten på de resultat som uppnås på området frihet, säkerhet och rättvisa. Systemet kommer att fungera inom ramen för principerna i Haagprogrammet och bör så småningom leda till en bättre utformning av politiken genom det sker en systematisk återkoppling av utvärderingsresultaten till beslutsprocessen.

[5] SEK(2000) 1051.

Fig. 1: Utvärdering genom hela beslutsprocessen



3. UTVÄRDERING AV EU:S POLITIK FÖR FRIHET, SÄKERHET OCH RÄTTVISA – CENTRALA FRÅGOR

3.1. Komplexa och ambitiösa politiska mål

8. Frihet, säkerhet och rättvisa är ett av EU:s **bredaste politikområden**. Målen omfattar några av de mest aktuella frågorna: fri rörlighet för personer, terrorism och organiserad brottslighet, polisiärt och rättsligt samarbete, asyl och migrationspolitik, respekt för grundläggande rättigheter och främjande av EU-medborgarnas rättigheter. Hänsyn till ländernas nationella suveränitet försvårar ofta genomförandet och gör det nödvändigt att kompromissa på EU-nivå. Ett nytt utvärderingssystem måste därför ta hänsyn till denna politiska bakgrund.

9. Uppfyllandet av de komplexa och ambitiösa politiska målen kompliceras ytterligare av en ibland förvirrande lagstiftning, en blandning av olika förfaranden för beslutsfattande och tillämpning.

För att kunna anpassa det föreslagna utvärderingssystemet till dessa komplexa mål måste systemet vara **flexibelt** och tillåta **vidareutveckling och konsolidering**.

3.2. Tidsplan

10. På grund av kommissionens särskilda roll och beslutsprocessen på området för frihet, säkerhet och rättvisa kräver politiska åtgärder på olika områden ofta **olika lång tid** innan de är färdigutvecklade och kan träda i kraft. Det är därför nödvändigt att **i varje enskilt fall** och för **varje enskilt område** ta ställning till hur ingående analysen behöver vara. Inom alla områden kommer hänsyn att tas till resultaten på kort och medellång sikt, men på vissa områden kan det bli svårare att analysera de konkreta effekterna (t.ex. när det gäller narkotika- eller migration).

Det föreslagna utvärderingssystemet bör vara så **flexibelt** att utvärderingarna kan vara olika ingående för olika områden, och att hänsyn tas till politikens utvecklings- och konsolideringsgrad.

Det tycks därför lämpligt att man åtminstone i den första fasen koncentrerar sig på resultat på kort och medellång sikt. Det slutliga målet skall vara att få en bild av vilka generella effekter politiken på olika områden har på lång sikt.

3.3. Medverkan av institutioner och berörda parter

11. En annan specifik aspekt på politiken för frihet, säkerhet och rättvisa är dess inverkan på alla berörda parter. Oavsett vilket utvärderingssystem man väljer att tillämpa måste hänsyn tas till **de berörda parternas förväntningar och prioriteringar** och även till **behovet av konfidentialitet** inom vissa politikområden, t.ex. terrorism och organiserad brottslighet.

12. I en anda av **partnerskap** kommer kommissionen att **samråda och diskutera** med medlemsstaterna och EU:s institutioner under och efter utarbetandet av utvärderingsrapporten. Medlemsstaterna och EU:s institutioner kommer i detta syfte att anmodas att utse **kontaktpunkter** för dialogen med kommissionen. Utvärderingsrapporten[6] blir **offentlig** och vänder sig till medlemsstaterna och EU:s institutioner.

13. Rådet och medlemsstaterna kommer tillsammans med kommissionen att utgöra huvudaktörerna i det föreslagna utvärderingssystemet. Europaparlamentet kommer att vara nära knutet till arbetet i enlighet med institutionernas befogenheter och förpliktelser. Medlemsstaternas parlament kommer också att delta i utvärderingen av de periodiska rapporterna.

14. På de områden som omfattas av EG-fördraget kommer Regionkommittén och Europeiska ekonomiska och sociala kommittén att delta i förberedelserna och genomförandet av utvärderingssystemet. Utvärderingsrapporterna kommer rutinmässigt att skickas till utskotten när de godkänts.

15. Olika organ som Europeiska unionens byrå för grundläggande rättigheter, Europeiskt centrum för kontroll av narkotika och narkotikamissbruk (ECNN), Europol, Eurojust och Europeiska byrån för förvaltningen av det operativa samarbetet vid Europeiska unionens medlemsstaters yttre gränser kommer att ha en viktig funktion i systemet.

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[6] Se punkt 30.

Först och främst därför att dessa organ kommer att förse systemet med uppgifter och analyser. Dessutom kommer de att rådfrågas av kommissionen i samband med utvärderingsrapporterna.

16. Det civila samhället kan också lämna värdefulla bidrag i detta sammanhang. Kommissionen kommer att se till att synpunkterna från det civila samhällets organisationer beaktas och den kommer att fastställa lämpliga metoder för att se till att de deltar i utvärderingen av all politik på området för frihet, säkerhet och rättvisa.

Det föreslagna utvärderingssystemet bör omfatta **en samrådsmekanism som är öppen för insyn** och som även kan användas för insamling och kontroll av relevanta uppgifter.

3.4. Statistik

17. En **viktig komponent** i utvecklingen av ett utvärderingssystem är tillgången till statistik[7] och nödvändig analyskapacitet. På vissa områden finns det bra statistik att tillgå (t.ex. avseende narkotikapolitiken), medan det på andra områden, t.ex. brottslighet och straffrättskipning, fortfarande finns en del att göra. Statistik över utvecklingen av de behov som politiken för frihet, säkerhet och rättvisa inriktar sig på kommer att behövas som underlag för bedömningar av hur de befintliga behoven ökat eller minskat med en viss politik, och för att man så småningom skall kunna dra slutsatser om hur effektiv politiken har varit. Förbättringar krävs inom följande tre områden: kvalitet, tillgänglighet och analys. I det arbetet kommer organ som Europeiskt centrum för kontroll av narkotika och narkotikamissbruk (ECNN), Eurojust, Europol och den framtida Europeiska unionens byrå för grundläggande rättigheter att spela en viktig roll. Olika forskningsprojekt och nätverk kommer också att bidra aktivt till dessa mål.

Parallellt med utarbetandet av det föreslagna utvärderingssystemet behöver därför **statistiken** om frihet, säkerhet och rättvisa förbättras med hänsyn till **kvalitet, tillgänglighet och analys**.

4. UTVÄRDERING AV EU:S POLITIK FÖR FRIHET, SÄKERHET OCH RÄTTVISA – FÖRSLAG TILL ETT STRATEGISKT UTVÄRDERINGSSYSTEM

4.1. Beskrivning av utvärderingssystemet

18. **Det strategiska system för utvärdering** av politiken för frihet, säkerhet och rättvisa **som föreslås här bygger på en konsolidering av** de **resultat** som uppnåtts på andra områden av EU:s politik**.** Systemet bygger på **nuvarande praxis** (se bilaga 2) och använder, särskilt när det gäller programfinansiering, uppgifter som kommer från befintliga utvärderingskrav. Även på andra områden där det redan finns uppgifter kommer man att vinnlägga sig om att utnyttja dessa för att **undvika dubbelarbete**.

19. Systemet är **flexibelt** och genomförs i **tre steg**:

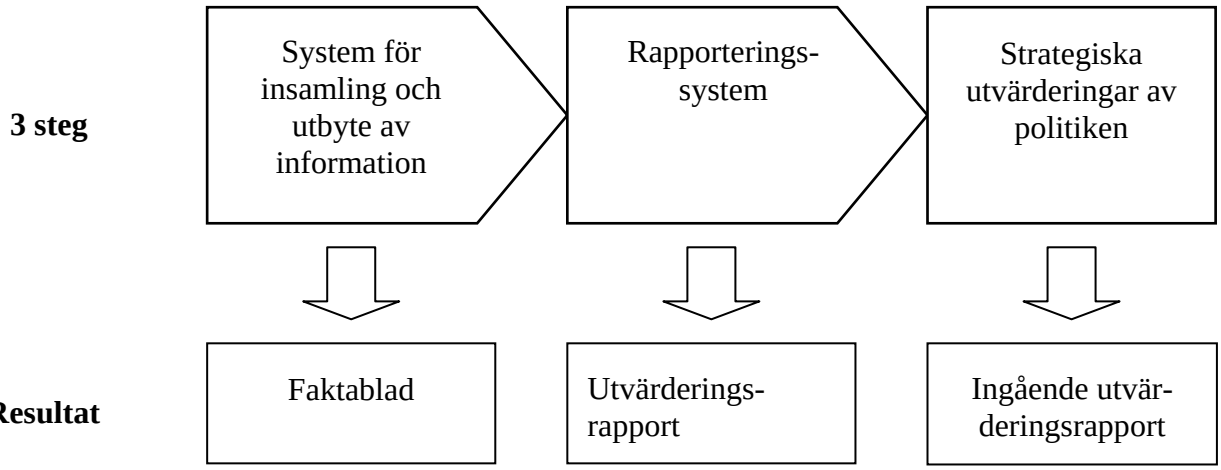
[7] EU:s statistik utarbetas på grundval av bestämmelserna i rådets förordning om gemenskapsstatistik. Åtgärder för detta genomförs i överensstämmelse med gemenskapens statistiska program och de årliga programmen och med tillämpning av principerna i europeiska uppförandekoden avseende statistik.

(1) I steg 1 upprättas ett system för insamling och utbyte av uppgifter.

(2) Steg 2 innehåller ett **rapporteringssystem** där uppgifterna konsolideras, används och analyseras.

(3) I steg 3 utförs riktade **ingående strategiska utvärderingar**.

Fig. 2: Utvärderingssystemets tre steg



20. Systemet kommer att omfatta alla politiska åtgärder på områdena för frihet, säkerhet och rättvisa[8].

21. Utvärderingsrapporterna[9] kommer att skickas till rådet, Europaparlamentet, Europeiska ekonomiska och sociala kommittén samt Regionkommittén, och i förekommande fall även till en bredare krets, bl.a. i samband med tillfälliga offentliga arrangemang.

22. Genom att rapporteringen blir bättre och spridningen av utvärderingsresultaten förbättras, väntas systemet på sikt leda till att resultaten utnyttjas bättre på beslutsnivå.

23. Systemet följer kommissionens riktlinjer om utvärdering och kommer att fungera i enlighet med dess allmänna principer.

4.1.1. System för insamling och utbyte av uppgifter

24. Systemet för insamling och utbyte av uppgifter kommer att bygga på så kallade **faktablad** (ett för varje politikområde) som fylls i av de behöriga myndigheterna i medlemsstaterna. När det gäller områden där det redan finns uppgifter i ett liknande format **fyller** kommissionen **i** de uppgifterna **på förhand**. Faktabladen kommer

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[8] I steg 3 kan man fortsätta att använda det kollegiala utvärderingssystem som beskrivs i bilaga 2 punkt 2.3.2. Beroende på hur de nuvarande institutionella ramarna utvecklas kan kommissionen komma att administrera systemet i ett senare skede. Den kommer under alla omständigheter att komplettera systemet med egna ingående strategiska utvärderingar på de områden som omfattas av avdelning VI i EU-fördraget.

[9] Se punkt 30.

samtidigt att skickas ut för **samråd** med berörda parter[10] och det civila samhället. Samrådet kommer att vara specifikt för varje politikområde och bygga på befintliga nätverk och samrådsmekanismer, med nödvändigt hänsynstagande till kravet på konfidentialitet på vissa områden.

25. På faktabladen anges en **övergripande politisk målsättning** för varje område och de **viktigaste instrumenten** (rättsliga, finansiella och andra) för att nå dessa mål. Systemet förväntas ge en tydlig bild av de **resultat som uppnåtts**.

26. Faktabladen kommer även att innehålla en rad **indikatorer** för varje område. Dessa är nära knutna till politikområdets övergripande målsättning. Faktabladen ingår i den **samrådsprocess** som följer på offentliggörandet av detta dokument och kommer att få sin slutliga utformning i partnerskap med medlemsstaterna. I bilaga 1 till detta meddelande visas exempel på de föreslagna faktabladen.

27. Kommissionen kommer att anmoda varje medlemsstat att utse nationella **kontaktpunkter**. Dessa kommer att spela en viktig roll vid samordningen av svaren på nationell nivå och i samarbetet med kommissionens avdelningar.

28. När det gäller **EU:s lagstiftning**, kommer indikatorerna och faktabladens bedömningssystem att fokusera på konkreta resultat från den praktiska tillämpningen av lagstiftningen och inte på i vilken utsträckning bestämmelserna har införlivats i nationell lagstiftning eller hur EU:s lagstiftning påverkat medlemsstaternas rättssystem. Detta behandlas i stället i ”resultattavlan för framsteg” där bestämmelsernas tillämpning och genomförande i nationell lagstiftning bedöms snarare än graden av måluppfyllelse.

29. När det gäller EU:s **finansieringsprogram** kommer faktabladen att grundas på **befintliga genomförande- och utvärderingsrapporter** som utarbetats i enlighet med bestämmelserna i budgetförordningen och den relevanta rättsliga grunden. De uppgifter som krävs för faktabladen om finansieringsprogram förväntas vara lätta att ta fram och det krävs därför endast några få ytterligare uppgifter från medlemsstaterna.

4.1.2. Rapporteringssystem

30. När kommissionen fått in faktabladen och samrått med berörda parter kommer den att behandla de inkomna uppgifterna och utarbeta en **utvärderingsrapport** där uppgifterna konsolideras och analyseras. Denna rapport kommer även att innehålla **rekommendationer för politiken** på de olika områden som tas upp.

31. Syftet med denna process är att utvärdera den politik som genomförs på EU-nivå på området för frihet, säkerhet och rättvisa och identifiera områden som lämpar sig för en **ingående strategisk utvärdering**.

4.1.3. Strategiska utvärderingar av politiken

32. Efter utvärderingsrapporten och ytterligare samråd kan **ingående strategiska utvärderingar av politiken på vissa områden** göras. Dessa utvärderingar syftar till

[10] Se punkt 3.3.

att få fram användbara och aktuella uppgifter som kan tjäna som underlag för politiska beslut på de olika politikområdena.

33. Tanken är att man genom dessa strategiska utvärderingar skall förbättra befintlig praxis (se bilaga 2), bland annat genom

(a) att fokusera på **politiken** (eller delar av den) snarare än på enskilda åtgärder (t.ex. utvärdering av den gemensamma invandringspolitiken),

(b) att analysera **sambandet** mellan olika åtgärder inom ett visst politikområde (t.ex. hur finansieringsprogram stöder och underlättar genomförandet av EU-lagstiftningen på ett givet område),

(c) att undersöka hur en viss politik bidrar till det **övergripande målet** att upprätta ett område med frihet, säkerhet och rättvisa,

(d) att fastställa **graden av måluppfyllelse** för det allmänna målet och

(e) att bedöma måluppfyllelse av ett övergripande mål på området för frihet, säkerhet och rättvisa (t.ex. skyddet av grundläggande rättigheter).

4.2. Frekvens och uppföljning

34. Med en fastställd utvärderingsfrekvens är det möjligt att kontrollera utvecklingen med regelbundna intervall och göra jämförelser. Det föreslås att denna utvärdering (faktablad + utvärderingsrapport) genomförs **två gånger vart femte år**. Kommissionen kommer i största möjliga utsträckning att använda sig av redan disponibla uppgifter.

35. I detta förslag har hänsyn tagits till att utvärderingen

(a) bör vara **regelbundet återkommande**,

(b) inte bör vara för betungande,

(c) inte behöver utföras årligen eftersom den inriktar sig på resultat som visar sig på längre sikt och uppgifter som samlas in över en längre period,

(d) bör samordnas med **befintliga** strategiska och fleråriga planer.

36. Med den tidsplan som föreslås kan rådet och kommissionen även använda resultaten från utvärderingsrapporterna när de bedömer om det finns behov av att ett nytt strategiskt program 2009 när Haagprogrammet löper ut.

37. Om utvärderingsrapporter utarbetas vartannat eller vart tredje år kan systemet samordnas med femårscykeln. Detta kommer att främja ett bättre och mer strategiskt utnyttjande av utvärderingsresultaten i beslutsfattandet. 2006–2007 kommer att utgöra en övergångsperiod (se tabellen nedan).

38. För att faktabladen skall kunna samordnas med ”resultattavlan för framsteg” planerar man att skicka ut dem till medlemsstaterna i slutet av 2006 och sedan offentliggöra utvärderingsrapporten och den andra resultattavlan i mitten av 2007.

Tidsplan	Resultattavlan för framsteg (SB)	Utvärderingssystem	Handlingsplan
2005			Antagande av handlingsplanen för Haagprogrammet
2006	SB+ 1		Delrapport om genomförandet (i slutet av 2006)
2007	SB+ 2	Utvärderingsrapport 1	Första översyn av politiken
2008	SB+ 3		
2009	SB+ 4	Utvärderingsrapport 2	
2010	SB+ 5		Haagprogrammet löper ut
2011	SB+ 6		
2012	SB+ 7	Utvärderingsrapport 3	
2013	SB+ 8		
2014	SB+ 9	Utvärderingsrapport 4	

(övergångsperioden är gråmarkerad)

39. Resultatutvärderingen i bilagan innehåller en uppskattning av **medlemsstaternas administrativa merkostnader**. Medlemsstaterna uppmanas att med kommissionens stöd arbeta för att de **uppgifter** som lämnas är **jämförbara och korrekta**. Aktuella utvärderingar av ett antal rättsliga åtgärder har visat att grundläggande uppgifter som lämnas om politiken ibland varken är harmoniserade eller korrekta. Rådets och kommissionens särskilda utvärderingar av politiken för frihet, säkerhet och rättvisa kommer att utgöra en ytterligare informationskälla.

40. Detta meddelande utgör **starten på en process av medellång varaktighet**. Kommentarer och förslag till förbättringar av det föreslagna utvärderingssystemet och faktabladen kan göras i uppföljningen till detta meddelande. I detta syfte kommer en omfattande samrådsprocess att inledas och en öppen utfrågning planeras under hösten.

41. Efter fem år kommer systemet att **ses över** för att man skall undersöka vilka ändringar som behöver göras. Man kommer då att ta hänsyn till resultaten i fig. 2. Utvärderingen kommer att grundas på de målsättningar som anges i punkt 3.

5. SLUTSATSER

42. Kommissionen anser det nödvändigt att upprätta ett **enhetligt och övergripande system för utvärdering** av EU:s politik för frihet, säkerhet och rättvisa, med

beaktande av den nuvarande situationen och Haagprogrammets mandat. Ett sådant system måste vara **flexibelt** och ta hänsyn till **utvecklingen av institutionella och rättsliga ramar** för att se till att EU:s politik för frihet, säkerhet och rättvisa ytterligare förbättras och effektiviseras.

43. Systemet kommer att vara uppbyggt så att resultaten från olika utvärderingar samlas inom samma ram och därigenom kan tjäna som underlag för det politiska beslutsfattandet på olika nivåer. På så sätt kommer det föreslagna systemet också att förse beslutsfattare med **relevant information** så att de har tid att överväga hur Haagprogrammet skall följas upp när det löper ut 2009.

44. Kommissionen och rådet kommer att genomföra systemet i enlighet med sina institutionella befogenheter och i nära samarbete med Europaparlamentet. För att utvärderingssystemet skall kunna lanseras och tillämpas effektivt är det nödvändigt att EU:s institutioner och medlemsstaterna, med hjälp av sina myndigheter och förvaltningar, **samordnar och fullt ut stöder verksamheten**.

45. Syftet med utvärderingssystemet är också att det skall effektivisera EU:s åtgärder och det kommer därför att bidra till att uppfylla de strategiska målsättningarna om **bättre lagstiftning** och **större öppenhet om EU:s verksamhet**.

ANNEX 1

Factsheet of JLS policies

POLICY AREA: EXTERNAL BORDERS, VISA POLICY AND FREE MOVEMENT OF PERSONS
Factors influencing evaluation mechanism: well established policy area, 1st pillar activities, there is a strong consensus amongst stakeholders for EU level action; there is a mix of instruments (legislative activities, co-operation activities, programme funding, functioning Community Agency, IT systems); possible to construct evaluation indicators, but might be hard to measure outcomes and results and causal links in practice. Methods to evaluate controls at borders are improving, including available administrative information and statistics. Some constraints on fully independent evaluation. There are strong interlinkages between the instruments within the ABB activity and strong potential for 'thematic' evaluation examining instruments in parallel.
Policy sub-area 1: External borders
Objectives: Develop an integrated external border management system Ensure uniform high standards of border checks and border surveillance at EU external borders Reduce number of illegal cross border movements of people Further 'burden sharing' in management of external borders
Policy sub-area level indicators: The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of all third country national border crossings into EU (*Source: Commission - Eurostat statistics on asylum and migration*) The difference between the numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of

all third country national border crossings into EU through the most permeable and least permeable border. Note that this indicator would require to define the most and least permeable EU border. The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally (*Source: Commission - Eurostat statistics on asylum and migration*) The proportion of all resource commitments to external border management originating in countries without EU external borders *(Source: MS)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS.

European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX)	Improvement of operational cooperation between Member State authorities Increased competences of border guards	Co-operation with Agency and responses to good practice, training and other advice.	Operational cooperation *Measured by:* Number of joint operations and pilot projects carried out *(Source: Agency)* Development of risk analysis *Measured by:* Number of risk analyses carried out *(Source: Agency)* Increased training *Measured by*: Number of border guards trained Number of training courses and	Improvement of border control *Measured by:* Effective joint operations *(Source: Agency)* Increased intelligence *Measured by:* Use of risk analyses by national services *(Source: MS)* Better trained border guards *Measured by:* Use of newly acquired skills *(Source: MS)*	Improved resource deployment at external borders (due to better intelligence) Reduced permeability of external borders (due to better trained staff)	Difficult to assess causality of intervention. Evaluation methods – case studies, follow up surveys. EU leading the evaluation. (Other EU Agency evaluations have tended to be process rather than impact oriented)

			seminars offered *(Source: Agency)*			
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national authorities To improve the overall efficiency of national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted *(Source: Commission)*	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed by July 2006.

	administrations in their tasks					
Teams of national experts	Further objectives of FRONTEX agency: Better deployment of resources in circumstances requiring special assistance Increased competences of border guards	Secondment of experts to teams.	Provision of technical and operational assistance. *Measured by:* number of assignments carried out by teams *(Source: Agency)*	Improved practice in border surveillance. *Measured by:* use of results of teams' work in border surveillance and efficiency of teams work *(Source: Agency and MS)*	Reduced permeability of external borders (due to assistance to staff) Facilitated legitimate travel	Evaluation methods – case studies, qualitative analysis.
Policy sub-area 2: Visa policy and free movement of persons						
Objectives: Prevent illegal immigration and threats to public order Reduce time taken and costs of acquiring visas for legitimate travellers. Reciprocation with third countries on visa waivers. Reduce number of visas given to travellers who become overstayers and illegal migrants Abolish controls at internal EU borders						

Policy sub-area level indicators:

The average time taken from application to receipt of (a particular class of) visa *(Source: MS, VIS)*

The average costs (fees) for (a particular class of) visa *(Source: MS, VIS)*

The number of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission)*

The total population of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission*)

The number of EU internal border crossings that are subject to controls *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Common application centres (for Schengen countries)	Render the reception of visa applications more efficient through a better allocation of resources. Reduce costs in relation to capturing of biometrics. Harmonisation of reciprocal	Commitment to the centres. Participation in setting up the centres.	Number of centres established and MS involved *(Source: MS).* Number of visas issued through the centres *(Source: MS).*	Increased efficiency of providing visa services. *Measured by:* time taken to issue visas *(Source: MS)* *(Source: MS).* Improved use of visa related	Reduced costs to visa applicants. Reduced costs to administrations. Increased bone fide travel.	Evaluation method – efficiency analysis. Potential evaluation leadership from the MS and use of peer review process.

	procedures by MS			information *(Source: MS).*		
Visa Information System	Improve the implementation of the common visa policy by the exchange of visa data between Member States, in order to prevent visa shopping, to facilitate the fight against fraud, checks on visas, to assist in the identification of illegal immigrants, to facilitate the application of the Dublin II Regulation and to contribute to the prevention of threats to internal security.	Implementation at the national level, including the development/adaptation of national systems.	Number of number of visas refused, annulled, revoked, processing times *(Source: Commission).* Availability rate *(Source: Commission)*	Retention and sharing of data from visa applications and related decisions. *Measured by:* number of entries in VIS *(Source: Commission).* Measured: number of analyses conducted using VIS data *(Source: Commission).*	Improvement of application procedures, of checks at the external borders and within the Schengen territory, of the application of the Dublin II Regulation, of the identification of illegal immigrants and of the detection of fraud. Facilitated legitimate travel.	Monitoring and evaluation, by the Commission at EU level.
The reciprocity mechanism (Council Regulation	To ensure EU citizens can travel without a visa to all third countries whose nationals	Co-operation with the Commission, information sharing on bilateral dialogue with	Number of third countries who have waived visa requirements for EU nationals	Improved reciprocity measured by percentage of decrease of non-	Facilitated legitimate travel for EU travelers	Diplomatic efforts on EU level vis-à-vis third countries concerned.

851/2005)	don't need a visa to travel to the EU.	third countries	*(Source: Commission)*	reciprocity cases Improved dialogue and diplomatic contacts with third countries		The first Report of the Commission on reciprocity in visa waivers was adopted on 10 January 2006
Council Regulation on a Border code	To implement common rules governing the movement of persons across borders, to include both rules on checks at external borders and rules on the removal of checks on persons at internal borders and the reintroduction of such checks in certain circumstances. To improve integrated border management	Application in MS that apply the Schengen acquis	Harmonisation of rules governing the movement of persons at internal and external borders *(Source: Commission)*	Improved border management and control	Improved control of external borders Facilitated travel within the Schengen acquis	This regulation was adopted recently – February 2006.

POLICY AREA: CITIZENSHIP AND FUNDAMENTAL RIGHTS
Factors influencing evaluation mechanism: Relatively new policy area in JLS (although the citizenship policy as such is an established area in the EC/Commission activities), 1st pillar activities, a combination of instruments (legislation, funding programmes, new Community Agency). The nature of the instruments and their objectives leads to reliance on qualitative evaluation methods. However, there is scope for further improvements to the information base through surveys and the development of statistics. The objectives within the policy area are wide ranging and the sub policy areas as defined below are not distinct. There is some scope for evaluating sub sets of instruments in parallel.
Policy sub-area 1: Citizenship of the Union
Global objectives: Increase awareness of Union citizens of their rights and of the ways these can be enforced Decrease any obstacles for the enjoyment of their rights by Union citizens, in particular of the right to free movement and residence Increase participation of EU citizens in democratic life in the Union Facilitate the diplomatic and consular protection offered to the Union citizens in third countries
Policy sub-area level indicators: Levels of citizens' awareness of their rights and mechanisms of redress *(Source: Surveys and Eurobarometer reports)* Instances of right to free movement and residence hindered *(Source: complaints made to Commission)* Rates of voting registration and participation – percentage of increase/decrease *(Source: Member States)* Number of citizens standing for election to public office – percentage of increase/decrease *(Source: Member States)*

Instances of use and complaints from EU citizens over levels of consular protection *(Source: Member States)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Directive 2004/38/EC on free movement and residence	Clarify and simplify existing Community law in field	Transposition into national legal systems	Relevant national laws adopted in line with Directive provisions and notified the Commission by 30.4.2006 together with a table of conformity. *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the Directive *(Source: Commission)*	Facilitated free movement and residence	Evaluation leadership by the EU. Would benefit from strong involvement of MS in evaluation
Community legislation on the EP elections and on the right of non-national Union citizens' electoral rights in their country of residence	Ensure that the EP elections are conducted according to the basic principles of democratic elections Ensure the participation of non-national Union citizens to the EP elections and to the	Transposition into national legal systems	Relevant national laws adopted in line with provisions of Community law and notified to the Commission *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the legislation *(Source: Commission)*	EP elections carried out democratically. Non-national Union citizens participate in the elections on the same conditions as nationals in EP elections and in municipal	

	municipal elections				elections.	
Fundamental Rights and Citizenship programme (part Citizenship)	Improve awareness of citizenship of the Union and related rights Encourage citizens to participate to actively to democratic life	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring system)*	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Dissemination of good practice in voter education and activation. *Measured by:* level of awareness of Programme's outputs *(Source: MS)*	Improved awareness of Union citizenship and related rights amongst EU citizens. Increased participation in democratic life.	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.
Policy sub-area 2: Fundamental Rights						
Global objectives: Increase the awareness of fundamental rights amongst citizens. (This concerns the rights as protected on European Union and national level including the relevant regional and international instruments.) Decrease instances of breaches of fundamental rights (including breaches of privacy, personal data protection and protection from violence against						

children, women and youth)

Reduce the instances of racism, anti-semitism and xenophobia

Establish a Fundamental Rights Agency (from EUMC)

Increase number of participants in and their commitments to civil society

Policy sub-area level indicators:

Levels of citizens' awareness of fundamental rights *(Source: Surveys and Eurobarometer reports)*

Instances of breaches of fundamental rights, especially as a result of EU interventions (including breaches of privacy, personal data protection and protection from violence against children, women and youth) *(Source: Commission and FR Agency)*

Instances of racism, anti-semitism and xenophobia *(Source: FR Agency)*

Time commitments of population to participation in civil society *(Source: MS)*

Number of civil society organisations in NMS since accession *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Relevant provisions of the Treaties on European Union and on European Community	Ensure that the EU institutions and the Member States fully respect fundamental rights	Compliance of the national legislation and practices with the fundamental rights	Community legislation as well as implementing national laws adopted in compliance with the Treaty	Correct application of rights and principles contained in the Treaty *Measured by:* number of court	Decreased level of breaches of FR Increased protection of rights of citizens	

				cases/complaints resulting from the legislation *(Source: Commission*		
Fundamental Rights and Citizenship programme (part Fundamental Rights)	Improve awareness of FR as protected on European and national level Improve research base Improve intensity and quality of interfaith and intercultural dialogue in MS Improve tolerance in the EU Improve quality of civil society organisations Improve rule of law Decrease breaches	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring* system)	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Improved awareness of FR amongst EU citizens Stronger civil society in the MS	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.

	of FR in MS					
Preparatory action to support civil society in the NMS in areas of rule of law, democracy, FR, media pluralism, fight against corruption.	Improve quality of civil society organisations in NMS Improved rule of law in NMS Improve democracy in NMS Decrease breaches of FR in NMS	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of beneficiaries reached *(Source: programme monitoring system)*	Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Stronger civil society in the NMS	Clear intervention logic but difficult to measure outcomes and impacts, in part because of the scale and scope of the underlying objectives. Strong involvement of MS in evaluation
Daphne II programme	Reduce violence against children, adolescents and women	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of good practices identified *(Source: programme monitoring system)*	Increased awareness of the issues in wider society *(Source: public opinion surveys, Commission)* Adoption of good practice in tackling violence *(Source: MS).* Better intelligence	Reduced violence against children, adolescents and women	Evaluation leadership by the EU. Major problems of data reliability at the level of impacts.

			Number of 'beneficiaries' and victims reached *(Source: programme monitoring system)*	base. *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Number of knowledge and practitioner communities created *(Source: Commission).* Number of improved facilities for victims *(Source: programme monitoring system)*		
Fundamental Rights Agency	Improve the availability, quality, and comparability of information on respect and promotion of FR.	Participation in Agency's activities	Provision of data and analyses of FR. *Measured by:* number of analytical outputs *(Source: Agency)*	Better intelligence base. Measured by: use of analytical results by policy makers *(Source: Agency and Commission)*	Decreased level of breaches of FR	Evaluations of EU agencies have tended to focus on process issues. Whilst objectives are clear it will be difficult to assess

	Improve co-ordination between stakeholders Improve public awareness of their FR		Number of reporting activities *(Source: Agency).* Number of networks of stakeholders supported *(Source: Agency).*	Better co-ordination of activities. Increased public awareness *(Source: public opinion surveys, Agency and Commission).*		causality and measure the impacts of the agency.
Data Protection Directive	Facilitate the free movement of personal information within the EU Protect rights of individuals Conclude agreements with third countries	Transposition of Directive into national legal systems Establishment of National Data Protection Supervisory authorities	Relevant national laws adopted pursuant to the Directive provisions *(Source: MS and Commission)*	Application of rules and provisions contained in the law. *Measured by:* - Appropriate enforcement mechanisms and remedies available to ensure respect for the law and assistance to individuals through: a) Judicial remedies b) Intervention of data protection	Facilitated movement of personal information within the EU Harmonised protection of individuals at a high level (both inside the EU and in third countries for personal data transferred from the EU)	Evaluation leadership by the EU but in partnership with MS

				supervisory authority (ex officio or following complaints) *(Source: MS)*		

POLICY AREA: COORDINATION IN THE FIELD OF DRUGS
Factors influencing evaluation mechanism: Activities in this policy area are cross pillar and cover a variety of areas, including health, police cooperation, information, evaluation and coordination. The EU Drug Action Plan and EU Drug Strategy are very important documents endorsed by the Council as the basic policy framework for all drugs issues within the EU and within the context of the EU's external relations. They cover all activities in this policy area and provide the guidelines for all Member States to implement the objectives and actions they contain into national policy. The Action Plan takes its lead from the objectives of the EU Drug Strategy and translates these objectives into 80 concrete actions. It concentrates on the two major aspects of drug policy, demand reduction and supply reduction, and also covers a number of cross-cutting themes: international cooperation, research, information and evaluation. It includes actions within EU competence (public health, precursor control, money laundering and development aid) as well as close cooperation between Member States and partnerships with international organisations. The Action Plan furthermore covers monitoring and evaluation and includes assessment tools and indicators for each action. The actions covered by the Action Plan are subject to an annual progress review by the Commission's services. Evaluation in this area is already well-established through the methods and indicators developed during the evaluation of the previous EU Drugs Strategy and Action Plan. Reliable data is available from the European Monitoring Centre on Drugs and Drug Addiction, Europol and the Commission. As with other policies relating to complex, global socio-political issues, the evaluation of the impacts of EU drug policy is a problematical and sensitive matter due to the multiple factors that have to be taken into account and for which there may not be reliable data by their very nature (e.g. figures for trafficking in illicit drugs are always rough estimates; corruption caused by trade in drugs is hidden, etc.).
Objectives: To significantly reduce the prevalence of drug use among the population and to reduce the social harm and health damage caused by the use of and trade in illicit drugs, and to strengthen international cooperation (EU Action Plan on Drugs 2005-2008)
Policy-level indicators: **The EU Action Plan contains the major legal instruments such as the Council Decision on the information exchange, risk assessment and control of new psychoactive substances, or the Framework Decision on penalties for drug trafficking. It also contains the assessment tools and indicators required for the evaluation process of these instruments and all other actions. These have been drawn up in cooperation with the**

EMCDDA and Europol, who will help the Commission to keep track of implementation.

On this basis the Commission will publish an Annual Progress Review and if necessary propose adjustments. Responsibility for implementation of actions and deadlines are clearly indicated in the Plan. To keep implementation on track, targets whose deadlines have passed or are unlikely to be met will be subject to recommendations for their implementation or identification of failure to implement. The Commission will carry out an impact assessment in 2008 in view of proposing a second Action Plan for 2009-2012. A final evaluation of the Strategy and the Action Plans will be carried out by the Commission in 2012. These evaluations will go beyond the strict confines of the Action Plan and will include, on the basis of the work of the EMCDDA and Europol, a general view of the evolution of the drugs situation in Europe.

POLICY AREA: COMMON IMMIGRATION AND ASYLUM POLICIES
Factors influencing evaluation mechanism: New policy area. 1st pillar activities. Interventions include legislation, programmes and cooperation activities. Good, comparable data is required and is planned. MS consensus about broad aims but not at individual instrument level. Impacts of these instruments on third-countries, and in particular development countries, to be considered.
Policy sub-area 1: Common European Asylum System
Objectives: To establish a common asylum procedure and uniform status, To facilitate practical and collaborative cooperation,

To address pressures on asylum systems and reception capacities.						
Policy sub-area level indicators: Number of asylum seekers applying for asylum in Member States other than the country of first entry *(Source: Eurodac)* Instances of MS breaching minimum defined standards *(Source: Commission)* Differences in standards of reception between Member States *(Source: Commission)* Differences between Member States with regard to the average time taken to determine the outcome of an application for asylum *(Source: MS and Commission)* Comparison of asylum acceptance rates among Member States[11] *(Source: Commission - Eurostat)* Differences in the level of capacity per Member State (asylum systems and reception facilities) relative to needs *(Source: Member States)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for	To reduce 'asylum shopping' To increase responsibility sharing among	Adoption of measures implementing the Regulation at national level	Number of take back requests *(Source: Commission – Eurostat)* Number of applicants sent to another Member State *(Source:*	Decreased delay in the examination of claims and attribution of responsibility *Measured by:*	Increased sharing of responsibility Greater efficiency and effectiveness in implementing decisions on transfers	Numbers are available through Eurodac which allows for an assessment of trends. Evaluation of the 'Dublin

[11] Asylum acceptance rates can at the moment only be roughly estimated with the data currently available, as asylum decisions in one year often relate to applications made in earlier years.

determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national)	MS. To increase efficiency by granting MS a realistic period in which to implement decisions on transfers.		*Commission – Eurostat)* Number of multiple claims *(Source: Commission – Eurostat)* Number of registered irregular entrants *(Source: Commission – Eurostat)* Proportion of cases dealt within country of entry *(Source: Commission – Eurostat)*	*a*verage delay of examination before and after implementation of the Regulation *(Source: MS)* Decreased delay to implement decisions on transfers *Measured by:* average delay of transfer before and after *(Source: MS)*	Reduction of persons making multiple claims	System' will be ready in June 2006.
Eurodac	To facilitate application of the Dublin Regulation by identifying asylum seekers and persons who have entered the EU irregularly. To determine whether a	Member States to send required data to central unit.	Efficiency of the system *Measured by:* Number of records per Member State *(Source: Eurodac)* Number of successful and rejected transactions recorded in the system *(Source:*	Increased number of asylum applications being examined in the first country of asylum/entry *Measured by:* Percentage rate of change before	Improved efficiency in applying the Dublin Regulation	Difficult to judge whether MS use system correctly and systematically. Some scope for peer review but there could be constraints on independent evaluation. Evaluation is

	foreign national has previously claimed asylum in another MS.		*Eurodac)*	and after introduction of the system *(Source: MS)* Reduction of persons making multiple claims *Measured by:* Percentage rate of change before and after *(Source: MS)*		underway of the 'Dublin system' which considers both the Regulation and Eurodac.
Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the	To ensure a minimum level of protection in all Member States for those in need of protection. To guarantee the rights of persons qualifying for refugee status or subsidiary protection status To reduce	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of Member States achieving minimum standards or above *(Source: Commission)*	Reduction of false claims *Measured by:* Number of unfounded cases *(Source: MS)* Improved protection *Measured by:* Numbers granted refugee and subsidiary	Guarantee of a minimum level of protection across the EU Approximation of rights granted to refugees Reduction in disparities between legislation and practice Reduction of secondary movements	Common standards difficult to achieve as Directive allows scope for interpretation

content of the protection granted)	disparities between MS' legislation and practice. To limit secondary movements. To prevent false claims.			protection status *(Source: MS)* Improved access to rights *Measured by:* Increased numbers of refugees accessing education, services, employment, appropriate accommodation, integration programmes *(Source: MS)*	Fewer false claims Improved integration	
Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers)	Ensure a dignified standard of living to asylum seekers across the EU. Address applicants special needs.	Transposition into national legal systems	Improved facilities *Measured by:* Expenditure on the improvement of reception facilities *(Source: MS)* Improvement of equal standards across the EU	Improved standard of living for asylum seekers *Measured by:* Number of asylum seekers living in appropriate	Approximation of standards of living for asylum seekers across the EU Improved facilities and services for asylum seekers Improved socio-vocational integration	Common standards difficult to achieve as Directive allows scope for interpretation. Evaluation due at the end of 2006.

	Ensure equal standards across the EU. Limit secondary movements.		*Measured by:* Numbers of MS achieving minimum standards or above *(Source: Commission)*	accommodation *(Source: MS)* Number of asylum seekers accessing services *(Source: MS)* Number of asylum seekers accessing employment and vocational activities *(Source: MS)* Number of specific provisions for applicants with special needs *(Source: MS)*	of asylum seekers Reduction of secondary movements	
ERF II	Support and encourage efforts in receiving refugees and displaced persons	Disbursement rate/amount spent per year	Increased reception capacity *Measured by:* Numbers of projects implemented per type of action *(Source: MS)*	Increased balance of effort among MS M*easured by:* The proportion of all resource commitments	Improved reception standards and conditions Increased access of asylum seekers to health, housing, education, services and	Indicators have been developed in the context of the final evaluation.

	Foster solidarity among MS Promote balance in the efforts to receive asylum seekers Promote the social, economic and cultural integration of target groups Promote voluntary return		Number of beneficiaries (per country of origin and target group) per type of action *(Source: MS)* Number of reception places *(Source: MS)* Increased capacity of services to asylum seekers *Measured by:* Number and type of services available*(Source: MS)* Number of beneficiaries receiving education and training *(Source: MS)* Increased voluntary returns *Measured by:* Number of voluntary returns *(Source: MS)*	*(Source: MS)* Increased social, economic and cultural integration of target groups M*easured by:* Percentage of persons per target group and activity able to apply new skills (i.e. percentage of persons who benefited from vocational training in employment)	labour market Fairer and more effective asylum procedures (including return) An improved balance in effort to receive asylum seekers	

Policy sub-area 2: Legal and illegal migration						
Objectives: To establish admission procedures capable of responding to fluctuating demands for migrant labour						
Policy sub-area level indicators: Skill shortages in vocations and professions *(Source: Commission - Eurostat, MS Labour Force Surveys, EEO)* Employment rates amongst migrant groups *(Source: Commission - Eurostat, MS Labour Force Surveys)* Estimation of the numbers of migrants overstaying the duration of their work permits *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Family reunification Directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification)	Determine conditions for the exercise of the right to family reunification by TCNs.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Improved efficiency of procedures *Measured by:* Number of family members reunited *(Source: MS)* Reduced length of process: average delay before and after *(Source: MS)*	Facilitated procedures for family reunification Protection of right to family life	Common standards difficult to achieve as Directive allows scope for interpretation.

Directive on status of TCNs as long-term residents	Approximate national laws by creating a single status. Ensure equal treatment of TCNs throughout the EU.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Equal treatment of TCNs *Measured by:* Numbers granted/refused status *(Source: MS)* Increased number of TCNs accessing employment, education and training (rate of increase) *(Source: MS)* Increased mobility of TCNs *Measured by:* Number of TCNs moving from one MS to another *(Source: Commission)*	Approximation of national laws Equal treatment and application of uniform rights for TCNs across the EU Improved mobility of TCNs Improved integration of TCNs	Common standards difficult to achieve as Directive allows for scope for interpretation

Directive on the admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary service	To promote Europe as a world centre of excellence for studies and vocational training by promoting the mobility of TCNs to the Community for the purpose of studies The approximation of the Member States' national legislation on conditions of entry and residence	Transposition into national legal systems.	Approximation of national legislation *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Increased mobility of TCNs to the Community for the purposes of study/vocational training *Measured by:* Numbers granted entry for study/vocational training/voluntary service *(Source: MS)*	Approximation of national laws Improved mobility of TCNs for study, vocational and volunteer purposes	Common standards difficult to achieve as Directive allows for scope for interpretation
Policy sub-area 3: Integration of third-country nationals						
Objectives: To prevent the isolation of certain groups and achieve successful integration of Third Country Nationals and their descendents To fight discrimination against legally residing Third Country Nationals						

To promote the exchange of experience and information						
Policy sub-area level indicators: Instances of discrimination *(Source: FR Agency, MS)* Employment rates of third country nationals *(Source: Commission - Eurostat, MS)* Employment rates of second generation migrants *(Source: SOPEMI Report, MS)* Relative income levels of third country nationals *(Source: Commission - Eurostat, MS)* Proportion of third country nationals living in poverty *(Source: Commission - Eurostat, MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
INTI preparatory actions (integration of TCNs)	Promote new and innovative ways of integrating immigrants. To encourage co-operation between MS and the creation of transnational partnerships and networks.	Disbursement rate/amount spent per year	Successful implementation REFINE *Measured by:* Numbers of projects and activities implemented and average sums of money involved *(Source: MS + Commission)* Number of TCNs	Identification of new and innovative practices Exchange of information and best practices promoted among EU MS Transnational networks and dialogue between	Increased cooperation among MS through networks and cooperation activities Increased dialogue with civil society Enhanced integration of TCNs Development and promotion of a European framework	Integration policies are implemented mainly at regional and local levels in MS. Differences exist among MS in terms of numbers of migrants and integration

	Enhance empowerment of migrants. Promote dialogue with civil society.		benefiting from projects Increased cooperation *Measured by:* Number of transnational networks set up *(Source: MS + Commission)* Number of new integration models identified and exchanged among MS	stakeholders supported among MS	approach on integration of TCNs	experience. Potential impacts may not be significant considering that this is a small fund with very diverse projects. Final evaluation is planned for 2007.
Policy sub-area 4: External dimension of asylum and migration						
Objectives: Assist third countries in migration management, intensify MS cooperation to manage migration flows and prevent humanitarian crises, integrate migration into third country relations, develop policies that link migration, development cooperation and humanitarian assistance, intensify cooperation with third countries on southern and eastern border of EU						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Numbers of legal migrants by third country *(Source: Commission - Eurostat)* Numbers of illegal migrants by third country intercepted crossing an external border *(Source: Commission – Eurostat)* Numbers of visa overstayers by third country intercepted *(Source: MS)*						

Numbers of asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum seekers returning to country of origin /other third country *(Source: MS)* Number of victims of trafficking from third countries *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Programme for financial and technical assistance to third countries (AENEAS)	Give specific and complementary financial and technical aid to third countries in order to support their efforts to improve the management of migratory flows Develop legislation in third countries on legal immigration and international protection	Not applicable (action is at Community level)	Successful implementation *Measured by;* Number of information campaigns organised on advantages of legal migration/consequences of illegal migration in third countries *(Source: Commission)* Number of returnees benefiting from reintegration programmes *(Source: Commission)*	Development of legislation in third countries *Measured by:* New legislation passed in third countries on legal and illegal migration *(Source: Commission)* Decreased number of illegal migrants entering the EU *Measured by:*	Improved management of migration flows Decrease in illegal migration and trafficking Increased awareness in third countries on advantages of legal migration/consequences of illegal migration Successful reintegration of returnees	High number of external factors to the programme influence impact indicators. Causality links difficult to establish. As action is at Community level, MS will not contribute to evaluation. May be difficult to evaluate as this is a new area which is also

	Raise public awareness in third countries on advantages of legal migration and consequences of illegal migration Establishment in third countries of preventive policy in the fight against illegal migration Readmission and durable reintegration of returnees			rate of decrease *(Source: Commission)*		highly political. A Communication on the future of the AENEAS fund was adopted in January 2006.
Policy sub-area 5: Return and re-admission						
Objectives: To establish an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Proportion of failed asylum seekers (and illegal migrants) who are repatriated *(Source: MS)*						

Numbers returned to countries subsequently deemed unsafe within a period of two years *(Source: MS)* Numbers (of labour market age) in employment in country of origin 12 months after being subject to return						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Preparatory actions for Return Management	To support efforts made by MS to improve the organisation and implementation of integrated return management and specific measures in the area of return management To increase knowledge and capabilities in the area of return management To develop co-operation between MS with respect to	Disbursement rate/amount spent per year	Number of actions implemented relating to the introduction and improvement of the organisation and implementation of integrated return management *(Source: Commission)* Number of actions implemented relating to the introduction and improvement of specific measures in the area of return management *(Source: Commission)* Number of actions implemented relating to the increase of knowledge and capabilities in the area of return management	Increased number of returnees *Measured by:* rate of increase *(Source: MS and Commission)* Reduction in cost of detaining illegal migrants *Measured by:* rate of reduction *(Source: MS and Commission)*	The strengthening of efforts made by Member States at improving the organisation and implementation of integrated return management Improved organisation and implementation of integrated return management Increased knowledge and capabilities in return management Increased cooperation between MS and countries of return with respect to return management	

	return management as well as co-operation with countries of return To promote sustainable return, thereby avoiding secondary movements		*(Source: Commission)*		Reduction in illegal migrants living in the Member States (overstayers) Increased removal of illegal third country nationals Decrease secondary movements Improved return conditions	
Re-admission agreements	To facilitate the readmission to their own country of persons residing without authorisation in a Member State. To combat illegal immigration To improve the effectiveness of return	(These are reciprocal agreements between the EU and third countries.)	Successful implementation of the agreements *Measured by:* Number of persons readmitted to third countries covered by the agreements	Increased number of returnees *Measured by:* rate of increase *(Source: Commission and MS)* Reduction in cost for detaining illegal migrants *Measured by:* rate of reduction *(Source: MS)*	Decrease in illegal immigration Improved effectiveness of return procedures	Agreements have been signed with Hong Kong, Macao, Albania, Sri Lanka and Russia. Others are currently being negotiated.

	procedures					
Policy sub-area 6: Horizontal issues						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Proposed mutual information procedure on planned national asylum and immigration measures	Enhance mutual information of national immigration and asylum policies between MS policy-makers	Cooperation by MS	Successful implementation of procedure *Measured by:* Number of national measures submitted through the system Number of responses generated to requests for information *(Source: MS + Commission)* Meetings organised *(Source: MS + Commission)*	Increased knowledge of other Member State policies and measures	Anticipation of effects of changes to other national policies Better understanding of other national contexts could lead to an enhancement of the possibilities for harmonisation	Procedure yet to be implemented. Implementation could start in 2007.
European Migration Network	Provide the Community and MS with objective,	Organisation of activities at national level by national contact	Successful implementation of network	Better and faster access to information on migration and	Increased knowledge and understanding of the migration phenomenon at	Proposal and impact assessment due by September

	reliable and comparable information on migration and asylum.	points	*Measured by:* Number of products produced *(Source: MS + Commission)* Number of meetings and conferences held *(Source: MS + Commission)* Number of networks set up at national level *(Source: MS)*	asylum Increased knowledge of issues at national level Increased information sharing between actors	Member State and EU level Increased capacity to "anticipate" migratory developments	2006 for a Council Decision on the future EMN.
Proposed Regulation on Community statistics on migration and international protection	Improve the statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.	Adoption of measures at national level	Successful implementation of Regulation *Measured by:* Increased proportion of statistical data items supplied according to the harmonised definitions as opposed to national definitions *(Source: MS)* Increased proportion of statistical data items directly based on	Increased availability of data Improvement to quality and comparability of data between Member States *Measured by:* Improvements in the completeness, timeliness and degree of harmonization of	Improved analyses of data Improved statistical knowledge	Regulation will probably be adopted in 2006. First reference year for the statistics will be 2008.

			appropriate data sources as opposed to statistical estimations *(Source: Commission - Eurostat))*	migration and asylum data supplied to the Commission - Eurostat *(Source: Commission – Eurostat)*		
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed in July 2006.

	authorities To improve the overall efficiency of national administrations in their tasks		*(Source: Commission)*			

POLICY AREA: ESTABLISHING A GENUINE EUROPEAN AREA OF JUSTICE IN CRIMINAL AND CIVIL MATTERS
Factors influencing evaluation mechanism: The policy area includes both first pillar (civil justice) and third pillar (criminal justice) matters. The main instruments are legislation including the introduction of new legal instruments and activities to stimulate judicial cooperation. Evaluation should cover the implementation of mutual recognition instruments and the various flanking (confidence building) measures that make mutual recognition possible. The potential to identify the causal links between the interventions and the achievement of objectives is greater within civil matters than criminal matters. Information on the scale and nature of the relevant (cross border) civil and criminal matters is however poor. The instruments in both sub policy areas are potentially reinforcing. The classification of the instruments within the civil matters sub policy area relate to both process (cooperation and procedures) and to substantive problems addressed by the instruments (cross border disputes and breakdown of international marriages). There is also a miscellaneous sub category. The achievement of a European area of justice in criminal matters may be constrained by continued variations in definitions of crimes and penalties. Several of the instruments mentioned under civil matters are 'forthcoming'. They are included however because they illustrate aspects of the evaluation challenges in this policy area. The Judicial training instrument is relevant to both sub policy areas. There are close links between the instruments and objectives of the policy sub area 2 Criminal matters, and the objectives and activities in the policy area: law enforcement cooperation, prevention and fight against organised crime. Also, it should be noted that adjustments to the indicators put forward in criminal matters may take place in light of the implementation of the forthcoming Action Plan on statistics in the field of crime and criminal justice (see more expanded reference on page 49).
Policy sub-area 1: Civil matters
Objectives: To increase mutual recognition and enforcement of judicial decisions To establish clear rules on jurisdiction and applicable law To reduce the costs of resolving cross border disputes To increase the likelihood that cross border disputes are resolved To reduce the likelihood of cross border disputes arising

To reduce the negative consequences of breakdowns in 'international' marriages and prevent child abduction						
Policy sub-area level indicators: Number of mutually recognised judicial decisions Average costs (of different types) of cross-border disputes Number of cross-border cases not resolved Spouses' (perceptions of) costs of international divorces The number and amount of cross-border maintenance claims not paid *Source: MS*						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Horizontal cooperation activities						
Specific programme 'Civil justice' (Framework Programme 2007-2013 Fundamental Rights and Justice)	To increase mutual confidence of judicial actors. To increase instances of mutual recognition. To reduce application of	Participation in and support for cooperation programme.	Number of meetings, workshops. Numbers of legal, judicial and administrative authorities involved in cooperation.	Increased knowledge of Member States legal and judicial systems in civil matters. Measured by: Levels of knowledge	Mutually recognised decisions acted upon/ enforced. Increased legal certainty. Improved access to justice.	Establishing causal links between the interventions and outcomes and impacts will be problematic

	intermediate procedures.		*Source: programme monitoring system*	amongst relevant authorities *(Source: MS surveys)*	Decreased costs and time spent in accessing justice due to disparities in civil law and civil procedures.	
European judicial network in civil and commercial matters	To improve and facilitate co-operation in civil justice matters To facilitate access to justice and information To reduce costs of access to information on international and European law and national judicial systems by EU nationals (and therefore increase access).	Participation in and support for cooperation programme.	Meetings, publications website. Numbers of legal actors involved in cooperation. *Source: Network management reports (Source: Commission)*	Hits and usage of website (*Source: Commission*)	Improved access to justice and quality of advice on cross (internal) border issues. Improvement of judicial cooperation between MS and courts	Establishing causal links between the interventions and outcomes and impacts will be problematic
Rules on procedures						
Regulation on jurisdiction and the recognition	To harmonise national rules of conflict of	Implementation	Harmonised Community rules	Simpler and quicker procedures to recognise and	Better and quicker access to justice	Clear intervention logic

and enforcement of judgements in civil and commercial matters (Brussels I 44/2001)	jurisdiction To simplify procedures for recognition and enforcement of judgements from MS		(*Source: MS reporting to Commission)*	enforce the judgements Measured by: Length of time taken to recognise and enforce the judgements *(Source: MS)*	Prevent conflict of jurisdiction	
Regulation on taking evidence in civil and commercial matters (1206/2001)	To improve, simplify and speed up procedures for taking evidence between the courts of different MS	Implementation	Establishment of facilitated cross-border procedures between courts in different MS for taking evidence (*Source: MS reporting to Commission)*	Quicker and more efficient judicial procedures Measured by: Length of time taken to take evidence between courts *(Source: MS)*	Better and quicker access to justice	Clear intervention logic.
Regulation on the service of documents in civil and commercial matters (Regulation 1348/2000)	To increase efficiency and speed in judicial procedures To improve and expedite the transmission of	Implementation	Establishment of common rules on transmission of judicial and extrajudicial documents between	Quicker and more efficient judicial procedures Measured by: Length of time taken to transmit	Better and quicker access to justice Quicker judicial procedures	Clear intervention logic.

	documents between MS		MS(*Source: MS reporting to Commission)*	the documents and enforce judgements *(Source: MS)*		
Directive on legal aid in cross-border disputes (Council Directive 2003/8/EC)	To guarantee adequate level of legal aid in cross-border disputes through establishing minimum common standards between MS	Implementation	Minimum common standards relating to legal aid in cross-border disputes (*Source: MS reporting to Commission)*	Adequate levels of legal aid in cross-border disputes *(Source: MS)*	Improved access to justice, especially of vulnerable groups	Clear intervention logic.
Resolution of cross border disputes						
European payment order (forthcoming)	To reduce the costs and time taken to make payments. To increase the number of cross-border orders for payment	Implementation	Numbers of cross-border orders for payment made	Reduction of intermediate procedures	Reduced costs and time of litigation in cross-border cases concerning uncontested pecuniary claims. Improved access to justice. Facilitated recovery of cross-border debts	Establishing causal links between the interventions and outcomes and impacts will be problematic. Proposal yet to be adopted.

European enforcement order for uncontested claims (Regulation 805/2004)	To enable quick and efficient enforcement of an uncontested claim between MS	Implementation	Number of applications of European enforcement order in EU MS (*Source: MS*)	Quicker and more efficient enforcement of uncontested claims in another MS Measured by: Length of time needed to enforce such a claim *(Source: MS)*	Reduced costs and time in such cross-border cases Improved access to justice	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on Alternative Dispute Resolution (ADR)	To reduce the costs of dispute resolution To facilitate recourse to mediation by improving legal certainty	Implementation	More possibilities and better awareness of possibilities for ADR	More attempts to use ADR	Reduced costs of dispute resolution More disputes resolved without going to court	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on small claims	To facilitate cross-border access to justice for small claims To reduce the costs and time taken to resolve	Implementation	Application of Small Claims Procedure in the 25 EU MS (*Source: MS*)	Increased number of small claims pursued. (*Source: MS*)	More small claims resolved. Increased legal certainty. Increased access to justice.	Proposal yet to be adopted.

	small claims. To increase the number of legitimate small claims made.					
Marriage and divorce law						
Instrument on maintenance obligations	To improve and simplify enforcement procedures of maintenance obligations. To enhance cooperation. To clarify what is applicable (non-conflicting) law	Implementation	Application of Regulation in maintenance obligations proceedings in 25 EU MS (*Source: MS*)	Reduction of intermediate procedures. Reduced cases of forum shopping Increased cooperation between legal professionals / competent authorities in the Member States (*Source: MS*)	Increased legal certainty Better informed decisions Mutually recognised decisions acted upon/ enforced. Facilitated recovery of debts (maintenance for creditors)	Instrument is at the Council discussion stage. Establishing causal links between the interventions and outcomes and impacts will be problematic. Evaluation requires good data from the Member States.
Regulation on jurisdiction and recognition and enforcement of judgements in matrimonial	To harmonise rules of jurisdiction To enable automatic	Implementation	Establishment of harmonised rules on jurisdiction (*Source: MS*)	Quicker and more efficient recognition and enforcement of judgements	Better access to justice Better protection of citizens in case of divorce	Evaluation requires good data from the Member States.

matters and parental responsibility (Brussels II, 2201/2003)	recognition and enforcement of judgements between MS			Measured by: Length of time taken to recognise and enforce a judgement (*Source: MS*)	Facilitated visiting rights for parents Better protection of children's' rights	
Various						
Instrument on the conflict of laws in the area of contractual obligations (Rome I).	To reduce costs associated with differences regarding non-contractual obligations To increase party autonomy and flexibility To increase legal certainty for consumers and internal market	Implementation	Numbers of cross-border disputes settled Application of conflict of law rules in the MS (*Source: MS*)	Improved mutual trust between judicial authorities Faster procedures. (*Source: MS*)	Reduced uncertainty. Reduced costs. Facilitated mutual recognition of international contracts	Proposal in discussion stage.
Proposal for a regulation on the law applicable to non-contractual obligations (Rome	To harmonise rules on non-contractual obligations	Implementation	Provision of a set of community rules Application of	Improved mutual trust between judicial authorities Faster procedures.	Reduced legal uncertainty. Better access to justice	Establishing causal links between the interventions and outcomes and impacts

II, COM(2003) final)	To increase legal certainty		rules in the MS (*Source: MS*)	(*Source: MS*) Increased legal certainty for victims of damages and perpetrators of torts	Reduced costs of accessing justice	will be problematic
Regulation on insolvency proceedings (1346/2000)	To improve efficiency and effectiveness of cross-border insolvency proceedings To prevent shopping for a more favourable legal position	Implementation	Provision of a set of community rules Application of rules in the MS (*Source: MS*)	More efficient and effective cross-border insolvency proceedings Prevention of shopping for a more favourable legal position Measured by: Time taken for proceedings Perceptions of shopping amongst legal professionals (*Source: MS, surveys*)	Better access to justice Reduced costs of accessing justice Better resolution of cross border insolvencies Better cooperation between courts and administrators of insolvency	Clear intervention logic
Directive on	To facilitate better	Implementation	Co-operation	Better access to	Better access to	Clear intervention logic

compensation to crime victims (2004/80/EC)	access for victims to compensations where crime was committed in another MS To establish a compensation mechanism in such cases		mechanism between MS set up (*Source: MS*)	compensation to victims of crimes in cross-border situations (*Source: MS*)	justice Better compensation for victims of cross-border crime in Europe	
Policy sub-area 2: Criminal matters (Justice)						
Objectives: To promote mutual recognition To increase confidence and other conditions leading to mutual recognition To reduce differences in the definition of crimes. In particular, to explore common definitions and procedures for human trafficking and cross border crimes To reduce differences in detention and trial procedures To improve taking of evidence To reduce differences in penalties To speed up cross border arrest and surrender procedures To facilitate cross border management, freezing and confiscation of criminal assets To protect victims of crime						

Policy sub-area level indicators:

Number of mutually recognised judicial decisions

Extent of mutual confidence: proportion of officials in national administrations who have high confidence in other MS systems (measured by surveys of national authorities)

Level of awareness of judicial actors of other MS systems

Number of definitions of crimes approximated

Number of reduced differences in detention and trial procedures and definition of penalties

Length of cross-border arrest and surrender procedures

Size of criminal assets frozen and confiscated in cross-border cases

Source: MS

Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
European arrest warrant and the surrender procedures between Member States (Council Framework Decision of 13 June 2002on the	To facilitate and expedite surrender procedures in respect of persons wanted for trial and sentenced persons between Member States	Transposition	Numbers of arrest warrants issued, executed and refused Numbers of persons surrendered and of persons received from other Member	Faster and simpler surrender procedures *Measured by:* Average duration of surrender procedures (*Source: MS*)	Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence	Requires good data from MS. MS must actively participate in evaluation.

European arrest warrant and the surrender procedures between Member States (2002/584/JHA))			States and numbers of persons consenting to surrender. (Source: MS)		between judicial authorities. Increased security and safety within the EU	
Instrument on the execution of orders freezing property or evidence (Council Framework Decision 2003/577/JHA of 22 July 2003)	To facilitate recognition and execution of freezing orders issued by a judicial authority of another Member State	Transposition	Number of freezing requests issued and executed (Source: MS)	Increased efficiency and effectiveness of freezing orders *Measured by:* Faster procedures to freeze assets Increased use of procedures to freeze assets Increased speed of national procedures as a consequence of freezing order Improved access to evidence obtained/ Improved recovery of assets	Increased efficiency of procedures; increased mutual confidence between judicial authorities. Decreased levels of organised crime (*Source: Europol reports*)	Requires good data from MS.

				(Source: MS)		
Instrument on the application of the principle of mutual recognition to financial penalties (Council Framework Decision 2005/214/JHA of 24 February 2005)	To facilitate the enforcement of financial penalties imposed by judicial or administrative authorities in a Member State other than the State in which the penalties were imposed.	Transposition	Number of decisions and issued and executed *(Source: MS)*	Faster and more effective procedures to ensure enforcement of financial penalties Measured by: Average length of procedures *(Source: MS)*	Dissuasive effect to potential criminals and decreased level of financial crime Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	Requires good data from MS. Difficult to measure causal links between outcomes and impacts
Instrument on the exchange of information extracted from the criminal record (Council Decision 2005/876/JHA of 21 November 2005)	To improve exchanges of information on criminal records between Member States	Voluntary compliance	Number of requests sent , number of replies sent -for the purpose of criminal proceedings, and - for other purposes Respect of	Improved knowledge available to sentencing authorities about the convicted person's full European criminal record. Improved circulation of information on criminal records for other purposes (e.g.	Dissuasive effect to potential criminals and hence decreased levels of crime Increased visibility of mutual recognition, better knowledge of each other's	Requires good data from MS. Difficult to measure causal links between outcomes and impacts

			deadlines *(Source: MS*)	employment) Improved quality of information on criminal records from abroad in the Member State of nationality *(Source: MS)*	judicial systems and increased mutual confidence between judicial authorities. More appropriate and better informed sentencing decisions	
Instrument on the standing of victims in criminal proceedings (Council Framework Decision of 15 March 2001)	To assist victims before or after criminal proceedings	Transposition	Application of rules the instrument *(Source: MS)*	Better information for victims on legal advice and on their rights, protection for vulnerable victims and more appropriate methods of obtaining evidence Improved situation for victims in relation to criminal proceedings *(Source: MS)*	Raised awareness of victims' rights amongst practitioners *Measured by MS surveys* Better access to justice	Requires good data from MS.
Framework programme on police and judicial	Help legal practitioners, law enforcement	Commitments to AGIS projects	*Number of activities promoting training and expert*	Development of instruments, strategies and	Improved operational procedures and	Transnational cooperation activities normally require

cooperation in criminal matters (AGIS)	officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Participation	*mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *(Source: Commission)*	approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	qualitative approaches to evaluation taking account of varying contexts.
Flanking measures in place						
The European Judicial Network (Joint Action of 29 June 1998 adopted by the Council)	To improve judicial cooperation between Member States through direct contacts between judicial	Designation of national contact points	Regular meetings, creation and updating of specific tools (website, "fiches belges", atlas and SOLON legal	Increased efficiency of procedures and better communication between judicial authorities. Measured by:	Improved functioning of mutual recognition instruments, better knowledge of each other's	

	authorities		glossary) Number of cases in which the EJN is involved. *(Source: EJN and Member States)*	Average duration of procedures, analysis of outcomes of proceedings, perceptions of ECJ as a communication tool *(Source: EJN and Member States)*	judicial systems and increased mutual confidence between judicial authorities.	
Eurojust (Council Decision of 28 February 2002)	Better co - ordination of investigation and prosecution of serious cross-border crime	Appointment of national experts to Eurojust	Immediate access to information about legal systems from a practitioner of the nationality of the Member States in question. Measured by: number of cases where Eurojust is used Establishment of the coordination role. Establishment of Eurojust as a potential arbiter of conflicts of	Increased efficiency of procedures and better communication between prosecutors and judicial authorities. Measured by: Average duration of procedures, analysis of outcomes of proceedings *(Source: Eurojust and MS)*	Increased cross border prosecution rates and improved efficiency (evidence gathering, mutual information exchange on procedural matters) Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased	

			jurisdiction. Establishment of Eurojust as peporting authority for problems with European Arrest Warrants. (*Source: Eurojust and MS)*		mutual confidence between judicial authorities.	
Joint investigation teams (Council Framework Decision of 13 June 2002)	To facilitate, expedite and improve investigations in cross border cases	Transposition	Setting up of joint investigation teams Number of cases investigated by such teams (Source: MS)	Efficient gathering of evidence in cross border cases Measured by: Average duration of cross-border case reaching the court (Source: MS)	Increased range of judicial cooperation tools. Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	

Horizontal instrument for both Sub Policy area 1 (Civil matters) and Sub Policy area 2 (Criminal matters)						
Judicial training	To improve knowledge of relevant EU instruments among legal practitioners To enhance mutual understanding of legal systems among judges and prosecutors To co-ordinate national judicial training programmes To promote better language skills among European legal practitioners	Participation in training activities	Organisation of training activities *Measured by:* Training programmes offered, number of participants benefiting from training on EU matters) *(Source: Commission. Participant feedback)*	In evaluating the success of this policy, regard must be had to the effective use of available EU funding. Increased number of judicial training activities, increased coordination between national judicial training programmes, development of the European Judicial Training Network. *Measured by:* Quality of training activities, number of participants in exchanges Improved knowledge of European and international instruments amongst judges and prosecutors (Source: MS	Increased understanding of mutual recognition Promotion of a European judicial culture.	

				Interviews with law enforcement and judicial actors)		

5.1. POLICY AREA: LAW ENFORCEMENT COOPERATION AND PREVENTION OF AND FIGHT AGAINST GENERAL ORGANISED CRIME

Factors influencing evaluation mechanism: Policy based on the TEU Title VI (third pillar). Activities include legislation, including the approximation of crimes and penalties and cooperation measure. Establishing causal links between the EU interventions and the ultimate objective of reducing crime is always likely to be problematic. The current factsheet intends to facilitate the assessment of the implementation of EU instruments in this area. Full fledged evaluation will require substantial improvements in the quality and availability of statistical information in the field of crime and criminal justice. The forthcoming Action Plan in this field (to be adopted by the Commission in July 2006) will address these issues and put forward concrete proposals, including carrying out an inventory and setting-up an expert group. In this context, this factsheet and the indicators included therein will necessarily be adjusted and improved in the light of the implementation of the Action Plan, and could be used as a starting point for discussions in this field.

Policy sub-area 1: Crimes and Sanctions (i.e. legislation to fight organised (cross border) crime and terrorism)

Objectives:

To combat:

- Terrorism
- Smuggling and trafficking of human beings,
- Sexual exploitation, racism and xenophobia,
- Financial and economic crime,
- Environmental crime,
- Illicit trafficking in goods,
- Organised crime and cyber crime.

To reduce the financial resources available to those involved in organised crime To criminalise active and passive corruption
Policy sub-area level indicators: Numbers and trends of successful prosecutions for (S*ource: UN crime and criminal justice trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*): • Smuggling and trafficking of human beings, • Sexual exploitation, • Financial and economic crime, • Environmental crime, • Illicit trafficking in goods (including firearms), Numbers of successful prosecutions for organised crime (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*) Numbers of prosecutions for active and passive corruption (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*) Perception of levels of active and passive corruption (S*ource: Transparency International survey)* Numbers of crimes subject to EU interventions and instruments (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*)

Main instrument	Objectives	Implementation at national level	Indicators/evaluation questions			Specific issues /comments
			Immediate results	Outcomes	Impacts	
Terrorism						
Council Framework Decision (FD) of 13 June 2002 on combating terrorism (2002/475/JHA)	To approximate the definition of terrorist offences, and penalties and sanctions in all MS To establish jurisdictional rules to ensure that offences are prosecuted To apply specific measures for victims of terrorist offences	Implementation of FD	Application of FD provisions. *Measured by:* The number of definitions of offences, penalties and sanctions approximated Number of measures applied for victims of terrorist offences *(Sources: MS)*	Number of terrorists prosecuted as a result of FD	Reduced instances of terrorist activities Improved help to victims of terrorism	Difficult to assess the causal links between outputs, outcomes and impacts
Pilot project on victims of terrorism	To help the victims of terrorist acts and/or their relatives to	Implementation of projects	Number of beneficiaries assisted through psychological	Improved cooperation and exchange Increased research	Improved social and psychological support to victims of	

	recover by means of social or psychological support provided by organisations and/or their networks. To raise the awareness of the European public against the terrorist threat, so that the traditional fight against terrorism through police and judiciary measures can be complemented by public opinion condemning terrorism in all its forms.		support Number of special training programmes organised Number of social integration programmes organised for victims Number of special medical programmes created Number of events and information campaigns organised	on the situation of victims of terrorist acts Creation of reception centres for victims	terrorist attacks Increase awareness of the European public	
Pilot project on prevention, preparedness and	To combat terrorism	Implementation of projects	Number of studies carried out	Development of capabilities for the management of	Improved expertise on	

response to terrorist attacks	To improve the security of citizens		Number of expert networks set up	crises Exchange of experience and best practice	terrorism Increased exchange of expertise Increased cooperation with international partners	
Smuggling and trafficking of human beings						
Council Framework Decision (FD) 2002/629/JHA of 19 July 2002 on combating trafficking in human beings	Reduce human trafficking	Implementation of FD	Application of FD provisions. *Measured by:* Number of detentions resulting from FD *(Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced trafficking in human beings Reduction in damage to victims of trafficking	Identifying cases specifically linked to FD may be problematic
Sexual exploitation						
Council frameword decision (FD) 2004/68/JHA of 22 December 2003 on	Reduce sexual exploitation of children. Reduce child	Implementation of FD	Application of FD provisions. *Measured by:* Number of	Successful prosecutions resulting from FD *(Source: MS)*	Reduced sexual exploitation of children. Indicated for example by reductions in	Identifying cases specifically linked to FD may be

combating the sexual exploitation of children and child pornography	pornography.		detentions resulting from FD *(Source: MS)*		numbers of complaints. Reduced child pornography. Indicated for example by reduction in number of illicit websites and other outlets.	problematic
Financial and economic crime						
Council Framework Decision (FD) of 22 July 2003 criminalising corruption in private sector	Criminalise active and passive corruption	Implementation of FD	Application of FD provisions. *Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced corruption in private sector. (*Source: Transparency International surveys*)	
FD on money laundering and counterfeiting of	Criminalise fraud involving any form of non-	Implementation of FD	Application of FD provisions.	Successful prosecutions resulting from FD	Reduced money laundering and counterfeiting of	

non-cash payments	cash means of payment in all MS		*Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	*(Source: MS)*	non-cash payments *(Source: national criminal justice statistics)*	
Illicit trafficking in goods						
Proposal for a regulation on import/export licensing system for firearms	Reduce firearms trafficking. Harmonize the regime for import and export of firearms.	Establishment of the system	Application of the regulation *Measured by:* Numbers of arms licensed *(Source: MS)*	Increased control over imports and exports of firearms *Measured by:* perceptions of law enforcement agencies *(Source: MS)*	Reduced firearms trafficking Reduced use of illicit firearms	Clear intervention logic (forthcoming) The instrument is relevant to borders policy area.
Organised crime						
Council Framework Decision 2001/500/JHA	Approximate definitions, incriminations and sanctions	Implementation of FD	Application of rules and provisions contained in FD	Assets frozen and confiscated. *Measured by*:	Reduced money laundering Reduced crime	Regular monitoring reports from the Commission

of 26 June 2001 relating to money laundering, identification, tracing, freezing or seizing and confiscation of the instrumentalities and proceeds from crime	Improve mutual legal assistance in the investigation and prosecution of this type of crime		*Measured by:* Instances of suspicious transactions reported to entities subject to reporting obligations Penalties resulting from FD Prosecutions resulting from FD Reduction of the differences in maximum penalties among MS *(Source: MS, Commission)*	Effective judgments pronounced Amounts frozen and confiscated *(Source: MS)*	*Measured by:* Perceptions of law enforcement agencies.	Identifying cases specifically linked to the FD may be problematic (This instrument might fit better under financial crime although it is about enacting penalties and might better fit under Justice criminal matters. Evaluation need to be done in combination with the third money laundering directive).
Proposal for a FD on fight against organised crime (2005)	Harmonise the definition of offences and penalties Facilitate	Implementation of FD	Application of rules and provisions contained in FD. *Measured by:* Better harmonised	Increased judicial co-operation *Measured by:* Trials and successful	Reduced organised crime *Measured by*: Perceptions of law enforcement	Difficult to measure impacts Identifying cases specifically

	cooperation between judicial authorities and coordinate their activities.		definition of offences and penalties. Instances of judicial cooperation *(Source: MS, Commission)*	prosecutions resulting from FD *(Source: MS)*	agencies.	linked to the FD may be problematic (This too might better fit under Justice criminal matters policy area)
Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. (April 2004)	Reduce organised crime participation in illegal migration and human trafficking Facilitate victims giving evidence against suspected criminals	Implementation of Directive	Application of rules and provisions contained in Directive *Measured by* Instances of residence permits issued *(Source: MS)*	More victims testifying against suspected criminals Successful prosecution of suspected criminals *(Source: MS)*	Reduced organised crime participation in illegal migration and human trafficking *Measured by*: Perceptions of migration and law enforcement agencies.	This instrument is relevant to borders policy area. (It does not fit easily in this sub category.)

Policy sub area 2: Cooperation and exchange of information to enforce the law.
(The architecture of the instruments in this sub policy area is such that the instruments should be reinforcing. Capturing these synergies in evaluation work would be of value)
Objectives: To increase cooperation between police and customs authorities of MS To increase cooperation of MS police and customs authorities with Europol To develop and improve use of 'intelligence led law enforcement' and Joint Investigation Teams To encourage exchange of experiences on best practice on investigative techniques To improve the quality of Member States law enforcement data with the assistance of Europol
Policy sub-area level indicators: Number of formal joint investigations Number of informal joint investigations Number of successful prosecutions resulting from joint investigations (formal and informal) Number of successful prosecutions resulting from the adoption of best practice investigative techniques Extent of mutual confidence: proportion of officials in national administrations/law enforcement authorities who have confidence in other MS systems (measured by surveys of national authorities) Periods of time (person days) on (trans-national) exchanges of staff *Source: MS*

Main instrument	Objectives	Implementation at national level	Indicators/evaluation questions			Specific issues /comments
			Immediate results	Outcomes	Impacts	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS. Evaluation will be very difficult.
Common position on the	To prevent and combat serious	Exchange of data with Interpol	Number of data records forwarded to	Enhanced cooperation	Decreased illicit	

exchange of data with Interpol on passports	and organised crime including terrorism through improved cooperation between MS' law enforcement authorities and between them and such authorities in third Countries by exchanging passport data with Interpol	through database on stolen travel documents	Interpol	between law enforcement authorities	activities	
Task Force of Police Chiefs	Create conditions for cooperation	Participation of police chiefs (or alternates)	Cooperation activities. *Measured by*: Meetings held Informal contacts Formal cooperation agreements *(Source: MS)*	Mutual cooperation *Measured by*: Instances of cooperation Perceptions of participants *(Source: MS)*	Sustained cooperation *Measured by*: Instances of cooperation arising indirectly and at lower levels. Decrease in criminal	By its nature a difficult instrument to evaluate in its own right.

					activities *Measured by:* Number of arrests, prosecutions, and convictions	
Europol	Promote cooperation between MS law enforcement agencies	Provision of information, application and use of information received from Europol or via bilateral cooperation initiated by Europol	Cooperation activities *Measured by* Strategic analyses undertaken, Instances of exchange of intelligence. Use of formal joint investigation teams Use of informal joint investigation teams Number of investigations informed. *(Source: Europol*	Better law enforcement *Measured by*: Trials resulting from exchanges of intelligence and cooperation. Successful prosecutions resulting from exchanges of intelligence and cooperation. *(Source: MS and Europol)*	Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Evaluation needs to acknowledge the real constraints on multilateral police cooperation (issues of confidentiality and credit for solving cases) and the potentially weak links between police cooperation and reductions in crime. Evaluation work has included peer reviews

			and perceptions of participating MS and law enforcement agencies).			
CEPOL	Improve likelihood of (transnational) cooperation. Improve competences of trainees.	Commitment to EU level training	EU level Training activities *Measured by:* Number of police officers trained Number of courses offered *(Source: CEPOL, including potential follow up survey of trainees.)*	Improved cooperation *Measured by*: Resulting instances of cooperation between individual officers. Resulting instances of cooperation between agencies Resulting improved investigations. Resulting detentions and prosecutions *(Sources: MS Law enforcement agency records, judicial records)*	Increased competence in cross border level practice Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Identifying causal links with impacts will be especially difficult. An report on the operation and future of CEPOL was published in January 2006.

Framework programme on police and judicial cooperation in criminal matters (AGIS)	Help legal practitioners, law enforcement officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Commitments to AGIS projects Participation	*Number of activities promoting training and expert mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	Development of instruments, strategies and activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *Source: Commission)*	Improved operational procedures and approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	Transnational cooperation activities normally require qualitative approaches to evaluation taking account of varying contexts.

Policy sub area 3: Crime Prevention

Objectives:

To reduce instances of (cross border organised) crime

To establish European instruments for collecting, analysing and comparing information on crime and victimisation.

To provide better information on trends in crime in Member States

Policy sub-area level indicators:

Numbers of successful prosecutions of cross border organised crime

The frequency with which EU level statistics are collected (benchmark: annually)

The level of reliability of data (for example, number of definition changes), also indicated by the levels of confidence in data by key actors (*source: regular surveys*)

Consistency of data between Members States (for example, numbers of definition variations), indicated the levels of confidence in data by key actors (*source: regular surveys*)

Source: Commission, MS

Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Forum on organised crime prevention	Better exchange of information Creation of a	Active participation from MS	Coordination and cooperation of activities	Better and increased information base Better legal and	Reduced crime	Difficult to measure causal links

	Platform of expertise		*Measured by*: Meetings and seminars held Studies undertaken etc. *(Source: Commission)*	other instruments *Measured by:* Application and dissemination of information and best practices exchanged *(Source: MS)*		
European crime prevention network	Provide expertise and knowledge in developing effective crime prevention measures	Active participation from MS	Network Activities *Measured by* Meetings, Exchange of information Identification and propagation of good practice. Copies/hits on good practice and recommendations. (Source: Commission)	Application of Network Knowledge *Measured by*: Uptake of recommendations Improved policy making processes *(Source: MS via Consultations)*	Improved policies and practices with respect to crime prevention Reduced crime	Difficult to measure causal links
EU action plan	Provide better	Active	Availability of	Application of	Better informed	Difficult to

on EU statistics on crime and criminal justice	information base on EU crime trends, levels and on victimisation as well as on criminal justice.	participation from MS	information on crime and criminal justice covering EU *Measured by:* Availability, coverage and comparability o data. *(Source: Commission)*	improved information *Measured by*: Dissemination of information to EU and MS policy makers Citation of statistics in policy documents *(Source: Commission and MS)*	policy making at EU level. Better informed policy making at MS level.	measure causal links Statistical information is not available Instrument underpins evaluation of other instruments as it should improve statistics available at the EU level
Action plan on public-private partnerships	Establish public-private partnerships at EU level to tackle multinational organised crime and terrorism	Active participation from MS	Implementation of Action plan Creation of a EU level Platform for public-private partnership against organised crime and terrorism *Measured by* Reports from old and new partnership structures to the	Increased co-operation between public and private sector *Measured by:* Number of co-operation activities *Source: Commission: Follow up studies of specific partnerships)*	Reduced level of damage from organised crime and terrorism	Process evaluation could be appropriate

			platform Effective participation in the work of the Platform and new partnerships Composition of partnerships established *(Source: Commission)*			
Policy sub area 4: Management of crises[12] with cross border effects						
Objectives: Reduce detrimental cross border impacts of crises						

[12] With particular regard to preparedness and response to terrorist attacks.

Policy sub-area level indicators: Number of cross border crises reported in press/media Number of cross border crises involving EU crisis management						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Setting up of integrated and co-ordinated EU crisis-management arrangements in the Commission and the Council	Increase the level of preparedness to tackle cross-border crises within the EU	Active participation from MS in the structures to be established	Establishment of integrated and co-ordinated structures at the EU level *Measured by:* Assessments of MS capacities Training and joint exercises conducted Operational plans established *(Source: MS administrative records)*	Increased level of preparedness for cross border crises *Measured by:* Actual responses to crises Results of 'Exercises' undertaken. *(Source: MS Potential stakeholder surveys)*	Reduced impacts of such crises	There are likely to be particular difficulties in establishing the counter factual with respect to this instrument. Impacts may only be assessed sometime following emergencies. Some scope for peer review

ANNEX 2

Current practice for monitoring and evaluating EU policies on freedom, security and justice

1. MONITORING

1.1. The Tampere scoreboard

The Tampere European Council in 1999 invited the Commission to compile a **scoreboard** to keep implementation of policies on freedom, security and justice under continuous review. The scoreboard would specifically keep track of progress made with implementation of the measures and compliance with the deadlines set in the Amsterdam Treaty, the Vienna Action Plan and the Tampere programme. In response, the Commission produced its first scoreboard in March 2000, followed by regular updates every six months taking into account the objectives set by the European Councils in Laeken (2001), Seville (2002) and Thessaloniki (June 2003). The last Tampere scoreboard was presented in June 2004, marking the end of the first five-year period (1999-2004).

The scoreboards indicated the objectives and deadlines set at Tampere and in each case the responsibilities assigned to launch, advance and complete the process. To provide a clear view of the progress made in each area, the scoreboard showed the outstanding proposals and initiatives presented, progress in Council and European Parliament proceedings and the work planned. A specific section of the scoreboard focused on transposition of the instruments adopted.

1.2. Reviewing implementation of EU legislation

1.2.1. Instruments adopted under the EC Treaty

Implementation by the Member States of Community legislation concerning free movement of persons, visas, asylum, immigration, judicial cooperation in civil matters and citizens' rights adopted under the European Community Treaty is monitored by the Commission. If a Member State fails to comply with its legislative obligations, the Commission can then initiate infringement proceedings under Article 226 of the EC Treaty and may bring the matter before the Court of Justice.

Apart from normal application of the monitoring mechanism under Articles 226 of the EC Treaty, monitoring implementation of the instruments adopted under Title IV of the EC Treaty is not systematic, although it is usual practice. For example, none of the four directives adopted on illegal migration provides for a monitoring report by the Commission.

Some reports, such as the evaluation of the derogation for issuing visas to members of the Olympic family[13], go beyond mere analysis of implementation and contain information on

[13] Report on the functioning of the derogation system introduced by Regulation 1295/2003 regarding measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens (SEC(2005) 1051). This report was written by the Commission on the basis of information provided by the Greek authorities.

results. There are other examples concerning instruments adopted under Title II of the Treaty, such as reports[14] relating to free movement of Union citizens or reports[15] on their electoral rights in municipal and European Parliament elections.

1.2.2. Instruments adopted under Title VI of the Treaty on European Union

In the case of instruments adopted under Title VI of the EU Treaty concerning police and judicial cooperation in criminal matters, there is **no equivalent compliance mechanism** allowing the Commission to exercise its institutional powers as guardian of the Treaties.

For all Framework Decisions adopted by the Council, it is compulsory for Member States to transmit a detailed set of national implementing measures to the Commission and to the Council. Based on this information, the Commission then issues a report (e.g. 2002 Framework Decision on combating terrorism[16]). allowing the Council to debate the need for further measures in the field concerned. The Council generally expresses its position in a final report.

For some Framework Decisions, the Commission repeats or updates its monitoring exercise (e.g. "Victims" Framework Decision[17]).

Similarly, the Commission systematically monitors common positions and issues a monitoring report on national implementing measures. The Commission has also taken the initiative to issue specific reports on certain Council Decisions imposing no monitoring obligation such as those relating to Eurojust[18]

This monitoring exercise deals only with the **legal transposition** aspect and rarely includes details on the **practical implementation of instruments**. Such assessments of legal transposition answer the following questions: are the implementing measures effective, correct and in line with the Framework Decision? Are they clear and do they provide legal certainty? Do they fully apply the instrument and comply with the time limit for transposition?

In some cases this exercise has been backed up by an initial assessment of practical implementation in the Member States and of the tangible results of the national legislation. For example, in the case of the Framework Decision on the European Arrest Warrant[19], some

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14 Reports from the Commission to the Council and the European Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (Right of residence), COM(1999) 127 final and COM(2003) 101 final.

15 Reports on the application of Directive 93/109/EC: Right of EU citizens residing in a Member State of which they are not nationals to vote in European Parliament elections, COM(97) 731 final and COM(2000) 843, or Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2002) 260 final.

16 Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, COM(2004) 409 final, 8.6.2004.

17 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

18 Report from the Commission on the legal transposition of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, COM(2004) 457 final, 6.7.2004.

19 Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (COM(2005) 63 final), p.2, paragraph 2: *"The evaluation criteria adopted by the Commission for this report are, firstly,*

of the practical results of the implementing measures were included in the monitoring report, such as the question of effectiveness and rapidity of surrender. The Commission's report also included some preliminary figures, such as the number of warrants issued or the average time taken to execute a warrant, which mainly illustrated the difficulty of obtaining adequate statistics in this field.

1.3. Information-gathering mechanisms on policy implementation

1.3.1. Existing mechanisms

Following the call by the 2001 Laeken European Council to set up an enhanced exchange of information in the field of immigration and asylum, the Commission launched an information and consultation procedure with a **"Committee on Immigration and Asylum"** (CIA) at its heart. The CIA is made up of experts from the Member States but also frequently provides a forum for representatives of civil society, such as European social partners and the UNHCR, to present their views on pertinent immigration and asylum issues.

In the field of integration, the "**National Contact Points on Integration**" (NCP) play an important role in monitoring progress across policy fields and in ensuring that integration efforts at national and EU level support each other. They convey key results to the CIA.

A **European Migration Network** (EMN) was set up in 2002 as a preparatory measure in response to the need to improve exchanges of information on all aspects of migration and asylum. Its primary objective is to provide the Community and the Member States with objective, reliable and comparable information in these fields by systematically collecting and storing existing data and information from Member States and carrying out national and European level analysis. At present, the EMN consists of national contact points designated by the Member States.

1.3.2. Mechanisms in preparation

In the field of asylum, a Communication[20] on strengthened practical cooperation proposed bringing into operation a **system for sharing expertise**, resources and knowledge between key stakeholders, as a tool for strengthening common approaches to implementation of the first-stage legislative instruments of the European asylum system, building - amongst others - on existing mechanisms, such as the EURASIL group.

In September 2005 the Commission tabled a proposal for a **Regulation on Community statistics on migration and international protection**. The Regulation will improve statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.

In October 2005 the Commission tabled a proposal for a Council Decision on the establishment of a **mutual information procedure on national measures** taken in the areas of asylum and immigration which could affect other Member States. The proposal is based on

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the general criteria normally used nowadays to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposal), and, secondly, criteria specific to the arrest warrant, principally the fact that it is a judicial instrument, its effectiveness and its rapidity."

[20] COM(2006) 67 final.

the recognition that the absence of border checks in the Schengen area and the gradual development of common EU immigration and asylum policies require timely exchanges of information and discussion of national measures taken on asylum and immigration.

1.4. Monitoring implementation of The Hague Programme

The Hague Multi-Annual Programme (2005-2009) and the Action Plan implementing it invited the Commission to present an **annual report on implementation** of these two instruments to the Council (the "Scoreboard plus").

The "Scoreboard plus" will aim predominantly at assessing proper and adequate transposition of the legislative acts adopted and effective implementation of the measures agreed. In concrete terms, "Scoreboard plus" will assess the outcome of both (a) the **significant political progress** achieved at the point of adoption at EU level and (b) **implementation at national level of measures** related to freedom, security and justice.

This structure will bring visibility to monitoring and provide a comprehensive overview of implementation of the Action Plan, meeting the requirements of the European Council in The Hague Programme. It will increase transparency and visibility and improve and facilitate implementation. The **first "Scoreboard plus"** is presented **in parallel** to this Communication, one year after adoption of the Action Plan implementing The Hague Programme.

2. EVALUATION

This section briefly describes the state of play with evaluation in the field of freedom, security and justice, depending on the subject-matter: (1) **programmes,** (2) **legislation** or (3) **policies**[21]**.** Evaluations on freedom, security and justice mainly focus on **individual policy instruments**, be they legislative or financial. As in other areas, evaluation of policies (defined as a coherent set of instruments serving the same coherent objective) is **still developing**. As a consequence, evaluation activities are currently very diverse (internal or external evaluations, annual progress reports, peer reviews, etc.) and very different in scope. This results in a **lack of comparable evaluation** results across policies and of a true overview of the results achieved in establishing an Area of Freedom, Security and Justice.

The evaluation mechanism put forward in this Communication aims at tackling this issue. It provides a **platform** for exhaustive presentation and comparability of existing evaluation results, and identification of any information gaps. Whilst taking into account the fact that evaluation is more advanced for some activities than others, it will allow the establishment of a **common set of minimum evaluation requirements** across the different policies.

2.1. Evaluation of Community programmes

Evaluation of **programmes** is **well developed** within the Commission, including in the area of freedom, security and justice, where major programmes such as the European Refugee

[21] Evaluations of agencies and external bodies have not been included, for example the evaluation of the draft Council Decision transforming the European Police College (CEPOL) into an EU body, the evaluation of the European Monitoring Centre for Drugs and Drug Addiction and the evaluation of the functioning of the European Judicial Network (EJN) in civil and commercial matters.

Fund, AGIS and DAPHNE are regularly evaluated[22]. Available evaluation results demonstrate that whilst the immediate results of funding programmes are easily identified and measured, their longer-term effects are sometimes more difficult to grasp. In this context, the Commission proposals for the 2007-2013 programmes on freedom, security and justice establish a better link between the programmes' specific objectives and the overall political objectives. This will have an impact on the evaluation framework for these programmes, in particular through assessment of their consistency with other instruments (legislative or other) in the same field.

2.2. Evaluation of legislation

Contrary to the evaluation of programmes, evaluation of **legislation** is a **more recent** development in the case of freedom, security and justice. Recent examples include the evaluation of the European Arrest Warrant[23] (2005), the economic evaluation of the Data Protection Directive[24] (2005) and the on-going evaluations of the Directive on minimum standards for the reception of asylum-seekers[25] and of the Brussels I Regulation[26]. Also, the introduction of impact assessments of EU legislation has led to systematic *ex-ante* appraisal, which should greatly facilitate further interim and/or *ex-post* evaluation. In this context, systematic scrutiny of legislative proposals and other draft instruments to ensure that they are compatible with the Charter of Fundamental Rights should serve the same purpose[27].

2.3. Evaluation of policies

2.3.1. Mechanism for Schengen evaluation

The Schengen evaluation system, first established in the intergovernmental Schengen framework and then integrated into the European Union framework[28], assesses correct implementation of the Schengen *acquis* by participating Member States through a peer review mechanism, including visits to Member States. It has issued restricted reports, given details of cases of non-compliance with existing rules and practices and made further recommendations. This mechanism applies to both Community and third pillar measures.

When internal border controls with and between new EU Member States are lifted, the Commission will submit a "*proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism*", as requested by The Hague Programme.

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22 The results of these evaluations are available online at: http://europa.eu.int/comm/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm.

23 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

24 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

25 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers.

26 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

27 SEC(2001) 380/3, COM(2005) 172.

28 Decision 26 DEF 1998 of the Schengen Executive Committee.

2.3.2. Mechanism for the fight against organised crime

Joint Action 97/827/JHA, adopted by the Council on 5 December 1997, established a mechanism for evaluating the application and implementation at national level of international undertakings in the **fight against organised crime**[29]. Two rounds of evaluation have already been completed and two others are ongoing. The first round focused on mutual legal assistance in criminal matters, on which a report was subsequently released on 1 August 2001[30]. The second assessed instruments dealing with law enforcement and drug trafficking. Finally, the third and fourth rounds, not yet completed, are evaluating exchanges of information and intelligence between the Member States and Europol and the European Arrest Warrant respectively. The 1997 mechanism is operated by teams of experts designated by Member States, assisted by the General-Secretariat of the Council, with the involvement of the Commission. It is based on **study visits** and allows an in-depth examination of how instruments or policies are working in practice.

The Commission believes that although this mechanism has proved **useful and effective**, it nevertheless has some **shortcomings**, in particular the total duration of the process, the scope limited to only matters related to organised crime and the limited dissemination of the evaluation results.

2.3.3. Mechanism for the fight against terrorism[31]

Following the conclusions of the extraordinary meeting of the Justice and Home Affairs Council on 20 September 2001, the Council set up a procedure for peer assessment of national anti-terrorist arrangements in the framework of international cooperation between Member States. The first round of evaluations started in 2003 and focused on exchanges of information. Evaluation teams are made up of national experts and their reports are confidential.

2.3.4. Evaluation of the EU Action Plan on Drugs

In 2004 the Commission carried out the final evaluation of the EU Drugs Strategy and Action Plan on Drugs for 2000-2004[32], in cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol. The evaluation exercise provided an **overview of the drugs situation in the European Union** over the reference period. The Strategy and the Action Plan included a wide range of drug-related measures, mainly within the competence of the Member States. Their impact on the drug situation in the European Union could not be considered, mainly because the EU Strategy and Action Plan failed to establish impact indicators.

The EU Action Plan on Drugs for 2005-2008 takes into account the evaluation of the preceding Action Plan and has been designed from the outset to facilitate full evaluation. Accordingly, it clearly allocates responsibilities for each action and includes specific assessment tools, indicators and schedules for implementation. The Action Plan provides for

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29 For further information see: http://europa.eu.int/scadplus/leg/en/lvb/l33053.htm.

30 Final report on the first evaluation exercise - mutual legal assistance in criminal matters (2001/C 216/02).

31 Council Decision 2002/996/JHA of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.

32 COM(2004) 707.

the Commission to present annual reviews of implementation of the Plan plus a final evaluation in 2008, with a view to preparing the next Plan. The **first annual progress** review will be presented in **autumn 2006.**

2.3.5. Mechanism for evaluating respect of fundamental rights

The **European Monitoring Centre on Racism and Xenophobia** studies the extent and development of the phenomena of racism, xenophobia and anti-Semitism and analyses their consequences and effects. Its findings are presented in annual reports. Once established, the Agency on Fundamental Rights, with its wider mandate, is expected to play a key role in evaluating respect of fundamental rights.

The **network of fundamental rights experts** was created by the European Commission in 2002 in response to a recommendation in the European Parliament's report[33] on the state of fundamental rights in the European Union. The network assesses the fundamental rights situation through an annual report, on the basis of an **analysis of the legislation, the case-law and the administrative practice** of the national authorities of the Member States and in the institutions of the Union. The reference points for the evaluation are the rights set out in the European Union's Charter of Fundamental Rights. The results are published annually (so far, in 2003, 2004 and 2005).

[33] 2000/2231(INI).

ANNEX 3

Glossary

Activity: A coherent area of action with objectives and resources. In other words, "Activities" consist of well-defined and delimited measures to which inputs are allocated and converted into outputs.

The policy for the development of an Area of Freedom, Security and Justice has been divided into different Activity-Based Management (ABB) activities such as:

– Activity 1802 “External borders, visa policy and free movement of persons”,

– Activity 1803 “Common immigration and asylum policies”,

– Activity 1804 “Citizenship and fundamental rights”,

– Activity 1805 “Law enforcement cooperation and prevention of and fight against general organised crime”,

– Activity 1806 “Establishing a genuine European area of justice in criminal and civil matters”,

– Activity 1807 “Coordination in the field of drugs”.

Evaluation: “Judgement of interventions according to their results, impacts and the needs they aim to satisfy”[34]. It is a process undertaken by the Commission in order to identify what can be learned for policy and planning.

***Ex ante/ex post* evaluation**

Ex ante evaluation: Evaluation performed before implementation of a measure. For the purposes of the Commission, *ex ante* evaluation is defined as a process that supports the preparation of proposals for new or renewed Community activities. Its purpose is to gather information and carry out analyses that help to define objectives and to ensure that these objectives can be met, that the instruments used are cost-effective and that reliable subsequent evaluation will be possible.

Intermediate (or mid-term) evaluation: Evaluation performed during implementation of a measure. If the evaluation extends throughout the period of implementation, this is also called "on-going evaluation". This type of evaluation critically appraises the first outputs and results, in order to assess the quality of monitoring and implementation of the measure. The main focus is to help to prepare adjustments and reprogramming and to provide input for the preliminary deliberations on the future of the measures.

Ex post evaluation: Evaluation conducted either on or after completion of a measure. The main interest is overall assessment of the measure, in particular by analysing the impact

[34] Communication on Evaluation (SEC(2000) 1051): http://europa.eu.int/comm/budget/evaluation/keydocuments_en.htm.

achieved and examining its efficiency. The objective is to understand the reasons for success or failure and the sustainability of the results and impact. It also tries to draw conclusions that can be applied generally to other measures.

Impact: A general term used to describe the effects of a measure on society. Impact can be either positive or negative and foreseen or unforeseen. Initial effects are called outcomes/results, whilst impact is usually longer-term.

Impact assessment: Impact assessment is about examining the likely economic, social and environmental impact of the Commission's proposals. It identifies and assesses the issue at stake and the objectives pursued. It identifies the main options for achieving the objectives and analyses their likely impact. It outlines the advantages and disadvantages of each option as well as synergies and trade-offs.

Indicators: A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Output indicators are normally straightforward. Impact indicators may be more difficult to obtain, and it is often appropriate to rely on indirect indicators as proxies. Indicators can be either quantitative or qualitative.

Monitoring: A continuous process of examining delivery in terms of adoption and implementation of different measures, especially legislation. It is not to be confused with programme monitoring, which consists of examining the delivery of programme outputs to the intended beneficiaries. Evaluation, on the other hand, is carried out at a discrete point in time, and consists of an in-depth study. Monitoring generates data which can be used in evaluations.

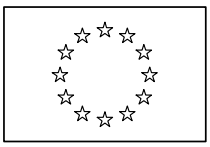
Outcomes/results: The intermediate effects of a measure.

Policy: A set of activities, which may differ in type (programmes, measures, procedures, laws or rules) and beneficiaries or target groups, directed towards common general objectives or goals. Unlike projects and programmes, a policy is not usually delimited in terms of time or budget.

Policy area: Within the EU the concept *policy* may designate various scope and levels of complexity, ranging from an overall Commission strategy or objective over a policy area to an ABB-activity. In this context, a policy will normally embrace a range of instruments At Commission level, the ABB-activities (215 altogether) have been grouped into some 30 policy areas, closely identifiable with Directorates-General. This Communication deals with policy area 18: Freedom, security and justice.

Policy instruments: A set of techniques by which public authorities attempt to ensure support and to effect or prevent social change. In this sense, there is a strong emphasis on the dynamic evolving nature of policies, with individual policy instruments being added, withdrawn or redesigned over time. The variety of available policy instruments includes, for example, legislation such as regulations or directives and may involve resource commitments, for example in the form of operational programmes; they also include Communications, action plans, etc. However, policy instruments differ significantly in the way in which they bring about results and impacts and the timescales over which these can be expected.

Programme: A set of organised but often varied actions (a programme may encompass several different projects, measures and processes) directed towards achieving specific objectives, often with a definite time schedule and budget.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
COM(2006) 332 final

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Evaluation of EU Policies on Freedom, Security and Justice

{SEC(2006) 815}

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Evaluation of EU Policies on Freedom, Security and Justice

1. INTRODUCTION

1. The Hague **Programme** (2004)[1] states that "evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential to the effectiveness of Union action". The **Action Plan** implementing The Hague Programme (2005)[2], which sets out a policy framework for the European Union activities on freedom, security and justice over the next five years, provides for the adoption, in 2006, of a **general Communication** from the Commission on how to develop an evaluation mechanism at EU level in this area[3].

2. The Heads of State and Government had identified evaluation of implementation as a **key tool** to ensure that the significant results achieved by the Union and its Member States on the development of an Area of Freedom, Security and Justice are properly implemented and constantly reviewed, where appropriate, in order to respond to the real **expectations of European citizens**.

3. By underlining the importance of evaluation, The Hague Programme aimed at (1) **further improving the way policies, programmes and instruments** are set up, by identifying problems and obstacles encountered when implementing them, (2) laying down more systematic rules on the **financial accountability and scrutiny of policies**, (3) favouring learning and **exchanges of good practice** and (4) participating in **developing an evaluation culture** across the Union.

In view of (1) the **mandate** given to the Commission by The Hague Programme and its Action Plan, (2) the **fragmentation** of existing monitoring and evaluation mechanisms and (3) the need to transmit **extensive information** to all stakeholders on the implementation and results of policies, the Commission considers that the **time has come** to work towards setting up a **coherent and comprehensive mechanism for evaluation** of EU policies on freedom, security and justice, in a spirit of **partnership** with Member States and EU institutions.

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1 Annex 1 to the Presidency Conclusions of the Brussels European Council, November 2004.

2 Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union (OJ C 198, 12.8.2005, p. 1).

3 The Action Plan also calls for a Communication on the systematic, objective and impartial evaluation of the implementation of EU policies in the field of justice, with a view to reinforcing mutual trust while fully respecting the independence of the judiciary. Later this year the Commission will present a further Communication which will address this issue in detail, in accordance with the general principles established in this Communication.

Such a mechanism will include **monitoring implementation** (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", hereafter the "Scoreboard plus")[4] and **evaluating the results** of the policies.

2. THE CONCEPT OF EVALUATION

4. A distinction must be drawn between the principles of monitoring implementation and of evaluation:

   - **Monitoring implementation** consists of reviewing progress on carrying out policies.

   - The Communication on Evaluation presented by the Commission in 2000[5] defines **evaluation** as "*judgement of interventions (public actions) according to their results, impacts and the needs they aim to satisfy*". The main role of evaluation is to provide policy-makers with input about the impact and effectiveness of activities planned and carried out.

5. The Commission interprets the mechanism referred to in the Action Plan as a means of monitoring implementation and evaluating the concrete results of policies on freedom, security and justice. In this context, evaluation goes beyond and builds up on monitoring implementation of policies by studying the effects of implementation, as outlined below. This is in line with The Hague Programme since the concept of "*evaluation of the implementation as well as of the effects of all measures"* encompasses both monitoring implementation itself and evaluating the results of the measures taken.

6. This is the rationale for the Commission to propose a coherent and comprehensive package built around two pillars: the "Scoreboard plus" for monitoring implementation and the **evaluation mechanism** proposed in this Communication.

7. The mechanism put forward in this Communication is based on this comprehensive definition which, in the Commission's view, should allow a full understanding of the quantity and quality of results achieved on freedom, security and justice. Such a mechanism would operate within the framework of the principles established in The Hague Programme. Ultimately this should improve policy-making, by promoting systematic feedback of evaluation results into the decision-making process.

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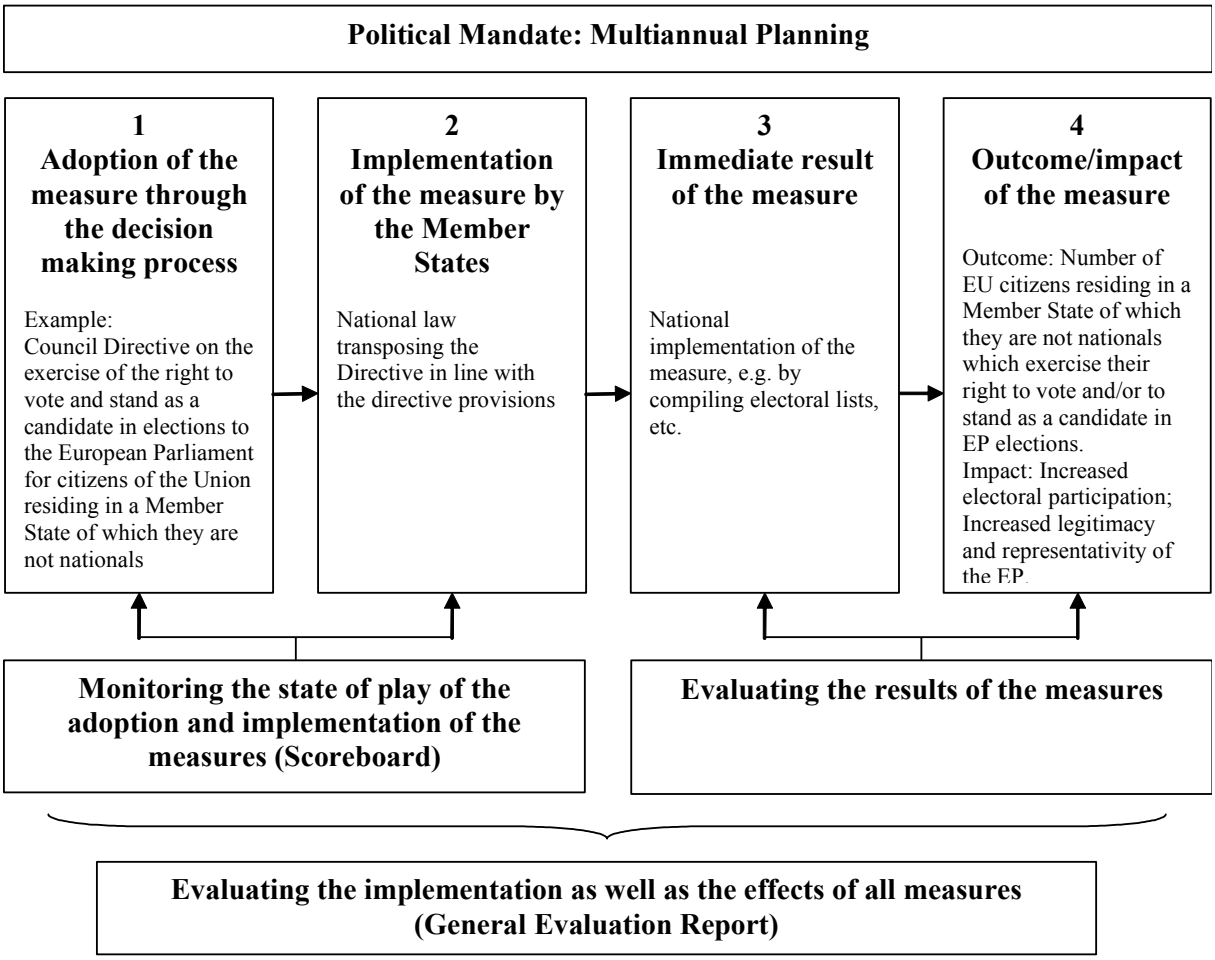
4 COM(2006) 333.

5 SEC(2000) 1051.

Box 1: Evaluation across the decision-making process



3. EVALUATING EU POLICIES ON FREEDOM, SECURITY AND JUSTICE - CHALLENGES TO BE ADDRESSED

3.1. Complex and ambitious policy goals and arrangements

8. Freedom, security and justice is one of the EU's **most diverse policy areas**. The objectives to be achieved encompass some of the most topical issues: free movement of persons, terrorism and organised crime, police and judicial cooperation, asylum and migration policy, all of this while respecting fundamental rights and promoting the rights of Union citizens. Often national sovereignty considerations necessitate compromises at EU level or make implementation difficult. Therefore, any new evaluation mechanism will have to take account of this political context.

9. The complex and ambitious policy goals sought are further complicated by a sometimes confusing legal framework, a mix of decision-making and compliance procedures.

To accommodate this complexity, the proposed evaluation mechanism needs to be **progressive** and to include possibilities for **further development and consolidation**.

3.2. Timing

10. As a result of the specific role of the Commission and the decision-making process in the freedom, security and justice field, the various policies often require different **time frames** before they can be developed and become fully operational. A **case-by-case approach** is therefore necessary to identify the right level of analysis for **each individual policy**. While immediate and intermediate results will be taken into consideration for all policies, analysing the practical impact could be more difficult for some of them (e.g. drugs or migration policies).

The proposed evaluation mechanism should allow **sufficient flexibility** for differentiated in-depth evaluation of specific policies, taking due account of their level of development and consolidation.

Focusing on immediate and intermediate results therefore seems appropriate, at least in the first stage. Identification of the overall impact of policies must be the ultimate objective of the evaluation mechanism in the longer term.

3.3. Involving institutions and stakeholders

11. Another unique aspect of freedom, security and justice is the impact of policy on stakeholders. Any evaluation mechanism in this field must take into consideration **stakeholders' expectations and priorities** and, in particular, the **need for confidentiality** in some policy areas, such as terrorism and organised crime.

12. In a spirit of **partnership**, the Commission will **consult and debate** with Member States and EU institutions during and after preparation of the evaluation report. To that end, Member States and EU institutions will be invited to designate **contact points** to facilitate dialogue with the Commission. The evaluation report[6] will be **public** and addressed to the Member States and EU institutions.

13. The Council and the Member States together with the Commission will be the main players in the proposed evaluation mechanism. The European Parliament will be closely associated, in compliance with the institutional prerogatives and obligations. National Parliaments will also be involved in evaluation of the regular reports.

14. In the areas covered by the EC Treaty, the Committee of the Regions and the European Economic and Social Committee will be involved in preparation and implementation of the evaluation mechanism. Evaluation reports will be routinely transmitted to the Committees after adoption.

15. Agencies such as the European Union Agency for Fundamental Rights, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Europol, Eurojust or the European Agency for the Management of Operational Cooperation at the

[6] Cf. paragraph 30.

External Borders will play an important role in the mechanism. First, they will feed the evaluation exercise with information and analysis when available. Second, the Commission will consult them on the evaluation reports.

16. The contribution of civil society will be very valuable in this context. The Commission will ensure that the views of the civil society will be taken into account and will establish appropriate mechanisms to ensure its participation in the evaluation of all policies in the area of freedom, security and justice.

The proposed evaluation mechanism should include **transparent consultation mechanisms,** which could also be used to gather and cross-check relevant information.

3.4. Availability of statistics

17. Availability of statistics[7] and of the necessary analytical capacity is a **key component** in the development of an evaluation system. While statistics are well-developed for some activities (e.g. drugs policy), further work needs to be done in other areas, such as crime and criminal justice[8]. Statistics on evolution of the needs addressed by policies on freedom, security and justice will be required as baseline data to assess whether existing needs are attenuated or aggravated by a policy over time and, ultimately, to be able to draw conclusions about the impact of policies. Improvements should be made in three areas: quality, availability and analysis. Work by agencies, including the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Eurojust, Europol and the future Fundamental Rights Agency, will play a special role in this context. Research projects and networks will also contribute to this objective.

Consequently, in parallel with setting up the proposed evaluation system, improvements will have to be made to the **quality, availability and analysis of statistics** on freedom, security and justice.

4. EVALUATING EU POLICIES ON FREEDOM, SECURITY AND JUSTICE - PROPOSAL FOR A STRATEGIC EVALUATION MECHANISM

4.1. Description of the evaluation mechanism

18. **The proposed strategic evaluation mechanism** for freedom, security and justice **builds upon** the **consolidated results** achieved in other areas of EU policy. Such a mechanism would build on **current practices,** as described in Annex 2, and, in the specific case of funding programmes, use information derived from existing evaluation requirements. Also, in other areas where information is already available

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7 The production of Community statistics is governed by the rules set out in Council Regulation on Community Statistics, and actions on the establishment of Community statistics are carried out according to the Community Statistical Programme and its Annual Programmes, respecting the principles set out in the European Statistics Code of Practice.

8 To this end, the Commission is planning to adopt an EU plan on developing a comprehensive and coherent EU strategy to measure crime and criminal justice. The ultimate goal will be to have community statistics based on harmonised definitions and collection and reporting mechanisms.

particular attention will be paid to making use of existing data and **avoiding duplication of work**.

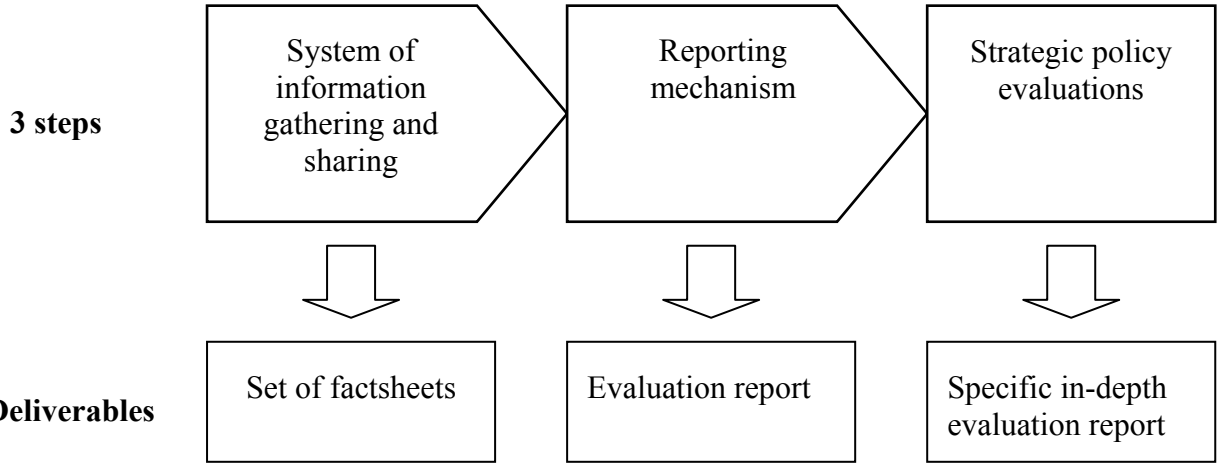
19. A **three-step progressive** mechanism is proposed:

(1) First, it provides for setting up a system for information gathering and sharing.

(2) Second, it includes a **reporting mechanism** which consolidates, uses and analyses this information.

(3) Third, it is completed by targeted **in-depth strategic evaluations**.

Box 2: The three steps of the mechanism



20. The mechanism will be comprehensive and will encompass all policies in the area of freedom, security and justice[9].

21. Evaluation reports[10] will be transmitted to the Council and European Parliament and also to the European Economic and Social Committee and the Committee of the Regions and disseminated as appropriate to wider audiences, including via *ad-hoc* public events.

22. By enhancing reporting and dissemination of evaluation results, the mechanism ultimately seeks to foster actual use of the results at the decision-making level.

23. The mechanism is consistent with current Commission guidance on evaluation and will operate in conformity with its general principles.

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[9] In the third step of the proposed mechanism, the peer review evaluation mechanism described in Annex 2, point 2.3.2 could continue to be carried out. Depending on how the current institutional framework evolves, the Commission could manage this mechanism at a later stage. In any event, the Commission will back up this mechanism with its own in-depth strategic evaluations in the areas covered by Title VI of the EU Treaty.

[10] Cf. paragraph 30.

4.1.1. Information gathering and sharing system

24. The information gathering and sharing system will be based on **"factsheets**" (one for each policy area) which will be filled in by the Member States' competent authorities. In areas for which information is already available in a similar format, the Commission will **fill in** the factsheets **in advance** as far as possible. In parallel, the factsheets will be put out to **consultation** with relevant stakeholders[11] and civil society. Consultations will be specific to each policy and will build upon **existing networks** and consultation mechanisms, with due regard to confidentiality requirements in certain areas.

25. The factsheets will indicate an **overall policy objective** for each area and list the **main instruments** (legislative, non-legislative and financial) contributing to attaining that objective. The mechanism should provide a clear overview of the **achievements**.

26. The factsheets will also provide a set of **indicators** for each policy. These indicators will be clearly linked to the overall objective of the policy area. The factsheets will be an integral part of the **consultation process** which will follow publication of this document and will be finalised in partnership with Member States. Examples of the proposed factsheets are given in Annex 1 to this Communication.

27. The Commission intends to invite each Member State to designate **contact points** at national level. The contact points will play an important role in coordination of the response at national level and work in consultation with Commission departments.

28. As regards **EU legislation**, the indicators and the rating system in the factsheets will focus on tangible results of application of the legislation in practice not on the level of transposition into national law or the impact of EU law on the national legal systems. The latter are the main objectives of the "Scoreboard plus", which assesses transposition and implementation rather than judging the degree of achievement of the objectives.

29. Regarding EU **funding programmes**, the factsheets will build on **existing implementation and evaluation reports** produced to meet the obligations set out in the Financial Regulation and the relevant legal basis. The information required by the factsheets on funding programmes is expected to be readily available and any additional contributions required from Member States should therefore be minimal.

4.1.2. Reporting mechanism

30. Following receipt of the factsheets and consultation with stakeholders, the Commission will validate the information received and elaborate an **"evaluation report**" consolidating and analysing the information provided. This evaluation report will also include **political recommendations** regarding the different policy areas addressed.

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[11] Cf. section 3.3.

31. The aim of this exercise is to evaluate the policies carried out at EU level in the area of freedom, security and justice and to identify areas suitable for an **in-depth strategic evaluation**.

4.1.3. Strategic policy evaluations

32. Following the evaluation report and further consultation, **in-depth strategic policy evaluations** can be conducted in **selected areas.** These evaluations will aim at producing useful and timely information as inputs for political decisions in each policy area, as appropriate.

33. Strategic evaluations should add value to the current practices described in Annex 2, notably by:

(a) focusing on **policies** (or coherent sub-sets), rather than individual instruments (for instance, evaluation of the common immigration policy);

(b) analysing the **coherence** of different instruments within a given policy (e.g. how financial programmes support and facilitate implementation of the EU legislation in a given field);

(c) investigating how a certain policy contributes to the **overall objective** of establishing an Area of Freedom, Security and Justice;

(d) determining the overall **rate of achievement** of that general objective; and

(e) assessing achievement of an overarching objective in the field of freedom, security and justice (for instance, safeguarding of fundamental rights).

4.2. Frequency and follow-up

34. A set frequency makes it possible to monitor progress at regular intervals and to draw comparisons. As regards the timetable, the proposal is to conduct this evaluation exercise ("factsheets" plus "evaluation report") **twice every five years.** The Commission will draw on available information as far as possible.

35. The proposal takes into account the fact that this mechanism:

(a) should be conducted on a **regular basis**,

(b) should not be too burdensome,

(c) does not need to be conducted every year since it focuses on slow-moving outputs and results and on medium-term data,

(d) should be coordinated with the **existing** strategic and multi-annual plans.

36. In particular, the proposed timetable would also enable the Council and the Commission to use the results of the evaluation reports as input for assessing the need to prepare a further Strategic Programme in 2009 after The Hague Programme expires.

37. Publishing the evaluation report every two or three years will make it possible to synchronise the mechanism with the five-year cycle. This will foster more thorough and strategic use of evaluation results in decision-making. 2006-2007 will be a transition period (see table below).

38. In order to coordinate with the "Scoreboard plus", the schedule is to send the factsheets to Member States at the end of 2006 and publish the evaluation report, together with the second "Scoreboard plus", in mid-2007.

Timetable	"Scoreboard plus" (SB)	Review mechanism	Action Plan
2005			Adoption of The Hague Action Plan
2006	SB+ 1		Intermediate assessment of implementation (end of 2006)
2007	SB+ 2	Evaluation report 1	First policy review
2008	SB+ 3		
2009	SB+ 4	Evaluation report 2	
2010	SB+ 5		End of The Hague programme
2011	SB+ 6		
2012	SB+ 7	Evaluation report 3	
2013	SB+ 8		
2014	SB+ 9	Evaluation report 4	

(Transition period in grey)

39. An assessment of the **additional administrative costs to Member States** is included in the annexed impact assessment. Member States are encouraged to work, with the support of the Commission, towards **data comparability and accuracy**. Recent experience with the evaluation of a number of legislative instruments has shown that, at times, basic data concerning policies are neither harmonised nor accurate. *Ad hoc* evaluations of policies on freedom, security and justice by the Council or the Commission will be an additional source of information.

40. This Communication is intended to mark the **start of a medium-term process**. The proposed mechanism and the factsheets are presented so that comments on and improvements to them can be made in the follow-up to this Communication. To this end, a wide-ranging consultation process will be launched, including the organisation of a hearing in the autumn.

41. An **assessment** of the mechanism will be conducted after five years to decide on possible adjustments and improvements to the system. The outputs to be considered will be the deliverables identified in box 2. The assessment will be against the objectives stated in paragraph 3.

5. CONCLUSIONS

42. The Commission considers it necessary to set up a **coherent and comprehensive mechanism for evaluation** of EU policies on freedom, security and justice, bearing in mind the current situation and the mandate given by The Hague Programme. Such a mechanism will have to be **progressive** and take into account the **evolving institutional and legal framework**, with a view to ensuring further enhancement and effectiveness of freedom, security and justice policies.

43. This mechanism will provide a means of bringing together individual evaluation results in a coherent framework and thereby informing political decision-making at the appropriate level. In this respect, the proposed mechanism will also provide policy-makers with **relevant information in time** for considering the appropriate follow-up to The Hague Programme when it expires in 2009.

44. The proposed mechanism will be implemented by the Commission and the Council in full compliance with their institutional prerogatives and in close association with the European Parliament. **Concerted action** and **full commitment** by EU institutions and Member States are necessary for effective establishment and implementation of the evaluation mechanism, with national authorities and administrations playing a key role in this respect.

45. Finally, such an evaluation mechanism will aim at making the action taken by the Union more effective and will contribute to the strategic objectives of **better regulation** and **transparency of EU activities**.

ANNEX 1

Factsheet of JLS policies

POLICY AREA: EXTERNAL BORDERS, VISA POLICY AND FREE MOVEMENT OF PERSONS
Factors influencing evaluation mechanism: well established policy area, 1st pillar activities, there is a strong consensus amongst stakeholders for EU level action; there is a mix of instruments (legislative activities, co-operation activities, programme funding, functioning Community Agency, IT systems); possible to construct evaluation indicators, but might be hard to measure outcomes and results and causal links in practice. Methods to evaluate controls at borders are improving, including available administrative information and statistics. Some constraints on fully independent evaluation. There are strong interlinkages between the instruments within the ABB activity and strong potential for 'thematic' evaluation examining instruments in parallel.
Policy sub-area 1: External borders
Objectives: Develop an integrated external border management system Ensure uniform high standards of border checks and border surveillance at EU external borders Reduce number of illegal cross border movements of people Further 'burden sharing' in management of external borders
Policy sub-area level indicators: The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of all third country national border crossings into EU (*Source: Commission - Eurostat statistics on asylum and migration*) The difference between the numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of

all third country national border crossings into EU through the most permeable and least permeable border. Note that this indicator would require to define the most and least permeable EU border. The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally (*Source: Commission - Eurostat statistics on asylum and migration*) The proportion of all resource commitments to external border management originating in countries without EU external borders *(Source: MS)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS.

European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX)	Improvement of operational cooperation between Member State authorities Increased competences of border guards	Co-operation with Agency and responses to good practice, training and other advice.	Operational cooperation *Measured by:* Number of joint operations and pilot projects carried out *(Source: Agency)* Development of risk analysis *Measured by:* Number of risk analyses carried out *(Source: Agency)* Increased training *Measured by*: Number of border guards trained Number of training courses and	Improvement of border control *Measured by:* Effective joint operations *(Source: Agency)* Increased intelligence *Measured by:* Use of risk analyses by national services *(Source: MS)* Better trained border guards *Measured by:* Use of newly acquired skills *(Source: MS)*	Improved resource deployment at external borders (due to better intelligence) Reduced permeability of external borders (due to better trained staff)	Difficult to assess causality of intervention. Evaluation methods – case studies, follow up surveys. EU leading the evaluation. (Other EU Agency evaluations have tended to be process rather than impact oriented)

			seminars offered *(Source: Agency)*			
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national authorities To improve the overall efficiency of national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted *(Source: Commission)*	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed by July 2006.

	administrations in their tasks					
Teams of national experts	Further objectives of FRONTEX agency: Better deployment of resources in circumstances requiring special assistance Increased competences of border guards	Secondment of experts to teams.	Provision of technical and operational assistance. *Measured by:* number of assignments carried out by teams *(Source: Agency)*	Improved practice in border surveillance. *Measured by:* use of results of teams' work in border surveillance and efficiency of teams work *(Source: Agency and MS)*	Reduced permeability of external borders (due to assistance to staff) Facilitated legitimate travel	Evaluation methods – case studies, qualitative analysis.
Policy sub-area 2: Visa policy and free movement of persons						
Objectives: Prevent illegal immigration and threats to public order Reduce time taken and costs of acquiring visas for legitimate travellers. Reciprocation with third countries on visa waivers. Reduce number of visas given to travellers who become overstayers and illegal migrants Abolish controls at internal EU borders						

Policy sub-area level indicators:

The average time taken from application to receipt of (a particular class of) visa *(Source: MS, VIS)*

The average costs (fees) for (a particular class of) visa *(Source: MS, VIS)*

The number of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission)*

The total population of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission*)

The number of EU internal border crossings that are subject to controls *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Common application centres (for Schengen countries)	Render the reception of visa applications more efficient through a better allocation of resources. Reduce costs in relation to capturing of biometrics. Harmonisation of reciprocal	Commitment to the centres. Participation in setting up the centres.	Number of centres established and MS involved *(Source: MS).* Number of visas issued through the centres *(Source: MS).*	Increased efficiency of providing visa services. *Measured by:* time taken to issue visas *(Source: MS)* *(Source: MS).* Improved use of visa related	Reduced costs to visa applicants. Reduced costs to administrations. Increased bone fide travel.	Evaluation method – efficiency analysis. Potential evaluation leadership from the MS and use of peer review process.

	procedures by MS			information *(Source: MS).*		
Visa Information System	Improve the implementation of the common visa policy by the exchange of visa data between Member States, in order to prevent visa shopping, to facilitate the fight against fraud, checks on visas, to assist in the identification of illegal immigrants, to facilitate the application of the Dublin II Regulation and to contribute to the prevention of threats to internal security.	Implementation at the national level, including the development/adaptation of national systems.	Number of number of visas refused, annulled, revoked, processing times *(Source: Commission).* Availability rate *(Source: Commission)*	Retention and sharing of data from visa applications and related decisions. *Measured by:* number of entries in VIS *(Source: Commission).* Measured: number of analyses conducted using VIS data *(Source: Commission).*	Improvement of application procedures, of checks at the external borders and within the Schengen territory, of the application of the Dublin II Regulation, of the identification of illegal immigrants and of the detection of fraud. Facilitated legitimate travel.	Monitoring and evaluation, by the Commission at EU level.
The reciprocity mechanism (Council Regulation	To ensure EU citizens can travel without a visa to all third countries whose nationals	Co-operation with the Commission, information sharing on bilateral dialogue with	Number of third countries who have waived visa requirements for EU nationals	Improved reciprocity measured by percentage of decrease of non-	Facilitated legitimate travel for EU travelers	Diplomatic efforts on EU level vis-à-vis third countries concerned.

851/2005)	don't need a visa to travel to the EU.	third countries	*(Source: Commission)*	reciprocity cases Improved dialogue and diplomatic contacts with third countries		The first Report of the Commission on reciprocity in visa waivers was adopted on 10 January 2006
Council Regulation on a Border code	To implement common rules governing the movement of persons across borders, to include both rules on checks at external borders and rules on the removal of checks on persons at internal borders and the reintroduction of such checks in certain circumstances. To improve integrated border management	Application in MS that apply the Schengen acquis	Harmonisation of rules governing the movement of persons at internal and external borders *(Source: Commission)*	Improved border management and control	Improved control of external borders Facilitated travel within the Schengen acquis	This regulation was adopted recently – February 2006.

POLICY AREA: CITIZENSHIP AND FUNDAMENTAL RIGHTS
Factors influencing evaluation mechanism: Relatively new policy area in JLS (although the citizenship policy as such is an established area in the EC/Commission activities), 1st pillar activities, a combination of instruments (legislation, funding programmes, new Community Agency). The nature of the instruments and their objectives leads to reliance on qualitative evaluation methods. However, there is scope for further improvements to the information base through surveys and the development of statistics. The objectives within the policy area are wide ranging and the sub policy areas as defined below are not distinct. There is some scope for evaluating sub sets of instruments in parallel.
Policy sub-area 1: Citizenship of the Union
Global objectives: Increase awareness of Union citizens of their rights and of the ways these can be enforced Decrease any obstacles for the enjoyment of their rights by Union citizens, in particular of the right to free movement and residence Increase participation of EU citizens in democratic life in the Union Facilitate the diplomatic and consular protection offered to the Union citizens in third countries
Policy sub-area level indicators: Levels of citizens' awareness of their rights and mechanisms of redress *(Source: Surveys and Eurobarometer reports)* Instances of right to free movement and residence hindered *(Source: complaints made to Commission)* Rates of voting registration and participation – percentage of increase/decrease *(Source: Member States)* Number of citizens standing for election to public office – percentage of increase/decrease *(Source: Member States)*

Instances of use and complaints from EU citizens over levels of consular protection *(Source: Member States)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Directive 2004/38/EC on free movement and residence	Clarify and simplify existing Community law in field	Transposition into national legal systems	Relevant national laws adopted in line with Directive provisions and notified the Commission by 30.4.2006 together with a table of conformity. *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the Directive *(Source: Commission)*	Facilitated free movement and residence	Evaluation leadership by the EU. Would benefit from strong involvement of MS in evaluation
Community legislation on the EP elections and on the right of non-national Union citizens' electoral rights in their country of residence	Ensure that the EP elections are conducted according to the basic principles of democratic elections Ensure the participation of non-national Union citizens to the EP elections and to the	Transposition into national legal systems	Relevant national laws adopted in line with provisions of Community law and notified to the Commission *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the legislation *(Source: Commission)*	EP elections carried out democratically. Non-national Union citizens participate in the elections on the same conditions as nationals in EP elections and in municipal	

	municipal elections				elections.	
Fundamental Rights and Citizenship programme (part Citizenship)	Improve awareness of citizenship of the Union and related rights Encourage citizens to participate to actively to democratic life	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring system)*	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Dissemination of good practice in voter education and activation. *Measured by:* level of awareness of Programme's outputs *(Source: MS)*	Improved awareness of Union citizenship and related rights amongst EU citizens. Increased participation in democratic life.	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.
Policy sub-area 2: Fundamental Rights						
Global objectives: Increase the awareness of fundamental rights amongst citizens. (This concerns the rights as protected on European Union and national level including the relevant regional and international instruments.) Decrease instances of breaches of fundamental rights (including breaches of privacy, personal data protection and protection from violence against						

children, women and youth)

Reduce the instances of racism, anti-semitism and xenophobia

Establish a Fundamental Rights Agency (from EUMC)

Increase number of participants in and their commitments to civil society

Policy sub-area level indicators:

Levels of citizens' awareness of fundamental rights *(Source: Surveys and Eurobarometer reports)*

Instances of breaches of fundamental rights, especially as a result of EU interventions (including breaches of privacy, personal data protection and protection from violence against children, women and youth) *(Source: Commission and FR Agency)*

Instances of racism, anti-semitism and xenophobia *(Source: FR Agency)*

Time commitments of population to participation in civil society *(Source: MS)*

Number of civil society organisations in NMS since accession *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Relevant provisions of the Treaties on European Union and on European Community	Ensure that the EU institutions and the Member States fully respect fundamental rights	Compliance of the national legislation and practices with the fundamental rights	Community legislation as well as implementing national laws adopted in compliance with the Treaty	Correct application of rights and principles contained in the Treaty *Measured by:* number of court	Decreased level of breaches of FR Increased protection of rights of citizens	

				cases/complaints resulting from the legislation *(Source: Commission*		
Fundamental Rights and Citizenship programme (part Fundamental Rights)	Improve awareness of FR as protected on European and national level Improve research base Improve intensity and quality of interfaith and intercultural dialogue in MS Improve tolerance in the EU Improve quality of civil society organisations Improve rule of law Decrease breaches	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring* system)	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Improved awareness of FR amongst EU citizens Stronger civil society in the MS	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.

	of FR in MS					
Preparatory action to support civil society in the NMS in areas of rule of law, democracy, FR, media pluralism, fight against corruption.	Improve quality of civil society organisations in NMS Improved rule of law in NMS Improve democracy in NMS Decrease breaches of FR in NMS	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of beneficiaries reached *(Source: programme monitoring system)*	Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Stronger civil society in the NMS	Clear intervention logic but difficult to measure outcomes and impacts, in part because of the scale and scope of the underlying objectives. Strong involvement of MS in evaluation
Daphne II programme	Reduce violence against children, adolescents and women	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of good practices identified *(Source: programme monitoring system)*	Increased awareness of the issues in wider society *(Source: public opinion surveys, Commission)* Adoption of good practice in tackling violence *(Source: MS).* Better intelligence	Reduced violence against children, adolescents and women	Evaluation leadership by the EU. Major problems of data reliability at the level of impacts.

			Number of 'beneficiaries' and victims reached *(Source: programme monitoring system)*	base. *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Number of knowledge and practitioner communities created *(Source: Commission).* Number of improved facilities for victims *(Source: programme monitoring system)*		
Fundamental Rights Agency	Improve the availability, quality, and comparability of information on respect and promotion of FR.	Participation in Agency's activities	Provision of data and analyses of FR. *Measured by:* number of analytical outputs *(Source: Agency)*	Better intelligence base. Measured by: use of analytical results by policy makers *(Source: Agency and Commission)*	Decreased level of breaches of FR	Evaluations of EU agencies have tended to focus on process issues. Whilst objectives are clear it will be difficult to assess

	Improve co-ordination between stakeholders Improve public awareness of their FR		Number of reporting activities *(Source: Agency).* Number of networks of stakeholders supported *(Source: Agency).*	Better co-ordination of activities. Increased public awareness *(Source: public opinion surveys, Agency and Commission).*		causality and measure the impacts of the agency.
Data Protection Directive	Facilitate the free movement of personal information within the EU Protect rights of individuals Conclude agreements with third countries	Transposition of Directive into national legal systems Establishment of National Data Protection Supervisory authorities	Relevant national laws adopted pursuant to the Directive provisions *(Source: MS and Commission)*	Application of rules and provisions contained in the law. *Measured by:* - Appropriate enforcement mechanisms and remedies available to ensure respect for the law and assistance to individuals through: a) Judicial remedies b) Intervention of data protection	Facilitated movement of personal information within the EU Harmonised protection of individuals at a high level (both inside the EU and in third countries for personal data transferred from the EU)	Evaluation leadership by the EU but in partnership with MS

				supervisory authority (ex officio or following complaints) *(Source: MS)*		

POLICY AREA: COORDINATION IN THE FIELD OF DRUGS
Factors influencing evaluation mechanism: Activities in this policy area are cross pillar and cover a variety of areas, including health, police cooperation, information, evaluation and coordination. The EU Drug Action Plan and EU Drug Strategy are very important documents endorsed by the Council as the basic policy framework for all drugs issues within the EU and within the context of the EU's external relations. They cover all activities in this policy area and provide the guidelines for all Member States to implement the objectives and actions they contain into national policy. The Action Plan takes its lead from the objectives of the EU Drug Strategy and translates these objectives into 80 concrete actions. It concentrates on the two major aspects of drug policy, demand reduction and supply reduction, and also covers a number of cross-cutting themes: international cooperation, research, information and evaluation. It includes actions within EU competence (public health, precursor control, money laundering and development aid) as well as close cooperation between Member States and partnerships with international organisations. The Action Plan furthermore covers monitoring and evaluation and includes assessment tools and indicators for each action. The actions covered by the Action Plan are subject to an annual progress review by the Commission's services. Evaluation in this area is already well-established through the methods and indicators developed during the evaluation of the previous EU Drugs Strategy and Action Plan. Reliable data is available from the European Monitoring Centre on Drugs and Drug Addiction, Europol and the Commission. As with other policies relating to complex, global socio-political issues, the evaluation of the impacts of EU drug policy is a problematical and sensitive matter due to the multiple factors that have to be taken into account and for which there may not be reliable data by their very nature (e.g. figures for trafficking in illicit drugs are always rough estimates; corruption caused by trade in drugs is hidden, etc.).
Objectives: To significantly reduce the prevalence of drug use among the population and to reduce the social harm and health damage caused by the use of and trade in illicit drugs, and to strengthen international cooperation (EU Action Plan on Drugs 2005-2008)
Policy-level indicators: **The EU Action Plan contains the major legal instruments such as the Council Decision on the information exchange, risk assessment and control of new psychoactive substances, or the Framework Decision on penalties for drug trafficking. It also contains the assessment tools and indicators required for the evaluation process of these instruments and all other actions. These have been drawn up in cooperation with the**

EMCDDA and Europol, who will help the Commission to keep track of implementation.

On this basis the Commission will publish an Annual Progress Review and if necessary propose adjustments. Responsibility for implementation of actions and deadlines are clearly indicated in the Plan. To keep implementation on track, targets whose deadlines have passed or are unlikely to be met will be subject to recommendations for their implementation or identification of failure to implement. The Commission will carry out an impact assessment in 2008 in view of proposing a second Action Plan for 2009-2012. A final evaluation of the Strategy and the Action Plans will be carried out by the Commission in 2012. These evaluations will go beyond the strict confines of the Action Plan and will include, on the basis of the work of the EMCDDA and Europol, a general view of the evolution of the drugs situation in Europe.

POLICY AREA: COMMON IMMIGRATION AND ASYLUM POLICIES
Factors influencing evaluation mechanism: New policy area. 1st pillar activities. Interventions include legislation, programmes and cooperation activities. Good, comparable data is required and is planned. MS consensus about broad aims but not at individual instrument level. Impacts of these instruments on third-countries, and in particular development countries, to be considered.
Policy sub-area 1: Common European Asylum System
Objectives: To establish a common asylum procedure and uniform status, To facilitate practical and collaborative cooperation,

To address pressures on asylum systems and reception capacities.						
Policy sub-area level indicators: Number of asylum seekers applying for asylum in Member States other than the country of first entry *(Source: Eurodac)* Instances of MS breaching minimum defined standards *(Source: Commission)* Differences in standards of reception between Member States *(Source: Commission)* Differences between Member States with regard to the average time taken to determine the outcome of an application for asylum *(Source: MS and Commission)* Comparison of asylum acceptance rates among Member States[12] *(Source: Commission - Eurostat)* Differences in the level of capacity per Member State (asylum systems and reception facilities) relative to needs *(Source: Member States)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for	To reduce 'asylum shopping' To increase responsibility sharing among	Adoption of measures implementing the Regulation at national level	Number of take back requests *(Source: Commission – Eurostat)* Number of applicants sent to another Member State *(Source:*	Decreased delay in the examination of claims and attribution of responsibility *Measured by:*	Increased sharing of responsibility Greater efficiency and effectiveness in implementing decisions on transfers	Numbers are available through Eurodac which allows for an assessment of trends. Evaluation of the 'Dublin

[12] Asylum acceptance rates can at the moment only be roughly estimated with the data currently available, as asylum decisions in one year often relate to applications made in earlier years.

determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national)	MS. To increase efficiency by granting MS a realistic period in which to implement decisions on transfers.		*Commission – Eurostat)* Number of multiple claims *(Source: Commission – Eurostat)* Number of registered irregular entrants *(Source: Commission – Eurostat)* Proportion of cases dealt within country of entry *(Source: Commission – Eurostat)*	*a*verage delay of examination before and after implementation of the Regulation *(Source: MS)* Decreased delay to implement decisions on transfers *Measured by:* average delay of transfer before and after *(Source: MS)*	Reduction of persons making multiple claims	System' will be ready in June 2006.
Eurodac	To facilitate application of the Dublin Regulation by identifying asylum seekers and persons who have entered the EU irregularly. To determine whether a	Member States to send required data to central unit.	Efficiency of the system *Measured by:* Number of records per Member State *(Source: Eurodac)* Number of successful and rejected transactions recorded in the system *(Source:*	Increased number of asylum applications being examined in the first country of asylum/entry *Measured by:* Percentage rate of change before	Improved efficiency in applying the Dublin Regulation	Difficult to judge whether MS use system correctly and systematically. Some scope for peer review but there could be constraints on independent evaluation. Evaluation is

	foreign national has previously claimed asylum in another MS.		*Eurodac)*	and after introduction of the system *(Source: MS)* Reduction of persons making multiple claims *Measured by:* Percentage rate of change before and after *(Source: MS)*		underway of the 'Dublin system' which considers both the Regulation and Eurodac.
Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the	To ensure a minimum level of protection in all Member States for those in need of protection. To guarantee the rights of persons qualifying for refugee status or subsidiary protection status To reduce	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of Member States achieving minimum standards or above *(Source: Commission)*	Reduction of false claims *Measured by:* Number of unfounded cases *(Source: MS)* Improved protection *Measured by:* Numbers granted refugee and subsidiary	Guarantee of a minimum level of protection across the EU Approximation of rights granted to refugees Reduction in disparities between legislation and practice Reduction of secondary movements	Common standards difficult to achieve as Directive allows scope for interpretation

content of the protection granted)	disparities between MS' legislation and practice. To limit secondary movements. To prevent false claims.			protection status *(Source: MS)* Improved access to rights *Measured by:* Increased numbers of refugees accessing education, services, employment, appropriate accommodation, integration programmes *(Source: MS)*	Fewer false claims Improved integration	
Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers)	Ensure a dignified standard of living to asylum seekers across the EU. Address applicants special needs.	Transposition into national legal systems	Improved facilities *Measured by:* Expenditure on the improvement of reception facilities *(Source: MS)* Improvement of equal standards across the EU	Improved standard of living for asylum seekers *Measured by:* Number of asylum seekers living in appropriate	Approximation of standards of living for asylum seekers across the EU Improved facilities and services for asylum seekers Improved socio-vocational integration	Common standards difficult to achieve as Directive allows scope for interpretation. Evaluation due at the end of 2006.

	Ensure equal standards across the EU. Limit secondary movements.		*Measured by:* Numbers of MS achieving minimum standards or above *(Source: Commission)*	accommodation *(Source: MS)* Number of asylum seekers accessing services *(Source: MS)* Number of asylum seekers accessing employment and vocational activities *(Source: MS)* Number of specific provisions for applicants with special needs *(Source: MS)*	of asylum seekers Reduction of secondary movements	
ERF II	Support and encourage efforts in receiving refugees and displaced persons	Disbursement rate/amount spent per year	Increased reception capacity *Measured by:* Numbers of projects implemented per type of action *(Source: MS)*	Increased balance of effort among MS M*easured by:* The proportion of all resource commitments	Improved reception standards and conditions Increased access of asylum seekers to health, housing, education, services and	Indicators have been developed in the context of the final evaluation.

	Foster solidarity among MS Promote balance in the efforts to receive asylum seekers Promote the social, economic and cultural integration of target groups Promote voluntary return		Number of beneficiaries (per country of origin and target group) per type of action *(Source: MS)* Number of reception places *(Source: MS)* Increased capacity of services to asylum seekers *Measured by:* Number and type of services available*(Source: MS)* Number of beneficiaries receiving education and training *(Source: MS)* Increased voluntary returns *Measured by:* Number of voluntary returns *(Source: MS)*	*(Source: MS)* Increased social, economic and cultural integration of target groups M*easured by:* Percentage of persons per target group and activity able to apply new skills (i.e. percentage of persons who benefited from vocational training in employment)	labour market Fairer and more effective asylum procedures (including return) An improved balance in effort to receive asylum seekers	

Policy sub-area 2: Legal and illegal migration						
Objectives: To establish admission procedures capable of responding to fluctuating demands for migrant labour						
Policy sub-area level indicators: Skill shortages in vocations and professions *(Source: Commission - Eurostat, MS Labour Force Surveys, EEO)* Employment rates amongst migrant groups *(Source: Commission - Eurostat, MS Labour Force Surveys)* Estimation of the numbers of migrants overstaying the duration of their work permits *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Family reunification Directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification)	Determine conditions for the exercise of the right to family reunification by TCNs.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Improved efficiency of procedures *Measured by:* Number of family members reunited *(Source: MS)* Reduced length of process: average delay before and after *(Source: MS)*	Facilitated procedures for family reunification Protection of right to family life	Common standards difficult to achieve as Directive allows scope for interpretation.

Directive on status of TCNs as long-term residents	Approximate national laws by creating a single status. Ensure equal treatment of TCNs throughout the EU.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Equal treatment of TCNs *Measured by:* Numbers granted/refused status *(Source: MS)* Increased number of TCNs accessing employment, education and training (rate of increase) *(Source: MS)* Increased mobility of TCNs *Measured by:* Number of TCNs moving from one MS to another *(Source: Commission)*	Approximation of national laws Equal treatment and application of uniform rights for TCNs across the EU Improved mobility of TCNs Improved integration of TCNs	Common standards difficult to achieve as Directive allows for scope for interpretation

Directive on the admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary service	To promote Europe as a world centre of excellence for studies and vocational training by promoting the mobility of TCNs to the Community for the purpose of studies The approximation of the Member States' national legislation on conditions of entry and residence	Transposition into national legal systems.	Approximation of national legislation *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Increased mobility of TCNs to the Community for the purposes of study/vocational training *Measured by:* Numbers granted entry for study/vocational training/voluntary service *(Source: MS)*	Approximation of national laws Improved mobility of TCNs for study, vocational and volunteer purposes	Common standards difficult to achieve as Directive allows for scope for interpretation
Policy sub-area 3: Integration of third-country nationals						
Objectives: To prevent the isolation of certain groups and achieve successful integration of Third Country Nationals and their descendents To fight discrimination against legally residing Third Country Nationals						

To promote the exchange of experience and information						
Policy sub-area level indicators: Instances of discrimination *(Source: FR Agency, MS)* Employment rates of third country nationals *(Source: Commission - Eurostat, MS)* Employment rates of second generation migrants *(Source: SOPEMI Report, MS)* Relative income levels of third country nationals *(Source: Commission - Eurostat, MS)* Proportion of third country nationals living in poverty *(Source: Commission - Eurostat, MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
INTI preparatory actions (integration of TCNs)	Promote new and innovative ways of integrating immigrants. To encourage co-operation between MS and the creation of transnational partnerships and networks.	Disbursement rate/amount spent per year	Successful implementation REFINE *Measured by:* Numbers of projects and activities implemented and average sums of money involved *(Source: MS + Commission)* Number of TCNs	Identification of new and innovative practices Exchange of information and best practices promoted among EU MS Transnational networks and dialogue between	Increased cooperation among MS through networks and cooperation activities Increased dialogue with civil society Enhanced integration of TCNs Development and promotion of a European framework	Integration policies are implemented mainly at regional and local levels in MS. Differences exist among MS in terms of numbers of migrants and integration

	Enhance empowerment of migrants. Promote dialogue with civil society.		benefiting from projects Increased cooperation *Measured by:* Number of transnational networks set up *(Source: MS + Commission)* Number of new integration models identified and exchanged among MS	stakeholders supported among MS	approach on integration of TCNs	experience. Potential impacts may not be significant considering that this is a small fund with very diverse projects. Final evaluation is planned for 2007.
Policy sub-area 4: External dimension of asylum and migration						
Objectives: Assist third countries in migration management, intensify MS cooperation to manage migration flows and prevent humanitarian crises, integrate migration into third country relations, develop policies that link migration, development cooperation and humanitarian assistance, intensify cooperation with third countries on southern and eastern border of EU						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Numbers of legal migrants by third country *(Source: Commission - Eurostat)* Numbers of illegal migrants by third country intercepted crossing an external border *(Source: Commission – Eurostat)* Numbers of visa overstayers by third country intercepted *(Source: MS)*						

Numbers of asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum seekers returning to country of origin /other third country *(Source: MS)* Number of victims of trafficking from third countries *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Programme for financial and technical assistance to third countries (AENEAS)	Give specific and complementary financial and technical aid to third countries in order to support their efforts to improve the management of migratory flows Develop legislation in third countries on legal immigration and international protection	Not applicable (action is at Community level)	Successful implementation *Measured by;* Number of information campaigns organised on advantages of legal migration/consequences of illegal migration in third countries *(Source: Commission)* Number of returnees benefiting from reintegration programmes *(Source: Commission)*	Development of legislation in third countries *Measured by:* New legislation passed in third countries on legal and illegal migration *(Source: Commission)* Decreased number of illegal migrants entering the EU *Measured by:*	Improved management of migration flows Decrease in illegal migration and trafficking Increased awareness in third countries on advantages of legal migration/consequences of illegal migration Successful reintegration of returnees	High number of external factors to the programme influence impact indicators. Causality links difficult to establish. As action is at Community level, MS will not contribute to evaluation. May be difficult to evaluate as this is a new area which is also

	Raise public awareness in third countries on advantages of legal migration and consequences of illegal migration Establishment in third countries of preventive policy in the fight against illegal migration Readmission and durable reintegration of returnees			rate of decrease *(Source: Commission)*		highly political. A Communication on the future of the AENEAS fund was adopted in January 2006.
Policy sub-area 5: Return and re-admission						
Objectives: To establish an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Proportion of failed asylum seekers (and illegal migrants) who are repatriated *(Source: MS)*						

Numbers returned to countries subsequently deemed unsafe within a period of two years *(Source: MS)* Numbers (of labour market age) in employment in country of origin 12 months after being subject to return						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Preparatory actions for Return Management	To support efforts made by MS to improve the organisation and implementation of integrated return management and specific measures in the area of return management To increase knowledge and capabilities in the area of return management To develop co-operation between MS with respect to	Disbursement rate/amount spent per year	Number of actions implemented relating to the introduction and improvement of the organisation and implementation of integrated return management *(Source: Commission)* Number of actions implemented relating to the introduction and improvement of specific measures in the area of return management *(Source: Commission)* Number of actions implemented relating to the increase of knowledge and capabilities in the area of return management	Increased number of returnees *Measured by:* rate of increase *(Source: MS and Commission)* Reduction in cost of detaining illegal migrants *Measured by:* rate of reduction *(Source: MS and Commission)*	The strengthening of efforts made by Member States at improving the organisation and implementation of integrated return management Improved organisation and implementation of integrated return management Increased knowledge and capabilities in return management Increased cooperation between MS and countries of return with respect to return management	

	return management as well as co-operation with countries of return To promote sustainable return, thereby avoiding secondary movements		*(Source: Commission)*		Reduction in illegal migrants living in the Member States (overstayers) Increased removal of illegal third country nationals Decrease secondary movements Improved return conditions	
Re-admission agreements	To facilitate the readmission to their own country of persons residing without authorisation in a Member State. To combat illegal immigration To improve the effectiveness of return	(These are reciprocal agreements between the EU and third countries.)	Successful implementation of the agreements *Measured by:* Number of persons readmitted to third countries covered by the agreements	Increased number of returnees *Measured by:* rate of increase *(Source: Commission and MS)* Reduction in cost for detaining illegal migrants *Measured by:* rate of reduction *(Source: MS)*	Decrease in illegal immigration Improved effectiveness of return procedures	Agreements have been signed with Hong Kong, Macao, Albania, Sri Lanka and Russia. Others are currently being negotiated.

	procedures					
Policy sub-area 6: Horizontal issues						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Proposed mutual information procedure on planned national asylum and immigration measures	Enhance mutual information of national immigration and asylum policies between MS policy-makers	Cooperation by MS	Successful implementation of procedure *Measured by:* Number of national measures submitted through the system Number of responses generated to requests for information *(Source: MS + Commission)* Meetings organised *(Source: MS + Commission)*	Increased knowledge of other Member State policies and measures	Anticipation of effects of changes to other national policies Better understanding of other national contexts could lead to an enhancement of the possibilities for harmonisation	Procedure yet to be implemented. Implementation could start in 2007.
European Migration Network	Provide the Community and MS with objective,	Organisation of activities at national level by national contact	Successful implementation of network	Better and faster access to information on migration and	Increased knowledge and understanding of the migration phenomenon at	Proposal and impact assessment due by September

	reliable and comparable information on migration and asylum.	points	*Measured by:* Number of products produced *(Source: MS + Commission)* Number of meetings and conferences held *(Source: MS + Commission)* Number of networks set up at national level *(Source: MS)*	asylum Increased knowledge of issues at national level Increased information sharing between actors	Member State and EU level Increased capacity to "anticipate" migratory developments	2006 for a Council Decision on the future EMN.
Proposed Regulation on Community statistics on migration and international protection	Improve the statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.	Adoption of measures at national level	Successful implementation of Regulation *Measured by:* Increased proportion of statistical data items supplied according to the harmonised definitions as opposed to national definitions *(Source: MS)* Increased proportion of statistical data items directly based on	Increased availability of data Improvement to quality and comparability of data between Member States *Measured by:* Improvements in the completeness, timeliness and degree of harmonization of	Improved analyses of data Improved statistical knowledge	Regulation will probably be adopted in 2006. First reference year for the statistics will be 2008.

			appropriate data sources as opposed to statistical estimations *(Source: Commission - Eurostat))*	migration and asylum data supplied to the Commission - Eurostat *(Source: Commission – Eurostat)*		
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed in July 2006.

	authorities To improve the overall efficiency of national administrations in their tasks		*(Source: Commission)*			

POLICY AREA: ESTABLISHING A GENUINE EUROPEAN AREA OF JUSTICE IN CRIMINAL AND CIVIL MATTERS
Factors influencing evaluation mechanism: The policy area includes both first pillar (civil justice) and third pillar (criminal justice) matters. The main instruments are legislation including the introduction of new legal instruments and activities to stimulate judicial cooperation. Evaluation should cover the implementation of mutual recognition instruments and the various flanking (confidence building) measures that make mutual recognition possible. The potential to identify the causal links between the interventions and the achievement of objectives is greater within civil matters than criminal matters. Information on the scale and nature of the relevant (cross border) civil and criminal matters is however poor. The instruments in both sub policy areas are potentially reinforcing. The classification of the instruments within the civil matters sub policy area relate to both process (cooperation and procedures) and to substantive problems addressed by the instruments (cross border disputes and breakdown of international marriages). There is also a miscellaneous sub category. The achievement of a European area of justice in criminal matters may be constrained by continued variations in definitions of crimes and penalties. Several of the instruments mentioned under civil matters are 'forthcoming'. They are included however because they illustrate aspects of the evaluation challenges in this policy area. The Judicial training instrument is relevant to both sub policy areas. There are close links between the instruments and objectives of the policy sub area 2 Criminal matters, and the objectives and activities in the policy area: law enforcement cooperation, prevention and fight against organised crime. Also, it should be noted that adjustments to the indicators put forward in criminal matters may take place in light of the implementation of the forthcoming Action Plan on statistics in the field of crime and criminal justice (see more expanded reference on page 49).
Policy sub-area 1: Civil matters
Objectives: To increase mutual recognition and enforcement of judicial decisions To establish clear rules on jurisdiction and applicable law To reduce the costs of resolving cross border disputes To increase the likelihood that cross border disputes are resolved To reduce the likelihood of cross border disputes arising

To reduce the negative consequences of breakdowns in 'international' marriages and prevent child abduction						
Policy sub-area level indicators: Number of mutually recognised judicial decisions Average costs (of different types) of cross-border disputes Number of cross-border cases not resolved Spouses' (perceptions of) costs of international divorces The number and amount of cross-border maintenance claims not paid *Source: MS*						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Horizontal cooperation activities						
Specific programme 'Civil justice' (Framework Programme 2007-2013 Fundamental Rights and Justice)	To increase mutual confidence of judicial actors. To increase instances of mutual recognition. To reduce application of	Participation in and support for cooperation programme.	Number of meetings, workshops. Numbers of legal, judicial and administrative authorities involved in cooperation.	Increased knowledge of Member States legal and judicial systems in civil matters. Measured by: Levels of knowledge	Mutually recognised decisions acted upon/ enforced. Increased legal certainty. Improved access to justice.	Establishing causal links between the interventions and outcomes and impacts will be problematic

	intermediate procedures.		*Source: programme monitoring system*	amongst relevant authorities *(Source: MS surveys)*	Decreased costs and time spent in accessing justice due to disparities in civil law and civil procedures.	
European judicial network in civil and commercial matters	To improve and facilitate co-operation in civil justice matters To facilitate access to justice and information To reduce costs of access to information on international and European law and national judicial systems by EU nationals (and therefore increase access).	Participation in and support for cooperation programme.	Meetings, publications website. Numbers of legal actors involved in cooperation. *Source: Network management reports (Source: Commission)*	Hits and usage of website (*Source: Commission*)	Improved access to justice and quality of advice on cross (internal) border issues. Improvement of judicial cooperation between MS and courts	Establishing causal links between the interventions and outcomes and impacts will be problematic
Rules on procedures						
Regulation on jurisdiction and the recognition	To harmonise national rules of conflict of	Implementation	Harmonised Community rules	Simpler and quicker procedures to recognise and	Better and quicker access to justice	Clear intervention logic

and enforcement of judgements in civil and commercial matters (Brussels I 44/2001)	jurisdiction To simplify procedures for recognition and enforcement of judgements from MS		*(Source: MS reporting to Commission)*	enforce the judgements Measured by: Length of time taken to recognise and enforce the judgements *(Source: MS)*	Prevent conflict of jurisdiction	
Regulation on taking evidence in civil and commercial matters (1206/2001)	To improve, simplify and speed up procedures for taking evidence between the courts of different MS	Implementation	Establishment of facilitated cross-border procedures between courts in different MS for taking evidence *(Source: MS reporting to Commission)*	Quicker and more efficient judicial procedures Measured by: Length of time taken to take evidence between courts *(Source: MS)*	Better and quicker access to justice	Clear intervention logic.
Regulation on the service of documents in civil and commercial matters (Regulation 1348/2000)	To increase efficiency and speed in judicial procedures To improve and expedite the transmission of	Implementation	Establishment of common rules on transmission of judicial and extrajudicial documents between	Quicker and more efficient judicial procedures Measured by: Length of time taken to transmit	Better and quicker access to justice Quicker judicial procedures	Clear intervention logic.

	documents between MS		MS(*Source: MS reporting to Commission)*	the documents and enforce judgements *(Source: MS)*		
Directive on legal aid in cross-border disputes (Council Directive 2003/8/EC)	To guarantee adequate level of legal aid in cross-border disputes through establishing minimum common standards between MS	Implementation	Minimum common standards relating to legal aid in cross-border disputes (*Source: MS reporting to Commission)*	Adequate levels of legal aid in cross-border disputes *(Source: MS)*	Improved access to justice, especially of vulnerable groups	Clear intervention logic.
Resolution of cross border disputes						
European payment order (forthcoming)	To reduce the costs and time taken to make payments. To increase the number of cross-border orders for payment	Implementation	Numbers of cross-border orders for payment made	Reduction of intermediate procedures	Reduced costs and time of litigation in cross-border cases concerning uncontested pecuniary claims. Improved access to justice. Facilitated recovery of cross-border debts	Establishing causal links between the interventions and outcomes and impacts will be problematic. Proposal yet to be adopted.

European enforcement order for uncontested claims (Regulation 805/2004)	To enable quick and efficient enforcement of an uncontested claim between MS	Implementation	Number of applications of European enforcement order in EU MS (*Source: MS*)	Quicker and more efficient enforcement of uncontested claims in another MS Measured by: Length of time needed to enforce such a claim *(Source: MS)*	Reduced costs and time in such cross-border cases Improved access to justice	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on Alternative Dispute Resolution (ADR)	To reduce the costs of dispute resolution To facilitate recourse to mediation by improving legal certainty	Implementation	More possibilities and better awareness of possibilities for ADR	More attempts to use ADR	Reduced costs of dispute resolution More disputes resolved without going to court	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on small claims	To facilitate cross-border access to justice for small claims To reduce the costs and time taken to resolve	Implementation	Application of Small Claims Procedure in the 25 EU MS (*Source: MS*)	Increased number of small claims pursued. (*Source: MS*)	More small claims resolved. Increased legal certainty. Increased access to justice.	Proposal yet to be adopted.

	small claims. To increase the number of legitimate small claims made.					
Marriage and divorce law						
Instrument on maintenance obligations	To improve and simplify enforcement procedures of maintenance obligations. To enhance cooperation. To clarify what is applicable (non-conflicting) law	Implementation	Application of Regulation in maintenance obligations proceedings in 25 EU MS (*Source: MS*)	Reduction of intermediate procedures. Reduced cases of forum shopping Increased cooperation between legal professionals / competent authorities in the Member States (*Source: MS*)	Increased legal certainty Better informed decisions Mutually recognised decisions acted upon/ enforced. Facilitated recovery of debts (maintenance for creditors)	Instrument is at the Council discussion stage. Establishing causal links between the interventions and outcomes and impacts will be problematic. Evaluation requires good data from the Member States.
Regulation on jurisdiction and recognition and enforcement of judgements in matrimonial	To harmonise rules of jurisdiction To enable automatic	Implementation	Establishment of harmonised rules on jurisdiction (*Source: MS*)	Quicker and more efficient recognition and enforcement of judgements	Better access to justice Better protection of citizens in case of divorce	Evaluation requires good data from the Member States.

matters and parental responsibility (Brussels II, 2201/2003)	recognition and enforcement of judgements between MS			Measured by: Length of time taken to recognise and enforce a judgement (*Source: MS*)	Facilitated visiting rights for parents Better protection of children's' rights	
Various						
Instrument on the conflict of laws in the area of contractual obligations (Rome I).	To reduce costs associated with differences regarding non-contractual obligations To increase party autonomy and flexibility To increase legal certainty for consumers and internal market	Implementation	Numbers of cross-border disputes settled Application of conflict of law rules in the MS (*Source: MS*)	Improved mutual trust between judicial authorities Faster procedures. (*Source: MS*)	Reduced uncertainty. Reduced costs. Facilitated mutual recognition of international contracts	Proposal in discussion stage.
Proposal for a regulation on the law applicable to non-contractual obligations (Rome	To harmonise rules on non-contractual obligations	Implementation	Provision of a set of community rules Application of	Improved mutual trust between judicial authorities Faster procedures.	Reduced legal uncertainty. Better access to justice	Establishing causal links between the interventions and outcomes and impacts

II, COM(2003) final)	To increase legal certainty		rules in the MS (*Source: MS*)	(*Source: MS*) Increased legal certainty for victims of damages and perpetrators of torts	Reduced costs of accessing justice	will be problematic
Regulation on insolvency proceedings (1346/2000)	To improve efficiency and effectiveness of cross-border insolvency proceedings To prevent shopping for a more favourable legal position	Implementation	Provision of a set of community rules Application of rules in the MS (*Source: MS*)	More efficient and effective cross-border insolvency proceedings Prevention of shopping for a more favourable legal position Measured by: Time taken for proceedings Perceptions of shopping amongst legal professionals (*Source: MS, surveys*)	Better access to justice Reduced costs of accessing justice Better resolution of cross border insolvencies Better cooperation between courts and administrators of insolvency	Clear intervention logic
Directive on	To facilitate better	Implementation	Co-operation	Better access to	Better access to	Clear intervention logic

compensation to crime victims (2004/80/EC)	access for victims to compensations where crime was committed in another MS To establish a compensation mechanism in such cases		mechanism between MS set up (*Source: MS*)	compensation to victims of crimes in cross-border situations (*Source: MS*)	justice Better compensation for victims of cross-border crime in Europe	
Policy sub-area 2: Criminal matters (Justice)						
Objectives: To promote mutual recognition To increase confidence and other conditions leading to mutual recognition To reduce differences in the definition of crimes. In particular, to explore common definitions and procedures for human trafficking and cross border crimes To reduce differences in detention and trial procedures To improve taking of evidence To reduce differences in penalties To speed up cross border arrest and surrender procedures To facilitate cross border management, freezing and confiscation of criminal assets To protect victims of crime						

Policy sub-area level indicators:

Number of mutually recognised judicial decisions

Extent of mutual confidence: proportion of officials in national administrations who have high confidence in other MS systems (measured by surveys of national authorities)

Level of awareness of judicial actors of other MS systems

Number of definitions of crimes approximated

Number of reduced differences in detention and trial procedures and definition of penalties

Length of cross-border arrest and surrender procedures

Size of criminal assets frozen and confiscated in cross-border cases

Source: MS

Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
European arrest warrant and the surrender procedures between Member States (Council Framework Decision of 13 June 2002on the	To facilitate and expedite surrender procedures in respect of persons wanted for trial and sentenced persons between Member States	Transposition	Numbers of arrest warrants issued, executed and refused Numbers of persons surrendered and of persons received from other Member	Faster and simpler surrender procedures *Measured by:* Average duration of surrender procedures (*Source: MS*)	Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence	Requires good data from MS. MS must actively participate in evaluation.

European arrest warrant and the surrender procedures between Member States (2002/584/JHA))			States and numbers of persons consenting to surrender. (Source: MS)		between judicial authorities. Increased security and safety within the EU	
Instrument on the execution of orders freezing property or evidence (Council Framework Decision 2003/577/JHA of 22 July 2003)	To facilitate recognition and execution of freezing orders issued by a judicial authority of another Member State	Transposition	Number of freezing requests issued and executed (Source: MS)	Increased efficiency and effectiveness of freezing orders *Measured by:* Faster procedures to freeze assets Increased use of procedures to freeze assets Increased speed of national procedures as a consequence of freezing order Improved access to evidence obtained/ Improved recovery of assets	Increased efficiency of procedures; increased mutual confidence between judicial authorities. Decreased levels of organised crime (*Source: Europol reports*)	Requires good data from MS.

				(Source: MS)		
Instrument on the application of the principle of mutual recognition to financial penalties (Council Framework Decision 2005/214/JHA of 24 February 2005)	To facilitate the enforcement of financial penalties imposed by judicial or administrative authorities in a Member State other than the State in which the penalties were imposed.	Transposition	Number of decisions and issued and executed *(Source: MS)*	Faster and more effective procedures to ensure enforcement of financial penalties Measured by: Average length of procedures *(Source: MS)*	Dissuasive effect to potential criminals and decreased level of financial crime Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	Requires good data from MS. Difficult to measure causal links between outcomes and impacts
Instrument on the exchange of information extracted from the criminal record (Council Decision 2005/876/JHA of 21 November 2005)	To improve exchanges of information on criminal records between Member States	Voluntary compliance	Number of requests sent , number of replies sent -for the purpose of criminal proceedings, and - for other purposes Respect of	Improved knowledge available to sentencing authorities about the convicted person's full European criminal record. Improved circulation of information on criminal records for other purposes (e.g.	Dissuasive effect to potential criminals and hence decreased levels of crime Increased visibility of mutual recognition, better knowledge of each other's	Requires good data from MS. Difficult to measure causal links between outcomes and impacts

			deadlines *(Source: MS*)	employment) Improved quality of information on criminal records from abroad in the Member State of nationality *(Source: MS)*	judicial systems and increased mutual confidence between judicial authorities. More appropriate and better informed sentencing decisions	
Instrument on the standing of victims in criminal proceedings (Council Framework Decision of 15 March 2001)	To assist victims before or after criminal proceedings	Transposition	Application of rules the instrument *(Source: MS)*	Better information for victims on legal advice and on their rights, protection for vulnerable victims and more appropriate methods of obtaining evidence Improved situation for victims in relation to criminal proceedings *(Source: MS)*	Raised awareness of victims' rights amongst practitioners *Measured by MS surveys* Better access to justice	Requires good data from MS.
Framework programme on police and judicial	Help legal practitioners, law enforcement	Commitments to AGIS projects	*Number of activities promoting training and expert*	Development of instruments, strategies and	Improved operational procedures and	Transnational cooperation activities normally require

cooperation in criminal matters (AGIS)	officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Participation	*mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *(Source: Commission)*	approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	qualitative approaches to evaluation taking account of varying contexts.
Flanking measures in place						
The European Judicial Network (Joint Action of 29 June 1998 adopted by the Council)	To improve judicial cooperation between Member States through direct contacts between judicial	Designation of national contact points	Regular meetings, creation and updating of specific tools (website, "fiches belges", atlas and SOLON legal	Increased efficiency of procedures and better communication between judicial authorities. Measured by:	Improved functioning of mutual recognition instruments, better knowledge of each other's	

	authorities		glossary) Number of cases in which the EJN is involved. *(Source: EJN and Member States)*	Average duration of procedures, analysis of outcomes of proceedings, perceptions of ECJ as a communication tool *(Source: EJN and Member States)*	judicial systems and increased mutual confidence between judicial authorities.	
Eurojust (Council Decision of 28 February 2002)	Better co - ordination of investigation and prosecution of serious cross-border crime	Appointment of national experts to Eurojust	Immediate access to information about legal systems from a practitioner of the nationality of the Member States in question. Measured by: number of cases where Eurojust is used Establishment of the coordination role. Establishment of Eurojust as a potential arbiter of conflicts of	Increased efficiency of procedures and better communication between prosecutors and judicial authorities. Measured by: Average duration of procedures, analysis of outcomes of proceedings *(Source: Eurojust and MS)*	Increased cross border prosecution rates and improved efficiency (evidence gathering, mutual information exchange on procedural matters) Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased	

			jurisdiction. Establishment of Eurojust as peporting authority for problems with European Arrest Warrants. (*Source: Eurojust and MS)*		mutual confidence between judicial authorities.	
Joint investigation teams (Council Framework Decision of 13 June 2002)	To facilitate, expedite and improve investigations in cross border cases	Transposition	Setting up of joint investigation teams Number of cases investigated by such teams (Source: MS)	Efficient gathering of evidence in cross border cases Measured by: Average duration of cross-border case reaching the court (Source: MS)	Increased range of judicial cooperation tools. Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	

Horizontal instrument for both Sub Policy area 1 (Civil matters) and Sub Policy area 2 (Criminal matters)						
Judicial training	To improve knowledge of relevant EU instruments among legal practitioners To enhance mutual understanding of legal systems among judges and prosecutors To co-ordinate national judicial training programmes To promote better language skills among European legal practitioners	Participation in training activities	Organisation of training activities *Measured by:* Training programmes offered, number of participants benefiting from training on EU matters) *(Source: Commission. Participant feedback)*	In evaluating the success of this policy, regard must be had to the effective use of available EU funding. Increased number of judicial training activities, increased coordination between national judicial training programmes, development of the European Judicial Training Network. *Measured by:* Quality of training activities, number of participants in exchanges Improved knowledge of European and international instruments amongst judges and prosecutors (Source: MS	Increased understanding of mutual recognition Promotion of a European judicial culture.	

				Interviews with law enforcement and judicial actors)		

5.1. POLICY AREA: LAW ENFORCEMENT COOPERATION AND PREVENTION OF AND FIGHT AGAINST GENERAL ORGANISED CRIME

Factors influencing evaluation mechanism: Policy based on the TEU Title VI (third pillar). Activities include legislation, including the approximation of crimes and penalties and cooperation measure. Establishing causal links between the EU interventions and the ultimate objective of reducing crime is always likely to be problematic. The current factsheet intends to facilitate the assessment of the implementation of EU instruments in this area. Full fledged evaluation will require substantial improvements in the quality and availability of statistical information in the field of crime and criminal justice. The forthcoming Action Plan in this field (to be adopted by the Commission in July 2006) will address these issues and put forward concrete proposals, including carrying out an inventory and setting-up an expert group. In this context, this factsheet and the indicators included therein will necessarily be adjusted and improved in the light of the implementation of the Action Plan, and could be used as a starting point for discussions in this field.

Policy sub-area 1: Crimes and Sanctions (i.e. legislation to fight organised (cross border) crime and terrorism)

Objectives:

To combat:

- Terrorism
- Smuggling and trafficking of human beings,
- Sexual exploitation, racism and xenophobia,
- Financial and economic crime,
- Environmental crime,
- Illicit trafficking in goods,
- Organised crime and cyber crime.

To reduce the financial resources available to those involved in organised crime To criminalise active and passive corruption
Policy sub-area level indicators: Numbers and trends of successful prosecutions for (S*ource: UN crime and criminal justice trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*): • Smuggling and trafficking of human beings, • Sexual exploitation, • Financial and economic crime, • Environmental crime, • Illicit trafficking in goods (including firearms), Numbers of successful prosecutions for organised crime (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*) Numbers of prosecutions for active and passive corruption (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*) Perception of levels of active and passive corruption (S*ource: Transparency International survey)* Numbers of crimes subject to EU interventions and instruments (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*)

Main instrument	Objectives	Implementation at national level	Indicators/evaluation questions			Specific issues /comments
			Immediate results	Outcomes	Impacts	
Terrorism						
Council Framework Decision (FD) of 13 June 2002 on combating terrorism (2002/475/JHA)	To approximate the definition of terrorist offences, and penalties and sanctions in all MS To establish jurisdictional rules to ensure that offences are prosecuted To apply specific measures for victims of terrorist offences	Implementation of FD	Application of FD provisions. *Measured by:* The number of definitions of offences, penalties and sanctions approximated Number of measures applied for victims of terrorist offences *(Sources: MS)*	Number of terrorists prosecuted as a result of FD	Reduced instances of terrorist activities Improved help to victims of terrorism	Difficult to assess the causal links between outputs, outcomes and impacts
Pilot project on victims of terrorism	To help the victims of terrorist acts and/or their relatives to	Implementation of projects	Number of beneficiaries assisted through psychological	Improved cooperation and exchange Increased research	Improved social and psychological support to victims of	

	recover by means of social or psychological support provided by organisations and/or their networks. To raise the awareness of the European public against the terrorist threat, so that the traditional fight against terrorism through police and judiciary measures can be complemented by public opinion condemning terrorism in all its forms.		support Number of special training programmes organised Number of social integration programmes organised for victims Number of special medical programmes created Number of events and information campaigns organised	on the situation of victims of terrorist acts Creation of reception centres for victims	terrorist attacks Increase awareness of the European public	
Pilot project on prevention, preparedness and	To combat terrorism	Implementation of projects	Number of studies carried out	Development of capabilities for the management of	Improved expertise on	

response to terrorist attacks	To improve the security of citizens		Number of expert networks set up	crises Exchange of experience and best practice	terrorism Increased exchange of expertise Increased cooperation with international partners	
Smuggling and trafficking of human beings						
Council Framework Decision (FD) 2002/629/JHA of 19 July 2002 on combating trafficking in human beings	Reduce human trafficking	Implementation of FD	Application of FD provisions. *Measured by:* Number of detentions resulting from FD *(Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced trafficking in human beings Reduction in damage to victims of trafficking	Identifying cases specifically linked to FD may be problematic
Sexual exploitation						
Council frameword decision (FD) 2004/68/JHA of 22 December 2003 on	Reduce sexual exploitation of children. Reduce child	Implementation of FD	Application of FD provisions. *Measured by:* Number of	Successful prosecutions resulting from FD *(Source: MS)*	Reduced sexual exploitation of children. Indicated for example by reductions in	Identifying cases specifically linked to FD may be

combating the sexual exploitation of children and child pornography	pornography.		detentions resulting from FD *(Source: MS)*		numbers of complaints. Reduced child pornography. Indicated for example by reduction in number of illicit websites and other outlets.	problematic
Financial and economic crime						
Council Framework Decision (FD) of 22 July 2003 criminalising corruption in private sector	Criminalise active and passive corruption	Implementation of FD	Application of FD provisions. *Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced corruption in private sector. (*Source: Transparency International surveys*)	
FD on money laundering and counterfeiting of	Criminalise fraud involving any form of non-	Implementation of FD	Application of FD provisions.	Successful prosecutions resulting from FD	Reduced money laundering and counterfeiting of	

non-cash payments	cash means of payment in all MS		*Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	*(Source: MS)*	non-cash payments *(Source: national criminal justice statistics)*	
Illicit trafficking in goods						
Proposal for a regulation on import/export licensing system for firearms	Reduce firearms trafficking. Harmonize the regime for import and export of firearms.	Establishment of the system	Application of the regulation *Measured by:* Numbers of arms licensed *(Source: MS)*	Increased control over imports and exports of firearms *Measured by:* perceptions of law enforcement agencies *(Source: MS)*	Reduced firearms trafficking Reduced use of illicit firearms	Clear intervention logic (forthcoming) The instrument is relevant to borders policy area.
Organised crime						
Council Framework Decision 2001/500/JHA	Approximate definitions, incriminations and sanctions	Implementation of FD	Application of rules and provisions contained in FD	Assets frozen and confiscated. *Measured by*:	Reduced money laundering Reduced crime	Regular monitoring reports from the Commission

of 26 June 2001 relating to money laundering, identification, tracing, freezing or seizing and confiscation of the instrumentalities and proceeds from crime	Improve mutual legal assistance in the investigation and prosecution of this type of crime		*Measured by:* Instances of suspicious transactions reported to entities subject to reporting obligations Penalties resulting from FD Prosecutions resulting from FD Reduction of the differences in maximum penalties among MS *(Source: MS, Commission)*	Effective judgments pronounced Amounts frozen and confiscated *(Source: MS)*	*Measured by:* Perceptions of law enforcement agencies.	Identifying cases specifically linked to the FD may be problematic (This instrument might fit better under financial crime although it is about enacting penalties and might better fit under Justice criminal matters. Evaluation need to be done in combination with the third money laundering directive).
Proposal for a FD on fight against organised crime (2005)	Harmonise the definition of offences and penalties Facilitate	Implementation of FD	Application of rules and provisions contained in FD. *Measured by:* Better harmonised	Increased judicial co-operation *Measured by:* Trials and successful	Reduced organised crime *Measured by*: Perceptions of law enforcement	Difficult to measure impacts Identifying cases specifically

	cooperation between judicial authorities and coordinate their activities.		definition of offences and penalties. Instances of judicial cooperation *(Source: MS, Commission)*	prosecutions resulting from FD *(Source: MS)*	agencies.	linked to the FD may be problematic (This too might better fit under Justice criminal matters policy area)
Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. (April 2004)	Reduce organised crime participation in illegal migration and human trafficking Facilitate victims giving evidence against suspected criminals	Implementation of Directive	Application of rules and provisions contained in Directive *Measured by* Instances of residence permits issued *(Source: MS)*	More victims testifying against suspected criminals Successful prosecution of suspected criminals *(Source: MS)*	Reduced organised crime participation in illegal migration and human trafficking *Measured by*: Perceptions of migration and law enforcement agencies.	This instrument is relevant to borders policy area. (It does not fit easily in this sub category.)

Policy sub area 2: Cooperation and exchange of information to enforce the law.
(The architecture of the instruments in this sub policy area is such that the instruments should be reinforcing. Capturing these synergies in evaluation work would be of value)
Objectives: To increase cooperation between police and customs authorities of MS To increase cooperation of MS police and customs authorities with Europol To develop and improve use of 'intelligence led law enforcement' and Joint Investigation Teams To encourage exchange of experiences on best practice on investigative techniques To improve the quality of Member States law enforcement data with the assistance of Europol
Policy sub-area level indicators: Number of formal joint investigations Number of informal joint investigations Number of successful prosecutions resulting from joint investigations (formal and informal) Number of successful prosecutions resulting from the adoption of best practice investigative techniques Extent of mutual confidence: proportion of officials in national administrations/law enforcement authorities who have confidence in other MS systems (measured by surveys of national authorities) Periods of time (person days) on (trans-national) exchanges of staff *Source: MS*

Main instrument	Objectives	Implementation at national level	Indicators/evaluation questions			Specific issues /comments
			Immediate results	Outcomes	Impacts	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS. Evaluation will be very difficult.
Common position on the	To prevent and combat serious	Exchange of data with Interpol	Number of data records forwarded to	Enhanced cooperation	Decreased illicit	

exchange of data with Interpol on passports	and organised crime including terrorism through improved cooperation between MS' law enforcement authorities and between them and such authorities in third Countries by exchanging passport data with Interpol	through database on stolen travel documents	Interpol	between law enforcement authorities	activities	
Task Force of Police Chiefs	Create conditions for cooperation	Participation of police chiefs (or alternates)	Cooperation activities. *Measured by*: Meetings held Informal contacts Formal cooperation agreements *(Source: MS)*	Mutual cooperation *Measured by*: Instances of cooperation Perceptions of participants *(Source: MS)*	Sustained cooperation *Measured by*: Instances of cooperation arising indirectly and at lower levels. Decrease in criminal	By its nature a difficult instrument to evaluate in its own right.

					activities *Measured by:* Number of arrests, prosecutions, and convictions	
Europol	Promote cooperation between MS law enforcement agencies	Provision of information, application and use of information received from Europol or via bilateral cooperation initiated by Europol	Cooperation activities *Measured by* Strategic analyses undertaken, Instances of exchange of intelligence. Use of formal joint investigation teams Use of informal joint investigation teams Number of investigations informed. *(Source: Europol*	Better law enforcement *Measured by*: Trials resulting from exchanges of intelligence and cooperation. Successful prosecutions resulting from exchanges of intelligence and cooperation. *(Source: MS and Europol)*	Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Evaluation needs to acknowledge the real constraints on multilateral police cooperation (issues of confidentiality and credit for solving cases) and the potentially weak links between police cooperation and reductions in crime. Evaluation work has included peer reviews

			and perceptions of participating MS and law enforcement agencies).			
CEPOL	Improve likelihood of (transnational) cooperation. Improve competences of trainees.	Commitment to EU level training	EU level Training activities *Measured by:* Number of police officers trained Number of courses offered *(Source: CEPOL, including potential follow up survey of trainees.)*	Improved cooperation *Measured by*: Resulting instances of cooperation between individual officers. Resulting instances of cooperation between agencies Resulting improved investigations. Resulting detentions and prosecutions *(Sources: MS Law enforcement agency records, judicial records)*	Increased competence in cross border level practice Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Identifying causal links with impacts will be especially difficult. An report on the operation and future of CEPOL was published in January 2006.

Framework programme on police and judicial cooperation in criminal matters (AGIS)	Help legal practitioners, law enforcement officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Commitments to AGIS projects Participation	*Number of activities promoting training and expert mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	Development of instruments, strategies and activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *Source: Commission)*	Improved operational procedures and approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	Transnational cooperation activities normally require qualitative approaches to evaluation taking account of varying contexts.

Policy sub area 3: Crime Prevention

Objectives:

To reduce instances of (cross border organised) crime

To establish European instruments for collecting, analysing and comparing information on crime and victimisation.

To provide better information on trends in crime in Member States

Policy sub-area level indicators:

Numbers of successful prosecutions of cross border organised crime

The frequency with which EU level statistics are collected (benchmark: annually)

The level of reliability of data (for example, number of definition changes), also indicated by the levels of confidence in data by key actors (*source: regular surveys*)

Consistency of data between Members States (for example, numbers of definition variations), indicated the levels of confidence in data by key actors (*source: regular surveys*)

Source: Commission, MS

Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Forum on organised crime prevention	Better exchange of information Creation of a	Active participation from MS	Coordination and cooperation of activities	Better and increased information base Better legal and	Reduced crime	Difficult to measure causal links

	Platform of expertise		*Measured by*: Meetings and seminars held Studies undertaken etc. *(Source: Commission)*	other instruments *Measured by:* Application and dissemination of information and best practices exchanged *(Source: MS)*		
European crime prevention network	Provide expertise and knowledge in developing effective crime prevention measures	Active participation from MS	Network Activities *Measured by* Meetings, Exchange of information Identification and propagation of good practice. Copies/hits on good practice and recommendations. (Source: Commission)	Application of Network Knowledge *Measured by*: Uptake of recommendations Improved policy making processes *(Source: MS via Consultations)*	Improved policies and practices with respect to crime prevention Reduced crime	Difficult to measure causal links
EU action plan	Provide better	Active	Availability of	Application of	Better informed	Difficult to

on EU statistics on crime and criminal justice	information base on EU crime trends, levels and on victimisation as well as on criminal justice.	participation from MS	information on crime and criminal justice covering EU *Measured by:* Availability, coverage and comparability o data. *(Source: Commission)*	improved information *Measured by*: Dissemination of information to EU and MS policy makers Citation of statistics in policy documents *(Source: Commission and MS)*	policy making at EU level. Better informed policy making at MS level.	measure causal links Statistical information is not available Instrument underpins evaluation of other instruments as it should improve statistics available at the EU level
Action plan on public-private partnerships	Establish public-private partnerships at EU level to tackle multinational organised crime and terrorism	Active participation from MS	Implementation of Action plan Creation of a EU level Platform for public-private partnership against organised crime and terrorism *Measured by* Reports from old and new partnership structures to the	Increased co-operation between public and private sector *Measured by:* Number of co-operation activities *Source: Commission: Follow up studies of specific partnerships)*	Reduced level of damage from organised crime and terrorism	Process evaluation could be appropriate

			platform Effective participation in the work of the Platform and new partnerships Composition of partnerships established *(Source: Commission)*			
Policy sub area 4: Management of crises[13] with cross border effects						
Objectives: Reduce detrimental cross border impacts of crises						

[13] With particular regard to preparedness and response to terrorist attacks.

Policy sub-area level indicators: Number of cross border crises reported in press/media Number of cross border crises involving EU crisis management						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Setting up of integrated and co-ordinated EU crisis-management arrangements in the Commission and the Council	Increase the level of preparedness to tackle cross-border crises within the EU	Active participation from MS in the structures to be established	Establishment of integrated and co-ordinated structures at the EU level *Measured by:* Assessments of MS capacities Training and joint exercises conducted Operational plans established *(Source: MS administrative records)*	Increased level of preparedness for cross border crises *Measured by:* Actual responses to crises Results of 'Exercises' undertaken. *(Source: MS Potential stakeholder surveys)*	Reduced impacts of such crises	There are likely to be particular difficulties in establishing the counter factual with respect to this instrument. Impacts may only be assessed sometime following emergencies. Some scope for peer review

ANNEX 2

Current practice for monitoring and evaluating EU policies on freedom, security and justice

1. MONITORING

1.1. The Tampere scoreboard

The Tampere European Council in 1999 invited the Commission to compile a **scoreboard** to keep implementation of policies on freedom, security and justice under continuous review. The scoreboard would specifically keep track of progress made with implementation of the measures and compliance with the deadlines set in the Amsterdam Treaty, the Vienna Action Plan and the Tampere programme. In response, the Commission produced its first scoreboard in March 2000, followed by regular updates every six months taking into account the objectives set by the European Councils in Laeken (2001), Seville (2002) and Thessaloniki (June 2003). The last Tampere scoreboard was presented in June 2004, marking the end of the first five-year period (1999-2004).

The scoreboards indicated the objectives and deadlines set at Tampere and in each case the responsibilities assigned to launch, advance and complete the process. To provide a clear view of the progress made in each area, the scoreboard showed the outstanding proposals and initiatives presented, progress in Council and European Parliament proceedings and the work planned. A specific section of the scoreboard focused on transposition of the instruments adopted.

1.2. Reviewing implementation of EU legislation

1.2.1. Instruments adopted under the EC Treaty

Implementation by the Member States of Community legislation concerning free movement of persons, visas, asylum, immigration, judicial cooperation in civil matters and citizens' rights adopted under the European Community Treaty is monitored by the Commission. If a Member State fails to comply with its legislative obligations, the Commission can then initiate infringement proceedings under Article 226 of the EC Treaty and may bring the matter before the Court of Justice.

Apart from normal application of the monitoring mechanism under Articles 226 of the EC Treaty, monitoring implementation of the instruments adopted under Title IV of the EC Treaty is not systematic, although it is usual practice. For example, none of the four directives adopted on illegal migration provides for a monitoring report by the Commission.

Some reports, such as the evaluation of the derogation for issuing visas to members of the Olympic family[14], go beyond mere analysis of implementation and contain information on

[14] Report on the functioning of the derogation system introduced by Regulation 1295/2003 regarding measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens (SEC(2005) 1051). This report was written by the Commission on the basis of information provided by the Greek authorities.

results. There are other examples concerning instruments adopted under Title II of the Treaty, such as reports[15] relating to free movement of Union citizens or reports[16] on their electoral rights in municipal and European Parliament elections.

1.2.2. Instruments adopted under Title VI of the Treaty on European Union

In the case of instruments adopted under Title VI of the EU Treaty concerning police and judicial cooperation in criminal matters, there is **no equivalent compliance mechanism** allowing the Commission to exercise its institutional powers as guardian of the Treaties.

For all Framework Decisions adopted by the Council, it is compulsory for Member States to transmit a detailed set of national implementing measures to the Commission and to the Council. Based on this information, the Commission then issues a report (e.g. 2002 Framework Decision on combating terrorism[17]). allowing the Council to debate the need for further measures in the field concerned. The Council generally expresses its position in a final report.

For some Framework Decisions, the Commission repeats or updates its monitoring exercise (e.g. "Victims" Framework Decision[18]).

Similarly, the Commission systematically monitors common positions and issues a monitoring report on national implementing measures. The Commission has also taken the initiative to issue specific reports on certain Council Decisions imposing no monitoring obligation such as those relating to Eurojust[19]

This monitoring exercise deals only with the **legal transposition** aspect and rarely includes details on the **practical implementation of instruments**. Such assessments of legal transposition answer the following questions: are the implementing measures effective, correct and in line with the Framework Decision? Are they clear and do they provide legal certainty? Do they fully apply the instrument and comply with the time limit for transposition?

In some cases this exercise has been backed up by an initial assessment of practical implementation in the Member States and of the tangible results of the national legislation. For example, in the case of the Framework Decision on the European Arrest Warrant[20], some

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15 Reports from the Commission to the Council and the European Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (Right of residence), COM(1999) 127 final and COM(2003) 101 final.

16 Reports on the application of Directive 93/109/EC: Right of EU citizens residing in a Member State of which they are not nationals to vote in European Parliament elections, COM(97) 731 final and COM(2000) 843, or Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2002) 260 final.

17 Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, COM(2004) 409 final, 8.6.2004.

18 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

19 Report from the Commission on the legal transposition of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, COM(2004) 457 final, 6.7.2004.

20 Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (COM(2005) 63 final), p.2, paragraph 2: *"The evaluation criteria adopted by the Commission for this report are, firstly,*

of the practical results of the implementing measures were included in the monitoring report, such as the question of effectiveness and rapidity of surrender. The Commission's report also included some preliminary figures, such as the number of warrants issued or the average time taken to execute a warrant, which mainly illustrated the difficulty of obtaining adequate statistics in this field.

1.3. Information-gathering mechanisms on policy implementation

1.3.1. Existing mechanisms

Following the call by the 2001 Laeken European Council to set up an enhanced exchange of information in the field of immigration and asylum, the Commission launched an information and consultation procedure with a **"Committee on Immigration and Asylum"** (CIA) at its heart. The CIA is made up of experts from the Member States but also frequently provides a forum for representatives of civil society, such as European social partners and the UNHCR, to present their views on pertinent immigration and asylum issues.

In the field of integration, the "**National Contact Points on Integration**" (NCP) play an important role in monitoring progress across policy fields and in ensuring that integration efforts at national and EU level support each other. They convey key results to the CIA.

A **European Migration Network** (EMN) was set up in 2002 as a preparatory measure in response to the need to improve exchanges of information on all aspects of migration and asylum. Its primary objective is to provide the Community and the Member States with objective, reliable and comparable information in these fields by systematically collecting and storing existing data and information from Member States and carrying out national and European level analysis. At present, the EMN consists of national contact points designated by the Member States.

1.3.2. Mechanisms in preparation

In the field of asylum, a Communication[21] on strengthened practical cooperation proposed bringing into operation a **system for sharing expertise**, resources and knowledge between key stakeholders, as a tool for strengthening common approaches to implementation of the first-stage legislative instruments of the European asylum system, building - amongst others - on existing mechanisms, such as the EURASIL group.

In September 2005 the Commission tabled a proposal for a **Regulation on Community statistics on migration and international protection**. The Regulation will improve statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.

In October 2005 the Commission tabled a proposal for a Council Decision on the establishment of a **mutual information procedure on national measures** taken in the areas of asylum and immigration which could affect other Member States. The proposal is based on

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the general criteria normally used nowadays to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposal), and, secondly, criteria specific to the arrest warrant, principally the fact that it is a judicial instrument, its effectiveness and its rapidity."

[21] COM(2006) 67 final.

the recognition that the absence of border checks in the Schengen area and the gradual development of common EU immigration and asylum policies require timely exchanges of information and discussion of national measures taken on asylum and immigration.

1.4. Monitoring implementation of The Hague Programme

The Hague Multi-Annual Programme (2005-2009) and the Action Plan implementing it invited the Commission to present an **annual report on implementation** of these two instruments to the Council (the "Scoreboard plus").

The "Scoreboard plus" will aim predominantly at assessing proper and adequate transposition of the legislative acts adopted and effective implementation of the measures agreed. In concrete terms, "Scoreboard plus" will assess the outcome of both (a) the **significant political progress** achieved at the point of adoption at EU level and (b) **implementation at national level of measures** related to freedom, security and justice.

This structure will bring visibility to monitoring and provide a comprehensive overview of implementation of the Action Plan, meeting the requirements of the European Council in The Hague Programme. It will increase transparency and visibility and improve and facilitate implementation. The **first "Scoreboard plus"** is presented **in parallel** to this Communication, one year after adoption of the Action Plan implementing The Hague Programme.

2. EVALUATION

This section briefly describes the state of play with evaluation in the field of freedom, security and justice, depending on the subject-matter: (1) **programmes,** (2) **legislation** or (3) **policies**[22]**.** Evaluations on freedom, security and justice mainly focus on **individual policy instruments**, be they legislative or financial. As in other areas, evaluation of policies (defined as a coherent set of instruments serving the same coherent objective) is **still developing**. As a consequence, evaluation activities are currently very diverse (internal or external evaluations, annual progress reports, peer reviews, etc.) and very different in scope. This results in a **lack of comparable evaluation** results across policies and of a true overview of the results achieved in establishing an Area of Freedom, Security and Justice.

The evaluation mechanism put forward in this Communication aims at tackling this issue. It provides a **platform** for exhaustive presentation and comparability of existing evaluation results, and identification of any information gaps. Whilst taking into account the fact that evaluation is more advanced for some activities than others, it will allow the establishment of a **common set of minimum evaluation requirements** across the different policies.

2.1. Evaluation of Community programmes

Evaluation of **programmes** is **well developed** within the Commission, including in the area of freedom, security and justice, where major programmes such as the European Refugee

[22] Evaluations of agencies and external bodies have not been included, for example the evaluation of the draft Council Decision transforming the European Police College (CEPOL) into an EU body, the evaluation of the European Monitoring Centre for Drugs and Drug Addiction and the evaluation of the functioning of the European Judicial Network (EJN) in civil and commercial matters.

Fund, AGIS and DAPHNE are regularly evaluated[23]. Available evaluation results demonstrate that whilst the immediate results of funding programmes are easily identified and measured, their longer-term effects are sometimes more difficult to grasp. In this context, the Commission proposals for the 2007-2013 programmes on freedom, security and justice establish a better link between the programmes' specific objectives and the overall political objectives. This will have an impact on the evaluation framework for these programmes, in particular through assessment of their consistency with other instruments (legislative or other) in the same field.

2.2. Evaluation of legislation

Contrary to the evaluation of programmes, evaluation of **legislation** is a **more recent** development in the case of freedom, security and justice. Recent examples include the evaluation of the European Arrest Warrant[24] (2005), the economic evaluation of the Data Protection Directive[25] (2005) and the on-going evaluations of the Directive on minimum standards for the reception of asylum-seekers[26] and of the Brussels I Regulation[27]. Also, the introduction of impact assessments of EU legislation has led to systematic *ex-ante* appraisal, which should greatly facilitate further interim and/or *ex-post* evaluation. In this context, systematic scrutiny of legislative proposals and other draft instruments to ensure that they are compatible with the Charter of Fundamental Rights should serve the same purpose[28].

2.3. Evaluation of policies

2.3.1. Mechanism for Schengen evaluation

The Schengen evaluation system, first established in the intergovernmental Schengen framework and then integrated into the European Union framework[29], assesses correct implementation of the Schengen *acquis* by participating Member States through a peer review mechanism, including visits to Member States. It has issued restricted reports, given details of cases of non-compliance with existing rules and practices and made further recommendations. This mechanism applies to both Community and third pillar measures.

When internal border controls with and between new EU Member States are lifted, the Commission will submit a "*proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism*", as requested by The Hague Programme.

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23 The results of these evaluations are available online at: http://europa.eu.int/comm/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm.

24 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

25 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

26 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers.

27 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

28 SEC(2001) 380/3, COM(2005) 172.

29 Decision 26 DEF 1998 of the Schengen Executive Committee.

2.3.2. Mechanism for the fight against organised crime

Joint Action 97/827/JHA, adopted by the Council on 5 December 1997, established a mechanism for evaluating the application and implementation at national level of international undertakings in the **fight against organised crime**[30]. Two rounds of evaluation have already been completed and two others are ongoing. The first round focused on mutual legal assistance in criminal matters, on which a report was subsequently released on 1 August 2001[31]. The second assessed instruments dealing with law enforcement and drug trafficking. Finally, the third and fourth rounds, not yet completed, are evaluating exchanges of information and intelligence between the Member States and Europol and the European Arrest Warrant respectively. The 1997 mechanism is operated by teams of experts designated by Member States, assisted by the General-Secretariat of the Council, with the involvement of the Commission. It is based on **study visits** and allows an in-depth examination of how instruments or policies are working in practice.

The Commission believes that although this mechanism has proved **useful and effective**, it nevertheless has some **shortcomings**, in particular the total duration of the process, the scope limited to only matters related to organised crime and the limited dissemination of the evaluation results.

2.3.3. Mechanism for the fight against terrorism[32]

Following the conclusions of the extraordinary meeting of the Justice and Home Affairs Council on 20 September 2001, the Council set up a procedure for peer assessment of national anti-terrorist arrangements in the framework of international cooperation between Member States. The first round of evaluations started in 2003 and focused on exchanges of information. Evaluation teams are made up of national experts and their reports are confidential.

2.3.4. Evaluation of the EU Action Plan on Drugs

In 2004 the Commission carried out the final evaluation of the EU Drugs Strategy and Action Plan on Drugs for 2000-2004[33], in cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol. The evaluation exercise provided an **overview of the drugs situation in the European Union** over the reference period. The Strategy and the Action Plan included a wide range of drug-related measures, mainly within the competence of the Member States. Their impact on the drug situation in the European Union could not be considered, mainly because the EU Strategy and Action Plan failed to establish impact indicators.

The EU Action Plan on Drugs for 2005-2008 takes into account the evaluation of the preceding Action Plan and has been designed from the outset to facilitate full evaluation. Accordingly, it clearly allocates responsibilities for each action and includes specific assessment tools, indicators and schedules for implementation. The Action Plan provides for

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30 For further information see: http://europa.eu.int/scadplus/leg/en/lvb/l33053.htm.

31 Final report on the first evaluation exercise - mutual legal assistance in criminal matters (2001/C 216/02).

32 Council Decision 2002/996/JHA of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.

33 COM(2004) 707.

the Commission to present annual reviews of implementation of the Plan plus a final evaluation in 2008, with a view to preparing the next Plan. The **first annual progress** review will be presented in **autumn 2006.**

2.3.5. Mechanism for evaluating respect of fundamental rights

The **European Monitoring Centre on Racism and Xenophobia** studies the extent and development of the phenomena of racism, xenophobia and anti-Semitism and analyses their consequences and effects. Its findings are presented in annual reports. Once established, the Agency on Fundamental Rights, with its wider mandate, is expected to play a key role in evaluating respect of fundamental rights.

The **network of fundamental rights experts** was created by the European Commission in 2002 in response to a recommendation in the European Parliament's report[34] on the state of fundamental rights in the European Union. The network assesses the fundamental rights situation through an annual report, on the basis of an **analysis of the legislation, the case-law and the administrative practice** of the national authorities of the Member States and in the institutions of the Union. The reference points for the evaluation are the rights set out in the European Union's Charter of Fundamental Rights. The results are published annually (so far, in 2003, 2004 and 2005).

[34] 2000/2231(INI).

ANNEX 3

Glossary

Activity: A coherent area of action with objectives and resources. In other words, "Activities" consist of well-defined and delimited measures to which inputs are allocated and converted into outputs.

The policy for the development of an Area of Freedom, Security and Justice has been divided into different Activity-Based Management (ABB) activities such as:

– Activity 1802 “External borders, visa policy and free movement of persons”,

– Activity 1803 “Common immigration and asylum policies”,

– Activity 1804 “Citizenship and fundamental rights”,

– Activity 1805 “Law enforcement cooperation and prevention of and fight against general organised crime”,

– Activity 1806 “Establishing a genuine European area of justice in criminal and civil matters”,

– Activity 1807 “Coordination in the field of drugs”.

Evaluation: “Judgement of interventions according to their results, impacts and the needs they aim to satisfy”[35]. It is a process undertaken by the Commission in order to identify what can be learned for policy and planning.

***Ex ante/ex post* evaluation**

Ex ante evaluation: Evaluation performed before implementation of a measure. For the purposes of the Commission, *ex ante* evaluation is defined as a process that supports the preparation of proposals for new or renewed Community activities. Its purpose is to gather information and carry out analyses that help to define objectives and to ensure that these objectives can be met, that the instruments used are cost-effective and that reliable subsequent evaluation will be possible.

Intermediate (or mid-term) evaluation: Evaluation performed during implementation of a measure. If the evaluation extends throughout the period of implementation, this is also called "on-going evaluation". This type of evaluation critically appraises the first outputs and results, in order to assess the quality of monitoring and implementation of the measure. The main focus is to help to prepare adjustments and reprogramming and to provide input for the preliminary deliberations on the future of the measures.

Ex post evaluation: Evaluation conducted either on or after completion of a measure. The main interest is overall assessment of the measure, in particular by analysing the impact

[35] Communication on Evaluation (SEC(2000) 1051): http://europa.eu.int/comm/budget/evaluation/keydocuments_en.htm.

achieved and examining its efficiency. The objective is to understand the reasons for success or failure and the sustainability of the results and impact. It also tries to draw conclusions that can be applied generally to other measures.

Impact: A general term used to describe the effects of a measure on society. Impact can be either positive or negative and foreseen or unforeseen. Initial effects are called outcomes/results, whilst impact is usually longer-term.

Impact assessment: Impact assessment is about examining the likely economic, social and environmental impact of the Commission's proposals. It identifies and assesses the issue at stake and the objectives pursued. It identifies the main options for achieving the objectives and analyses their likely impact. It outlines the advantages and disadvantages of each option as well as synergies and trade-offs.

Indicators: A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Output indicators are normally straightforward. Impact indicators may be more difficult to obtain, and it is often appropriate to rely on indirect indicators as proxies. Indicators can be either quantitative or qualitative.

Monitoring: A continuous process of examining delivery in terms of adoption and implementation of different measures, especially legislation. It is not to be confused with programme monitoring, which consists of examining the delivery of programme outputs to the intended beneficiaries. Evaluation, on the other hand, is carried out at a discrete point in time, and consists of an in-depth study. Monitoring generates data which can be used in evaluations.

Outcomes/results: The intermediate effects of a measure.

Policy: A set of activities, which may differ in type (programmes, measures, procedures, laws or rules) and beneficiaries or target groups, directed towards common general objectives or goals. Unlike projects and programmes, a policy is not usually delimited in terms of time or budget.

Policy area: Within the EU the concept *policy* may designate various scope and levels of complexity, ranging from an overall Commission strategy or objective over a policy area to an ABB-activity. In this context, a policy will normally embrace a range of instruments At Commission level, the ABB-activities (215 altogether) have been grouped into some 30 policy areas, closely identifiable with Directorates-General. This Communication deals with policy area 18: Freedom, security and justice.

Policy instruments: A set of techniques by which public authorities attempt to ensure support and to effect or prevent social change. In this sense, there is a strong emphasis on the dynamic evolving nature of policies, with individual policy instruments being added, withdrawn or redesigned over time. The variety of available policy instruments includes, for example, legislation such as regulations or directives and may involve resource commitments, for example in the form of operational programmes; they also include Communications, action plans, etc. However, policy instruments differ significantly in the way in which they bring about results and impacts and the timescales over which these can be expected.

Programme: A set of organised but often varied actions (a programme may encompass several different projects, measures and processes) directed towards achieving specific objectives, often with a definite time schedule and budget.

COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 28.6.2006
COM(2006) 332 final

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPÉEN

Évaluer les politiques de l'Union européenne en matière de liberté, de sécurité et de justice

{SEC(2006) 815}

COMMUNICATION DE LA COMMISSION AU CONSEIL ET AU PARLEMENT EUROPÉEN

Évaluer les politiques de l'Union européenne en matière de liberté, de sécurité et de justice

1. INTRODUCTION

1. Le **programme** de La Haye (2004)[1] note que «de l'avis du Conseil européen, l'évaluation de la mise en œuvre et des effets de chaque mesure est indispensable pour que l'action de l'Union soit efficace.» Le **plan d'action** mettant en œuvre ce programme (2005)[2], qui constitue le cadre de référence pour le travail de l'UE en matière de justice, de liberté et de sécurité pour les cinq années à venir, prévoit l'adoption, en 2006, d'une **communication** de la Commission sur la mise en place d'un mécanisme d'évaluation au niveau de l'UE dans ce domaine[3].

2. Pour les chefs d'État ou de gouvernement, l'évaluation de la mise en œuvre des politiques est un **outil essentiel. Il permet** de s'assurer que les avancées significatives de l'Union et ses États membres dans la création d'un espace de Liberté, de Sécurité et de Justice sont effectivement mises en œuvre et régulièrement examinées afin de répondre aux **attentes des citoyens européens**.

3. En soulignant l'importance de l'évaluation, le programme de La Haye visait (1) **à améliorer encore la conception des politiques, des programmes et des instruments** en identifiant les problèmes et les obstacles rencontrés lors de leur mise en œuvre, (2) à renforcer la transparence et le contrôle des politiques et de l'utilisation du budget européen, (3) à favoriser l'information et les **échanges de bonnes pratiques** et (4) à contribuer à l'**avènement d'une culture de l'évaluation** dans toute l'Union.

Eu égard (1) au **mandat** donné à la Commission par le programme de La Haye et son plan d'action, (2) à la **fragmentation** des mécanismes existants de suivi et d'évaluation et (3) à la nécessité de **bien informer** toutes les parties prenantes sur la mise en œuvre et les résultats des politiques, la Commission estime que **le moment est venu** de travailler à la mise en place d'un **mécanisme complet et cohérent d'évaluation** des politiques de l'Union en matière de liberté, de sécurité et de justice, dans un esprit de **partenariat** avec les États membres et les institutions de l'UE.

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1 Annexe I aux conclusions de la présidence, Conseil européen de Bruxelles, novembre 2004.

2 Plan d'action du Conseil et de la Commission mettant en œuvre le programme de La Haye visant à renforcer la liberté, la sécurité et la justice dans l'Union européenne (JO C 198 du 12.8.2005, p. 1).

3 Le plan d'action appelle aussi à l'élaboration d'une communication sur l'évaluation systématique, objective et impartiale de l'application des politiques de l'Union dans le domaine de la justice en vue de renforcer la confiance mutuelle tout en respectant pleinement l'indépendance de l'appareil judiciaire. Plus tard dans l'année, la Commission présentera donc une autre communication qui traitera en détail de cette question conformément aux principes généraux énoncés dans la présente communication.

Un tel mécanisme englobera **le suivi de la mise en œuvre** (comme détaillé dans la communication «Renforcer la liberté, la sécurité et la justice dans l'Union européenne: rapport sur la mise en œuvre du programme de La Haye pour l'année 2005», ci-après, le «tableau de bord Plus»)[4] et **l'évaluation des résultats** des politiques.

2. LE CONCEPT D'EVALUATION

4. Il convient de distinguer l'évaluation du suivi de la mise en œuvre:

   - le **suivi de la mise en œuvre** consiste à examiner les progrès accomplis dans l'exécution des politiques;

   - la communication relative à l'évaluation, présentée par la Commission en 2000[5], définit l'**évaluation** comme une «*appréciation des interventions* (actions publiques) *en fonction de leurs résultats, de leur impact et des besoins qu'elles visent à satisfaire.*» L'évaluation a pour rôle principal de fournir aux responsables des informations concernant l'incidence et l'efficacité des activités qui ont été prévues et réalisées.

5. La Commission voit dans le mécanisme mentionné dans le plan d'action un moyen d'assurer le suivi de la mise en œuvre et d'évaluer les résultats concrets des politiques menées en matière de liberté, de sécurité et de justice. En l'occurrence, l'évaluation s'appuie sur le suivi, mais va au-delà en examinant les effets de la mise en œuvre, comme indiqué plus bas. Ceci est conforme au programme de La Haye, étant donné que le concept d'«*évaluation de la mise en œuvre ainsi que des effets de toutes les mesures*» recouvre tant la mise en œuvre elle-même que l'évaluation des résultats des mesures adoptées.

6. Telles sont les raisons pour lesquelles la Commission propose un dispositif cohérent et complet en deux volets: le **«tableau de bord Plus»** pour le suivi de la mise en œuvre et le **mécanisme d'évaluation** proposé dans la présente communication.

7. Le mécanisme décrit ici repose sur cette définition extensive qui, de l'avis de la Commission, devrait permettre d'appréhender pleinement les résultats quantitatifs et qualitatifs obtenus en matière de liberté, de sécurité et de justice. Un tel mécanisme fonctionnerait dans le cadre des principes énoncés dans le programme de La Haye. En fin de compte, la formulation des politiques devrait s'en trouver améliorée grâce à la prise en compte accrue des résultats des évaluations dans le processus de prise de décision.

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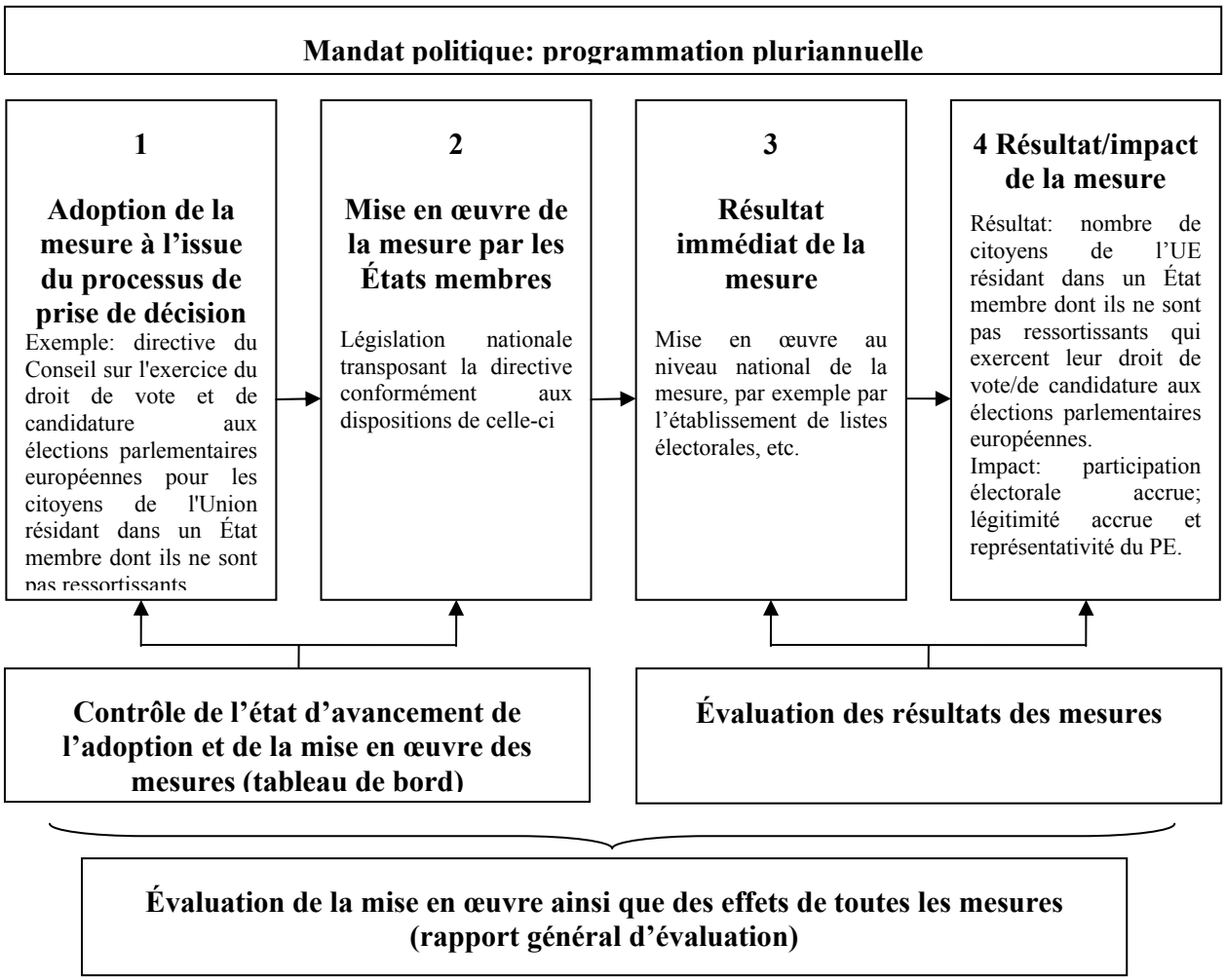
4 COM(2006) 333.
5 SEC(2000) 1051.

Encadré 1: Évaluation à tous les stades



3. ÉVALUER LES POLITIQUES DE L'UE EN MATIERE DE LIBERTE, DE SECURITE ET DE JUSTICE – DIFFICULTES A CONSIDERER

3.1. Des objectifs et des dispositifs complexes et ambitieux

8. Le domaine des politiques de l'Espace de liberté, de sécurité et de justice est l'**un des plus divers de l'Union**. Les objectifs touchent à certaines des questions les plus sensibles: libre circulation des personnes, terrorisme et crime organisé, coopération policière et judiciaire, politique en matière d'asile et de migration, tout cela en respectant les droits fondamentaux et en promouvant les droits des citoyens de l'Union. Les questions de souveraineté nationale obligent souvent à trouver des compromis au niveau de l'UE ou rendent difficile la mise en œuvre. Par conséquent, tout nouveau mécanisme d'évaluation devra prendre en compte ce contexte politique.

9. Le caractère à la fois complexe et ambitieux des objectifs poursuivis se double d'un cadre juridique (procédures décisionnelles, examen de la conformité) parfois déroutant.

Pour faire face à cette complexité, le mécanisme d'évaluation proposé doit être **progressif** et prévoir les possibilités d'**évolution et de consolidation**.

3.2. Calendrier

10. En raison du rôle particulier de la Commission et du processus de prise de décision dans le domaine de la liberté, de la sécurité et de la justice, les différentes politiques ne sont pas mises en œuvre et ne produisent pas leurs effets **dans les mêmes délais**. Une **approche au cas par cas** est par conséquent nécessaire, afin de trouver le juste niveau d'analyse pour **chaque politique**. Les résultats immédiats et intermédiaires seront pris en considération pour toutes les politiques, mais l'analyse de leur incidence pratique sera sans doute plus difficile dans certains cas (par exemple, pour les politiques en matière de drogue ou de migration).

Le mécanisme d'évaluation proposé devra posséder la **souplesse nécessaire** pour permettre une évaluation approfondie différentiée des diverses politiques en tenant compte de leur degré de développement et de consolidation.

Il paraît donc approprié de se concentrer sur les résultats immédiats et intermédiaires, du moins dans un premier temps. La détermination de l'incidence globale des politiques doit constituer à plus long terme l'objectif ultime du mécanisme d'évaluation.

3.3. Associer les institutions et les acteurs du domaine

11. Les questions de liberté, de sécurité et de justice sont uniques également par l'impact qu'ont les politiques correspondantes sur les acteurs du domaine. Tout mécanisme d'évaluation dans ce domaine doit impérativement tenir compte des **attentes et des priorités des différents acteurs** et, en particulier, du **besoin de confidentialité** dans certaines matières telles que le terrorisme et le crime organisé.

12. Dans un esprit de **partenariat**, la Commission **consultera** les États membres et les institutions de l'UE **et débattra** avec eux pendant et après la préparation du rapport d'évaluation. Les États membres et les institutions de l'UE seront invités dans ce but à désigner des **points de contact** afin de faciliter le dialogue avec la Commission. Le rapport d'évaluation[6] sera **public** et adressé aux États membres et aux institutions de l'UE.

13. Le Conseil et les États membres seront avec la Commission les principaux acteurs dans le mécanisme proposé. Le Parlement européen sera étroitement associé, conformément à ses prérogatives et obligations institutionnelles. Les parlements nationaux seront eux aussi impliqués dans l'évaluation des rapports réguliers.

14. Dans les domaines couverts par le traité CE, le Comité des régions et le Comité économique et social européen participeront à l'élaboration et à la mise en œuvre du mécanisme d'évaluation. Les rapports d'évaluation leur seront systématiquement transmis après adoption.

15. Des agences telles que l'Agence de l'Union européenne pour les droits fondamentaux, l'Observatoire européen des drogues et des toxicomanies (OEDT), Europol, Eurojust ou l'Agence européenne pour la gestion de la coopération

[6] Cf. paragraphe 30.

opérationnelle aux frontières extérieures auront également un rôle important à jouer. Premièrement, elles «alimenteront» l'exercice d'évaluation avec les informations et analyses dont elles disposent et, deuxièmement, la Commission les consultera sur les rapports d'évaluation.

16. Les contributions émanant de la **société civile** seront très utiles dans ce contexte. La Commission veillera à ce que les opinions exprimées par la société civile soient prises en compte. Elle mettra en place les mécanismes nécessaires afin que la participation de la société civile à l'évaluation de toutes les politiques dans le domaine de la liberté, de la sécurité et de la justice soit assurée.

Le mécanisme d'évaluation proposé devrait inclure des **mécanismes de consultation transparents**, qui pourraient aussi servir à recueillir et à vérifier les informations.

3.4. Disponibilité de statistiques

17. La disponibilité de statistiques[7] et des moyens de les analyser est **essentielle** à la mise au point d'un système d'évaluation. Si les statistiques sont déjà bien développées pour certaines activités (par exemple en matière de drogue), il y a encore des progrès à réaliser dans d'autres domaines tels que la criminalité et la justice pénale[8]. Des statistiques sur l'évolution des besoins auxquels répondent les politiques en matière de liberté, de sécurité et de justice seront nécessaires en tant que données de référence pour évaluer si une politique donnée a permis, avec le temps, d'atténuer les besoins existants ou bien les a aggravés au contraire, et, en fin de compte, pour pouvoir tirer des conclusions sur l'impact des politiques. Des améliorations devraient être apportées dans trois domaines: qualité, disponibilité et analyse. Les travaux des agences, parmi lesquelles l'Observatoire européen des drogues et des toxicomanies (OEDT), Europol, Eurojust et la future Agence des droits fondamentaux, joueront un rôle particulier dans ce contexte. Les projets et réseaux de recherche contribueront eux aussi à cet objectif.

Il conviendra par conséquent, parallèlement à la mise en place du système d'évaluation proposé, d'apporter des améliorations à la **qualité**, la **disponibilité** et l'**analyse des statistiques** en matière de liberté, de sécurité et de justice.

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7 La production de statistiques communautaires est régie par les dispositions du règlement du Conseil relatif aux statistiques communautaires, et les actions liées à l'établissement de ces statistiques sont réalisées conformément au programme statistique communautaire et à ses programmes annuels, en respectant les principes énoncés dans le code de bonnes pratiques de la statistique européenne.

8 À cet égard, la Commission prévoit d'adopter un plan de l'UE pour l'élaboration d'une stratégie européenne cohérente et globale de mesure de la criminalité et de la justice pénale, l'objectif ultime étant de disposer de statistiques communautaires fondées sur des définitions et des mécanismes de collecte et de compte rendu harmonisés.

4. ÉVALUER LES POLITIQUES DE L'UE EN MATIERE DE LIBERTE, DE SECURITE ET DE JUSTICE – PROPOSITION D'UN MECANISME D'EVALUATION STRATEGIQUE

4.1. Description du mécanisme d'évaluation

18. **Le mécanisme d'évaluation proposé** dans le domaine de la liberté, de la sécurité et de la justice **s'appuie sur** l'expérience acquise dans d'autres domaines de politique de l'Union. Un tel mécanisme compléterait les **pratiques en vigueur**, décrites dans l'annexe 2, et, dans le cas précis des programmes de financement, utiliserait les informations résultant des obligations d'évaluation existantes. Dans les autres domaines où des informations sont déjà disponibles, on veillera particulièrement à utiliser les données existantes et à **ne pas répéter des travaux déjà effectués**.

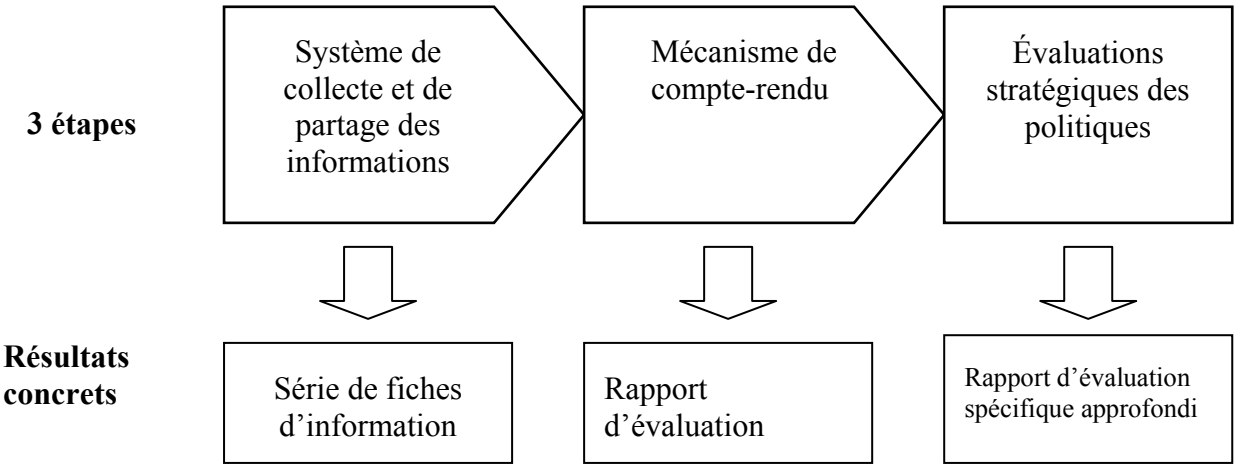
19. Un mécanisme progressif en trois étapes est proposé:

(1) en premier lieu, il prévoit la mise en place d'un système de collecte et de partage des informations;

(2) en deuxième lieu, il inclut l'**élaboration de rapports d'évaluation**, qui synthétisent, exploitent et analysent ces informations;

(3) en troisième lieu, il est complété par des **évaluations stratégiques approfondies**.

Encadré 2: Les trois étapes du mécanisme



20. Le mécanisme sera exhaustif en ce qu'il couvrira toutes les politiques relevant du domaine «liberté, sécurité et justice»[9].

21. Les rapports d'évaluation[10] seront transmis au Conseil et au Parlement européen, ainsi qu'au Comité économique et social européen et au Comité des régions, et diffusés plus largement si nécessaire, y compris à l'occasion de conférences ad hoc.

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[9] Durant la troisième étape du mécanisme proposé, le mécanisme d'évaluation par les pairs décrit dans l'annexe 2, au point 2.3.2, pourrait continuer de fonctionner. Selon la manière dont évoluera le cadre institutionnel actuel, la Commission pourrait gérer ce mécanisme dans un stade ultérieur. En tout état de cause, elle lui apportera le soutien des évaluations stratégiques approfondies auxquelles elle-même procède dans les domaines couverts par le titre VI du traité sur l'UE.

22. En renforçant la remontée et la dissémination des résultats d'évaluations, le mécanisme vise en définitive à promouvoir l'exploitation pratique de ces résultats au niveau de la prise de décision.

23. Ce mécanisme est cohérent avec les orientations actuelles de la Commission en matière d'évaluation et fonctionnera conformément à leurs principes généraux.

4.1.1. Système de collecte et de partage des informations

24. Le système de collecte et de partage des informations reposera sur des «**fiches»** (une pour chaque domaine politique) qui seront remplies par les autorités compétentes des États membres. Dans les domaines pour lesquels des informations sont déjà disponibles sous une forme identique, la Commission **pré-remplira** autant que possible les fiches. Parallèlement, les fiches seront diffusées pour **consultation** auprès des diverses parties prenantes[11] et de la société civile. Les consultations seront adaptées à chaque domaine politique et se fonderont sur les mécanismes de consultation et **réseaux existants**, en tenant compte comme il convient des exigences de confidentialité propres à certains domaines.

25. Les fiches mentionneront un **objectif global** pour chaque domaine et une liste des **principaux instruments** (législatifs, non législatifs et financiers) servant à atteindre cet objectif. Le mécanisme devrait permettre d'avoir une vue d'ensemble claire des **résultats obtenus**.

26. Les fiches fixeront en outre une série d'**indicateurs** pour chaque politique, qui seront clairement rattachés à l'objectif global du domaine correspondant. Les fiches feront partie intégrante du **processus de consultation** qui suivra la publication du présent document et seront finalisées en concertation avec les États membres. Des exemples des fiches proposées sont placés en annexe 1 de la présente communication.

27. La Commission envisage d'inviter chaque État membre à désigner des **points de contact** au niveau national. Ceux-ci joueront un rôle important de coordination des réponses au plan national et travailleront en concertation avec les services de la Commission.

28. En ce qui concerne la **législation de l'UE**, les indicateurs et le système d'évaluation contenus dans les fiches d'information se concentreront sur les résultats concrets de l'application de la législation et non sur le niveau de transposition en droit national ou sur l'impact du droit communautaire sur les systèmes juridiques nationaux. Ces derniers font partie des principaux objectifs du «tableau de bord Plus», qui évalue la transposition et la mise en œuvre plutôt que le degré de réalisation des objectifs.

29. En ce qui concerne les **programmes de financement** de l'UE, les fiches d'information se baseront sur les **rapports d'évaluation et de mise en œuvre existants** qui sont rédigés en application du règlement financier et de la base juridique concernée. Comme les informations sur les programmes de financement requises par les fiches devraient être disponibles, la contribution demandée aux États membres ne devrait être que minimale.

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[10] Voir le paragraphe 30.

[11] Voir le point 3.3.

4.1.2. Élaboration de rapports

30. Après réception des fiches et consultation avec les parties prenantes, la Commission validera les données reçues et établira un «**rapport d'évaluation**» dans lequel elle regroupera et analysera les renseignements fournis. Ce rapport d'évaluation inclura aussi des **recommandations politiques** concernant les différents domaines traités.

31. Le but de l'exercice est d'évaluer les politiques mises en œuvre au niveau de l'UE en matière de liberté, de sécurité et de justice et d'identifier les domaines devant faire l'objet d'une **évaluation stratégique approfondie**.

4.1.3. Évaluations stratégiques des politiques

32. À la suite du rapport d'évaluation et après de nouvelles consultations, des **évaluations stratégiques approfondies des politiques** pourront être effectuées dans des **domaines sélectionnés**. Ces évaluations viseront à dégager en temps utile des informations pertinentes pour éclairer la prise de décision dans chaque domaine politique.

33. Les évaluations stratégiques devraient apporter une valeur ajoutée par rapport aux pratiques actuelles décrites dans l'annexe 2, notamment:

(a) en se concentrant sur les **politiques** (ou des sous-ensembles cohérents) plutôt que sur des instruments particuliers (par exemple, la politique d'immigration commune);

(b) en analysant la **cohérence** des différents instruments à l'intérieur d'une politique donnée (par exemple, comment les programmes financiers soutiennent et facilitent la mise en œuvre de la législation de l'UE dans un domaine précis);

(c) en examinant comment une politique donnée contribue à l'**objectif global** de mise en place d'un espace de liberté, de sécurité et de justice;

(d) en déterminant le **taux de réalisation** global de cet objectif général; et

(e) en évaluant la réalisation d'un objectif de portée générale en matière de liberté, de sécurité et de justice (par exemple, la préservation des droits fondamentaux).

4.2. Fréquence et suivi

34. La répétition de l'exercice à intervalle régulier permet d'identifier les progrès réalisés et d'effectuer des comparaisons. En ce qui concerne le calendrier, il est proposé de procéder à cet exercice d'évaluation («fiches» et «rapport d'évaluation») **deux fois tous les cinq ans**. La Commission s'appuiera autant que possible sur les informations disponibles.

35. La proposition tient compte de ce que ce mécanisme:

(a) devrait fonctionner sur une **base régulière**;

(b) ne devrait pas être trop lourd;

(c) n'a pas besoin d'avoir lieu chaque année étant donné qu'il porte sur des indicateurs de réalisations et de résultats qui évoluent lentement ainsi que sur des données à moyen terme;

(d) devrait être coordonné avec les plans stratégiques et pluriannuels **existants**.

36. En particulier, le calendrier proposé permettrait aussi au Conseil et à la Commission d'utiliser les résultats des rapports d'évaluation dans l'appréciation qu'ils feront de la nécessité de préparer un nouveau programme stratégique en 2009, à l'expiration du programme de La Haye.

37. La publication du rapport d'évaluation tous les deux ou trois ans permettra de synchroniser le mécanisme avec le cycle quinquennal. Cela favorisera une utilisation plus poussée et plus stratégique des résultats des évaluations dans la prise de décision. Les années 2006 et 2007 constitueront une période de transition (voir tableau ci-dessous).

38. Pour les besoins de la coordination avec le «tableau de bord Plus», il est prévu de transmettre les fiches aux États membres à la fin de l'année 2006 et de publier le rapport d'évaluation en même temps que la deuxième édition de ce «tableau de bord Plus», c'est–à-dire à la mi-2007.

Calendrier	**Tableau de bord Plus (TB)**	**Mécanisme d'examen**	**Plan d'action**
2005			Adoption du plan d'action de La Haye
2006	TB + 1		Évaluation intermédiaire de la mise en œuvre (fin 2006)
2007	TB + 2	Rapport d'évaluation 1	Premier réexamen des politiques
2008	TB + 3		
2009	TB + 4	Rapport d'évaluation 2	
2010	TB + 5		Fin du programme de La Haye
2011	TB + 6		
2012	TB + 7	Rapport d'évaluation 3	
2013	TB + 8		
2014	TB + 9	Rapport d'évaluation 4	

(période de transition en grisé)

39. Une évaluation des **coûts additionnels pour les États membres** est jointe dans l'analyse d'impact annexée. Les États membres sont encouragés à travailler, avec l'appui de la Commission, à la **comparabilité et à la précision de leurs données**. En effet, l'évaluation d'un certain nombre d'instruments législatifs a montré, récemment, qu'il arrivait que les données de base concernant les politiques ne soient ni harmonisées ni exactes. Les évaluations ponctuelles des politiques en matière de liberté, de sécurité et de justice effectuées par le Conseil ou la Commission constitueront une source d'informations supplémentaire.

40. La présente communication doit marquer le **lancement d'un processus à moyen terme**. Le mécanisme proposé et les fiches d'information sont présentés pour qu'ils puissent faire l'objet d'observations et d'améliorations durant la période qui suivra la communication. A cette fin un large processus de consultation sera lancé, avec notamment l'organisation d'une conférence pendant l'automne.

41. Le mécanisme donnera lieu à une **évaluation** après cinq ans, pour décider des ajustements et améliorations éventuels à apporter au système. Les réalisations à prendre en considération seront les fiches et rapports indiqués dans l'encadré 2. L'évaluation se fera par rapport aux objectifs énoncés au paragraphe 3.

5. CONCLUSIONS

42. La Commission estime nécessaire de mettre en place un **mécanisme global et cohérent d'évaluation** des politiques de l'UE en matière de liberté, de sécurité et de justice, compte tenu de la situation actuelle et du mandat qui lui est confié dans le programme de La Haye. Un tel mécanisme devra être **progressif** et prendre en considération l'**évolution du cadre institutionnel et juridique** pour conduire à un nouveau renforcement des politiques en matière de liberté, de sécurité et de justice et assurer leur efficacité.

43. Le mécanisme permettra de regrouper les résultats d'évaluations ponctuelles dans un cadre cohérent, apportant par là des informations qui aideront la prise de décision politique au niveau approprié. À cet égard, le mécanisme proposé fournira aussi aux responsables des **informations pertinentes en temps utile** pour décider de la suite à donner au programme de La Haye à son expiration en 2009.

44. Le mécanisme proposé sera mis en œuvre par la Commission et le Conseil, conformément à leurs prérogatives institutionnelles et en association étroite avec le Parlement européen. Une **action concertée** et **un engagement total** des institutions de l'UE comme des États membres seront nécessaires pour mener à bien la création et la mise en œuvre du mécanisme d'évaluation, les autorités et administrations nationales jouant à cet égard un rôle capital.

45. Enfin, un tel mécanisme contribuera à rendre plus efficace l'action de l'Union et à réaliser des objectifs stratégiques tels que la **simplification de la réglementation** et la **transparence des activités de l'UE**.

ANNEX 1

Factsheet of JLS policies

POLICY AREA: EXTERNAL BORDERS, VISA POLICY AND FREE MOVEMENT OF PERSONS
Factors influencing evaluation mechanism: well established policy area, 1st pillar activities, there is a strong consensus amongst stakeholders for EU level action; there is a mix of instruments (legislative activities, co-operation activities, programme funding, functioning Community Agency, IT systems); possible to construct evaluation indicators, but might be hard to measure outcomes and results and causal links in practice. Methods to evaluate controls at borders are improving, including available administrative information and statistics. Some constraints on fully independent evaluation. There are strong interlinkages between the instruments within the ABB activity and strong potential for 'thematic' evaluation examining instruments in parallel.
Policy sub-area 1: External borders
Objectives: Develop an integrated external border management system Ensure uniform high standards of border checks and border surveillance at EU external borders Reduce number of illegal cross border movements of people Further 'burden sharing' in management of external borders
Policy sub-area level indicators: The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of all third country national border crossings into EU (*Source: Commission - Eurostat statistics on asylum and migration*) The difference between the numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally as a proportion of

all third country national border crossings into EU through the most permeable and least permeable border. Note that this indicator would require to define the most and least permeable EU border. The numbers of illegal migrants apprehended that are known to have crossed the EU external border illegally (*Source: Commission - Eurostat statistics on asylum and migration*) The proportion of all resource commitments to external border management originating in countries without EU external borders *(Source: MS)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Schengen Information System (SIS) II	Sharing of information among MS in order to refuse entry on the basis of uniform practices	Consistent input and further use of information among MS	Quality and a Availability of SIS II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	Success in using SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	Reduced permeability of the external border. Increased confidence to promote 'free movement' policies.	Clear intervention logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS.

European Agency for the Management of Operational Co-operation at the External Borders (FRONTEX)	Improvement of operational cooperation between Member State authorities Increased competences of border guards	Co-operation with Agency and responses to good practice, training and other advice.	Operational cooperation *Measured by:* Number of joint operations and pilot projects carried out *(Source: Agency)* Development of risk analysis *Measured by:* Number of risk analyses carried out *(Source: Agency)* Increased training *Measured by*: Number of border guards trained Number of training courses and	Improvement of border control *Measured by:* Effective joint operations *(Source: Agency)* Increased intelligence *Measured by:* Use of risk analyses by national services *(Source: MS)* Better trained border guards *Measured by:* Use of newly acquired skills *(Source: MS)*	Improved resource deployment at external borders (due to better intelligence) Reduced permeability of external borders (due to better trained staff)	Difficult to assess causality of intervention. Evaluation methods – case studies, follow up surveys. EU leading the evaluation. (Other EU Agency evaluations have tended to be process rather than impact oriented)

			seminars offered *(Source: Agency)*			
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national authorities To improve the overall efficiency of national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted *(Source: Commission)*	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed by July 2006.

	administrations in their tasks					
Teams of national experts	Further objectives of FRONTEX agency: Better deployment of resources in circumstances requiring special assistance Increased competences of border guards	Secondment of experts to teams.	Provision of technical and operational assistance. *Measured by:* number of assignments carried out by teams *(Source: Agency)*	Improved practice in border surveillance. *Measured by:* use of results of teams' work in border surveillance and efficiency of teams work *(Source: Agency and MS)*	Reduced permeability of external borders (due to assistance to staff) Facilitated legitimate travel	Evaluation methods – case studies, qualitative analysis.
Policy sub-area 2: Visa policy and free movement of persons						
Objectives: Prevent illegal immigration and threats to public order Reduce time taken and costs of acquiring visas for legitimate travellers. Reciprocation with third countries on visa waivers. Reduce number of visas given to travellers who become overstayers and illegal migrants Abolish controls at internal EU borders						

Policy sub-area level indicators:

The average time taken from application to receipt of (a particular class of) visa *(Source: MS, VIS)*

The average costs (fees) for (a particular class of) visa *(Source: MS, VIS)*

The number of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission)*

The total population of third countries where the visa requirements of nationals to enter the EU match those EU citizens visiting the country in question (*Source: Commission*)

The number of EU internal border crossings that are subject to controls *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Common application centres (for Schengen countries)	Render the reception of visa applications more efficient through a better allocation of resources. Reduce costs in relation to capturing of biometrics. Harmonisation of reciprocal	Commitment to the centres. Participation in setting up the centres.	Number of centres established and MS involved *(Source: MS).* Number of visas issued through the centres *(Source: MS).*	Increased efficiency of providing visa services. *Measured by:* time taken to issue visas *(Source: MS)* *(Source: MS).* Improved use of visa related	Reduced costs to visa applicants. Reduced costs to administrations. Increased bone fide travel.	Evaluation method – efficiency analysis. Potential evaluation leadership from the MS and use of peer review process.

	procedures by MS			information *(Source: MS).*		
Visa Information System	Improve the implementation of the common visa policy by the exchange of visa data between Member States, in order to prevent visa shopping, to facilitate the fight against fraud, checks on visas, to assist in the identification of illegal immigrants, to facilitate the application of the Dublin II Regulation and to contribute to the prevention of threats to internal security.	Implementation at the national level, including the development/adaptation of national systems.	Number of number of visas refused, annulled, revoked, processing times *(Source: Commission).* Availability rate *(Source: Commission)*	Retention and sharing of data from visa applications and related decisions. *Measured by:* number of entries in VIS *(Source: Commission).* Measured: number of analyses conducted using VIS data *(Source: Commission).*	Improvement of application procedures, of checks at the external borders and within the Schengen territory, of the application of the Dublin II Regulation, of the identification of illegal immigrants and of the detection of fraud. Facilitated legitimate travel.	Monitoring and evaluation, by the Commission at EU level.
The reciprocity mechanism (Council Regulation	To ensure EU citizens can travel without a visa to all third countries whose nationals	Co-operation with the Commission, information sharing on bilateral dialogue with	Number of third countries who have waived visa requirements for EU nationals	Improved reciprocity measured by percentage of decrease of non-	Facilitated legitimate travel for EU travelers	Diplomatic efforts on EU level vis-à-vis third countries concerned.

851/2005)	don't need a visa to travel to the EU.	third countries	*(Source: Commission)*	reciprocity cases Improved dialogue and diplomatic contacts with third countries		The first Report of the Commission on reciprocity in visa waivers was adopted on 10 January 2006
Council Regulation on a Border code	To implement common rules governing the movement of persons across borders, to include both rules on checks at external borders and rules on the removal of checks on persons at internal borders and the reintroduction of such checks in certain circumstances. To improve integrated border management	Application in MS that apply the Schengen acquis	Harmonisation of rules governing the movement of persons at internal and external borders *(Source: Commission)*	Improved border management and control	Improved control of external borders Facilitated travel within the Schengen acquis	This regulation was adopted recently – February 2006.

POLICY AREA: CITIZENSHIP AND FUNDAMENTAL RIGHTS
Factors influencing evaluation mechanism: Relatively new policy area in JLS (although the citizenship policy as such is an established area in the EC/Commission activities), 1st pillar activities, a combination of instruments (legislation, funding programmes, new Community Agency). The nature of the instruments and their objectives leads to reliance on qualitative evaluation methods. However, there is scope for further improvements to the information base through surveys and the development of statistics. The objectives within the policy area are wide ranging and the sub policy areas as defined below are not distinct. There is some scope for evaluating sub sets of instruments in parallel.
Policy sub-area 1: Citizenship of the Union
Global objectives: Increase awareness of Union citizens of their rights and of the ways these can be enforced Decrease any obstacles for the enjoyment of their rights by Union citizens, in particular of the right to free movement and residence Increase participation of EU citizens in democratic life in the Union Facilitate the diplomatic and consular protection offered to the Union citizens in third countries
Policy sub-area level indicators: Levels of citizens' awareness of their rights and mechanisms of redress *(Source: Surveys and Eurobarometer reports)* Instances of right to free movement and residence hindered *(Source: complaints made to Commission)* Rates of voting registration and participation – percentage of increase/decrease *(Source: Member States)* Number of citizens standing for election to public office – percentage of increase/decrease *(Source: Member States)*

Instances of use and complaints from EU citizens over levels of consular protection *(Source: Member States)*						
Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Directive 2004/38/EC on free movement and residence	Clarify and simplify existing Community law in field	Transposition into national legal systems	Relevant national laws adopted in line with Directive provisions and notified the Commission by 30.4.2006 together with a table of conformity. *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the Directive *(Source: Commission)*	Facilitated free movement and residence	Evaluation leadership by the EU. Would benefit from strong involvement of MS in evaluation
Community legislation on the EP elections and on the right of non-national Union citizens' electoral rights in their country of residence	Ensure that the EP elections are conducted according to the basic principles of democratic elections Ensure the participation of non-national Union citizens to the EP elections and to the	Transposition into national legal systems	Relevant national laws adopted in line with provisions of Community law and notified to the Commission *(Source: Commission)*	Correct application of rules and provisions contained in the law *Measured by:* number of court cases/complaints resulting from the legislation *(Source: Commission)*	EP elections carried out democratically. Non-national Union citizens participate in the elections on the same conditions as nationals in EP elections and in municipal	

	municipal elections				elections.	
Fundamental Rights and Citizenship programme (part Citizenship)	Improve awareness of citizenship of the Union and related rights Encourage citizens to participate to actively to democratic life	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring system)*	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Dissemination of good practice in voter education and activation. *Measured by:* level of awareness of Programme's outputs *(Source: MS)*	Improved awareness of Union citizenship and related rights amongst EU citizens. Increased participation in democratic life.	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.
Policy sub-area 2: Fundamental Rights						
Global objectives: Increase the awareness of fundamental rights amongst citizens. (This concerns the rights as protected on European Union and national level including the relevant regional and international instruments.) Decrease instances of breaches of fundamental rights (including breaches of privacy, personal data protection and protection from violence against						

children, women and youth)

Reduce the instances of racism, anti-semitism and xenophobia

Establish a Fundamental Rights Agency (from EUMC)

Increase number of participants in and their commitments to civil society

Policy sub-area level indicators:

Levels of citizens' awareness of fundamental rights *(Source: Surveys and Eurobarometer reports)*

Instances of breaches of fundamental rights, especially as a result of EU interventions (including breaches of privacy, personal data protection and protection from violence against children, women and youth) *(Source: Commission and FR Agency)*

Instances of racism, anti-semitism and xenophobia *(Source: FR Agency)*

Time commitments of population to participation in civil society *(Source: MS)*

Number of civil society organisations in NMS since accession *(Source: MS)*

Main instruments	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Relevant provisions of the Treaties on European Union and on European Community	Ensure that the EU institutions and the Member States fully respect fundamental rights	Compliance of the national legislation and practices with the fundamental rights	Community legislation as well as implementing national laws adopted in compliance with the Treaty	Correct application of rights and principles contained in the Treaty *Measured by:* number of court	Decreased level of breaches of FR Increased protection of rights of citizens	

				cases/complaints resulting from the legislation *(Source: Commission*		
Fundamental Rights and Citizenship programme (part Fundamental Rights)	Improve awareness of FR as protected on European and national level Improve research base Improve intensity and quality of interfaith and intercultural dialogue in MS Improve tolerance in the EU Improve quality of civil society organisations Improve rule of law Decrease breaches	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of 'beneficiaries' reached *(Source: programme monitoring* system)	Improved intelligence base *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Improved awareness of FR amongst EU citizens Stronger civil society in the MS	Clear intervention logic. Evaluation would benefit from systematic surveys of public awareness.

	of FR in MS					
Preparatory action to support civil society in the NMS in areas of rule of law, democracy, FR, media pluralism, fight against corruption.	Improve quality of civil society organisations in NMS Improved rule of law in NMS Improve democracy in NMS Decrease breaches of FR in NMS	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of beneficiaries reached *(Source: programme monitoring system)*	Increased awareness of issues in focus under the action *(Source: public opinion surveys, Commission)*	Stronger civil society in the NMS	Clear intervention logic but difficult to measure outcomes and impacts, in part because of the scale and scope of the underlying objectives. Strong involvement of MS in evaluation
Daphne II programme	Reduce violence against children, adolescents and women	Implementation of measures and projects.	Number of projects supported (studies conducted, activities undertaken) *(Source: programme monitoring system)* Number of good practices identified *(Source: programme monitoring system)*	Increased awareness of the issues in wider society *(Source: public opinion surveys, Commission)* Adoption of good practice in tackling violence *(Source: MS).* Better intelligence	Reduced violence against children, adolescents and women	Evaluation leadership by the EU. Major problems of data reliability at the level of impacts.

			Number of 'beneficiaries' and victims reached *(Source: programme monitoring system)*	base. *Measured by:* use of analytical results by policy makers *(Source: Commission and MS)* Number of knowledge and practitioner communities created *(Source: Commission).* Number of improved facilities for victims *(Source: programme monitoring system)*		
Fundamental Rights Agency	Improve the availability, quality, and comparability of information on respect and promotion of FR.	Participation in Agency's activities	Provision of data and analyses of FR. *Measured by:* number of analytical outputs *(Source: Agency)*	Better intelligence base. Measured by: use of analytical results by policy makers *(Source: Agency and Commission)*	Decreased level of breaches of FR	Evaluations of EU agencies have tended to focus on process issues. Whilst objectives are clear it will be difficult to assess

	Improve co-ordination between stakeholders Improve public awareness of their FR		Number of reporting activities *(Source: Agency).* Number of networks of stakeholders supported *(Source: Agency).*	Better co-ordination of activities. Increased public awareness *(Source: public opinion surveys, Agency and Commission).*		causality and measure the impacts of the agency.
Data Protection Directive	Facilitate the free movement of personal information within the EU Protect rights of individuals Conclude agreements with third countries	Transposition of Directive into national legal systems Establishment of National Data Protection Supervisory authorities	Relevant national laws adopted pursuant to the Directive provisions *(Source: MS and Commission)*	Application of rules and provisions contained in the law. *Measured by:* - Appropriate enforcement mechanisms and remedies available to ensure respect for the law and assistance to individuals through: a) Judicial remedies b) Intervention of data protection	Facilitated movement of personal information within the EU Harmonised protection of individuals at a high level (both inside the EU and in third countries for personal data transferred from the EU)	Evaluation leadership by the EU but in partnership with MS

				supervisory authority (ex officio or following complaints) *(Source: MS)*		

POLICY AREA: COORDINATION IN THE FIELD OF DRUGS
Factors influencing evaluation mechanism: Activities in this policy area are cross pillar and cover a variety of areas, including health, police cooperation, information, evaluation and coordination. The EU Drug Action Plan and EU Drug Strategy are very important documents endorsed by the Council as the basic policy framework for all drugs issues within the EU and within the context of the EU's external relations. They cover all activities in this policy area and provide the guidelines for all Member States to implement the objectives and actions they contain into national policy. The Action Plan takes its lead from the objectives of the EU Drug Strategy and translates these objectives into 80 concrete actions. It concentrates on the two major aspects of drug policy, demand reduction and supply reduction, and also covers a number of cross-cutting themes: international cooperation, research, information and evaluation. It includes actions within EU competence (public health, precursor control, money laundering and development aid) as well as close cooperation between Member States and partnerships with international organisations. The Action Plan furthermore covers monitoring and evaluation and includes assessment tools and indicators for each action. The actions covered by the Action Plan are subject to an annual progress review by the Commission's services. Evaluation in this area is already well-established through the methods and indicators developed during the evaluation of the previous EU Drugs Strategy and Action Plan. Reliable data is available from the European Monitoring Centre on Drugs and Drug Addiction, Europol and the Commission. As with other policies relating to complex, global socio-political issues, the evaluation of the impacts of EU drug policy is a problematical and sensitive matter due to the multiple factors that have to be taken into account and for which there may not be reliable data by their very nature (e.g. figures for trafficking in illicit drugs are always rough estimates; corruption caused by trade in drugs is hidden, etc.).
Objectives: To significantly reduce the prevalence of drug use among the population and to reduce the social harm and health damage caused by the use of and trade in illicit drugs, and to strengthen international cooperation (EU Action Plan on Drugs 2005-2008)
Policy-level indicators: **The EU Action Plan contains the major legal instruments such as the Council Decision on the information exchange, risk assessment and control of new psychoactive substances, or the Framework Decision on penalties for drug trafficking. It also contains the assessment tools and indicators required for the evaluation process of these instruments and all other actions. These have been drawn up in cooperation with the**

EMCDDA and Europol, who will help the Commission to keep track of implementation.

On this basis the Commission will publish an Annual Progress Review and if necessary propose adjustments. Responsibility for implementation of actions and deadlines are clearly indicated in the Plan. To keep implementation on track, targets whose deadlines have passed or are unlikely to be met will be subject to recommendations for their implementation or identification of failure to implement. The Commission will carry out an impact assessment in 2008 in view of proposing a second Action Plan for 2009-2012. A final evaluation of the Strategy and the Action Plans will be carried out by the Commission in 2012. These evaluations will go beyond the strict confines of the Action Plan and will include, on the basis of the work of the EMCDDA and Europol, a general view of the evolution of the drugs situation in Europe.

POLICY AREA: COMMON IMMIGRATION AND ASYLUM POLICIES
Factors influencing evaluation mechanism: New policy area. 1st pillar activities. Interventions include legislation, programmes and cooperation activities. Good, comparable data is required and is planned. MS consensus about broad aims but not at individual instrument level. Impacts of these instruments on third-countries, and in particular development countries, to be considered.
Policy sub-area 1: Common European Asylum System
Objectives: To establish a common asylum procedure and uniform status, To facilitate practical and collaborative cooperation,

To address pressures on asylum systems and reception capacities.						
Policy sub-area level indicators: Number of asylum seekers applying for asylum in Member States other than the country of first entry *(Source: Eurodac)* Instances of MS breaching minimum defined standards *(Source: Commission)* Differences in standards of reception between Member States *(Source: Commission)* Differences between Member States with regard to the average time taken to determine the outcome of an application for asylum *(Source: MS and Commission)* Comparison of asylum acceptance rates among Member States[12] *(Source: Commission - Eurostat)* Differences in the level of capacity per Member State (asylum systems and reception facilities) relative to needs *(Source: Member States)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Dublin Regulation (Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for	To reduce 'asylum shopping' To increase responsibility sharing among	Adoption of measures implementing the Regulation at national level	Number of take back requests *(Source: Commission – Eurostat)* Number of applicants sent to another Member State *(Source:*	Decreased delay in the examination of claims and attribution of responsibility *Measured by:*	Increased sharing of responsibility Greater efficiency and effectiveness in implementing decisions on transfers	Numbers are available through Eurodac which allows for an assessment of trends. Evaluation of the 'Dublin

[12] Asylum acceptance rates can at the moment only be roughly estimated with the data currently available, as asylum decisions in one year often relate to applications made in earlier years.

determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national)	MS. To increase efficiency by granting MS a realistic period in which to implement decisions on transfers.		*Commission – Eurostat)* Number of multiple claims *(Source: Commission – Eurostat)* Number of registered irregular entrants *(Source: Commission – Eurostat)* Proportion of cases dealt within country of entry *(Source: Commission – Eurostat)*	*a*verage delay of examination before and after implementation of the Regulation *(Source: MS)* Decreased delay to implement decisions on transfers *Measured by:* average delay of transfer before and after *(Source: MS)*	Reduction of persons making multiple claims	System' will be ready in June 2006.
Eurodac	To facilitate application of the Dublin Regulation by identifying asylum seekers and persons who have entered the EU irregularly. To determine whether a	Member States to send required data to central unit.	Efficiency of the system *Measured by:* Number of records per Member State *(Source: Eurodac)* Number of successful and rejected transactions recorded in the system *(Source:*	Increased number of asylum applications being examined in the first country of asylum/entry *Measured by:* Percentage rate of change before	Improved efficiency in applying the Dublin Regulation	Difficult to judge whether MS use system correctly and systematically. Some scope for peer review but there could be constraints on independent evaluation. Evaluation is

	foreign national has previously claimed asylum in another MS.		*Eurodac)*	and after introduction of the system *(Source: MS)* Reduction of persons making multiple claims *Measured by:* Percentage rate of change before and after *(Source: MS)*		underway of the 'Dublin system' which considers both the Regulation and Eurodac.
Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the	To ensure a minimum level of protection in all Member States for those in need of protection. To guarantee the rights of persons qualifying for refugee status or subsidiary protection status To reduce	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of Member States achieving minimum standards or above *(Source: Commission)*	Reduction of false claims *Measured by:* Number of unfounded cases *(Source: MS)* Improved protection *Measured by:* Numbers granted refugee and subsidiary	Guarantee of a minimum level of protection across the EU Approximation of rights granted to refugees Reduction in disparities between legislation and practice Reduction of secondary movements	Common standards difficult to achieve as Directive allows scope for interpretation

content of the protection granted)	disparities between MS' legislation and practice. To limit secondary movements. To prevent false claims.			protection status *(Source: MS)* Improved access to rights *Measured by:* Increased numbers of refugees accessing education, services, employment, appropriate accommodation, integration programmes *(Source: MS)*	Fewer false claims Improved integration	
Reception Directive (Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers)	Ensure a dignified standard of living to asylum seekers across the EU. Address applicants special needs.	Transposition into national legal systems	Improved facilities *Measured by:* Expenditure on the improvement of reception facilities *(Source: MS)* Improvement of equal standards across the EU	Improved standard of living for asylum seekers *Measured by:* Number of asylum seekers living in appropriate	Approximation of standards of living for asylum seekers across the EU Improved facilities and services for asylum seekers Improved socio-vocational integration	Common standards difficult to achieve as Directive allows scope for interpretation. Evaluation due at the end of 2006.

	Ensure equal standards across the EU. Limit secondary movements.		*Measured by:* Numbers of MS achieving minimum standards or above *(Source: Commission)*	accommodation *(Source: MS)* Number of asylum seekers accessing services *(Source: MS)* Number of asylum seekers accessing employment and vocational activities *(Source: MS)* Number of specific provisions for applicants with special needs *(Source: MS)*	of asylum seekers Reduction of secondary movements	
ERF II	Support and encourage efforts in receiving refugees and displaced persons	Disbursement rate/amount spent per year	Increased reception capacity *Measured by:* Numbers of projects implemented per type of action *(Source: MS)*	Increased balance of effort among MS M*easured by:* The proportion of all resource commitments	Improved reception standards and conditions Increased access of asylum seekers to health, housing, education, services and	Indicators have been developed in the context of the final evaluation.

	Foster solidarity among MS Promote balance in the efforts to receive asylum seekers Promote the social, economic and cultural integration of target groups Promote voluntary return		Number of beneficiaries (per country of origin and target group) per type of action *(Source: MS)* Number of reception places *(Source: MS)* Increased capacity of services to asylum seekers *Measured by:* Number and type of services available*(Source: MS)* Number of beneficiaries receiving education and training *(Source: MS)* Increased voluntary returns *Measured by:* Number of voluntary returns *(Source: MS)*	*(Source: MS)* Increased social, economic and cultural integration of target groups M*easured by:* Percentage of persons per target group and activity able to apply new skills (i.e. percentage of persons who benefited from vocational training in employment)	labour market Fairer and more effective asylum procedures (including return) An improved balance in effort to receive asylum seekers	

Policy sub-area 2: Legal and illegal migration						
Objectives: To establish admission procedures capable of responding to fluctuating demands for migrant labour						
Policy sub-area level indicators: Skill shortages in vocations and professions *(Source: Commission - Eurostat, MS Labour Force Surveys, EEO)* Employment rates amongst migrant groups *(Source: Commission - Eurostat, MS Labour Force Surveys)* Estimation of the numbers of migrants overstaying the duration of their work permits *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Family reunification Directive (Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification)	Determine conditions for the exercise of the right to family reunification by TCNs.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Improved efficiency of procedures *Measured by:* Number of family members reunited *(Source: MS)* Reduced length of process: average delay before and after *(Source: MS)*	Facilitated procedures for family reunification Protection of right to family life	Common standards difficult to achieve as Directive allows scope for interpretation.

Directive on status of TCNs as long-term residents	Approximate national laws by creating a single status. Ensure equal treatment of TCNs throughout the EU.	Transposition into national legal systems.	Reduction of disparities among Member States *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Equal treatment of TCNs *Measured by:* Numbers granted/refused status *(Source: MS)* Increased number of TCNs accessing employment, education and training (rate of increase) *(Source: MS)* Increased mobility of TCNs *Measured by:* Number of TCNs moving from one MS to another *(Source: Commission)*	Approximation of national laws Equal treatment and application of uniform rights for TCNs across the EU Improved mobility of TCNs Improved integration of TCNs	Common standards difficult to achieve as Directive allows for scope for interpretation

Directive on the admission of TCNs for the purposes of studies, pupil exchange, unremunerated training or voluntary service	To promote Europe as a world centre of excellence for studies and vocational training by promoting the mobility of TCNs to the Community for the purpose of studies The approximation of the Member States' national legislation on conditions of entry and residence	Transposition into national legal systems.	Approximation of national legislation *Measured by:* Changes made to national legislation *(Source: MS and Commission)* Numbers of MS achieving minimum standards or above *(Source: Commission)*	Increased mobility of TCNs to the Community for the purposes of study/vocational training *Measured by:* Numbers granted entry for study/vocational training/voluntary service *(Source: MS)*	Approximation of national laws Improved mobility of TCNs for study, vocational and volunteer purposes	Common standards difficult to achieve as Directive allows for scope for interpretation
Policy sub-area 3: Integration of third-country nationals						
Objectives: To prevent the isolation of certain groups and achieve successful integration of Third Country Nationals and their descendents To fight discrimination against legally residing Third Country Nationals						

To promote the exchange of experience and information						
Policy sub-area level indicators: Instances of discrimination *(Source: FR Agency, MS)* Employment rates of third country nationals *(Source: Commission - Eurostat, MS)* Employment rates of second generation migrants *(Source: SOPEMI Report, MS)* Relative income levels of third country nationals *(Source: Commission - Eurostat, MS)* Proportion of third country nationals living in poverty *(Source: Commission - Eurostat, MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
INTI preparatory actions (integration of TCNs)	Promote new and innovative ways of integrating immigrants. To encourage co-operation between MS and the creation of transnational partnerships and networks.	Disbursement rate/amount spent per year	Successful implementation REFINE *Measured by:* Numbers of projects and activities implemented and average sums of money involved *(Source: MS + Commission)* Number of TCNs	Identification of new and innovative practices Exchange of information and best practices promoted among EU MS Transnational networks and dialogue between	Increased cooperation among MS through networks and cooperation activities Increased dialogue with civil society Enhanced integration of TCNs Development and promotion of a European framework	Integration policies are implemented mainly at regional and local levels in MS. Differences exist among MS in terms of numbers of migrants and integration

	Enhance empowerment of migrants. Promote dialogue with civil society.		benefiting from projects Increased cooperation *Measured by:* Number of transnational networks set up *(Source: MS + Commission)* Number of new integration models identified and exchanged among MS	stakeholders supported among MS	approach on integration of TCNs	experience. Potential impacts may not be significant considering that this is a small fund with very diverse projects. Final evaluation is planned for 2007.
Policy sub-area 4: External dimension of asylum and migration						
Objectives: Assist third countries in migration management, intensify MS cooperation to manage migration flows and prevent humanitarian crises, integrate migration into third country relations, develop policies that link migration, development cooperation and humanitarian assistance, intensify cooperation with third countries on southern and eastern border of EU						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Numbers of legal migrants by third country *(Source: Commission - Eurostat)* Numbers of illegal migrants by third country intercepted crossing an external border *(Source: Commission – Eurostat)* Numbers of visa overstayers by third country intercepted *(Source: MS)*						

Numbers of asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum applications by third country *(Source: Commission - Eurostat)* Numbers of failed asylum seekers returning to country of origin /other third country *(Source: MS)* Number of victims of trafficking from third countries *(Source: MS)*						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Programme for financial and technical assistance to third countries (AENEAS)	Give specific and complementary financial and technical aid to third countries in order to support their efforts to improve the management of migratory flows Develop legislation in third countries on legal immigration and international protection	Not applicable (action is at Community level)	Successful implementation *Measured by;* Number of information campaigns organised on advantages of legal migration/consequences of illegal migration in third countries *(Source: Commission)* Number of returnees benefiting from reintegration programmes *(Source: Commission)*	Development of legislation in third countries *Measured by:* New legislation passed in third countries on legal and illegal migration *(Source: Commission)* Decreased number of illegal migrants entering the EU *Measured by:*	Improved management of migration flows Decrease in illegal migration and trafficking Increased awareness in third countries on advantages of legal migration/consequences of illegal migration Successful reintegration of returnees	High number of external factors to the programme influence impact indicators. Causality links difficult to establish. As action is at Community level, MS will not contribute to evaluation. May be difficult to evaluate as this is a new area which is also

	Raise public awareness in third countries on advantages of legal migration and consequences of illegal migration Establishment in third countries of preventive policy in the fight against illegal migration Readmission and durable reintegration of returnees			rate of decrease *(Source: Commission)*		highly political. A Communication on the future of the AENEAS fund was adopted in January 2006.
Policy sub-area 5: Return and re-admission						
Objectives: To establish an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.						
Policy sub-area level indicators: Increase/decrease over a 5-year period of: Proportion of failed asylum seekers (and illegal migrants) who are repatriated *(Source: MS)*						

Numbers returned to countries subsequently deemed unsafe within a period of two years *(Source: MS)* Numbers (of labour market age) in employment in country of origin 12 months after being subject to return						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Preparatory actions for Return Management	To support efforts made by MS to improve the organisation and implementation of integrated return management and specific measures in the area of return management To increase knowledge and capabilities in the area of return management To develop co-operation between MS with respect to	Disbursement rate/amount spent per year	Number of actions implemented relating to the introduction and improvement of the organisation and implementation of integrated return management *(Source: Commission)* Number of actions implemented relating to the introduction and improvement of specific measures in the area of return management *(Source: Commission)* Number of actions implemented relating to the increase of knowledge and capabilities in the area of return management	Increased number of returnees *Measured by:* rate of increase *(Source: MS and Commission)* Reduction in cost of detaining illegal migrants *Measured by:* rate of reduction *(Source: MS and Commission)*	The strengthening of efforts made by Member States at improving the organisation and implementation of integrated return management Improved organisation and implementation of integrated return management Increased knowledge and capabilities in return management Increased cooperation between MS and countries of return with respect to return management	

	return management as well as co-operation with countries of return To promote sustainable return, thereby avoiding secondary movements		*(Source: Commission)*		Reduction in illegal migrants living in the Member States (overstayers) Increased removal of illegal third country nationals Decrease secondary movements Improved return conditions	
Re-admission agreements	To facilitate the readmission to their own country of persons residing without authorisation in a Member State. To combat illegal immigration To improve the effectiveness of return	(These are reciprocal agreements between the EU and third countries.)	Successful implementation of the agreements *Measured by:* Number of persons readmitted to third countries covered by the agreements	Increased number of returnees *Measured by:* rate of increase *(Source: Commission and MS)* Reduction in cost for detaining illegal migrants *Measured by:* rate of reduction *(Source: MS)*	Decrease in illegal immigration Improved effectiveness of return procedures	Agreements have been signed with Hong Kong, Macao, Albania, Sri Lanka and Russia. Others are currently being negotiated.

	procedures					
Policy sub-area 6: Horizontal issues						
Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Proposed mutual information procedure on planned national asylum and immigration measures	Enhance mutual information of national immigration and asylum policies between MS policy-makers	Cooperation by MS	Successful implementation of procedure *Measured by:* Number of national measures submitted through the system Number of responses generated to requests for information *(Source: MS + Commission)* Meetings organised *(Source: MS + Commission)*	Increased knowledge of other Member State policies and measures	Anticipation of effects of changes to other national policies Better understanding of other national contexts could lead to an enhancement of the possibilities for harmonisation	Procedure yet to be implemented. Implementation could start in 2007.
European Migration Network	Provide the Community and MS with objective,	Organisation of activities at national level by national contact	Successful implementation of network	Better and faster access to information on migration and	Increased knowledge and understanding of the migration phenomenon at	Proposal and impact assessment due by September

	reliable and comparable information on migration and asylum.	points	*Measured by:* Number of products produced *(Source: MS + Commission)* Number of meetings and conferences held *(Source: MS + Commission)* Number of networks set up at national level *(Source: MS)*	asylum Increased knowledge of issues at national level Increased information sharing between actors	Member State and EU level Increased capacity to "anticipate" migratory developments	2006 for a Council Decision on the future EMN.
Proposed Regulation on Community statistics on migration and international protection	Improve the statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.	Adoption of measures at national level	Successful implementation of Regulation *Measured by:* Increased proportion of statistical data items supplied according to the harmonised definitions as opposed to national definitions *(Source: MS)* Increased proportion of statistical data items directly based on	Increased availability of data Improvement to quality and comparability of data between Member States *Measured by:* Improvements in the completeness, timeliness and degree of harmonization of	Improved analyses of data Improved statistical knowledge	Regulation will probably be adopted in 2006. First reference year for the statistics will be 2008.

			appropriate data sources as opposed to statistical estimations *(Source: Commission - Eurostat))*	migration and asylum data supplied to the Commission - Eurostat *(Source: Commission – Eurostat)*		
Action Programme for administrative cooperation in the fields of external borders, visas, asylum and immigration (ARGO)	To promote cooperation between national administrations responsible for implementing Community rules and to ensure that proper account is taken of the Community dimension in their actions To promote the uniform application of Community law To encourage transparency of actions taken by the national	Disbursement rate/amount spent per year	Successful implementation of programme measured by: Number of projects implemented per activity area Number of training actions implemented Number of staff exchanges implemented Number of actions promoting data exchange implemented Number of studies, conferences and seminars conducted	Increased cooperation between national administrations and with third countries *Measured by:* Number of common operative centres and joint teams set up Number of cooperation activities in third countries set up *(Source: Commission)*	Uniform application of Community law Improved transparency of actions taken by national authorities Improved efficiency of national administrations	Mid-term evaluation to be completed in July 2006.

	authorities To improve the overall efficiency of national administrations in their tasks		*(Source: Commission)*			

POLICY AREA: ESTABLISHING A GENUINE EUROPEAN AREA OF JUSTICE IN CRIMINAL AND CIVIL MATTERS
Factors influencing evaluation mechanism: The policy area includes both first pillar (civil justice) and third pillar (criminal justice) matters. The main instruments are legislation including the introduction of new legal instruments and activities to stimulate judicial cooperation. Evaluation should cover the implementation of mutual recognition instruments and the various flanking (confidence building) measures that make mutual recognition possible. The potential to identify the causal links between the interventions and the achievement of objectives is greater within civil matters than criminal matters. Information on the scale and nature of the relevant (cross border) civil and criminal matters is however poor. The instruments in both sub policy areas are potentially reinforcing. The classification of the instruments within the civil matters sub policy area relate to both process (cooperation and procedures) and to substantive problems addressed by the instruments (cross border disputes and breakdown of international marriages). There is also a miscellaneous sub category. The achievement of a European area of justice in criminal matters may be constrained by continued variations in definitions of crimes and penalties. Several of the instruments mentioned under civil matters are 'forthcoming'. They are included however because they illustrate aspects of the evaluation challenges in this policy area. The Judicial training instrument is relevant to both sub policy areas. There are close links between the instruments and objectives of the policy sub area 2 Criminal matters, and the objectives and activities in the policy area: law enforcement cooperation, prevention and fight against organised crime. Also, it should be noted that adjustments to the indicators put forward in criminal matters may take place in light of the implementation of the forthcoming Action Plan on statistics in the field of crime and criminal justice (see more expanded reference on page 49).
Policy sub-area 1: Civil matters
Objectives: To increase mutual recognition and enforcement of judicial decisions To establish clear rules on jurisdiction and applicable law To reduce the costs of resolving cross border disputes To increase the likelihood that cross border disputes are resolved To reduce the likelihood of cross border disputes arising

To reduce the negative consequences of breakdowns in 'international' marriages and prevent child abduction						
Policy sub-area level indicators: Number of mutually recognised judicial decisions Average costs (of different types) of cross-border disputes Number of cross-border cases not resolved Spouses' (perceptions of) costs of international divorces The number and amount of cross-border maintenance claims not paid *Source: MS*						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Horizontal cooperation activities						
Specific programme 'Civil justice' (Framework Programme 2007-2013 Fundamental Rights and Justice)	To increase mutual confidence of judicial actors. To increase instances of mutual recognition. To reduce application of	Participation in and support for cooperation programme.	Number of meetings, workshops. Numbers of legal, judicial and administrative authorities involved in cooperation.	Increased knowledge of Member States legal and judicial systems in civil matters. Measured by: Levels of knowledge	Mutually recognised decisions acted upon/ enforced. Increased legal certainty. Improved access to justice.	Establishing causal links between the interventions and outcomes and impacts will be problematic

	intermediate procedures.		*Source: programme monitoring system*	amongst relevant authorities *(Source: MS surveys)*	Decreased costs and time spent in accessing justice due to disparities in civil law and civil procedures.	
European judicial network in civil and commercial matters	To improve and facilitate co-operation in civil justice matters To facilitate access to justice and information To reduce costs of access to information on international and European law and national judicial systems by EU nationals (and therefore increase access).	Participation in and support for cooperation programme.	Meetings, publications website. Numbers of legal actors involved in cooperation. *Source: Network management reports (Source: Commission)*	Hits and usage of website (*Source: Commission*)	Improved access to justice and quality of advice on cross (internal) border issues. Improvement of judicial cooperation between MS and courts	Establishing causal links between the interventions and outcomes and impacts will be problematic
Rules on procedures						
Regulation on jurisdiction and the recognition	To harmonise national rules of conflict of	Implementation	Harmonised Community rules	Simpler and quicker procedures to recognise and	Better and quicker access to justice	Clear intervention logic

and enforcement of judgements in civil and commercial matters (Brussels I 44/2001)	jurisdiction To simplify procedures for recognition and enforcement of judgements from MS		(*Source: MS reporting to Commission)*	enforce the judgements Measured by: Length of time taken to recognise and enforce the judgements *(Source: MS)*	Prevent conflict of jurisdiction	
Regulation on taking evidence in civil and commercial matters (1206/2001)	To improve, simplify and speed up procedures for taking evidence between the courts of different MS	Implementation	Establishment of facilitated cross-border procedures between courts in different MS for taking evidence (*Source: MS reporting to Commission)*	Quicker and more efficient judicial procedures Measured by: Length of time taken to take evidence between courts *(Source: MS)*	Better and quicker access to justice	Clear intervention logic.
Regulation on the service of documents in civil and commercial matters (Regulation 1348/2000)	To increase efficiency and speed in judicial procedures To improve and expedite the transmission of	Implementation	Establishment of common rules on transmission of judicial and extrajudicial documents between	Quicker and more efficient judicial procedures Measured by: Length of time taken to transmit	Better and quicker access to justice Quicker judicial procedures	Clear intervention logic.

	documents between MS		MS(*Source: MS reporting to Commission)*	the documents and enforce judgements *(Source: MS)*		
Directive on legal aid in cross-border disputes (Council Directive 2003/8/EC)	To guarantee adequate level of legal aid in cross-border disputes through establishing minimum common standards between MS	Implementation	Minimum common standards relating to legal aid in cross-border disputes (*Source: MS reporting to Commission)*	Adequate levels of legal aid in cross-border disputes *(Source: MS)*	Improved access to justice, especially of vulnerable groups	Clear intervention logic.
Resolution of cross border disputes						
European payment order (forthcoming)	To reduce the costs and time taken to make payments. To increase the number of cross-border orders for payment	Implementation	Numbers of cross-border orders for payment made	Reduction of intermediate procedures	Reduced costs and time of litigation in cross-border cases concerning uncontested pecuniary claims. Improved access to justice. Facilitated recovery of cross-border debts	Establishing causal links between the interventions and outcomes and impacts will be problematic. Proposal yet to be adopted.

European enforcement order for uncontested claims (Regulation 805/2004)	To enable quick and efficient enforcement of an uncontested claim between MS	Implementation	Number of applications of European enforcement order in EU MS (*Source: MS*)	Quicker and more efficient enforcement of uncontested claims in another MS Measured by: Length of time needed to enforce such a claim *(Source: MS)*	Reduced costs and time in such cross-border cases Improved access to justice	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on Alternative Dispute Resolution (ADR)	To reduce the costs of dispute resolution To facilitate recourse to mediation by improving legal certainty	Implementation	More possibilities and better awareness of possibilities for ADR	More attempts to use ADR	Reduced costs of dispute resolution More disputes resolved without going to court	Establishing causal links between the interventions and outcomes and impacts will be problematic
Instrument on small claims	To facilitate cross-border access to justice for small claims To reduce the costs and time taken to resolve	Implementation	Application of Small Claims Procedure in the 25 EU MS (*Source: MS*)	Increased number of small claims pursued. (*Source: MS*)	More small claims resolved. Increased legal certainty. Increased access to justice.	Proposal yet to be adopted.

	small claims. To increase the number of legitimate small claims made.					
Marriage and divorce law						
Instrument on maintenance obligations	To improve and simplify enforcement procedures of maintenance obligations. To enhance cooperation. To clarify what is applicable (non-conflicting) law	Implementation	Application of Regulation in maintenance obligations proceedings in 25 EU MS (*Source: MS*)	Reduction of intermediate procedures. Reduced cases of forum shopping Increased cooperation between legal professionals / competent authorities in the Member States (*Source: MS*)	Increased legal certainty Better informed decisions Mutually recognised decisions acted upon/ enforced. Facilitated recovery of debts (maintenance for creditors)	Instrument is at the Council discussion stage. Establishing causal links between the interventions and outcomes and impacts will be problematic. Evaluation requires good data from the Member States.
Regulation on jurisdiction and recognition and enforcement of judgements in matrimonial	To harmonise rules of jurisdiction To enable automatic	Implementation	Establishment of harmonised rules on jurisdiction (*Source: MS*)	Quicker and more efficient recognition and enforcement of judgements	Better access to justice Better protection of citizens in case of divorce	Evaluation requires good data from the Member States.

matters and parental responsibility (Brussels II, 2201/2003)	recognition and enforcement of judgements between MS			Measured by: Length of time taken to recognise and enforce a judgement (*Source: MS*)	Facilitated visiting rights for parents Better protection of children's' rights	
Various						
Instrument on the conflict of laws in the area of contractual obligations (Rome I).	To reduce costs associated with differences regarding non-contractual obligations To increase party autonomy and flexibility To increase legal certainty for consumers and internal market	Implementation	Numbers of cross-border disputes settled Application of conflict of law rules in the MS (*Source: MS*)	Improved mutual trust between judicial authorities Faster procedures. (*Source: MS*)	Reduced uncertainty. Reduced costs. Facilitated mutual recognition of international contracts	Proposal in discussion stage.
Proposal for a regulation on the law applicable to non-contractual obligations (Rome	To harmonise rules on non-contractual obligations	Implementation	Provision of a set of community rules Application of	Improved mutual trust between judicial authorities Faster procedures.	Reduced legal uncertainty. Better access to justice	Establishing causal links between the interventions and outcomes and impacts

II, COM(2003) final)	To increase legal certainty		rules in the MS (*Source: MS*)	(*Source: MS*) Increased legal certainty for victims of damages and perpetrators of torts	Reduced costs of accessing justice	will be problematic
Regulation on insolvency proceedings (1346/2000)	To improve efficiency and effectiveness of cross-border insolvency proceedings To prevent shopping for a more favourable legal position	Implementation	Provision of a set of community rules Application of rules in the MS (*Source: MS*)	More efficient and effective cross-border insolvency proceedings Prevention of shopping for a more favourable legal position Measured by: Time taken for proceedings Perceptions of shopping amongst legal professionals (*Source: MS, surveys*)	Better access to justice Reduced costs of accessing justice Better resolution of cross border insolvencies Better cooperation between courts and administrators of insolvency	Clear intervention logic
Directive on	To facilitate better	Implementation	Co-operation	Better access to	Better access to	Clear intervention logic

compensation to crime victims (2004/80/EC)	access for victims to compensations where crime was committed in another MS To establish a compensation mechanism in such cases		mechanism between MS set up (*Source: MS*)	compensation to victims of crimes in cross-border situations (*Source: MS*)	justice Better compensation for victims of cross-border crime in Europe	
Policy sub-area 2: Criminal matters (Justice)						
Objectives: To promote mutual recognition To increase confidence and other conditions leading to mutual recognition To reduce differences in the definition of crimes. In particular, to explore common definitions and procedures for human trafficking and cross border crimes To reduce differences in detention and trial procedures To improve taking of evidence To reduce differences in penalties To speed up cross border arrest and surrender procedures To facilitate cross border management, freezing and confiscation of criminal assets To protect victims of crime						

Policy sub-area level indicators:

Number of mutually recognised judicial decisions

Extent of mutual confidence: proportion of officials in national administrations who have high confidence in other MS systems (measured by surveys of national authorities)

Level of awareness of judicial actors of other MS systems

Number of definitions of crimes approximated

Number of reduced differences in detention and trial procedures and definition of penalties

Length of cross-border arrest and surrender procedures

Size of criminal assets frozen and confiscated in cross-border cases

Source: MS

Main instrument (and type of instrument)	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
European arrest warrant and the surrender procedures between Member States (Council Framework Decision of 13 June 2002on the	To facilitate and expedite surrender procedures in respect of persons wanted for trial and sentenced persons between Member States	Transposition	Numbers of arrest warrants issued, executed and refused Numbers of persons surrendered and of persons received from other Member	Faster and simpler surrender procedures *Measured by:* Average duration of surrender procedures (*Source: MS*)	Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence	Requires good data from MS. MS must actively participate in evaluation.

European arrest warrant and the surrender procedures between Member States (2002/584/JHA))			States and numbers of persons consenting to surrender. (Source: MS)		between judicial authorities. Increased security and safety within the EU	
Instrument on the execution of orders freezing property or evidence (Council Framework Decision 2003/577/JHA of 22 July 2003)	To facilitate recognition and execution of freezing orders issued by a judicial authority of another Member State	Transposition	Number of freezing requests issued and executed (Source: MS)	Increased efficiency and effectiveness of freezing orders *Measured by:* Faster procedures to freeze assets Increased use of procedures to freeze assets Increased speed of national procedures as a consequence of freezing order Improved access to evidence obtained/ Improved recovery of assets	Increased efficiency of procedures; increased mutual confidence between judicial authorities. Decreased levels of organised crime (*Source: Europol reports*)	Requires good data from MS.

				(Source: MS)		
Instrument on the application of the principle of mutual recognition to financial penalties (Council Framework Decision 2005/214/JHA of 24 February 2005)	To facilitate the enforcement of financial penalties imposed by judicial or administrative authorities in a Member State other than the State in which the penalties were imposed.	Transposition	Number of decisions and issued and executed *(Source: MS)*	Faster and more effective procedures to ensure enforcement of financial penalties Measured by: Average length of procedures *(Source: MS)*	Dissuasive effect to potential criminals and decreased level of financial crime Increased visibility of mutual recognition, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	Requires good data from MS. Difficult to measure causal links between outcomes and impacts
Instrument on the exchange of information extracted from the criminal record (Council Decision 2005/876/JHA of 21 November 2005)	To improve exchanges of information on criminal records between Member States	Voluntary compliance	Number of requests sent , number of replies sent -for the purpose of criminal proceedings, and - for other purposes Respect of	Improved knowledge available to sentencing authorities about the convicted person's full European criminal record. Improved circulation of information on criminal records for other purposes (e.g.	Dissuasive effect to potential criminals and hence decreased levels of crime Increased visibility of mutual recognition, better knowledge of each other's	Requires good data from MS. Difficult to measure causal links between outcomes and impacts

			deadlines *(Source: MS*)	employment) Improved quality of information on criminal records from abroad in the Member State of nationality *(Source: MS)*	judicial systems and increased mutual confidence between judicial authorities. More appropriate and better informed sentencing decisions	
Instrument on the standing of victims in criminal proceedings (Council Framework Decision of 15 March 2001)	To assist victims before or after criminal proceedings	Transposition	Application of rules the instrument *(Source: MS)*	Better information for victims on legal advice and on their rights, protection for vulnerable victims and more appropriate methods of obtaining evidence Improved situation for victims in relation to criminal proceedings *(Source: MS)*	Raised awareness of victims' rights amongst practitioners *Measured by MS surveys* Better access to justice	Requires good data from MS.
Framework programme on police and judicial	Help legal practitioners, law enforcement	Commitments to AGIS projects	*Number of activities promoting training and expert*	Development of instruments, strategies and	Improved operational procedures and	Transnational cooperation activities normally require

cooperation in criminal matters (AGIS)	officials and representatives of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries	Participation	*mobility* *Number of dissemination activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	activities for cooperation Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *(Source: Commission)*	approaches Better operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	qualitative approaches to evaluation taking account of varying contexts.
Flanking measures in place						
The European Judicial Network (Joint Action of 29 June 1998 adopted by the Council)	To improve judicial cooperation between Member States through direct contacts between judicial	Designation of national contact points	Regular meetings, creation and updating of specific tools (website, "fiches belges", atlas and SOLON legal	Increased efficiency of procedures and better communication between judicial authorities. Measured by:	Improved functioning of mutual recognition instruments, better knowledge of each other's	

	authorities		glossary) Number of cases in which the EJN is involved. *(Source: EJN and Member States)*	Average duration of procedures, analysis of outcomes of proceedings, perceptions of ECJ as a communication tool *(Source: EJN and Member States)*	judicial systems and increased mutual confidence between judicial authorities.	
Eurojust (Council Decision of 28 February 2002)	Better co - ordination of investigation and prosecution of serious cross-border crime	Appointment of national experts to Eurojust	Immediate access to information about legal systems from a practitioner of the nationality of the Member States in question. Measured by: number of cases where Eurojust is used Establishment of the coordination role. Establishment of Eurojust as a potential arbiter of conflicts of	Increased efficiency of procedures and better communication between prosecutors and judicial authorities. Measured by: Average duration of procedures, analysis of outcomes of proceedings *(Source: Eurojust and MS)*	Increased cross border prosecution rates and improved efficiency (evidence gathering, mutual information exchange on procedural matters) Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased	

			jurisdiction. Establishment of Eurojust as peporting authority for problems with European Arrest Warrants. (*Source: Eurojust and MS)*		mutual confidence between judicial authorities.	
Joint investigation teams (Council Framework Decision of 13 June 2002)	To facilitate, expedite and improve investigations in cross border cases	Transposition	Setting up of joint investigation teams Number of cases investigated by such teams (Source: MS)	Efficient gathering of evidence in cross border cases Measured by: Average duration of cross-border case reaching the court (Source: MS)	Increased range of judicial cooperation tools. Improved functioning of mutual recognition instruments, better knowledge of each other's judicial systems and increased mutual confidence between judicial authorities.	
Horizontal instrument for both Sub Policy area 1 (Civil matters) and Sub Policy area 2 (Criminal matters)						

Judicial training	To improve knowledge of relevant EU instruments among legal practitioners To enhance mutual understanding of legal systems among judges and prosecutors To co-ordinate national judicial training programmes To promote better language skills among European legal practitioners	Participation in training activities	Organisation of training activities *Measured by:* Training programmes offered, number of participants benefiting from training on EU matters) *(Source: Commission. Participant feedback)*	In evaluating the success of this policy, regard must be had to the effective use of available EU funding. Increased number of judicial training activities, increased coordination between national judicial training programmes, development of the European Judicial Training Network. *Measured by:* Quality of training activities, number of participants in exchanges Improved knowledge of European and international instruments amongst judges and prosecutors (Source: MS Interviews with law enforcement and	Increased understanding of mutual recognition Promotion of a European judicial culture.	

				judicial actors)		

5.1. POLICY AREA: LAW ENFORCEMENT COOPERATION AND PREVENTION OF AND FIGHT AGAINST GENERAL ORGANISED CRIME
Factors influencing evaluation mechanism: Policy based on the TEU Title VI (third pillar). Activities include legislation, including the approximation of crimes and penalties and cooperation measure. Establishing causal links between the EU interventions and the ultimate objective of reducing crime is always likely to be problematic. The current factsheet intends to facilitate the assessment of the implementation of EU instruments in this area. Full fledged evaluation will require substantial improvements in the quality and availability of statistical information in the field of crime and criminal justice. The forthcoming Action Plan in this field (to be adopted by the Commission in July 2006) will address these issues and put forward concrete proposals, including carrying out an inventory and setting-up an expert group. In this context, this factsheet and the indicators included therein will necessarily be adjusted and improved in the light of the implementation of the Action Plan, and could be used as a starting point for discussions in this field.
Policy sub-area 1: Crimes and Sanctions (i.e. legislation to fight organised (cross border) crime and terrorism)
Objectives: To combat: • Terrorism • Smuggling and trafficking of human beings, • Sexual exploitation, racism and xenophobia, • Financial and economic crime, • Environmental crime, • Illicit trafficking in goods, • Organised crime and cyber crime.

To reduce the financial resources available to those involved in organised crime

To criminalise active and passive corruption

Policy sub-area level indicators:

Numbers and trends of successful prosecutions for (S*ource: UN crime and criminal justice trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*):

- Smuggling and trafficking of human beings,
- Sexual exploitation,
- Financial and economic crime,
- Environmental crime,
- Illicit trafficking in goods (including firearms),

Numbers of successful prosecutions for organised crime (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*)

Numbers of prosecutions for active and passive corruption (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*)

Perception of levels of active and passive corruption (S*ource: Transparency International survey)*

Numbers of crimes subject to EU interventions and instruments (S*ource: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, Commission crime and criminal justice statistics*)

Main	**Objectives**	**Implementation**	**Indicators/evaluation questions**	**Specific issues**

instrument		at national level	Immediate results	Outcomes	Impacts	/comments
Terrorism						
Council Framework Decision (FD) of 13 June 2002 on combating terrorism (2002/475/JHA)	To approximate the definition of terrorist offences, and penalties and sanctions in all MS To establish jurisdictional rules to ensure that offences are prosecuted To apply specific measures for victims of terrorist offences	Implementation of FD	Application of FD provisions. *Measured by:* The number of definitions of offences, penalties and sanctions approximated Number of measures applied for victims of terrorist offences *(Sources: MS)*	Number of terrorists prosecuted as a result of FD	Reduced instances of terrorist activities Improved help to victims of terrorism	Difficult to assess the causal links between outputs, outcomes and impacts
Pilot project on victims of terrorism	To help the victims of terrorist acts and/or their relatives to recover by means of social	Implementation of projects	Number of beneficiaries assisted through psychological support Number of special	Improved cooperation and exchange Increased research on the situation of victims of terrorist	Improved social and psychological support to victims of terrorist attacks	

	or psychological support provided by organisations and/or their networks. To raise the awareness of the European public against the terrorist threat, so that the traditional fight against terrorism through police and judiciary measures can be complemented by public opinion condemning terrorism in all its forms.		training programmes organised Number of social integration programmes organised for victims Number of special medical programmes created Number of events and information campaigns organised	acts Creation of reception centres for victims	Increase awareness of the European public	
Pilot project on prevention, preparedness and response to	To combat terrorism To improve the security of	Implementation of projects	Number of studies carried out Number of expert	Development of capabilities for the management of crises	Improved expertise on terrorism Increased	

terrorist attacks	citizens		networks set up	Exchange of experience and best practice	exchange of expertise Increased cooperation with international partners	
Smuggling and trafficking of human beings						
Council Framework Decision (FD) 2002/629/JHA of 19 July 2002 on combating trafficking in human beings	Reduce human trafficking	Implementation of FD	Application of FD provisions. *Measured by:* Number of detentions resulting from FD *(Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced trafficking in human beings Reduction in damage to victims of trafficking	Identifying cases specifically linked to FD may be problematic
Sexual exploitation						
Council frameword decision (FD) 2004/68/JHA of 22 December 2003 on combating the sexual	Reduce sexual exploitation of children. Reduce child pornography.	Implementation of FD	Application of FD provisions. *Measured by:* Number of detentions resulting from FD	Successful prosecutions resulting from FD *(Source: MS)*	Reduced sexual exploitation of children. Indicated for example by reductions in numbers of complaints.	Identifying cases specifically linked to FD may be problematic

exploitation of children and child pornography			*(Source: MS)*		Reduced child pornography. Indicated for example by reduction in number of illicit websites and other outlets.	
Financial and economic crime						
Council Framework Decision (FD) of 22 July 2003 criminalising corruption in private sector	Criminalise active and passive corruption	Implementation of FD	Application of FD provisions. *Measured by:* New crimes detected as a result of FD Number of detentions resulting from FD *Source: MS)*	Successful prosecutions resulting from FD *(Source: MS)*	Reduced corruption in private sector. (*Source: Transparency International surveys*)	
FD on money laundering and counterfeiting of non-cash payments	Criminalise fraud involving any form of non-cash means of payment in all	Implementation of FD	Application of FD provisions. *Measured by:* New crimes	Successful prosecutions resulting from FD *(Source: MS)*	Reduced money laundering and counterfeiting of non-cash payments	

	MS		detected as a result of FD Number of detentions resulting from FD *Source: MS)*		*(Source: national criminal justice statistics)*	
Illicit trafficking in goods						
Proposal for a regulation on import/export licensing system for firearms	Reduce firearms trafficking. Harmonize the regime for import and export of firearms.	Establishment of the system	Application of the regulation *Measured by:* Numbers of arms licensed *(Source: MS)*	Increased control over imports and exports of firearms *Measured by:* perceptions of law enforcement agencies *(Source: MS)*	Reduced firearms trafficking Reduced use of illicit firearms	Clear intervention logic (forthcoming) The instrument is relevant to borders policy area.
Organised crime						
Council Framework Decision 2001/500/JHA of 26 June 2001 relating to money laundering,	Approximate definitions, incriminations and sanctions Improve mutual legal assistance in the	Implementation of FD	Application of rules and provisions contained in FD *Measured by:* Instances of suspicious	Assets frozen and confiscated. *Measured by*: Effective judgments pronounced	Reduced money laundering Reduced crime *Measured by:* Perceptions of	Regular monitoring reports from the Commission Identifying cases specifically

identification, tracing, freezing or seizing and confiscation of the instrumentalities and proceeds from crime	investigation and prosecution of this type of crime		transactions reported to entities subject to reporting obligations Penalties resulting from FD Prosecutions resulting from FD Reduction of the differences in maximum penalties among MS *(Source: MS, Commission)*	Amounts frozen and confiscated *(Source: MS)*	law enforcement agencies.	linked to the FD may be problematic (This instrument might fit better under financial crime although it is about enacting penalties and might better fit under Justice criminal matters. Evaluation need to be done in combination with the third money laundering directive).
Proposal for a FD on fight against organised crime (2005)	Harmonise the definition of offences and penalties Facilitate cooperation between judicial authorities and coordinate their	Implementation of FD	Application of rules and provisions contained in FD. *Measured by:* Better harmonised definition of offences and penalties.	Increased judicial co-operation *Measured by:* Trials and successful prosecutions resulting from FD	Reduced organised crime *Measured by*: Perceptions of law enforcement agencies.	Difficult to measure impacts Identifying cases specifically linked to the FD may be problematic

	activities.		Instances of judicial cooperation *(Source: MS, Commission)*	*(Source: MS)*		(This too might better fit under Justice criminal matters policy area)
Directive on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities. (April 2004)	Reduce organised crime participation in illegal migration and human trafficking Facilitate victims giving evidence against suspected criminals	Implementation of Directive	Application of rules and provisions contained in Directive *Measured by* Instances of residence permits issued *(Source: MS)*	More victims testifying against suspected criminals Successful prosecution of suspected criminals *(Source: MS)*	Reduced organised crime participation in illegal migration and human trafficking *Measured by*: Perceptions of migration and law enforcement agencies.	This instrument is relevant to borders policy area. (It does not fit easily in this sub category.)
Policy sub area 2: Cooperation and exchange of information to enforce the law.						
(The architecture of the instruments in this sub policy area is such that the instruments should be reinforcing. Capturing these synergies in evaluation work would be of value)						
Objectives:						

To increase cooperation between police and customs authorities of MS To increase cooperation of MS police and customs authorities with Europol To develop and improve use of 'intelligence led law enforcement' and Joint Investigation Teams To encourage exchange of experiences on best practice on investigative techniques To improve the quality of Member States law enforcement data with the assistance of Europol
Policy sub-area level indicators: Number of formal joint investigations Number of informal joint investigations Number of successful prosecutions resulting from joint investigations (formal and informal) Number of successful prosecutions resulting from the adoption of best practice investigative techniques Extent of mutual confidence: proportion of officials in national administrations/law enforcement authorities who have confidence in other MS systems (measured by surveys of national authorities) Periods of time (person days) on (trans-national) exchanges of staff *Source: MS*

Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Schengen Information	Sharing of information	Consistent input and further use of	Quality and a Availability of SIS	Success in using	Reduced permeability of	Clear intervention

System (SIS) II	among MS in order to refuse entry on the basis of uniform practices	information among MS	II information for competent national authorities *Measured by:* Number of records per category *(Source: MS and Commission)*	SIS information. *Measured by:* Number of correctly identified persons who should be refused entry and wanted goods discovered *(Source: MS)*	the external border. Increased confidence to promote 'free movement' policies.	logic. Evaluation methods – analysis of trends and process changes. Commission responsible for evaluation co-ordination and analysis, MS for information analysis. Most of the analysis will depend upon information from MS. Evaluation will be very difficult.
Common position on the exchange of data with Interpol on passports	To prevent and combat serious and organised crime including terrorism through improved	Exchange of data with Interpol through database on stolen travel documents	Number of data records forwarded to Interpol	Enhanced cooperation between law enforcement authorities	Decreased illicit activities	

	cooperation between MS' law enforcement authorities and between them and such authorities in third Countries by exchanging passport data with Interpol					
Task Force of Police Chiefs	Create conditions for cooperation	Participation of police chiefs (or alternates)	Cooperation activities. *Measured by*: Meetings held Informal contacts Formal cooperation agreements *(Source: MS)*	Mutual cooperation *Measured by*: Instances of cooperation Perceptions of participants *(Source: MS)*	Sustained cooperation *Measured by*: Instances of cooperation arising indirectly and at lower levels. Decrease in criminal activities *Measured by:* Number of arrests,	By its nature a difficult instrument to evaluate in its own right.

					prosecutions, and convictions	
Europol	Promote cooperation between MS law enforcement agencies	Provision of information, application and use of information received from Europol or via bilateral cooperation initiated by Europol	Cooperation activities *Measured by* Strategic analyses undertaken, Instances of exchange of intelligence. Use of formal joint investigation teams Use of informal joint investigation teams Number of investigations informed. *(Source: Europol and perceptions of participating MS and law enforcement agencies).*	Better law enforcement *Measured by*: Trials resulting from exchanges of intelligence and cooperation. Successful prosecutions resulting from exchanges of intelligence and cooperation. *(Source: MS and Europol)*	Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Evaluation needs to acknowledge the real constraints on multilateral police cooperation (issues of confidentiality and credit for solving cases) and the potentially weak links between police cooperation and reductions in crime. Evaluation work has included peer reviews

CEPOL	Improve likelihood of (transnational) cooperation. Improve competences of trainees.	Commitment to EU level training	EU level Training activities *Measured by:* Number of police officers trained Number of courses offered *(Source: CEPOL, including potential follow up survey of trainees.)*	Improved cooperation *Measured by*: Resulting instances of cooperation between individual officers. Resulting instances of cooperation between agencies Resulting improved investigations. Resulting detentions and prosecutions *(Sources: MS Law enforcement agency records, judicial records)*	Increased competence in cross border level practice Reduced 'cross border' crime Reduced crime *(Sources: UN crime justice and crime trends surveys, European sourcebook of criminal justice statistics, UK Home Office international criminal justice statistics)*	Identifying causal links with impacts will be especially difficult. An report on the operation and future of CEPOL was published in January 2006.
Framework programme on police and judicial cooperation in criminal matters	Help legal practitioners, law enforcement officials and representatives	Commitments to AGIS projects Participation	*Number of activities promoting training and expert mobility* *Number of dissemination*	Development of instruments, strategies and activities for cooperation	Improved operational procedures and approaches Better	Transnational cooperation activities normally require qualitative approaches to

(AGIS)	of victim assistance services from the EU Member States and Candidate Countries set up Europe-wide networks, exchange information and best practices. Encourage Member States to step-up co-operation with the applicant countries and other third countries		*activities* *Number of conferences and seminars* *Number of studies, research and evaluations* *(Source: Commission)*	Development of methods, techniques and instruments for operational and training use Exchange and dissemination of information, experience and best practices *Source: Commission)*	operational cooperation Cross-border use of good practices Mutual understanding of respective police, legal and administrative systems Common perception of criminality	evaluation taking account of varying contexts.
Policy sub area 3: Crime Prevention						
Objectives: To reduce instances of (cross border organised) crime To establish European instruments for collecting, analysing and comparing information on crime and victimisation.						

To provide better information on trends in crime in Member States						
Policy sub-area level indicators: Numbers of successful prosecutions of cross border organised crime The frequency with which EU level statistics are collected (benchmark: annually) The level of reliability of data (for example, number of definition changes), also indicated by the levels of confidence in data by key actors (*source: regular surveys*) Consistency of data between Members States (for example, numbers of definition variations), indicated the levels of confidence in data by key actors (*source: regular surveys*) *Source: Commission, MS*						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Forum on organised crime prevention	Better exchange of information Creation of a Platform of expertise	Active participation from MS	Coordination and cooperation of activities *Measured by*: Meetings and seminars held Studies undertaken etc. *(Source:*	Better and increased information base Better legal and other instruments *Measured by:* Application and dissemination of information and best practices	Reduced crime	Difficult to measure causal links

			Commission)	exchanged *(Source: MS)*		
European crime prevention network	Provide expertise and knowledge in developing effective crime prevention measures	Active participation from MS	Network Activities *Measured by* Meetings, Exchange of information Identification and propagation of good practice. Copies/hits on good practice and recommendations. (Source: Commission)	Application of Network Knowledge *Measured by*: Uptake of recommendations Improved policy making processes *(Source: MS via Consultations)*	Improved policies and practices with respect to crime prevention Reduced crime	Difficult to measure causal links
EU action plan on EU statistics on crime and criminal justice	Provide better information base on EU crime trends, levels and on victimisation as well as on criminal	Active participation from MS	Availability of information on crime and criminal justice covering EU *Measured by:* Availability, coverage and	Application of improved information *Measured by*: Dissemination of information to EU and MS policy	Better informed policy making at EU level. Better informed policy making at MS level.	Difficult to measure causal links Statistical information is not available Instrument

	justice.		comparability o data. *(Source: Commission)*	makers Citation of statistics in policy documents *(Source: Commission and MS)*		underpins evaluation of other instruments as it should improve statistics available at the EU level
Action plan on public-private partnerships	Establish public-private partnerships at EU level to tackle multinational organised crime and terrorism	Active participation from MS	Implementation of Action plan Creation of a EU level Platform for public-private partnership against organised crime and terrorism *Measured by* Reports from old and new partnership structures to the platform Effective participation in the work of the Platform and new partnerships	Increased co-operation between public and private sector *Measured by:* Number of co-operation activities *Source: Commission: Follow up studies of specific partnerships)*	Reduced level of damage from organised crime and terrorism	Process evaluation could be appropriate

			Composition of partnerships established *(Source: Commission)*			
Policy sub area 4: Management of crises[13] with cross border effects						
Objectives: Reduce detrimental cross border impacts of crises						
Policy sub-area level indicators: Number of cross border crises reported in press/media Number of cross border crises involving EU crisis management						
Main instrument	**Objectives**	**Implementation at national level**	**Indicators/evaluation questions**			**Specific issues /comments**
			Immediate results	**Outcomes**	**Impacts**	
Setting up of integrated and co-ordinated EU crisis-management arrangements in the Commission and the Council	Increase the level of preparedness to tackle cross-border crises within the EU	Active participation from MS in the structures to be established	Establishment of integrated and co-ordinated structures at the EU level *Measured by:* Assessments of MS capacities Training and joint	Increased level of preparedness for cross border crises *Measured by:* Actual responses to crises Results of 'Exercises'	Reduced impacts of such crises	There are likely to be particular difficulties in establishing the counter factual with respect to this instrument. Impacts may only be assessed sometime

[13] With particular regard to preparedness and response to terrorist attacks.

			exercises conducted Operational plans established *(Source: MS administrative records)*	undertaken. *(Source: MS Potential stakeholder surveys)*		following emergencies. Some scope for peer review

ANNEX 2

Current practice for monitoring and evaluating EU policies on freedom, security and justice

1. MONITORING

1.1. The Tampere scoreboard

The Tampere European Council in 1999 invited the Commission to compile a **scoreboard** to keep implementation of policies on freedom, security and justice under continuous review. The scoreboard would specifically keep track of progress made with implementation of the measures and compliance with the deadlines set in the Amsterdam Treaty, the Vienna Action Plan and the Tampere programme. In response, the Commission produced its first scoreboard in March 2000, followed by regular updates every six months taking into account the objectives set by the European Councils in Laeken (2001), Seville (2002) and Thessaloniki (June 2003). The last Tampere scoreboard was presented in June 2004, marking the end of the first five-year period (1999-2004).

The scoreboards indicated the objectives and deadlines set at Tampere and in each case the responsibilities assigned to launch, advance and complete the process. To provide a clear view of the progress made in each area, the scoreboard showed the outstanding proposals and initiatives presented, progress in Council and European Parliament proceedings and the work planned. A specific section of the scoreboard focused on transposition of the instruments adopted.

1.2. Reviewing implementation of EU legislation

1.2.1. Instruments adopted under the EC Treaty

Implementation by the Member States of Community legislation concerning free movement of persons, visas, asylum, immigration, judicial cooperation in civil matters and citizens' rights adopted under the European Community Treaty is monitored by the Commission. If a Member State fails to comply with its legislative obligations, the Commission can then initiate infringement proceedings under Article 226 of the EC Treaty and may bring the matter before the Court of Justice.

Apart from normal application of the monitoring mechanism under Articles 226 of the EC Treaty, monitoring implementation of the instruments adopted under Title IV of the EC Treaty is not systematic, although it is usual practice. For example, none of the four directives adopted on illegal migration provides for a monitoring report by the Commission.

Some reports, such as the evaluation of the derogation for issuing visas to members of the Olympic family[14], go beyond mere analysis of implementation and contain information on

[14] Report on the functioning of the derogation system introduced by Regulation 1295/2003 regarding measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2004 Olympic or Paralympic Games in Athens (SEC(2005) 1051). This report was written by the Commission on the basis of information provided by the Greek authorities.

results. There are other examples concerning instruments adopted under Title II of the Treaty, such as reports[15] relating to free movement of Union citizens or reports[16] on their electoral rights in municipal and European Parliament elections.

1.2.2. Instruments adopted under Title VI of the Treaty on European Union

In the case of instruments adopted under Title VI of the EU Treaty concerning police and judicial cooperation in criminal matters, there is **no equivalent compliance mechanism** allowing the Commission to exercise its institutional powers as guardian of the Treaties.

For all Framework Decisions adopted by the Council, it is compulsory for Member States to transmit a detailed set of national implementing measures to the Commission and to the Council. Based on this information, the Commission then issues a report (e.g. 2002 Framework Decision on combating terrorism[17]). allowing the Council to debate the need for further measures in the field concerned. The Council generally expresses its position in a final report.

For some Framework Decisions, the Commission repeats or updates its monitoring exercise (e.g. "Victims" Framework Decision[18]).

Similarly, the Commission systematically monitors common positions and issues a monitoring report on national implementing measures. The Commission has also taken the initiative to issue specific reports on certain Council Decisions imposing no monitoring obligation such as those relating to Eurojust[19]

This monitoring exercise deals only with the **legal transposition** aspect and rarely includes details on the **practical implementation of instruments**. Such assessments of legal transposition answer the following questions: are the implementing measures effective, correct and in line with the Framework Decision? Are they clear and do they provide legal certainty? Do they fully apply the instrument and comply with the time limit for transposition?

In some cases this exercise has been backed up by an initial assessment of practical implementation in the Member States and of the tangible results of the national legislation. For example, in the case of the Framework Decision on the European Arrest Warrant[20], some

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15 Reports from the Commission to the Council and the European Parliament on the implementation of Directives 90/364, 90/365 and 93/96 (Right of residence), COM(1999) 127 final and COM(2003) 101 final.

16 Reports on the application of Directive 93/109/EC: Right of EU citizens residing in a Member State of which they are not nationals to vote in European Parliament elections, COM(97) 731 final and COM(2000) 843, or Report from the Commission to the European Parliament and the Council on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections, COM(2002) 260 final.

17 Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism, COM(2004) 409 final, 8.6.2004.

18 Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings.

19 Report from the Commission on the legal transposition of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, COM(2004) 457 final, 6.7.2004.

20 Report from the Commission based on Article 34 of the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States (COM(2005) 63 final), p.2, paragraph 2: *"The evaluation criteria adopted by the Commission for this report are, firstly,*

of the practical results of the implementing measures were included in the monitoring report, such as the question of effectiveness and rapidity of surrender. The Commission's report also included some preliminary figures, such as the number of warrants issued or the average time taken to execute a warrant, which mainly illustrated the difficulty of obtaining adequate statistics in this field.

1.3. Information-gathering mechanisms on policy implementation

1.3.1. Existing mechanisms

Following the call by the 2001 Laeken European Council to set up an enhanced exchange of information in the field of immigration and asylum, the Commission launched an information and consultation procedure with a **"Committee on Immigration and Asylum"** (CIA) at its heart. The CIA is made up of experts from the Member States but also frequently provides a forum for representatives of civil society, such as European social partners and the UNHCR, to present their views on pertinent immigration and asylum issues.

In the field of integration, the "**National Contact Points on Integration**" (NCP) play an important role in monitoring progress across policy fields and in ensuring that integration efforts at national and EU level support each other. They convey key results to the CIA.

A **European Migration Network** (EMN) was set up in 2002 as a preparatory measure in response to the need to improve exchanges of information on all aspects of migration and asylum. Its primary objective is to provide the Community and the Member States with objective, reliable and comparable information in these fields by systematically collecting and storing existing data and information from Member States and carrying out national and European level analysis. At present, the EMN consists of national contact points designated by the Member States.

1.3.2. Mechanisms in preparation

In the field of asylum, a Communication[21] on strengthened practical cooperation proposed bringing into operation a **system for sharing expertise**, resources and knowledge between key stakeholders, as a tool for strengthening common approaches to implementation of the first-stage legislative instruments of the European asylum system, building - amongst others - on existing mechanisms, such as the EURASIL group.

In September 2005 the Commission tabled a proposal for a **Regulation on Community statistics on migration and international protection**. The Regulation will improve statistical knowledge of migration-related phenomena by specifying the data to be collected, the timetables to be applied, the definitions and the quality standards.

In October 2005 the Commission tabled a proposal for a Council Decision on the establishment of a **mutual information procedure on national measures** taken in the areas of asylum and immigration which could affect other Member States. The proposal is based on

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the general criteria normally used nowadays to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposal), and, secondly, criteria specific to the arrest warrant, principally the fact that it is a judicial instrument, its effectiveness and its rapidity."

[21] COM(2006) 67 final.

the recognition that the absence of border checks in the Schengen area and the gradual development of common EU immigration and asylum policies require timely exchanges of information and discussion of national measures taken on asylum and immigration.

1.4. Monitoring implementation of The Hague Programme

The Hague Multi-Annual Programme (2005-2009) and the Action Plan implementing it invited the Commission to present an **annual report on implementation** of these two instruments to the Council (the "Scoreboard plus").

The Scoreboard plus will aim predominantly at assessing proper and adequate transposition of the legislative acts adopted and effective implementation of the measures agreed. In concrete terms, The Scoreboard plus will assess the outcome of both (a) the **significant political progress** achieved at the point of adoption at EU level and (b) **implementation at national level of measures** related to freedom, security and justice.

This structure will bring visibility to monitoring and provide a comprehensive overview of implementation of the Action Plan, meeting the requirements of the European Council in The Hague Programme. It will increase transparency and visibility and improve and facilitate implementation. The **first Scoreboard plus** is presented **in parallel** to this Communication, one year after adoption of the Action Plan implementing The Hague Programme.

2. EVALUATION

This section briefly describes the state of play with evaluation in the field of freedom, security and justice, depending on the subject-matter: (1) **programmes,** (2) **legislation** or (3) **policies**[22]**.** Evaluations on freedom, security and justice mainly focus on **individual policy instruments**, be they legislative or financial. As in other areas, evaluation of policies (defined as a coherent set of instruments serving the same coherent objective) is **still developing**. As a consequence, evaluation activities are currently very diverse (internal or external evaluations, annual progress reports, peer reviews, etc.) and very different in scope. This results in a **lack of comparable evaluation** results across policies and of a true overview of the results achieved in establishing an Area of Freedom, Security and Justice.

The evaluation mechanism put forward in this Communication aims at tackling this issue. It provides a **platform** for exhaustive presentation and comparability of existing evaluation results, and identification of any information gaps. Whilst taking into account the fact that evaluation is more advanced for some activities than others, it will allow the establishment of a **common set of minimum evaluation requirements** across the different policies.

2.1. Evaluation of Community programmes

Evaluation of **programmes** is **well developed** within the Commission, including in the area of freedom, security and justice, where major programmes such as the European Refugee

[22] Evaluations of agencies and external bodies have not been included, for example the evaluation of the draft Council Decision transforming the European Police College (CEPOL) into an EU body, the evaluation of the European Monitoring Centre for Drugs and Drug Addiction and the evaluation of the functioning of the European Judicial Network (EJN) in civil and commercial matters.

Fund, AGIS and DAPHNE are regularly evaluated[23]. Available evaluation results demonstrate that whilst the immediate results of funding programmes are easily identified and measured, their longer-term effects are sometimes more difficult to grasp. In this context, the Commission proposals for the 2007-2013 programmes on freedom, security and justice establish a better link between the programmes' specific objectives and the overall political objectives. This will have an impact on the evaluation framework for these programmes, in particular through assessment of their consistency with other instruments (legislative or other) in the same field.

2.2. Evaluation of legislation

Contrary to the evaluation of programmes, evaluation of **legislation** is a **more recent** development in the case of freedom, security and justice. Recent examples include the evaluation of the European Arrest Warrant[24] (2005), the economic evaluation of the Data Protection Directive[25] (2005) and the on-going evaluations of the Directive on minimum standards for the reception of asylum-seekers[26] and of the Brussels I Regulation[27]. Also, the introduction of impact assessments of EU legislation has led to systematic *ex-ante* appraisal, which should greatly facilitate further interim and/or *ex-post* evaluation. In this context, systematic scrutiny of legislative proposals and other draft instruments to ensure that they are compatible with the Charter of Fundamental Rights should serve the same purpose[28].

2.3. Evaluation of policies

2.3.1. Mechanism for Schengen evaluation

The Schengen evaluation system, first established in the intergovernmental Schengen framework and then integrated into the European Union framework[29], assesses correct implementation of the Schengen *acquis* by participating Member States through a peer review mechanism, including visits to Member States. It has issued restricted reports, given details of cases of non-compliance with existing rules and practices and made further recommendations. This mechanism applies to both Community and third pillar measures.

When internal border controls with and between new EU Member States are lifted, the Commission will submit a "*proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism*", as requested by The Hague Programme.

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23 The results of these evaluations are available online at: http://europa.eu.int/comm/dgs/justice_home/evaluation/dg_coordination_evaluation_annexe_en.htm.

24 Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States.

25 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

26 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers.

27 Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

28 SEC(2001) 380/3, COM(2005) 172.

29 Decision 26 DEF 1998 of the Schengen Executive Committee.

2.3.2. Mechanism for the fight against organised crime

Joint Action 97/827/JHA, adopted by the Council on 5 December 1997, established a mechanism for evaluating the application and implementation at national level of international undertakings in the **fight against organised crime**[30]. Two rounds of evaluation have already been completed and two others are ongoing. The first round focused on mutual legal assistance in criminal matters, on which a report was subsequently released on 1 August 2001[31]. The second assessed instruments dealing with law enforcement and drug trafficking. Finally, the third and fourth rounds, not yet completed, are evaluating exchanges of information and intelligence between the Member States and Europol and the European Arrest Warrant respectively. The 1997 mechanism is operated by teams of experts designated by Member States, assisted by the General-Secretariat of the Council, with the involvement of the Commission. It is based on **study visits** and allows an in-depth examination of how instruments or policies are working in practice.

The Commission believes that although this mechanism has proved **useful and effective**, it nevertheless has some **shortcomings**, in particular the total duration of the process, the scope limited to only matters related to organised crime and the limited dissemination of the evaluation results.

2.3.3. Mechanism for the fight against terrorism[32]

Following the conclusions of the extraordinary meeting of the Justice and Home Affairs Council on 20 September 2001, the Council set up a procedure for peer assessment of national anti-terrorist arrangements in the framework of international cooperation between Member States. The first round of evaluations started in 2003 and focused on exchanges of information. Evaluation teams are made up of national experts and their reports are confidential.

2.3.4. Evaluation of the EU Action Plan on Drugs

In 2004 the Commission carried out the final evaluation of the EU Drugs Strategy and Action Plan on Drugs for 2000-2004[33], in cooperation with the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and Europol. The evaluation exercise provided an **overview of the drugs situation in the European Union** over the reference period. The Strategy and the Action Plan included a wide range of drug-related measures, mainly within the competence of the Member States. Their impact on the drug situation in the European Union could not be considered, mainly because the EU Strategy and Action Plan failed to establish impact indicators.

The EU Action Plan on Drugs for 2005-2008 takes into account the evaluation of the preceding Action Plan and has been designed from the outset to facilitate full evaluation. Accordingly, it clearly allocates responsibilities for each action and includes specific assessment tools, indicators and schedules for implementation. The Action Plan provides for

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30 For further information see: http://europa.eu.int/scadplus/leg/en/lvb/l33053.htm.

31 Final report on the first evaluation exercise - mutual legal assistance in criminal matters (2001/C 216/02).

32 Council Decision 2002/996/JHA of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.

33 COM(2004) 707.

the Commission to present annual reviews of implementation of the Plan plus a final evaluation in 2008, with a view to preparing the next Plan. The **first annual progress** review will be presented in **autumn 2006.**

2.3.5. Mechanism for evaluating respect of fundamental rights

The **European Monitoring Centre on Racism and Xenophobia** studies the extent and development of the phenomena of racism, xenophobia and anti-Semitism and analyses their consequences and effects. Its findings are presented in annual reports. Once established, the Agency on Fundamental Rights, with its wider mandate, is expected to play a key role in evaluating respect of fundamental rights.

The **network of fundamental rights experts** was created by the European Commission in 2002 in response to a recommendation in the European Parliament's report[34] on the state of fundamental rights in the European Union. The network assesses the fundamental rights situation through an annual report, on the basis of an **analysis of the legislation, the case-law and the administrative practice** of the national authorities of the Member States and in the institutions of the Union. The reference points for the evaluation are the rights set out in the European Union's Charter of Fundamental Rights. The results are published annually (so far, in 2003, 2004 and 2005).

[34] 2000/2231(INI).

ANNEX 3

Glossary

Activity: A coherent area of action with objectives and resources. In other words, "Activities" consist of well-defined and delimited measures to which inputs are allocated and converted into outputs.

The policy for the development of an Area of Freedom, Security and Justice has been divided into different Activity-Based Management (ABB) activities such as:

– Activity 1802 “External borders, visa policy and free movement of persons”,

– Activity 1803 “Common immigration and asylum policies”,

– Activity 1804 “Citizenship and fundamental rights”,

– Activity 1805 “Law enforcement cooperation and prevention of and fight against general organised crime”,

– Activity 1806 “Establishing a genuine European area of justice in criminal and civil matters”,

– Activity 1807 “Coordination in the field of drugs”.

Evaluation: “Judgement of interventions according to their results, impacts and the needs they aim to satisfy”[35]. It is a process undertaken by the Commission in order to identify what can be learned for policy and planning.

***Ex ante/ex post* evaluation**

Ex ante evaluation: Evaluation performed before implementation of a measure. For the purposes of the Commission, *ex ante* evaluation is defined as a process that supports the preparation of proposals for new or renewed Community activities. Its purpose is to gather information and carry out analyses that help to define objectives and to ensure that these objectives can be met, that the instruments used are cost-effective and that reliable subsequent evaluation will be possible.

Intermediate (or mid-term) evaluation: Evaluation performed during implementation of a measure. If the evaluation extends throughout the period of implementation, this is also called "on-going evaluation". This type of evaluation critically appraises the first outputs and results, in order to assess the quality of monitoring and implementation of the measure. The main focus is to help to prepare adjustments and reprogramming and to provide input for the preliminary deliberations on the future of the measures.

Ex post evaluation: Evaluation conducted either on or after completion of a measure. The main interest is overall assessment of the measure, in particular by analysing the impact

[35] Communication on Evaluation (SEC(2000) 1051): http://europa.eu.int/comm/budget/evaluation/keydocuments_en.htm.

achieved and examining its efficiency. The objective is to understand the reasons for success or failure and the sustainability of the results and impact. It also tries to draw conclusions that can be applied generally to other measures.

Impact: A general term used to describe the effects of a measure on society. Impact can be either positive or negative and foreseen or unforeseen. Initial effects are called outcomes/results, whilst impact is usually longer-term.

Impact assessment: Impact assessment is about examining the likely economic, social and environmental impact of the Commission's proposals. It identifies and assesses the issue at stake and the objectives pursued. It identifies the main options for achieving the objectives and analyses their likely impact. It outlines the advantages and disadvantages of each option as well as synergies and trade-offs.

Indicators: A characteristic or attribute which can be measured to assess an activity in terms of its outputs or impacts. Output indicators are normally straightforward. Impact indicators may be more difficult to obtain, and it is often appropriate to rely on indirect indicators as proxies. Indicators can be either quantitative or qualitative.

Monitoring: A continuous process of examining delivery in terms of adoption and implementation of different measures, especially legislation. It is not to be confused with programme monitoring, which consists of examining the delivery of programme outputs to the intended beneficiaries. Evaluation, on the other hand, is carried out at a discrete point in time, and consists of an in-depth study. Monitoring generates data which can be used in evaluations.

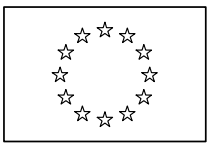
Outcomes/results: The intermediate effects of a measure.

Policy: A set of activities, which may differ in type (programmes, measures, procedures, laws or rules) and beneficiaries or target groups, directed towards common general objectives or goals. Unlike projects and programmes, a policy is not usually delimited in terms of time or budget.

Policy area: Within the EU the concept *policy* may designate various scope and levels of complexity, ranging from an overall Commission strategy or objective over a policy area to an ABB-activity. In this context, a policy will normally embrace a range of instruments At Commission level, the ABB-activities (215 altogether) have been grouped into some 30 policy areas, closely identifiable with Directorates-General. This Communication deals with policy area 18: Freedom, security and justice.

Policy instruments: A set of techniques by which public authorities attempt to ensure support and to effect or prevent social change. In this sense, there is a strong emphasis on the dynamic evolving nature of policies, with individual policy instruments being added, withdrawn or redesigned over time. The variety of available policy instruments includes, for example, legislation such as regulations or directives and may involve resource commitments, for example in the form of operational programmes; they also include Communications, action plans, etc. However, policy instruments differ significantly in the way in which they bring about results and impacts and the timescales over which these can be expected.

Programme: A set of organised but often varied actions (a programme may encompass several different projects, measures and processes) directed towards achieving specific objectives, often with a definite time schedule and budget.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
SEC(2006) 815

COMMISSION STAFF WORKING DOCUMENT

Annex to the

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

Evaluation of EU Policies on Freedom, Security and Justice

{COM(2006) 332 final}

IMPACT ASSESSMENT

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Executive Summary

Five options for a mechanism for evaluation of FSJ policies are here considered:

Option 1: No EU action (No mechanism would be proposed).

Option 2: Provision of an analytical/methodological framework for evaluation of FSJ policies.

Option 3: Focus on implementation/transposition of FSJ acquis (no evaluation).

Option 4: Develop policy evaluation, building on current monitoring experience. This would entail setting up a mechanism to monitor implementation of FSJ policies and to evaluate the effects of policies (evaluation).

Option 5: Develop an open method of coordination, building on current monitoring experience.

This impact assessment concludes that option 4 is the only choice which fulfils the mandate given in the Hague Action Plan (excludes option 1 and 2), enhances the current evaluation system (excludes option 3) and is at the same time realistic (excludes option 5). Adding to this, the Commission believes that the administrative burden on Member States will be fairly limited.

1. PURPOSE OF THE IMPACT ASSESSMENT

The Impact Assessment of the Communication on evaluation of EU policies on Freedom, Security and Justice (FSJ) serves several purposes:

- First, it demonstrates the Commission's openness to input from a wide range of stakeholders (Chapter 2) and, hence, its commitment to transparency.
- Second, it will help to explain the reasons for such a system of evaluation and why it should be set up at EU level (Chapters 3 and 4).
- Third, it sets out, analyses and compares the different policy options available, including the "no action" option (Chapter 5).
- Fourth, it assesses the possible social, economic and, to a lesser extent, environmental impact of the proposed system (Chapter 6).
- Finally, it deals with monitoring and evaluation (Chapter 7).

2. STAKEHOLDERS' CONSULTATION AND EXPERTISE

2.1. Consultation

This section focuses on the coming consultation on the proposed mechanism. Prior to the drafting of the present Communication and its impact assessment, no formal consultation has taken place, except for the interservice consultation (DG JLS D/4968) within the Commission.

Formulation of an evaluation mechanism for FSJ policies will be based on wide consultation with all relevant stakeholders. The Commission's Communication is intended as the starting point of such a consultation process, which will provide input for actually setting up the mechanism. In this context, a major hearing with a wide range of stakeholders will be held in October 2006 (see point 2.1.2). Consultations will also continue until the first evaluation exercise takes place. The Communication also builds on extensive work carried out by external experts on behalf of the Commission, which included informal consultation of some key stakeholders (see below).

2.1.1. Stakeholders' consultation and involvement

The first stakeholders in the evaluation system are **EU institutions and Member States**. On the one hand, they have to provide the inputs for the system and, on the other, they are the primary beneficiaries of the outputs. The Member States and the Council, taking into account their prerogatives and their role in the process, were consulted informally on some aspects of drafting the Communication; in particular, views were exchanged on evaluation with a sample of Justice and Home Affairs Counsellors in Brussels-based Permanent Representations in the context of the expert study mentioned above.

Setting up an evaluation mechanism for FSJ policies is a gradual process. The Committee of the Regions, the European Economic and Social Committee and various agencies, such as the Fundamental Rights Agency, the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) and the External Borders Agency, will be consulted on and involved in development of the mechanism. The agencies' data collection and statistics work will play an important role in the future evaluation mechanism.

The private sector will be involved in this context, notably within the framework of the Action Plan on Public/Private Partnerships to protect public organisations and private companies in particular from organised crime, to be published by the Commission later this year.

Besides the abovementioned hearing, the Commission also intends to present this Communication in different venues, to gather expert opinion on the proposed mechanism. The annual conference of the European Evaluation Society will be one such forum. Feedback from evaluation specialists will enable the Commission to fine-tune the mechanism.

Work in this area will have to conform to general Commission policy on evaluation, taking into account in particular the forthcoming general Commission Communication on Evaluation.

2.1.2. Forthcoming hearing

The hearing is intended to be a valuable addition to the Communication on the "Evaluation of EU Policies on Freedom, Security and Justice". It has three main goals:

1. to communicate with and involve civil society in the objective evaluation of FSJ policy;

2. to have a broader discussion and debate on the evaluation mechanism and method;

3. to have a detailed discussion, by policy area, on the individual factsheets that make up the instrument.

The Conference is planned for the end of October 2006, and between 100 and 150 participants are expected from:

- Member States (representatives and experts);
- international organisations and EU Agencies;
- civil society, e.g. NGOs, professional organisations, academia, etc.

2.2. Expertise

In preparation for the release of a Communication on Evaluation, the Commission tendered out the drafting of an analytical framework for the evaluation of policies and legislation in 2003, and then application of the framework to two policy areas in 2004. Building on the results of these studies, further expert support with the design of the evaluation mechanism was enlisted at the end of 2005, focusing specifically on the technicalities of the mechanism (indicators, data collection methods, data sources, etc.).

The initial preparatory study concluded that the policy area of freedom, security and justice is "characterised by complex and ambitious policy goals, varied institutional arrangements at European and Member State level, mixed models of decision-making and compliance which poses particular difficulties for evaluation." The study added that "no single global evaluation will be able to capture the full complexity of this and similar policy areas", therefore requiring a broader approach to evaluation, responding to various questions and criteria in order to create an effective evaluation mechanism. In such a political environment, stakeholders, including institutions and Member States, have numerous and varied expectations and priorities. The study recommends consultation with stakeholders to identify satisfactory evaluation objectives. Active involvement of the stakeholders is encouraged at all stages of the evaluation, particularly at the reporting stage.

3. DEFINITION OF THE ISSUE AND THE UNION'S COMPETENCE TO ACT

3.1. Definition of evaluation

A distinction must be drawn from the outset between the principles of monitoring implementation and of evaluation. Monitoring implementation consists of reviewing progress towards implementing policies. On the other hand, the Communication on Evaluation presented by the Commission in 2000[1] defines evaluation as a "*judgement of interventions (public actions) according to their results, impacts and the needs they aim to satisfy*". The main role of evaluation is to provide policy-makers with input about the effectiveness and impact of activities planned.

The Commission interprets the evaluation of implementation of policies referred to in the Hague Action Plan as a mechanism evaluating the concrete results of FSJ policies. Evaluation is wider than monitoring implementation of policies and includes studying the consequences of implementation, as clearly outlined in box 1 in the Communication.

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[1] Communication on Evaluation - SEC(2000) 1051: http://europa.eu.int/comm/budget/evaluation/keydocuments_en.htm.

The concept of evaluation of implementation therefore encompasses both monitoring implementation itself and evaluating the results of the measures taken. The Communication has been built around this basic distinction which, in the Commission's view, should allow better evaluation and a general understanding of the quantity and quality of results achieved on freedom, security and justice.

The Hague programme strikes a balance between the efficiency in the fight against terrorism and organised crime more generally on the one hand, and the respect and the active promotion of the fundamental rights on the other hand. Therefore, the annual evaluation by the Commission of the implementation of this programme should also assess whether this balance has been respected.

3.2. The need to act

Four compelling reasons can be given to set up a comprehensive evaluation mechanism on FSJ:

First, existing **monitoring and evaluation mechanisms are fragmented and incomplete**. Annex 2 to the Communication gives an overview of the evaluation system in place and illustrates this point. The current system features: numerous peer reviews, discrepancies between the first and the third pillar, and the need to add to the scoreboard exercise. Although the proposed mechanism does not replace the existing mechanisms, it completes them and allow for a comprehensive and synthetic overview of the outcomes of these mechanisms.

Second, there is a need to transmit extensive **information** to all stakeholders on implementation and the results of policies. Transparency is becoming a more and more important part of good governance. The evaluation mechanism could be made more visible.

Third, as the *"acquis"* enters into force, increased emphasis must be put on monitoring implementation of FSJ policies and assessing their effectiveness. This is essential in order to secure the added value of Union action and to provide adequate feed-back to policy-making.

Last but not least, the **Action Plan** implementing the Hague Programme gives the Commission a mandate to set out how to develop an evaluation mechanism at EU level.

The Hague Programme states that "*evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential to the effectiveness of Union action*". Accordingly, the Action Plan implementing the Hague Programme, which sets out a framework for EU activities over the next five years, proposes various measures in this field. In particular, it provides for the adoption, in 2006, of a general Communication from the Commission on how to develop an evaluation mechanism at EU level. The aim of this mechanism would be, *inter alia,* to reflect the objectives set in Article III-260 of the Treaty establishing a Constitution for Europe[2]. The Action Plan also calls for a Communication on the systematic, objective and impartial evaluation of the implementation of EU policies in the

[2] OJ C 310, 16.12.2004, p. 1. Article III-260 stipulates that "the Council may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States, in collaboration with the Commission, conduct objective and impartial evaluation of the implementation of the Union policies referred to in this Chapter by Member States' authorities, in particular in order to facilitate full application of the principle of mutual recognition".

field of justice, with a view to reinforcing mutual trust while fully respecting the independence of the judiciary.

3.3. The subsidiarity test

Such an evaluation mechanism can only be proposed at EU level since it envisages comprehensive consolidation of the information gathered at national level. The EU would play a coordinating role here in the field of FSJ and is the only level where this coordination and consolidation can take place most effectively.

Moreover, preparatory studies and initial interviews with Member States' representatives have demonstrated that there is little experience with EU policy evaluation at national level. The only (limited) experience to date with FSJ is the Council's peer review process, an exercise which has been used to evaluate third pillar policies on mutual legal assistance in criminal matters, the role of law enforcement in fighting drug trafficking and exchanges of information and intelligence between Europol and the Member States. This process has examined how the national systems and the exchanges of best practice work.

There is also the issue of independence and capacity for objective analysis. The peer review mechanism can be a highly politicised exercise and Member States are reluctant to criticise each other. Being in a more objective position and having the expertise, the Commission is at a vantage position to analyse and consolidate the data gathered at national level.

4. OBJECTIVES

4.1. Defining the objectives

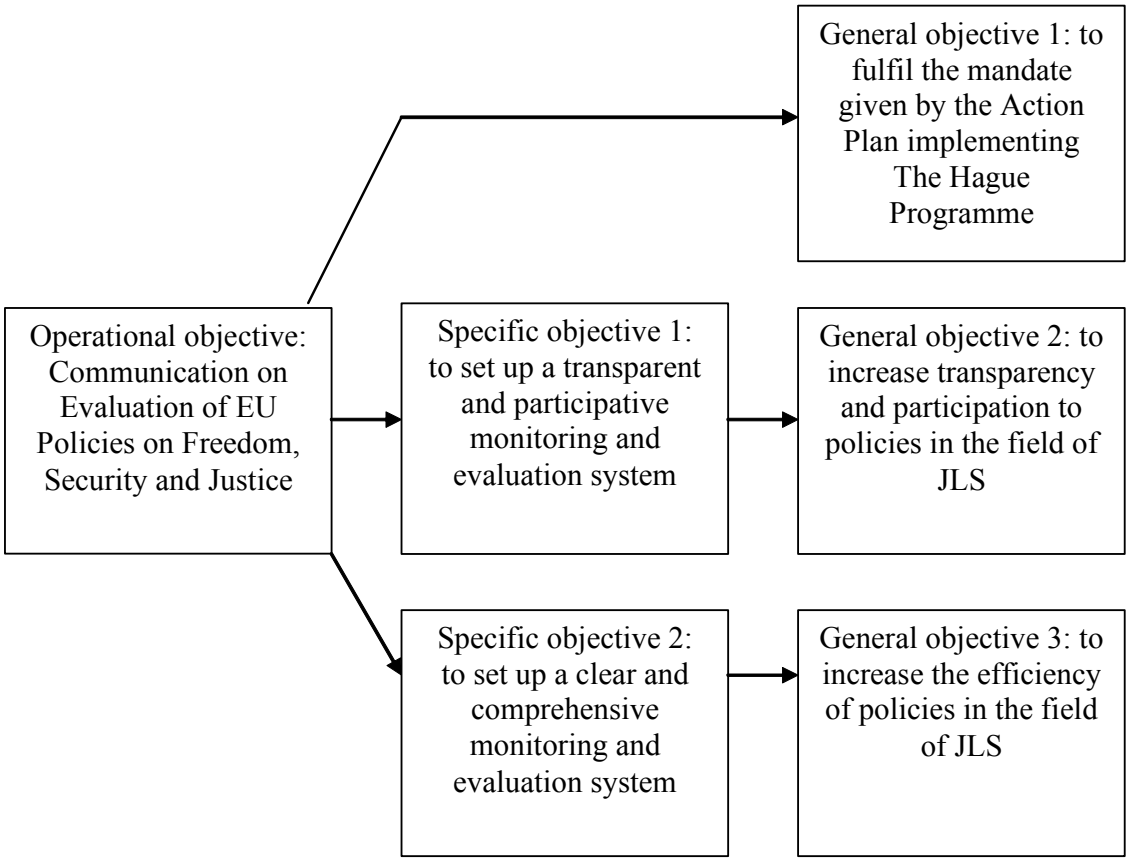
The objectives mirror the issues identified in section 3.2.

– First, the Communication should enable the Commission to fulfil the mandate given by the Action Plan implementing the Hague Programme.

– Second, the Communication should put in place a clear and comprehensive monitoring and evaluation system. The existing mechanisms are fragmented and incomplete. The Communication should, however, take into account various constraints: (a) the institutional and political differences between the first and third pillars; (b) evaluation mechanisms are more advanced in some areas than in others; (c) evaluation of FSJ is complex, multilayered and highly diverse.

– Third, another objective is greater transparency and wider participation regarding the implementation and results of the policies.

Rationale for intervention, according to the Communication on evaluation



4.2. Consistency of the objectives with other EU policies and strategies

The proposed evaluation mechanism will have little impact on other EU policies and strategies. It could serve as a test case for similar kinds of evaluation mechanisms in other areas.

The mechanism takes into account all evaluation systems and processes on FSJ[3]. It is also consistent with the forthcoming Communication on the evaluation of justice. As regards other areas of EU policy, informal consultations have been held to ensure that the proposed mechanism is in line with the Commission's current policy on evaluation and with forthcoming guidance on this matter[4]. For example, the concepts and definitions are in line, the objectives are the same. The Communication aims at making evaluation in the field of FJS more useful and used. This is the more general objective of the Commission in the field of evaluation.

[3] An overview is annexed to the Communication.

[4] A Communication on the Commission's evaluation framework is under preparation.

5. POLICY OPTIONS

Five options for a mechanism for evaluation of FSJ policies should be considered:

5.1. Option 1: No EU action

No mechanism would be proposed. This assumes that the current system for evaluation of FSJ policies is satisfactory and that any new mechanism would create an unnecessary burden. This option has been discarded for the reasons given in section 3.2 (need to act).

PROS	CONS
No additional cost or administrative burden.	Would not fulfil the mandate given by the Hague Action Plan, which calls for the adoption, in 2006, of a general Communication from the Commission setting out how to develop an evaluation mechanism at EU level.
	The results and findings of previous studies on the fragmentation of current practices (especially "Preparatory study of policies and legislation – Development of an analytical framework") would remain without an adequate response.
	No improvement of the current system of evaluation of FSJ policies.

5.2. Option 2: Provision of an analytical/methodological framework

This option would take the form of a Communication providing a methodological framework for evaluation of FSJ policies. It would introduce no new mechanism. Its sole aim would be to give guidelines for evaluation of FSJ policies, taking into account their specific features. The question of monitoring implementation would be left aside.

PROS	CONS
A Communication about the analytical framework to develop evaluation of FSJ policies would hardly change the current situation and would therefore not be politically challenged.	Such a Communication would be little ambitious and bring limited improvement to the current system of evaluation of FSJ policies.
Such a Communication would use the results and findings of previous studies (especially "Preparatory study of policies and legislation – Development of an analytical framework").	Such a Communication might duplicate the work and recommendations of the planned Communication on evaluation (DG BUDG).
	Experience in the field of evaluation is still

	developing. The timing might not be right for such a Communication if the practical experience is lacking.

5.3. Option 3: Focus on implementation/transposition of FSJ *acquis*

The mechanism would focus on simple monitoring of implementation, as opposed to evaluation (far-reaching and covering mid-term results and impact). It would set up a system for monitoring implementation of EU measures on freedom, security and justice. Part of the mandate given by the Hague Action Plan[5] would be fulfilled since only the "effects of all measures" would not be evaluated. Moreover, the concept of "evaluation", as currently understood in the Commission, would be left aside.

PROS	CONS
This would draw on experience with mutual evaluations and with reports on transposition of Directives and Framework Decisions. It could be linked to the development of capacity for dealing with infringements.	Such a Communication would only partly fulfil the mandate given by the Hague Action Plan.
	This would be monitoring and not really evaluation as generally understood – the judgement of a measure. Therefore, it would be no improvement on the current system of evaluation of FSJ policies.
	This would not act upon the results and findings of previous studies (especially "Preparatory study of policies and legislation – Development of an analytical framework").
	Such a mechanism would be very close to the on-going development of the scoreboard. There would be a risk of work being duplicated.

5.4. Option 4: Develop policy evaluation, building on current monitoring experience

This would entail setting up a mechanism to monitor implementation of FSJ policies and to evaluate the effects of policies (evaluation). It follows the mandate given in the Hague Programme for "*evaluation of the implementation as well as of the effects of all measures*". Moreover, it provides a comprehensive package since evaluating the implementation and the outcomes of policies are complementary.

A coherent and comprehensive package built around two pillars would be proposed:

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[5] The Hague Programme states that "*evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential to the effectiveness of Union action*".

– the Hague scoreboard: monitoring implementation of FSJ policies in the future;

– a three-step progressive strategic evaluation mechanism for FSJ:

(1) First, it provides for setting up a system for information gathering and sharing, covering the policy objectives and the main instruments for each area.

(2) Second, it would include a review mechanism, presenting the results of the analysis and consolidating the information.

(3) Third, the mechanism would be completed by targeted evaluations of particular policy areas or instruments, where necessary.

Methodological questions on evaluation could be dealt with but only if they are related to the proposed mechanism.

PROS	CONS
Such a mechanism would bring significant improvements to the current system of evaluation of FSJ policies.	It is very ambitious in the timeframe available – risk of non-delivery.
It would use and act upon the results and findings of previous studies (especially "Preparatory study of policies and legislation – Development of an analytical framework").	It could create an administrative burden for Member States.
It would fulfil the mandate given by the Hague Action Plan, encompassing both evaluation and monitoring of implementation.	

5.5. Option 5: Develop an open method of coordination, building on current monitoring experience

Open coordination is a process of mutual feedback for planning, examining, comparing and adjusting the policies of EU Member States, all on the basis of common objectives. The effectiveness of the process depends on developing common indicators, benchmarks and targets, accompanied by peer reviews and exchanges of good practices, in order to facilitate mutual learning and monitor progress towards agreed goals.

Examples of areas where the open method of coordination (OMC) has been used in the EU include:

- employment (annual national action plans and guidelines for the European employment strategy and the broad economic policy guidelines) and social exclusion;

- education (common objectives, voluntary harmonisation or interoperability of tertiary degree structures, also known as the Bologna Process);

- research and enterprise ("Lisbon Strategy": research & development/innovation, information society, enterprise policy (annual scorecards)).

Whereas in option 5.4 the evaluation mechanism assesses the effectiveness of the European action (although implemented in and by the Member States), in option 5.5 the Member States' policies are targeted. In an OMC[6] Member States would draft national policy plans and submit them to the Commission, which would then review them against a common strategy. Such a mechanism appears politically - in the current situation - very difficult if not impossible to put in place. Policies in the field of FSJ are often linked with national sovereignty. This implies first, that the MS will not agree with a feedback from other MS on their policies in the field. This also means that common objectives or guidelines will be difficult to establish. Last, confidentiality of information could be an additional issue.

Also, the OMC is more intergovernmental than the traditional "Community method" of policy-making in the EU. Because it is a decentralised approach implemented largely by the Member States and supervised by the Council of the European Union, the European Commission plays a primarily monitoring role and the involvement of the European Parliament and the European Court of Justice is very weak indeed.

PROS	CONS
Such a mechanism would use and act upon the results and findings of previous studies (especially "Preparatory study of policies and legislation – Development of an analytical framework").	OMC mechanisms are very ambitious and difficult to put in place. There are serious doubts about the feasibility of such a system at the moment.
It would be very ambitious and, to a certain extent, fulfil the mandate given by the Hague Action Plan.	It would bring significant improvements to the current system of evaluation of FSJ policies at Member State level but not at EU level. For this reason, the mandate given by the Hague Action Plan would not be completely fulfilled.
	Such a Communication is very ambitious in the timeframe available.
	OMC mechanisms are intergovernmental and different from the Community method.

5.6. Comparing the policy options

In terms of economic, social and environmental impact, there is little difference between the options. The main differences between them are the scale of the positive effects, the

[6] Generally, the OMC works in stages. First, the Council of Ministers agrees on policy goals. then the Member States convert the guidelines into national and regional policies. Next, specific benchmarks and indicators are agreed upon to measure best practice. Finally, results are monitored and evaluated. However, the OMC differs significantly across the policy areas to which it has been applied: reporting periods may be shorter or longer, guidelines may be set at the EU or Member State level and enforcement mechanisms may be harder or softer.

administrative burden and the political implications. The table set out below analyses these differences.

Option 4 is the only choice which fulfils the mandate given in the Hague Action Plan, enhances the current evaluation system and is at the same time realistic. The Commission believes that the administrative burden will be fairly limited. It is the best solution, according to the analysis matrix set out below.

Summary of the different options

	Criterion 1: fulfil the mandate given in the Hague Action Plan (0-5)	Criterion 2: propose an effective and comprehensive evaluation system (0-5)	Criterion 3: limit the administrative burden (0-5)	Criterion 4: be politically realistic (0-5)	Total (0-20)
Option 1: No mechanism	0	0	5	0	5
Option 2: Provision of an analytical/methodological framework	0	2	4	1	7
Option 3: Focus on implementation/transposition of FSJ *acquis*	3	1	3	4	11
Option 4: Develop policy evaluation	5	4	3	5	17
Option 5: Develop open method of coordination	3	4	2	0	9

Criterion 1: To fulfil the mandate given in the The Hague Action Plan which provides for the adoption, in 2006, of a general Communication from the Commission on how to develop an evaluation mechanism at EU level.

Criterion 2: To propose an effective and comprehensive evaluation system. Focusing on the analytical/methodological framework or the implementation/transposition of FSJ *acquis* would result in a too partial system.

Criterion 3: To limit the administrative burden. The administrative burden mainly comes from the additional (although limited) workload for EU institutions and MS that will result from the mechanism. Systems of monitoring and evaluations because they imply the designation of contact points and a process for information gathering and sharing would generate a

reasonable but not negligible additional cost (see estimation under). OMC (option 5) is a bit more resources consuming.

Criterion 4: To be politically realistic. Whilst the Commission proposal should be ambitious, it should be acceptable. A solution like an OMC would have little chance to be agreed on and is badly graded here.

We used the following grid (out of 5):

0: irrelevant proposal for this criterion

1: very bad

2: bad

3: neutral / average

4: good

5: very good

6. FURTHER ANALYSIS OF THE IMPACT OF THE PREFERRED MECHANISM

6.1. Social impact

Direct impact

This mechanism for policy evaluation will have a positive direct impact on society through enhanced transparency and hence governance. The proposed mechanism will make it possible to transmit more information to all the stakeholders on implementation and the results of the policies.

Indirect impact

Improved FSJ policies will have an indirect positive impact on society.

A climate of instability and insecurity has perverse effects on society as a whole. The autumn 2003 Eurobarometer survey found that almost nine out of ten citizens polled think that fighting organised crime, terrorism and drug trafficking should be priorities for the European Union and a large majority of them consider that the measures to prevent and fight these threats should be decided and carried out jointly. Specific forms of crime, such as drug addiction and trafficking in human beings, are sources of acute human suffering and can lead to social problems. Today no data suggest any significant fall in drug use and there are an estimated 1.5 million problem users in the European Union (EU). Second, terrorism wreaks immediate suffering on its direct victims, but also creates a widespread feeling of fear and terror which could destabilise society as a whole. Third, the spread of organised crime undermines the fabric of society and, ultimately, the rule of law, trust in institutions and States. Finally, corruption has a strong negative influence on governance and levels of social cohesion. The phenomenon takes many forms, from active infiltration of law enforcement bodies by organised crime to petty corruption by individuals and abuse by individuals holding positions of power for the purpose of personal enrichment. One sign that corruption remains

an important policy issue for Member States is that on the 2004 Perceptions Index compiled by the NGO Transparency International they rank from 1st to 67th out of the 146 countries surveyed.

In the fields of immigration and asylum, a well managed and credible migration policy backed up by efficient integration measures is aiming at preventing a potential increase of racism and xenophobia. According to the 2003 Eurobarometer survey, 60 % of the respondents in EU-15 expressed the view that multiculturalism had certain limits, an opinion that has increased since 1997.

6.2. Environmental impact

Direct impact

This mechanism will have no direct environmental impact.

Indirect impact

Action to create an Area of Freedom, Justice and Security can have positive consequences for the environment which constitutes the third pillar of sustainable development. First, the European Commission is aiming to protect the environment under criminal law and establishing police, criminal justice and administrative cooperation between Member States to combat serious environmental offences. Second, nuclear, bacteriological and chemical vectors – which pose a threat to the environment – are linked to organised crime. They can constitute a weapon in themselves and be a source of financing. Third, monitoring and exchanges of best practices at European level to protect critical infrastructure against major threats could enable the EU to avoid environmental disasters.

Therefore, by ensuring that the Commission action is more efficient and better implemented by the Member States, this mechanism could have a positive indirect impact on the environment.

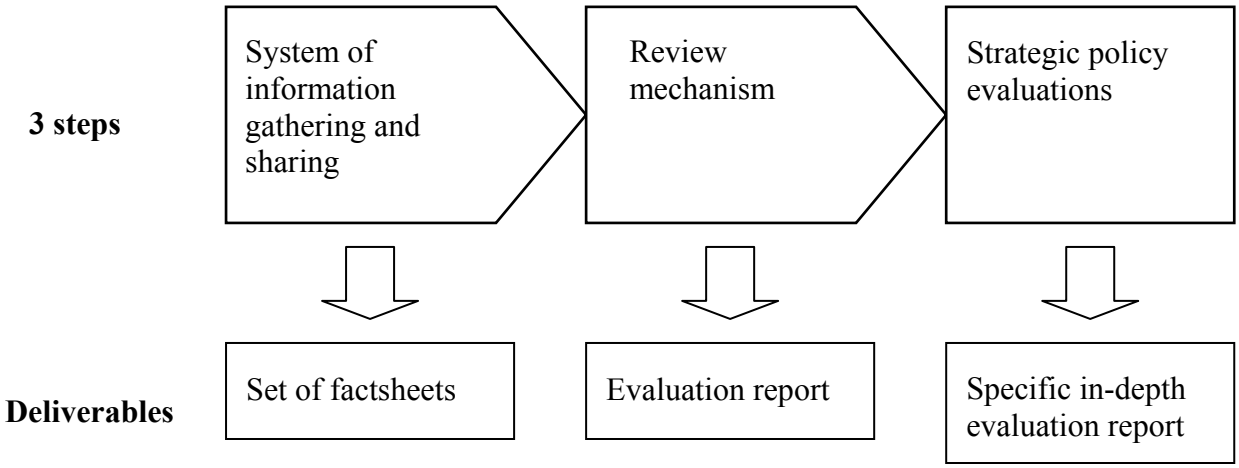
6.3. Economic impact

Direct impact

The negative economic impact of this mechanism is the administrative cost to the institutions and the Member States. Provision of information by other stakeholders will be done on a voluntary basis and therefore there will be no additional cost for the involved organisations nor for the citizens.

Estimating the administrative cost of the proposed mechanism

First the cost of each step of the proposed mechanism must be calculated before adding these costs up.



For **step 1**, the resources necessary to fill in a factsheet (R) can be estimated and then this figure can be multiplied by the number of factsheets (NF) and the number of countries (NC) to give C1 as the cost for step 1.

C1 = R x NF x NC,

where:

R = Resources needed to fill in one factsheet (= 10 person-days or p-d)

NF = 6,

NC = 25.

Therefore:

C1 = 1500 p-d

Training costs of the staff have not been included for two reasons. First, the part of the mechanism which implies knowledge in the field of evaluation will not be dealt with by Member States. The officials in the Member States will be addressed together with the factsheets detailed information on how to fill them in. Second, training on evaluation is currently provided by the Commission (and the Member States). The mechanism will therefore not imply additional cost on this side.

For **step 2**, the cost of preparing the "evaluation report" at Commission level can be estimated as follows:

C2 = R1 + R2 (cost for step 2),

where:

R1 = Resources needed to write the report (= 20 person-days),

R2 = Resources needed to coordinate gathering of the factsheets (= 10 person-days),

Hence, C2 = 30 p-d.

The cost of **step 3** depends on the number of in-depth evaluations carried out. The peer review team in the Council Secretariat-General will be taken as a reference point. Four national experts were needed for two years to complete the first round of evaluation. Another possibility would be to outsource the studies.

C3 = 4 X 200 = 800 p-d.

The total annual cost envisaged is therefore:

C = C1 + C2 + C3

C = 2 330 p-d.

Note 1: It is important to assess the net administrative costs (new costs imposed by an act minus costs saved by the same act whether at EU or at Member State level). In the absence of the evaluation mechanism, several reporting and evaluation systems would remain in place and generate costs for the Member States and the European institutions. By combining different evaluation mechanisms into a single one, the proposed framework will also avoid cost duplication. Assessing these savings are currently difficult since we have little information on the systems in place in the Member States.

Note 2: This estimate has been made on a yearly basis. The information gathering and evaluation report exercise would take place twice every five years. The resources available for each exercise are therefore 2.5 times those for one year. For example: R1 (writing the report) is expected to take an estimated 50 person-days.

	Information gathering	Evaluation report	Specific evaluations
Implication at Commission level	Additional human resources will be needed to coordinate the factsheets exercise.	Additional human resources will be needed to draft the evaluation report.	Additional financial resources will be needed to carry out the additional studies.
Implication at Member State level	Designation of a contact point to coordinate the factsheets exercise.	-	-

The Commission staff working document "Annex to the Communication on Better Regulation for Growth and Jobs in the European Union: Minimising administrative costs imposed by legislation - Detailed outline of a possible EU Net Administrative Cost Model" [COM(2005) 97] states that:

"It is also necessary to recognise the benefits of reporting and information obligations of EU legislation. Without the resulting data streams for public authorities and companies, enforcement and implementation will be severely restricted to the detriment of economic, social and environmental objectives. It is therefore a question of ensuring a proper balance where reporting and information costs are proportionate to the benefits they bring."

The evaluation mechanism proposed strikes the right balance between administrative costs and the benefits offered.

Indirect impact

Following the reasoning set out above, this policy evaluation mechanism will have a positive indirect economic impact.

Insecurity entails high costs, not only to those areas directly affected, but also for the whole economy, given for example the effects on the stability of the stock markets, consumer and investor confidence, etc. Data on the macroeconomic effects of the terrorist attacks on 11 September 2001 corroborate this view.

Critical infrastructure is particularly vulnerable, whether production plants, such as power stations, chemical works or pharmaceutical laboratories housing deadly viruses, or transport, energy and telecommunication networks, especially those which cross national borders. Civil protection is a European concern.

Another concern is the rise in organised crime. According to Europol, the number of criminal gangs rose to around 4 000 in 2002, from around 3 000 in 2001. Moreover, the financial resources of organised crime are increasing dramatically, with the International Monetary Fund estimating the profits at between 2 and 5 % of Europe's total gross domestic product.

Also, while insecurity threatens the European economy, the pursuit of security not only protects companies and citizens' jobs but also can contribute to enhancing internal and external competitiveness and speeding up economic growth. Moreover, the fight against all forms of crime has a positive impact on economic development. Measures which have a direct economic impact include action to combat financial crime, such as fraud and money laundering, relate directly to creating more opportunities for business to compete on a level playing field and ensure a robust financial system across the EU. This also encompasses efforts to combat terrorist financing. Work on counterfeiting and piracy has an immediate impact on the bottom line of the branches of industry worst hit by such crimes. The fight against corruption has a positive indirect impact on both the public sector (through public procurement, for example) and the private sector.

7. MONITORING AND EVALUATION

The evaluation mechanism will be set up progressively. Progress could be monitored through the following set of indicators:

– Qualitative

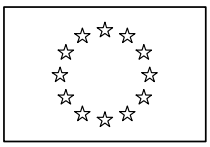
- Quality of the factsheets;
- Clarity of the factsheets;

- Quality of the report;
- Quality of the scoreboard;
- Clarity of the scoreboard.

– Quantitative

- Number of factsheets gathered;
- Cost per factsheet (man days);
- Number of evaluation reports issued;
- Number of in-depth evaluations.

Monitoring and evaluation of the system will be defined when the system is put in place. The system itself will monitor its own indirect impact. A review is envisaged after five years in operation, when the results of the mechanism in terms of the actual impact on FSJ policy-making will be taken into account.



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.6.2006
COM(2006) 346 final

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS AND THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Adaptation of the provisions of Title IV of the Treaty establishing the European Community relating to the jurisdiction of the Court of Justice with a view to ensuring more effective judicial protection

COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS AND THE COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES

Adaptation of the provisions of Title IV of the Treaty establishing the European Community relating to the jurisdiction of the Court of Justice with a view to ensuring more effective judicial protection

Introduction

Private individuals should be able to enjoy effective judicial protection of the rights that they derive from Community law[1]. For this purpose, the Treaty establishes a full system of forms of action and procedures, in which close cooperation between the Court of Justice and the national courts, organised by the preliminary ruling procedure (Article 234 of the Treaty establishing the European Community (the "EC Treaty")), is an essential component.

The Amsterdam Treaty sets the objective of progressively establishing an area of freedom, security and justice. For this purpose, some of the matters previously covered by Title VI of the Treaty on European Union (the "third pillar") were brought within the EC Treaty under certain conditions. Meanwhile, establishing this area has become a Union priority thanks to the political impetus given in particular by the European Council in 1999 (Tampere) and 2004 (Hague programme) and the sound cooperation of all the institutions.

In the development of this area of freedom, security and justice, respect for fundamental rights, and in particular effective judicial protection for everybody, must occupy an essential place. The second indent of Article 67(2) of the EC Treaty accordingly requires the Council, at the end of the transitional period of five years following the entry into force of the Treaty of Amsterdam, to take a decision "with a view to adapting the provisions concerning the jurisdiction of the Court of Justice" (i.e. Article 68 of the Treaty).

But the Commission notes that the transitional period expired on 1 May 2004 and that the Council has not launched work to fulfil this legal obligation[2].

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1 See, in particular, the judgments of the Court of Justice in Case 294/83 *Greens v Parliament* [1983] ECR 1339, para 23; Case 222/84 *Johnston* [1986] ECR 1651, para 18; Case C-50/00 P *Unión de pequeños agricultores* [2002] ECR I-6677, paras 38–40.

2 The Council decided, on the basis of the second indent of Article 67(2) of the EC Treaty to extend the application of the codecision procedure; see Decision of 22 December 2004 (2004/927/EC), OJ L 396, 31.12.2004, p. 45. The Commission had the following statement entered in the Council minutes: *"The Commission would wish to recall that Article 67(2) foresees a decision of the Council not only providing for the areas which should be governed by codecision but also adapting the provisions relating to the powers of the Court of Justice. The passage to codecision for a majority of the domains of Title IV as presented in this present decision contributes in no small measure to increasing the democratic legitimacy of instruments adopted under this title and the Commission can welcome the decision to that extent. That being so, it is unacceptable that the decision does not provide for any adaptation of the competences of the Court, thus perpetuating a situation where access to the Court of Justice remains limited. The Commission is absolutely convinced that, in this area which so closely touches on the rights of individuals, an increased access to justice is equally essential to enhance legitimacy."* The European Parliament took the same position in the Bourlanges Report adopted on 16 December 2004.

The purpose of this communication is to contribute to the adaptation of the special provisions of Article 68 of the EC Treaty concerning the jurisdiction of the Court of Justice in the fields covered by Title IV. In the Commission's opinion, this adaptation should consist of aligning that jurisdiction on the general scheme of the Treaty. A draft Council Decision to that end is attached.

For the reasons explained below, the Commission considers that the best way of adapting the provisions of Title IV relating to the Court is to bring them into line with the standard rules on judicial protection of the Treaty, in all fields covered by Title IV. The specific provisions of Article 68 of the EC Treaty should therefore cease to apply. This is necessary, first of all, for Article 68(1), which prohibits national courts other than those of final instance from applying to the Court for preliminary rulings, whereas Article 234, which establishes the procedure for cooperation with the courts of the Member States, allows any national court to do so. The same applies to the procedure provided for in Article 68(3)[3], which loses its raison d'être once the standard preliminary ruling procedure is established. Lastly, there is no longer any reason for excluding the jurisdiction of the Court for certain measures, as provided for in Article 68(2)[4].

The sections below develop the arguments on which the Commission's position is based. In particular, alignment of the rules concerning the jurisdiction of the Court in Title IV on the ordinary law will:

- ensure the uniform application and interpretation of Community law in this area as in all others (*infra*, item a);

- make it possible to strengthen judicial protection, in fields that are particularly sensitive in terms of fundamental rights (*infra*, item b);

- remedy a paradoxical retrograde step in judicial protection as a result of the Amsterdam Treaty in civil matters covered by Article 65 of the EC Treaty (*infra*, item c); and

- enable the Community judicial system to perform normally without any fear of operating problems in this area (*infra*, item d).

a) Ensure the uniform application and interpretation of Community law

Since the Amsterdam Treaty entered into force, the Union has been running a major legislative programme, launched by the Tampere European Council and reaffirmed in the Hague programme, in the areas of cooperation in civil matters, asylum, immigration, visas and the free movement of persons. An impressive body of Community law is emerging in response to the expectations of Europe's citizens and residents, who wish to live in a genuine area of freedom, security and justice.

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3 "The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this title or of acts of the institutions of the Community based on this title...".

4 "... the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security."

This body of legislation, like any other part of Community law, needs to be interpreted and applied uniformly throughout the Union, and the guarantor of this is the Court of Justice. As it expands, not only quantitatively but especially in terms of the importance of the rights that it confers, there is a vital need to ensure that it is applied in the same way throughout the Union.

The ideal procedure to enable the Court to guarantee the unity of Community law is the preliminary ruling procedure of Article 234 of the EC Treaty. This procedure, which organises close cooperation between the national courts and the Court of Justice, is the keystone of the Community legal order. An essential element of the procedure is the principle that *all* national courts can dialogue with the Court.

Any enduring exemption from this principle prevents the Court of Justice from pursuing its mission of guaranteeing the unity of Community law for the benefit of all potential litigants. In 1995 the Court warned that "*to limit access to the Court would have the effect of jeopardising the uniform application and interpretation of Community law throughout the Union, and could deprive individuals of effective judicial protection and undermine the unity of the case-law… The preliminary ruling system is the veritable cornerstone of the operation of the internal market, since it plays a fundamental role in ensuring that the law established by the Treaties retains its Community character with a view to guaranteeing that that law has the same effect in all circumstances in all the Member States of the European Union… One of the Court's essential tasks is to ensure just such a uniform interpretation, and it discharges that duty by answering the questions put to it by the national courts and tribunals*"[5].

The Court reiterated the point later, regretting the development of "a situation in which the mechanisms for judicial protection vary within the Union" since the transition from the European Communities to the European Union in 1993, and recommending that "rendering the system of judicial protection uniform on the basis of the Community model would actually appear to be the best way of ensuring observance of the law in all spheres of the European Union"[6].

The Commission stresses that consistency is an essential element of the area of freedom, security and justice. Uniform interpretation of the body of legislation that has now been accumulated is essential in order to guarantee this consistency. As an example, it is obvious that the homogeneous application of the acquis in the field of immigration and asylum will greatly help to limit secondary movements between Member States, which has been a constant concern since the area was established. Experience in cooperation in civil matters is just as eloquent: while the Court has been able to make the Brussels I Convention an extremely effective instrument in the service of litigants since 1971 (see *infra*, item c), conversely, since it has not been able to exert its role of standardising concepts under the

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5 Report of the Court of Justice on certain aspects of the application of the Treaty on European Union, 1995, pp. 5-6.

6 See address by President Rodriguez Iglesias at the European Convention, CONV 572/03, 20 February 2003. See also the Court of Justice discussion paper on "The future of the judicial system of the European Union" of 2000, pp. 22 to 23 where, while noting the exemption made in Article 68 of the EC Treaty, restated the general principle, to stress that "it seems necessary for all national courts and tribunals to retain the right to refer questions to the Court of Justice" and that "the uniform application of Community law frequently depends on the answer to a question of interpretation raised before a national court not having to await the outcome of appeal proceedings but being given by the Court of Justice at the outset, so that the case-law can become established at an early stage in the Member States of the Union".

Rome Convention of 1980 on the law applicable to contractual obligations[7], there are wide divergences in the interpretation of that convention in the different Member States.

The Commission now considers that the time has come to provide for Article 234 of the EC Treaty to apply in this area, where the legislation is advancing so dynamically. The more the '*acquis communautaire*' in the fields covered by Title IV develops, thanks in particular to the extension of the qualified majority and co-decision procedure decided on in December 2004, the less grounds there are for the limits on the Court's jurisdiction, conceived only for a five-year transitional period. The Commission already made this point in its statement of December 2004[8].

b) Strengthen judicial protection

The principle of effective judicial protection is one of the general principles of Community law. It is one of the fundamental rights that help to define the very concept of the rule of law. The exception from this principle in Article 68 of the EC Treaty applies in policy areas which are particularly sensitive in terms of fundamental rights and concern the protection of especially vulnerable people.

Restrictions on the right to refer to the Court under Article 68(1) of the EC Treaty raise problems of judicial protection in two types of case.

First, in national disputes concerning personal rights generated by legislation adopted under Title IV, the national courts of first instance and of appeal cannot ask the Court to interpret the applicable Community law. Litigants can therefore be forced to exhaust national redress procedures right up to the supreme court level to have a question referred for a preliminary ruling to clarify their rights.

Moreover, persons who consider that their fundamental rights are violated by a Community instrument adopted on the basis of Title IV have no access to any kind of judicial protection before having run the gamut of national redress procedures. Only the Court of Justice can rule on the invalidity of a Community instrument[9]. Consequently, a national court of first instance or of appeal, even if it is convinced that the relevant instrument is illegal, is still obliged by Article 68(1) of the EC Treaty to apply it without being able to refer the question to the Court of Justice. More serious still, it seems that such a court cannot even grant any kind of provisional judicial protection, since it is possible to provisionally disapply a Community instrument only if there is also a reference for a preliminary ruling on the validity of the instrument[10].

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7 The Commission recently proposed a Regulation to convert this Convention into a Community instrument [proposal for a Parliament and Council Regulation on the law applicable to contractual obligations (Rome I) - COM(2005) 650].

8 See footnote on page 2.

9 Case 314/85 *Foto- Frost* [1987] ECR 4199.

10 Joined cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen* [1991] ECR I-415; C-465/93 *Atlanta* [1995] ECR I-3761. It seems that the fundamental principles emerging from *Foto-Frost*, *Zuckerfabrik* and *Atlanta* should also apply to Title IV. Admittedly, there are those who argue that there should be an exception and that in this area, exceptionally, national courts should be given the power to disapply Community acts that they consider contrary to the Treaty, in order to avoid the problems of judicial protection mentioned in this communication. But this would seriously compromise the autonomy and uniformity of Community law.

In both cases, the restricted jurisdiction enjoyed by the Court under Article 68(1) of the EC Treaty is likely to have the practical effect of depriving people of effective judicial protection. This is all the more the case as in the matters in question people often do not have the financial resources needed to exhaust all national redress procedures, and/or they need rapid legal guidance. Persons protected by the law under Title IV include asylum-seekers and applicants for family reunification under Directives 2003/86/EC, 2004/83/EC and 2005/85/EC, third-country nationals challenging expulsion orders or discriminatory treatment, but also minors affected by disputes covering maintenance responsibilities, in particular, or the parental responsibility in the broad sense of Regulation (EC) No 2201/2003[11]. In addition, in civil and commercial matters to which Regulations (EC) No 44/2001, (EC) No 1348/2000, (EC) No 1206/2001 or (EC) No 805/2004 apply, litigation can easily become illusory or too expensive for small- and medium-sized enterprises if they have to go right up to the national supreme court before the Court of Justice can rule on their rights.

Incidentally, the need to take a case all the way up to the highest level simply in order to refer to the Court after months or years of procedure also breaks the rule of procedural economy. The result is to unnecessarily waste the resources of the national courts, which are free in other areas to decide when a preliminary ruling is the most efficient response. As regards fundamental rights in particular, early intervention by the Court of Justice under Article 234 of the EC Treaty can help to settle upstream problems and obviate the need to raise serious legal issues with successive national courts and even in the European Court of Human Rights.

Article 68(2) excludes the jurisdiction of the Court of Justice "to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security"[12].

The wording of this paragraph appears to exclude any review by the Court of Justice of Community measures adopted by the legislature on the basis of Article 62(1) of the EC Treaty that cover the maintenance of law and order and the safeguarding of internal security. This in practice means Community rules for the abolition of controls on persons at the Union's internal borders, including the exceptional possibilities of reintroducing such controls temporarily. Since, by definition, the national courts cannot rule either on the validity of such Community rules[13], the result is to exclude any possibility of judicial review, which is difficult to justify in an area of freedom, security and justice.

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11 In view of the need to ensure constant and effective protection of minors, disputes relating to parental responsibility, as defined by Regulation (EC) No 2201/2003, often have to be decided at short notice. Although decisions taken under Regulation (EC) No 2201/2003 are often appealed, they very rarely reach the supreme courts.

12 The third subparagraph of Article 2(1) of the Protocol integrating the Schengen acquis into the framework of the European Union contains a clause excluding the jurisdiction of the Court of Justice, in which the parts concerning the Schengen acquis integrated into Community law are parallel to Article 68(2) of the EC Treaty and will have therefore have to be "adapted" in parallel with it.

13 The Commission considers that, contrary to what has sometimes been argued, this paragraph cannot apply to national measures covering the maintenance of law and order and the safeguarding of internal security. This is clear from the very wording of paragraph 2. Neither in the procedure of Article 226 of the EC Treaty nor in the procedure of Article 234 of the Treaty does the Court of Justice ever "rule on" national measures or decisions, and such measures are not "taken pursuant to Article 62(1)".

Excluding the Court's jurisdiction over public-policy measures is also inconsistent with the rest of the Treaty. The Court's function since the origins of the Community has been to rule on the conformity with Community law of national measures taken to maintain public law and order and internal security in areas to which the treaties apply. Consider the example of national legislation and administrative implementing rules which can restrict the freedom of movement of goods and capital but also of Union citizens, and which might even go so far as to include expulsions of Union citizens by a host Member State to the Member State of origin to safeguard public policy[14]. Since then the Court of Justice has always reviewed proportionality and all the other guarantees[15] that circumscribe the exercise of these powers of the Member States, and its review has been attentive to the delicate nature of public policy issues while leaving the Member States with proper room for discretion[16]. In the field of Title IV itself, the Member States also take a variety of other measures in the interest of public policy which are amenable to the Court's jurisdiction. In any event, the proper way of safeguarding public policy in a Community governed by the rule of law is to adopt substantive measures, both legislative and executive, and not to exclude the right to take action in the court.

Lastly, the Commission wonders about the possible consequences in relation to the European Convention on Human Rights if there is no adaptation of Article 68 of the EC Treaty. For one thing, the European Court of Human Rights has held that Member States are collectively liable for any violation of the Convention resulting directly from Community primary law[17]. For another, that Court did consider that the protection of the fundamental rights offered by Community law as regards acts of the institutions was "equivalent" to that ensured by the mechanism of the convention; but it concluded that this equivalence was present on the basis of the ordinary law of the Treaty regarding the jurisdiction of the Court of Justice[18].

To sum up, the Commission considers that the need to strengthen judicial protection makes it urgent that Article 68(1) and (2) of the EC Treaty cease to apply and that the standard rules of the Treaty come into operation.

c) Remedy a gap in judicial protection in cooperation in civil matters

Between 1971 and 2002, when Regulation (EC) No 44/2001 entered into force, the Court of Justice had jurisdiction to give preliminary rulings on the interpretation of the "Brussels I" Convention of 1968[19], requested not only by the courts of final instance in the Member States but also by courts of appeal[20]. For thirty years the Court was regularly able to provide the

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14 These measures are based in particular on Articles 39(3) and 46 of the EC Treaty and must respect the guarantees of Directive 64/221/EEC on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (OJ 56, 4.4.1964, p. 850). This Directive is replaced, with effect from 30 April 2006, by Directive 2004/38/EC of 29 April 2004.

15 See in particular Directive 64/221/EEC, referred to above.

16 See in particular Case C-100/2001 *Olazábal* [2002] ECR I-10981.

17 Judgment of 18 February 1999 *Matthews v United Kingdom* (Application No 24833/94).

18 Judgment of 30 June 2005 *Bosphorus v Ireland* (Application No 45036/98), paras 96–99 and 160–165. The European Court concluded that the implementation of obligations resulting from secondary legislation enjoys a "presumption of conformity" with the Convention.

19 Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters.

20 Article 2 of the Protocol of 3 June 1971 on the interpretation by the Court of Justice of the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial

national appeal courts – and, therefore, citizens and companies active in civil and commercial matters – with valuable interpretations of this Convention, which was an extraordinary factor for European integration.

It is therefore paradoxical that the Amsterdam Treaty, which communitises this matter and enables the legislature to convert the previous conventions into regulations, at the same time, by means of Article 68(1) of the EC Treaty, heavily restricts the jurisdiction of the Court of Justice to interpret these regulations, by precluding appeal courts and allowing only courts of final instance to apply for preliminary rulings.

If such a restriction on review by the national courts had been in force between 1971 and 2002, there is no doubt that the bulk of the Court's decisions in civil and commercial matters[21] would never have been given, or would have been available to assist citizens and firms only after additional delay and cost. There is absolutely no reason why citizens and operators should have to accept that their judicial protection now is more limited than it was for thirty years.

The transitional period being over, it is therefore time for the Council to use the second indent of Article 67(2) of the EC Treaty to remedy this widening gap in protection and introduce the standard rules of Article 234 as regards on judicial cooperation in civil matters.

d) Trust in the proper functioning of the Court of Justice

One of the reasons for Article 68(1) of the EC Treaty seems to be a concern to avoid overloading the Court of Justice with a mass of references for preliminary rulings in matters covered by Title IV. A second fear could be that, in certain fields such as the right of asylum, the preliminary ruling procedure could have held up national judicial proceedings.

The Commission considers that the Court, the efficiency of the means of internal organisation which it now enjoys and the new possibilities created by the Nice Treaty must be trusted. The Court has managed to significantly reduce the average duration of preliminary ruling proceedings[22]. Moreover, it has already shown that the new expedited procedure means that it can give preliminary rulings more quickly if necessary. In addition, where necessary, special rules allowing immediate treatment of particularly urgent cases might be inserted in the Statute of the Court of Justice – thanks to the new legal basis in the second paragraph of Article 245, introduced by the Nice Treaty – and in its Rules of Procedure.

Otherwise, in fields where national proceedings are no less urgent, including proceedings in criminal matters, the Treaties do not confine the possibility of referring to the Court of Justice

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matters. In the cases concerning Article 37 of the Brussels Convention, even courts of first instance were entitled to refer to the Court of Justice.

[21] It is particularly striking to note that Court judgments of major importance for the operation of the Brussels Convention and, therefore, for Regulation (EC) No 44/2001, were given on references from appeal courts. "*Handelskwekerij Bier v Mines de Potasse d'Alsace*" (Case 21/76), "*De Bloos v Bouyer"* (Case 14/76), "*Tessili*" (Case 12/76), "*Denilauler*" (Case 125/79), "*Mund & Fester v Hatrex Internationaal Transport*" (Case C-398/92), "*Reichert*" (Case C-261/90) and "*Group Josi*" (Case C-412/98) are typical cases, the latter having clarified the applicability of the convention to applicants domiciled in third countries. *Owuzu-Jackson* (Case C-281/02) is another, being a leading case on the scope of the Brussels Convention.

[22] See the Court's press release 14/06 of 13 February 2006, "Statistics concerning judicial activity in 2005 – consolidation and continuation of the progress recorded in 2004".

to national courts of final instance. Thus, while judicial protection is completely insufficient in Title VI of the EU Treaty, since under Article 35(2) it presupposes an opt-in by the Member States and only 14 of them have done this, it is paradoxical to note that the Member States making use of this opt-in retain the freedom to choose to allow all the courts to refer questions for preliminary ruling to the Court of Justice, which eleven of them have done, whereas this is not possible in Title IV.

In any event, the Commission believes that, at the present stage of the development of the area of freedom, security and justice, considerations related to the Court's workload do not suffice to justify the maintenance of a provision which can undermine effective judicial protection and the unity of Community law.

Conclusion

Like Europe in general, the area of freedom, security and justice is being built in stages. Since the entry into force of the Amsterdam Treaty and the Tampere European Council, Title IV has made it possible to create an impressive body of legislation for the benefit of the Union's citizens and residents in so many aspects of their daily life.

The transitional period having expired, it is now urgent for the Council to fulfil its obligation under Article 67 of the EC Treaty and restore the Court's full jurisdiction to give preliminary rulings on legislation that has been adopted. This is necessary in order to fully guarantee the fundamental right to effective judicial protection and the uniformity of Community law, and thus to remedy a shortcoming which is no longer justifiable in a genuine "judicial area".

ANNEX

DRAFT
COUNCIL DECISION

adapting the provisions concerning the Court of Justice in fields covered by Title IV of Part Three of the Treaty establishing the European Community

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second indent of Article 67(2) thereof,

Having regard to the opinion of the European Parliament,

Whereas:

(1) By virtue of Article 68(1) of the Treaty, Article 234 of the Treaty is applicable to Title IV of Part Three of the Treaty under the circumstances and conditions specified in that provision. Under Article 68(2), the Court of Justice in any event has no jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security. In the same way, the third subparagraph of Article 2(1) of the Protocol integrating the Schengen acquis into the framework of the European Union excludes the jurisdiction of the Court of Justice to rule on measures or decisions relating to the maintenance of law and order and the safeguarding of internal security in the context of the Schengen acquis. Under Article 68(3) of the Treaty, the Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this title or of acts of the Community institutions based on it. The ruling given by the Court of Justice in response to such a request must not apply to judgments of courts or tribunals of the Member States which have become *res judicata*.

(2) Under the second indent of Article 67(2) of the Treaty, the Council, acting unanimously after consulting the European Parliament, is to take a decision, after a five-year transitional period after the entry into force of the Amsterdam Treaty, with a view to adapting the provisions relating to the powers of the Court of Justice.

(3) That adaptation should be made by aligning the special provisions existing in the fields covered by Title IV on the standard rules of the Treaty. The special provisions should therefore cease to apply and be replaced by application of the general rules of the Treaty, and in particular Article 234.

(4) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not taking part in the adoption of this Decision and is not bound by it or subject to its application,

HAS DECIDED AS FOLLOWS:

Sole Article

1. With effect from [1 January 2007], Article 234 of the Treaty shall apply to any request made to the Court of Justice by a national court to rule on a question concerning the interpretation of Title IV of Part Three of the Treaty or on the validity and interpretation of acts of the Community institutions on the basis of that Title, including requests made before [1 January 2007] on which the Court of Justice has not yet ruled at that date.

2. With effect from [1 January 2007], the second sentence of the third subparagraph of Article 2(1) of the Protocol integrating the Schengen acquis into the framework of the European Union shall cease to apply in matters to which Community law applies.

3. With effect from [1 January 2007], Article 68 of the Treaty shall cease to apply.

Done at Brussels, […]

For the Council
The President

COMMISSION DES COMMUNAUTÉS EUROPÉENNES

Bruxelles, le 28.6.2006
COM(2006) 346 final

COMMUNICATION DE LA COMMISSION AU PARLEMENT EUROPÉEN, AU CONSEIL, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN, AU COMITÉ DES RÉGIONS ET À LA COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES

visant l'adaptation des dispositions du titre IV du traité instituant la Communauté européenne relatives aux compétences de la Cour de justice, en vue d'assurer une protection juridictionnelle plus effective

COMMUNICATION DE LA COMMISSION AU PARLEMENT EUROPÉEN, AU CONSEIL, AU COMITÉ ÉCONOMIQUE ET SOCIAL EUROPÉEN, AU COMITÉ DES RÉGIONS ET À LA COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES

visant l'adaptation des dispositions du titre IV du traité instituant la Communauté européenne relatives aux compétences de la Cour de justice, en vue d'assurer une protection juridictionnelle plus effective

Introduction

Les particuliers doivent pouvoir bénéficier d'une protection juridictionnelle effective des droits qu'ils tirent du droit communautaire[1]. À cet effet, le traité a établi un système complet de voies de recours et de procédures, dont la coopération étroite entre la Cour de justice et les juridictions nationales, organisée par la procédure de renvoi préjudiciel (article 234 du traité instituant la Communauté européenne, ci-après dénommé « traité CE »), est un élément essentiel.

Le traité d'Amsterdam a consacré l'objectif de mettre en place progressivement un espace de liberté, de sécurité et de justice. À cet effet, certaines des matières qui relevaient auparavant du titre VI du traité sur l'Union européenne (le « 3ème pilier ») ont été intégrées dans le traité CE sous certaines conditions. Entre-temps, la construction de cet espace est devenue une priorité pour l'Union, grâce aux impulsions politiques notamment du Conseil européen en 1999 (Tampere) et 2004 (programme de La Haye) et la bonne coopération de toutes les institutions.

Dans le développement de cet espace de liberté, de sécurité et de justice, le respect des droits fondamentaux, et en particulier la protection juridictionnelle effective de toute personne, doit occuper une place essentielle. C'est dans cet esprit que l'article 67, paragraphe 2, second tiret, du traité CE impose au Conseil, à l'issue de la période transitoire de cinq ans à compter de l'entrée en vigueur du traité d'Amsterdam, de *prendre une décision « en vue d'adapter les dispositions relatives aux compétences de la Cour de justice »* (c'est-à-dire les dispositions de l'article 68 dudit traité).

Or, la Commission constate que la période transitoire a expiré le 1er mai 2004 et que le Conseil n'a pas entamé de travaux aux fins de remplir cette obligation juridique[2].

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[1] Voir, notamment, les arrêts de la Cour de justice dans les affaires Les Verts/Parlement, 294/83, rec. p. 1339, point 23 ; Johnston, 222/84, rec. 1986, p. 1651, point 18 ; C-50/00 P, Unión de pequeños agricultores, rec. 2002, I-6677, points 38–40.

[2] Le Conseil a décidé, sur la base de l'article 67, paragraphe 2, second tiret, du traité CE, d'étendre l'application de la procédure de codécision ; voir sa décision du 22 décembre 2004 (2004/927/CE), JO L 396 du 31.12.2004, p. 45. À cette occasion, la Commission a fait la déclaration suivante au PV du Conseil : *« La Commission tient à rappeler que l'article 67, paragraphe 2, prévoit que le Conseil prend une décision non seulement en vue de déterminer les domaines qui doivent relever de la codécision, mais aussi en vue d'adapter les dispositions relatives aux compétences de la Cour de justice. Le passage à la codécision pour la plupart des domaines couverts par le titre IV qui est prévu par la décision concernée contribue dans une large mesure à renforcer la légitimité démocratique des instruments adoptés en vertu dudit titre et, de ce point de vue, la Commission se félicite de la décision.*

Le but de la présente communication est de contribuer à l'adaptation des dispositions particulières de l'article 68 du traité CE, relatives aux compétences de la Cour de justice dans les domaines couverts par le titre IV. De l'avis de la Commission, cette adaptation devrait consister en l'alignement desdites compétences sur le régime général du traité. Un projet de décision du Conseil à cet effet est joint en annexe.

Pour les raisons exposées ci-après, la Commission estime que la façon appropriée d'adapter les dispositions du titre IV relatives à la Cour consiste à les aligner sur le régime commun de la protection juridictionnelle du traité, dans tous les domaines du titre IV. Les dispositions particulières de l'article 68 du traité CE devraient donc cesser de s'appliquer. Ceci s'impose, tout d'abord, pour le premier paragraphe de cet article qui interdit aux juridictions nationales autres que celles de dernière instance de saisir la Cour par renvoi préjudiciel alors que l'article 234 du traité qui établit la procédure de coopération avec les juridictions des États membres ouvre cette faculté à toute juridiction nationale. Il doit en être de même de la procédure prévue au paragraphe 3[3] qui perd sa raison d'être une fois instaurée la procédure préjudicielle normale. Enfin, l'exclusion de toute compétence de la Cour, prévue au paragraphe 2 pour certaines mesures[4], n'a pas de raison d'être maintenue.

Les sections qui suivent développent les arguments sur lesquels se fonde la position de la Commission. En particulier, l'alignement sur le droit commun des règles concernant les compétences de la Cour dans le titre IV:

- assurera l'application et l'interprétation uniformes du droit communautaire dans ce domaine comme dans tout autre (infra, point a) ;

- permettra de renforcer la protection juridictionnelle, et ce dans des domaines particulièrement sensibles au regard des droits fondamentaux (infra, point b) ;

- corrigera un recul paradoxal de protection juridictionnelle résultant du traité d'Amsterdam dans les matières civiles couvertes par l'article 65 du traité CE (infra, point c), et

- signifiera que le système judiciaire communautaire opérera normalement sans qu'il faille craindre des problèmes de fonctionnement dans ce domaine (infra, point d).

a) Assurer l'application et l'interprétation uniformes du droit communautaire

Depuis l'entrée en vigueur du traité d'Amsterdam, l'Union poursuit une œuvre législative majeure, lancée par le Conseil européen de Tampere et réaffirmée dans le programme de La Haye, dans les domaines de la coopération en matière civile, de l'asile, de l'immigration, des visas et de la libre circulation des personnes. Un corps impressionnant de droit

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Cela étant, il est inacceptable que la décision ne prévoie pas d'adaptation des compétences de la Cour, perpétuant ainsi une situation où l'accès à la Cour de justice demeure limité. La Commission est fermement convaincue que, dans ce domaine si étroitement lié aux droits des personnes, un accès plus large à la justice est tout aussi indispensable en vue de renforcer la légitimité ». La même position a été exprimée par le Parlement européen dans le rapport Bourlanges adopté le 16 décembre 2004.

[3] Conformément à ce paragraphe, *« Le Conseil, la Commission ou un État membre a la faculté de demander à la Cour de justice de statuer sur une question d'interprétation du présent titre ou d'actes pris par les institutions de la Communauté sur base de celui-ci. (...) ».*

[4] Conformément à ce paragraphe, *« (...) la Cour de justice n'est pas compétente pour statuer sur les mesures ou décisions prises en application de l'article 62, point 1, portant sur le maintien de l'ordre public et la sauvegarde de la sécurité intérieure. ».*

communautaire est en train de se construire, en réponse aux attentes des citoyens et résidents de l'Europe qui demandent de vivre dans un véritable espace de liberté, de sécurité et de justice.

Ce corps législatif, comme toute autre partie du droit communautaire, appelle une interprétation et une application uniformes partout dans l'Union, dont le garant est la Cour de justice. Dans la mesure où il est en expansion, et ce non seulement quantitativement mais surtout quant à l'importance des droits qu'il confère, il devient impératif d'assurer sa mise en œuvre homogène partout dans l'Union.

Or, la procédure par excellence qui permet à la Cour de garantir l'unité du droit communautaire est celle du renvoi préjudiciel prévu à l'article 234 du traité CE. Cette procédure, organisant une coopération étroite entre la Cour et les tribunaux nationaux, est au cœur de la construction de l'ordre juridique communautaire. Un élément essentiel de cette procédure est le principe selon lequel *toute* juridiction nationale peut dialoguer avec la Cour.

Toute dérogation persistante à ce principe empêche la mission de la Cour de garantir l'unité du droit communautaire au bénéfice de tous les justiciables. C'est ainsi que la Cour a mis en garde, dès 1995, que *«limiter la possibilité de saisir la Cour aurait pour effet de mettre en cause l'application et l'interprétation uniformes du droit communautaire dans l'ensemble de l'Union, et risquerait ainsi de priver les particuliers d'une protection juridictionnelle effective et de porter atteinte à l'unité de la jurisprudence… Le système de renvoi préjudiciel constitue la véritable clé de voûte du fonctionnement du marché intérieur, puisqu'il est essentiel à la préservation du caractère communautaire du droit institué par les traités et qu'il a pour but d'assurer en toute circonstance à ce droit le même effet dans tous les États membres…L'une des missions essentielles de la Cour consiste précisément à assurer une telle interprétation uniforme et c'est en répondant aux questions posées par ces tribunaux nationaux qu'elle s'en acquitte»*[5].

La Cour a réitéré ce point plus tard, en regrettant le développement, depuis le passage des Communautés européennes à l'Union européenne en 1993, *« de disparités dans le contrôle juridictionnel au sein de l'Union »* et en recommandant *« l'uniformisation du système de protection juridictionnelle sur la base du modèle communautaire »* comme *« la meilleure voie pour assurer le respect du droit dans tout le domaine de l'Union européenne»*[6].

La Commission souligne qu'un élément essentiel de l'espace de liberté, de sécurité et de justice est sa cohérence. Une interprétation uniforme du corps législatif entre-temps construit est indispensable afin de garantir cette cohérence. En guise d'exemple, il est évident que, dans le domaine de l'immigration et de l'asile, l'application homogène de l'acquis contribuera considérablement à limiter les mouvements secondaires entre les États membres, ce qui a été un souci constant depuis la création de l'espace. L'expérience en matière de coopération

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5 Voir rapport de la Cour de justice sur certains aspects de l'application du TUE, 1995, pp. 5-6.

6 Voir l'intervention du président Rodríguez Iglesias dans le cadre des travaux de la convention européenne, CONV 572/03 du 20 février 2003. Voir également le document de réflexion de la Cour « L'avenir du système juridictionnel de l'Union européenne » de 2000, pp. 31 à 33, dans lequel la Cour, tout en notant la dérogation prévue dans l'article 68 du traité CE a réitéré le principe général, pour souligner qu'il *« semble nécessaire que la possibilité de saisir la Cour reste ouverte à toutes les juridictions »* et que *« l'application uniforme du droit communautaire tient souvent à ce que la réponse à des questions d'interprétation soulevées devant les tribunaux ne reste pas en suspens jusqu'en appel ou en cassation, mais est apportée d'emblée par la Cour, ce qui permet, à un stade précoce, de fixer la jurisprudence dans les États membres de l'Union. ».*

civile est également parlante : tandis que la Cour a pu faire, depuis 1971, de la convention « Bruxelles I » un instrument extrêmement efficace au service des justiciables (voir infra, sous c), inversement, faute pour la Cour de pouvoir exercer son rôle d'uniformisation des concepts dans le cadre de la convention de Rome de 1980 sur la loi applicable aux obligations contractuelles[7], les dispositions de cette dernière convention font l'objet d'interprétations extrêmement divergentes d'un État membre à l'autre.

La Commission estime dès lors qu'il y a lieu désormais de prévoir l'application de l'article 234 du traité CE à l'ensemble de cette matière qui fait l'objet d'une construction législative si dynamique. Plus l'acquis communautaire dans les domaines couverts par le titre IV se développe, grâce notamment à l'extension de la procédure de majorité qualifiée et de co-décision décidée en décembre 2004, plus les limites fixées aux compétences de la Cour, conçues pour une période transitoire de cinq ans seulement, apparaissent injustifiées. La Commission a déjà mis en exergue ce point dans sa déclaration de décembre 2004[8].

b) Renforcer la protection juridictionnelle

Le principe de la protection juridictionnelle effective fait partie des principes généraux du droit communautaire. Il est un des droits fondamentaux constitutifs de la notion même d'État de droit. La dérogation, introduite par l'article 68 du traité CE à ce principe, intervient dans des politiques qui sont d'une sensibilité particulière au regard des droits fondamentaux et comportent la protection de personnes particulièrement vulnérables.

La limitation du droit de saisir la Cour, prévue au paragraphe 1 de l'article 68 du traité CE, soulève des problèmes de protection juridictionnelle dans deux cas de figure.

D'une part, dans des litiges nationaux concernant des droits subjectifs créés par la législation adoptée en vertu du titre IV, les juges nationaux de première instance et d'appel ne sont pas en mesure de demander à la Cour d'interpréter le droit communautaire applicable. Les personnes concernées peuvent donc être contraintes d'épuiser les voies d'action nationales jusqu'au dernier degré de juridiction pour obtenir qu'un renvoi préjudiciel puisse clarifier leurs droits.

D'autre part, les personnes qui s'estiment lésées dans leurs droits fondamentaux par un acte communautaire adopté sur la base du titre IV ne bénéficient pas d'une protection juridictionnelle quelconque avant d'avoir parcouru toute l'échelle des voies de recours judiciaires nationales. Car seule la Cour est compétente pour prononcer l'invalidité d'un acte communautaire[9]. Par conséquent, il paraît qu'un juge national de première instance ou d'appel, même s'il était convaincu de l'illégalité de l'acte en cause, serait néanmoins contraint par l'article 68, paragraphe 1, du traité CE de l'appliquer sans pouvoir saisir la Cour de la question. Plus grave encore, un tel juge ne peut, semble-t-il, même pas accorder une protection juridictionnelle provisoire quelconque, car la suspension provisoire de l'application

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7 La Commission a récemment proposé un règlement pour communautariser cette convention [proposition de règlement du Parlement européen et du Conseil sur la loi applicable aux obligations contractuelles (Rome I) - COM(2005) 650].

8 Voir la note de bas de page 2.

9 Affaire 314/85, Foto-Frost, rec. 1987, p. 04199.

d'un acte communautaire n'est admise que lorsqu'elle est accompagnée d'un renvoi préjudiciel portant sur la validité de l'acte[10].

Dans les deux cas de figure, les compétences réduites de la Cour en vertu de l'article 68, paragraphe 1, du traité CE risquent donc, en pratique, de priver les personnes concernées d'une protection juridictionnelle effective. Ceci d'autant plus que dans les matières en cause, ces personnes ne disposent souvent pas des ressources financières nécessaires pour épuiser toutes les instances nationales, et/ou ont besoin d'une intervention judiciaire rapide. Ainsi, les personnes que protège le droit du titre IV incluent les demandeurs d'asile ou d'un regroupement familial au sens des directives 2003/86/CE, 2004/83/CE et 2005/85/CE, les ressortissants de pays tiers s'opposant à des expulsions ou à des traitements discriminatoires, mais aussi les enfants mineurs touchés par des litiges portant sur des obligations alimentaires ou, en particulier, sur la responsabilité parentale au sens large du règlement (CE) n° 2201/2003[11]. Par ailleurs, en matière civile et commerciale, couverte par les règlements (CE) n° 44/2001, (CE) n° 1348/2000, (CE) n° 1206/2001, (CE) n° 805/2004, les contentieux peuvent aussi facilement devenir illusoires ou trop coûteux pour les petites et moyennes entreprises si elles doivent aller jusqu'à la cour suprême nationale avant que la Cour de justice puisse se prononcer sur leurs droits.

Il convient d'ajouter que la contrainte de porter un litige jusqu'à la dernière instance, dans le seul but de pouvoir saisir la Cour après des mois ou des années de procédure, est également contraire à l'économie procédurale. Elle peut conduire à gaspiller inutilement les ressources des juridictions nationales qui, dans d'autres domaines, peuvent librement apprécier à quel moment un renvoi préjudiciel est le plus efficace. Notamment en matière des droits fondamentaux, une intervention précoce de la Cour de justice en vertu de l'article 234 du traité CE peut permettre de régler les problèmes en amont et d'éviter que des questions juridiques sérieuses doivent être discutées devant plusieurs instances nationales voire devant la Cour européenne des droits de l'homme.

Le paragraphe 2 de l'article 68 du traité CE exclut toute compétence de la Cour de justice pour « statuer sur les mesures ou décisions prises en application de l'article 62, point 1, portant sur le maintien de l'ordre public et la sauvegarde de la sécurité intérieure »[12].

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10 Affaires jointes. C-143/88 et C-92/89, Zuckerfabrik Süderdithmarschen, rec. 1991, p. I-415; C-465/93, Atlanta, rec. 1995, I-3761. Il semble que les principes fondamentaux dégagés par la jurisprudence Foto-Frost, Zuckerfabrik et Atlanta devraient également s'appliquer au titre IV. Certes, certains ont argumenté qu'on devrait déroger et reconnaître dans ce domaine, exceptionnellement, aux juges nationaux le pouvoir de laisser inappliqués des actes communautaires qu'ils estiment contraires au traité, afin d'éviter les problèmes de protection juridictionnelle évoqués dans la présente communication. Toutefois, cette position comporterait une atteinte grave à l'autonomie et à l'uniformité du droit communautaire.

11 Compte tenu de la nécessité d'assurer une protection constante et efficace des mineurs, les litiges relatifs à la responsabilité parentale, telle que définie par le règlement (CE) n° 2201/2003, doivent souvent être tranchés à bref délai. Bien que les décisions prises en vertu du règlement (CE) n° 2201/2003 fassent souvent l'objet d'un recours, elles ne sont que rarement portées devant les juridictions de dernière instance.

12 L'article 2, paragraphe 1, troisième alinéa, du protocole intégrant l'acquis de Schengen dans le cadre de l'Union européenne, contient une disposition d'exclusion de compétence de la Cour de justice qui, concernant les parties de l'acquis de Schengen intégrées au droit communautaire, est parallèle à la disposition de l'article 68, paragraphe 2, du traité CE et devra donc être « adaptée » en parallèle à cette dernière.

Selon le libellé de ce paragraphe, celui-ci paraît exclure tout contrôle de la Cour relatif aux mesures *communautaires* adoptées par le législateur sur la base de l'article 62, point 1, du traité CE pour autant qu'elles portent sur le maintien de l'ordre public et la sauvegarde de la sécurité intérieure. Il s'agit concrètement des règles communautaires visant l'abolition de tout contrôle des personnes aux frontières intérieures à l'Union, y compris les possibilités exceptionnelles de réintroduire temporairement ces contrôles. Étant donné que, par définition, les juridictions nationales ne peuvent pas non plus statuer sur la validité de telles règles communautaires[13], il en résulte une exclusion totale de tout contrôle juridictionnel sur celles-ci, ce qui n'est guère défendable dans un espace de liberté, de sécurité et de justice.

L'exclusion de la compétence de la Cour pour des mesures d'ordre public est également incohérente par rapport au reste du traité. En effet, la mission de la Cour a été, depuis les origines de la Communauté, de se prononcer sur la conformité avec le droit communautaire des mesures nationales prises, dans le champ d'application des traités, pour maintenir l'ordre public et la sécurité intérieure. On citera notamment l'exemple des législations nationales, et leur application administrative, qui peuvent limiter la libre circulation des marchandises et capitaux, mais aussi des citoyens de l'Union ce qui peut même inclure des expulsions de ces citoyens par un État membre « hôte » vers l'État d'origine pour protéger l'ordre public[14]. La Cour a depuis toujours contrôlé la proportionnalité et toutes les autres garanties[15] cantonnant l'exercice de ces pouvoirs des États membres, et son contrôle a pleinement tenu compte de la sensibilité des besoins de l'ordre public en laissant aux États membres une marge d'appréciation appropriée[16]. Dans le champ même du titre IV, les États membres sont également amenés à prendre diverses autres mesures dans l'intérêt de l'ordre public qui entrent bien dans les compétences de la Cour. En tout état de cause, la sauvegarde de l'ordre public doit, dans une communauté de droit, être poursuivie par des mesures de fond, législatives et exécutives, et non pas par des exclusions du droit au juge.

Enfin, la Commission s'interroge sur les conséquences éventuelles au regard de la convention européenne des droits de l'homme, en cas d'absence totale de toute adaptation des dispositions de l'article 68 du traité CE. D'une part, la Cour européenne des droits de l'homme a statué que les États membres sont collectivement responsables de toute violation de cette convention qui résulterait directement du droit communautaire primaire[17]. D'autre part, cette Cour a certes estimé, concernant les actes des institutions, que la protection des droits fondamentaux offerte par le droit communautaire est « équivalente » à celle assurée par le mécanisme de la convention; mais la Cour européenne est parvenue à ce constat

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13 La Commission estime que, contrairement à ce qui a parfois été avancé, ce paragraphe ne peut pas s'appliquer à des mesures *nationales* portant sur le maintien de l'ordre public et la sauvegarde de la sécurité intérieure. Ceci découle du libellé même du paragraphe 2. En effet, ni dans la procédure prévue à l'article 226 du traité CE ni dans celles de l'article 234 dudit traité, la Cour de justice ne « statue » jamais « sur » des mesures ou décisions nationales, et de telles mesures ne sont pas « prises en application de l'article 62, point 1, du traité CE» .

14 Ces mesures se fondent notamment sur l'article 39, paragraphe 3, et de l'article 46 du traité CE et doivent respecter les garanties de la directive 64/221/CEE, pour la coordination des mesures spéciales aux étrangers en matière de déplacement et de séjour justifiées par des raisons d'ordre public, de sécurité publique et de santé publique (JO 56 du 4.4.1964, p. 850). Cette directive est remplacée, avec effet au 30 avril 2006, par la directive 2004/38/CE du 29 avril 2004.

15 Voir notamment la directive 64/221/CEE, précitée.

16 Voir notamment l'affaire C-100/2001, Olazábal, 2002, I-10981.

17 Voir l'arrêt du 18 février 1999, Matthews c. Royaume-Uni (requête n° 24833/94).

d'équivalence eu égard au *régime de droit commun* du traité relatif aux compétences de la Cour de justice[18].

En résumé, la Commission estime que l'exigence de renforcer la protection juridictionnelle rend urgent que les paragraphes 1 et 2 de l'article 68 du traité CE cessent de s'appliquer et que le régime commun du traité soit instauré.

c) Corriger un recul de protection juridictionnelle concernant la coopération en matière civile

Entre 1971 et 2002, date d'entrée en vigueur du règlement (CE) n° 44/2001, la Cour était compétente pour répondre aux demandes préjudicielles, concernant l'interprétation de la convention dite « Bruxelles I » de 1968[19], faites non seulement par les tribunaux de dernière instance des États membres *mais aussi par les juridictions statuant en appel*[20]. Pendant 30 ans, la Cour a ainsi pu fournir aux cours d'appel nationales - et, partant, aux citoyens et entreprises actifs en matière civile et commerciale - de nombreuses et précieuses interprétations de cette convention qui a marqué un jalon extraordinaire de l'intégration européenne.

Il est donc paradoxal que le traité d'Amsterdam, en « communautarisant » cette matière et en permettant au législateur de convertir les conventions antérieures en règlements, ait en même temps, par le biais de l'article 68, paragraphe 1, du traité CE, restreint sérieusement la compétence de la Cour pour interpréter ces règlements, en écartant les juridictions d'appel pour réserver aux seules juridictions statuant en dernier ressort le recours préjudiciel.

Si une telle restriction au contrôle par les juridictions nationales avait été en vigueur entre 1971 et 2002, nul doute qu'une bonne partie de la jurisprudence de la Cour en matière civile et commerciale[21] n'aurait soit jamais vu le jour ou n'aurait bénéficié aux citoyens et opérateurs économiques qu'après des retards et frais supplémentaires. Rien ne peut justifier que ces citoyens et opérateurs doivent supporter que leur protection juridictionnelle soit désormais plus limitée que ce qu'elle n'était pendant 30 ans.

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18 Voir l'arrêt du 30 juin 2005, Bosphorus c. Irlande (requête n° 45036/98), points 96–99 et 160–165. La Cour européenne en a tiré la conclusion que la mise en œuvre d'obligations résultant des actes de droit dérivé jouit d'une « présomption de conformité » avec la convention.

19 Convention du 27 septembre 1968 concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale.

20 Article 2 du protocole du 3 juin 1971 relatif à l'interprétation par la Cour de justice de la convention du 27 septembre 1968 concernant la compétence judiciaire et l'exécution des décisions en matière civile et commerciale. Dans les cas d'application de l'article 37 de la convention de Bruxelles, même des tribunaux statuant en première instance avaient le droit de saisir la Cour de justice.

21 Il est particulièrement frappant de constater que des arrêts d'une importance majeure pour le fonctionnement de la convention de Bruxelles et, partant, pour le règlement (CE) n° 4/2001 ont été adoptés par la Cour sur demande de renvoi formée par des cours d'appel. Il en est ainsi, en particulier, des arrêts « Bier Mines de Potasse d'Alsace » (aff. 21-76) « De Bloos » (aff 14-76), « Tessili » (aff. 12/76), « Denilauler » (aff. 125/79), « Mund-Fester » (aff. C-398-92), « Reichert » (aff. C-261-90) ou encore de l'arrêt « Group Josi » (aff. C-412/98), qui a clarifié l'applicabilité de la convention à des demandeurs domiciliés dans des pays tiers. Il en est également ainsi de l'arrêt « Owuzu-Jackson » (aff. C-281-02) dont l'importance est capitale pour la portée du domaine d'application de la convention de Bruxelles.

La période transitoire écoulée, il est donc temps que le Conseil utilise la voie de l'article 67, paragraphe 2, second tiret, du traité CE, pour rectifier ce recul de protection et instaure le régime commun de l'article 234 dudit traité en matière de coopération judiciaire civile.

d) Avoir confiance dans le bon fonctionnement de la Cour de justice

L'article 68, paragraphe 1, du traité CE semble s'expliquer en partie par un souci de prévenir un encombrement de la Cour par un afflux massif de renvois préjudiciels dans les matières couvertes par le titre IV. Une deuxième crainte a pu être que, dans certains domaines comme notamment le droit d'asile, la procédure de renvoi préjudiciel aurait pu retarder les procédures judiciaires nationales.

La Commission estime qu'il faut faire confiance à la Cour, à l'efficacité des moyens d'organisation interne qui sont dès à présent à la disposition de celle-ci ainsi qu'aux nouvelles possibilités entre-temps créées par le traité de Nice. La Cour est actuellement en mesure de faire état d'une réduction significative de la durée moyenne des procédures préjudicielles[22]. En outre, par l'usage de la nouvelle procédure accélérée, elle a déjà démontré qu'elle est capable de répondre plus rapidement à des questions préjudicielles si nécessaire. Par ailleurs, en cas de besoin, des règles spéciales permettant un traitement immédiat d'affaires particulièrement urgentes pourraient être introduites dans le statut de la Cour de justice – grâce à la nouvelle base juridique de l'article 245, deuxième alinéa introduite par le traité de Nice – et dans son règlement de procédure.

Du reste, dans d'autres domaines où les procédures nationales ne sont pas moins urgentes, y compris en matière pénale, les traités n'ont pas limité la possibilité de saisir la Cour aux seules juridictions nationales de dernière instance. Ainsi, alors même que la protection juridictionnelle est tout à fait insuffisante dans le titre VI du traité UE, puisqu'elle suppose, dans l'article 35, paragraphe 2, un *opt-in* de la part des États membres dont seuls 14 on fait usage, il est paradoxal de constater que, pour les États membres qui ont fait usage de cet *opt-in*, une liberté de choix leur est laissée de permettre à l'ensemble des juridictions de saisir la Cour en renvoie préjudiciel – ce que 11 États membres ont fait –, alors que ceci n'est pas possible dans le titre IV.

En tout état de cause, des considérations liées à la charge de travail des juges ne suffisent pas, aux yeux de la Commission, à justifier le maintien, au stade actuel du développement de l'espace de liberté, de sécurité et de justice, d'une disposition qui peut porter atteinte à la protection juridictionnelle effective et à l'unité du droit communautaire.

Conclusion

Comme l'Europe en général, l'espace de liberté, de sécurité et de justice se construit par étapes. Depuis l'entrée en vigueur du traité d'Amsterdam et le Conseil européen de Tampere, le titre IV a permis de créer un corps législatif impressionnant, au bénéfice des citoyens et résidents de l'Union dans de nombreux aspects de leur vie quotidienne.

La période transitoire étant expirée, il devient désormais urgent que le Conseil remplisse son obligation découlant de l'article 67 du traité CE, en rétablissant la Cour dans la plénitude de ses compétences préjudicielles sur la législation adoptée. Ceci s'impose afin de garantir

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[22] Voir, en dernier lieu, le communiqué de presse de la Cour n° 14/06 du 13 février 2006, intitulé «Statistiques judiciaires 2005 – les progrès constatés en 2004 se consolident et se poursuivent ».

pleinement le droit fondamental à la protection juridictionnelle effective ainsi que l'uniformité du droit communautaire, et de combler ainsi une lacune qui n'est plus justifiable dans un véritable « espace de justice».

ANNEXE

PROJET DE
DÉCISION DU CONSEIL

adaptant les dispositions relatives à la Cour de justice dans les domaines couverts par le titre IV de la troisième partie du traité instituant la Communauté européenne

LE CONSEIL DE L'UNION EUROPÉENNE,

vu le traité instituant la Communauté européenne, et notamment son article 67, paragraphe 2, second tiret,

vu l'avis du Parlement européen,

considérant ce qui suit :

(1) Conformément à l'article 68, paragraphe 1, du traité, l'article 234 du traité est applicable au titre IV de la troisième partie du traité dans des circonstances et conditions particulières prévues dans cette disposition. Conformément à l'article 68, paragraphe 2, la Cour de justice n'est, en tout état de cause, pas compétente pour statuer sur les mesures ou décisions prises en application de l'article 62, point 1, portant sur le maintien de l'ordre public et la sauvegarde de la sécurité intérieure. De la même manière, l'article 2, paragraphe 1, troisième alinéa, du protocole intégrant l'acquis de Schengen dans le cadre de l'Union européenne, exclut la compétence de la Cour de justice pour statuer sur les mesures ou décisions prises dans le cadre de l'acquis de Schengen et portant sur le maintien de l'ordre public et la sauvegarde de la sécurité intérieure. Conformément à l'article 68, paragraphe 3, du traité, le Conseil, la Commission ou un État membre a la faculté de demander à la Cour de justice de statuer sur une question d'interprétation du présent titre ou d'actes pris par les institutions de la Communauté sur la base de celui-ci. L'arrêt rendu par la Cour de justice en réponse à une telle demande n'est pas applicable aux décisions des juridictions des États membres qui ont force de chose jugée.

(2) Conformément à l'article 67, paragraphe 2, second tiret, du traité, le Conseil, statuant à l'unanimité après consultation du Parlement européen, doit prendre une décision, à l'issue d'une période transitoire de cinq ans après l'entrée en vigueur du traité d'Amsterdam, en vue d'adapter les dispositions relatives aux compétences de la Cour de justice.

(3) Il convient de procéder à ladite adaptation par l'alignement des dispositions particulières existant dans les domaines couverts par le titre IV sur le régime commun du traité. Ces dispositions particulières devraient donc cesser de s'appliquer, au profit de l'application des règles générales du traité et notamment de son article 234.

(4) Le Danemark, conformément aux articles 1er et 2 du protocole sur la position du Danemark annexé au traité sur l'Union européenne et au traité instituant la Communauté européenne, ne participe pas à l'adoption de la présente décision et n'est donc pas lié par celle-ci ni soumis à son application,

DECIDE:

Article unique

1. À compter du [1er janvier 2007], l'article 234 du traité s'applique à toute demande faite à la Cour de justice, par une juridiction nationale, de statuer sur une question concernant l'interprétation du titre IV de la troisième partie du traité ou sur la validité et l'interprétation des actes pris par les institutions de la Communauté sur la base dudit titre, y compris les demandes faites avant le [1er janvier 2007] sur lesquelles la Cour de justice n'aurait pas encore statué à cette date.

2. À compter du [1er janvier 2007], l'article 2, paragraphe 1, troisième alinéa, deuxième phrase, du protocole intégrant l'acquis de Schengen dans le cadre de l'Union européenne cesse de s'appliquer dans le champ d'application du droit communautaire.

3. À compter du [1er janvier 2007], l'article 68 du traité cesse de s'appliquer.

Fait à Bruxelles, le

Par le Conseil
Le président