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Viite

Asia

EU/OSA; Kertomus Haagin ohjelman ja toimintasuunnitelman täytäntöönpanosta vuosina 2005-2009

U/E-tunnus:

EUTORI-numero:

Ohessa lähetetään perustuslain 97§:n mukaisesti selvitys komission tiedonannosta koskien Haagin ohjelman ja toimintasuunnitelman (v. 2005–2009) arviointia.

Osastopäällikön sijainen, lainsäädäntöjohtaja

Asko Välimaa

EU-asiantuntija

Anna Hyvärinen

LIITTEET OM2009-00250

KOM(2009) 263 lopullinen (komission tiedonanto) fi ja sv

SEC(2009) 765 final (Liite 1: Implementation Scoreboard)

SEC (2009) 766 final (Liite 2: An extended report on the evaluation of the Hague Programme)

Asiasanat	oikeus- ja sisäasiat
Hoitaa	OM, SM, UM
Tiedoksi	EUE, STM, TEM, TH, VM, VNEUS

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Kokous

Liitteet

Viite

EUTORI/Eurodoc nro:

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U-tunnus / E-tunnus:

Haagin ohjelmaa on aikaisemmin käsitelty tunnuksella E 72/2004 vp.

Käsittelyn tarkoitus ja käsittelyvaihe:

Oikeus, vapaus ja turvallisuus Euroopassa vuodesta 2005: Haagin ohjelman ja toimintasuunnitelman arviointi.

Vuonna 2005 hyväksytty Haagin ohjelma ja sitä täydentävä toimintasuunnitelma päättyvät vuoden 2009 lopussa. Komissio on julkaissut 10.6.2009 tiedonannon, jossa arvioidaan Haagin ohjelman ja toimintasuunnitelman täytäntöönpanoa. Arvio toimii pohjana seuraavan oikeus- ja sisäasioiden ohjelman eli Tukholman (v. 2010–2014) valmisteluissa. Tukholman ohjelma hyväksytään Eurooppa-neuvostossa 10.12.2009. Tukholman ohjelman valmistelusta ks. E-jatkokirje 3.7.2009 (perusmuistio SM2009-00289).

Asiakirjat:

KOM(2009) 263 lopullinen
SEC(2009) 765 final (Liite 1: Implementation Scoreboard)
SEC(2009) 766 final (Liite 2: An extended report on the evaluation of the Hague Programme)
SEC(2009) 767 final (Liite 3: Institutional Scoreboard)

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

Asiasta ei tehdä päätöksiä.

Käsittelijä(t):

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Suomen kanta/ohje:

Komission julkaisema kattava Haagin ohjelman ja toimintasuunnitelman kokonaisarviointi antaa hyvän pohjan seuraavan monivuotisen ohjelman eli Tukholman ohjelman valmisteluille. Suomi kannattaa komission aietta antaa Tukholman ohjelman täytäntöönpanosta vastaavat vuosittaiset raportit. Suomen näkemyksen mukaan on tärkeää seurata, miten uuden ohjelman toteuttaminen etenee sekä EU-tasolla että jäsenvaltioissa, joissa instrumentteja pannaan täytäntöön ja sovelletaan.

Suomi pitää erityisen myönteisenä, että arviointikertomuksessa korostetaan jo hyväksyttyjen toimien ja päätösten täytäntöönpanon tehostamista sekä lainsäädännön laadun parantamista. Suomi pitää myös erittäin tärkeänä tavoitetta toiminnan arvioinnin tehostamisesta. Kuten komissio arviointiraportissaan katsoo, systemaattisia seuranta- ja arviointijärjestelmiä on syytä kehittää, jotta vaikutuksista saadaan vertailukelpoista tietoa. Seurannan ja arvioinnin avulla voidaan myös selvittää, miten olemassa olevaa EU-sääntelyä olisi tarpeen uudistaa. Voimaantullessaan Lissabonin sopimus antaisi arviointiin uusia mahdollisuuksia.

Pääasiallinen sisältö:

Kunnianhimoinen ohjelma ja sen näkyvät saavutukset

Haagin ohjelmaa ja toimintasuunnitelmaa koskevassa arvioinnissa on selvitetty ohjelmakauden saavutuksia. Komission tiedonannossa kerrotaan, että monien Haagin ohjelmassa asetettujen kunnianhimoisten tavoitteiden toteuttamisessa on edistytty harppauksin ja että useimmat Haagin ohjelmassa esitetyt toimenpiteet on toteutettu. Kuitenkin esimerkiksi laillista maahanmuuttoa koskevan sääntelyn aikaansaaminen on ollut haastavaa. Haagin ohjelman täytäntöönpanoa on osittain hankaloittanut se, ettei Lissabonin sopimusta ole ratifioitu, minkä vuoksi EU ei esimerkiksi ole voinut liittyä Euroopan ihmisoikeussopimukseen. Edistyminen on ollut hidasta myös rikosasioiden vastavuoroisessa tunnustamisessa ja poliisiyhteistyössä, jotka vaativat yksimielistä päätöksentekoa. Prosessuaalisia oikeuksia koskeva puitepäätos on yksi esimerkki Haagin ohjelmaan liittyvästä ehdotuksesta, jota ei vielä kukaan hyväksytty.

Komission tiedonannossa viitotaan tietä vapauden, turvallisuuden ja oikeuden alueen tulevalle ohjelmakaudelle (v. 2010–2014). Tiedonantoon liittyy kolme pitkäkököä asiakirjaa: 1) ohjelman täytäntöönpanokertomus, jossa tarkastellaan tavoitteita, merkittäviä käännteitä ja tulevia haasteita toiminta-aloittain; 2) institutionaalinen tulostaulu, jossa luodaan katsaus ohjelman välineisiin ja tavoitteisiin; sekä 3) tulostaulu täytäntöönpanosta kansallisella tasolla.

Vapauden vahvistaminen

Perusoikeuksien suojelua vahvistettiin ohjelmakaudella mm. komission tiedonannolla, jossa edellytetään aina varmistamaan lainsäädäntöehdotusten yhdenmukaisuus perusoikeuskirjan kanssa. EU:n perusoikeusvirasto aloitti toimintansa 1.3.2007 ja lasten oikeuksien edistämiseksi perustettiin eurooppalainen foorumi. Puitepäätos rassistiseen väkivaltaan tai vihaan yllyttävien henkilöiden rankaisemisesta on hyväksytty. *Henkilötietojen ja yksityisyyden suoja* on parannettu mm. tietosuojadirektiivillä sekä puitepääöksellä henkilötietojen käsittelystä rikosasioissa tehtävässä poliisi- ja

oikeudellisessa yhteistyössä. Puitepäättöksen täytäntöönpanosta on tarkoitus julkaista arviointiraportti vuonna 2013. Lisäksi EU pääsi ohjelmakaudella sopimukseen Yhdysvaltojen, Kanadan ja Australian kanssa matkustajarekisteritietojen luovuttamisesta.

Unionin kansalaisuutta on edistetty vuonna 2006 voimaan tulleella direktiivillä EU:n kansalaisten oikeudesta liikkua ja oleskella vapaasti jäsenvaltioiden alueella. Direktiivin saattaminen osaksi kansallisia lainsäädäntöjä ei ole ollut tyydyttävää, ja komissio on tehostamassa toimia täytäntöönpanon vauhdittamiseksi. Konsuliviranomaisten EU:n kansalaisille antaman suojelun toteuttamiseksi käytännössä on ehdotettu useita toimenpiteitä. Komissio on käynnistänyt selvityksen tietyistä *Euroopan parlamentin vaalien järjestämiseen* liittyvistä kysymyksistä. Parlamentti itse suunnittelee v. 1976 annetun vaalisäädöksen muuttamista.

Yhteisen eurooppalaisen turvapaikkajärjestelmän luomisessa siirryttiin toiseen kehitysvaiheeseen vuonna 2008 hyväksytyn toimintasuunnitelman myötä.

Maahanmuuton hallinnointia on parannettu pyrkimällä maksimoimaan laillisesta maahanmuutosta saatava taloudellinen hyöty, samalla kun laitonta maahanmuuttoa ja ihmisten salakuljetuksesta ja ihmiskaupasta voittoa saavia tahoja on torjuttu yhteisvoimin. Kolmansien maiden kansalaisten *kotouttamiselle* laadittiin yhteiset peruseriaatteet ja puitteet. Jäsenvaltioiden näissä puitteissa toteuttamia toimia tuetaan Euroopan kotouttamisrahastosta, josta on myönnetty 825 miljoonaa euroa vuosille 2007–2013.

Toimiva *rajava Alvonta* on hallitun maahanmuuton edellytys. Haagin ohjelma on johtanut kolmeen keskeiseen EU:n rajastrategian osatekijän syntyyn: Schengenin rajasäännösten voimaantuloon, jäsenvaltioiden välistä ulkorajayhteistyötä koordinoivan Frontex-viraston perustamiseen sekä EU:n ulkorajarahaston käynnistämiseen. Rajojen turvallisuuden varmistamisessa on ollut keskeisessä roolissa Frontex-virasto, joka toteutti 50 yhteistä operaatiota ja 23 pilottihanketta vuosina 2005–2008. Lisäksi komissio antoi vuonna 2008 ns. rajapaketin, joka sisältää kolme tiedonantoa: Frontexin arviointi ja jatkokehitys, Euroopan eteläisten ja itäisten ulkorajojen valvontajärjestelmän (EUROSUR) luominen ja EU:n rajaturvallisuuteen liittyvien tulevien toimien valmistelu. Tiedonannoissa yhdenmukaisen rajaturvallisuuden saavuttamiselle asetetaan uudet välitavoitteet. Nykyaikaisen, yhdenmukaisen rajavalvontajärjestelmän kehittämisessä hyödynnetään myös uusia teknologioita. Biometriset passit otettiin käyttöön vuonna 2006, ja Schengenin tietojärjestelmästä ja viisumitietojärjestelmästä kehitetään parhaillaan seuraavan sukupolven järjestelmiä.

Viisumipolitiikan osalta viisumitietojärjestelmän (VIS) täytäntöönpanolle ja toiminnalle vahvistettiin oikeusperusta vuonna 2008. Yhteinen konsuliohjeisto laadittiin uudelleen ja viisumisäännöstöä koskeva ehdotus tehtiin avoimuuden ja oikeusvarmuuden lisäämiseksi ja menettelyjen yhdenmukaistamiseksi. Vuosina 2007–2008 tuli voimaan useita viisumien myöntämistä helpottavia sopimuksia kolmansien maiden kanssa.

Turvapaikka- ja maahanmuuttoasioiden ulkoinen ulottuvuus on kehittynyt maahanmuuttoa koskevan kokonaisvaltaisen lähestymistavan myötä. Kyseessä oli perustavanlaatuinen muutos, kun turvallisuuslähtöisen lähestymistavan sijaan omaksuttiin muuttoliikkeen kaikkien näkökohtien syvällisempään ymmärtämiseen perustuva lähestymistapa. Käytännössä kokonaisvaltaista lähestymistapaa on sovellettu yhteisön yhteistyövälinein, joilla on rahoitettu monia maahanmuuttoon hankkeita ja pakolaisten suojeluun liittyviä hankkeita.

Turvallisuuden vahvistaminen

Haagin ohjelma on johtanut lukuisiin toimenpiteisiin *tietojenvaihdon tehostamiseksi*. Johtavaksi periaatteeksi määriteltiin ns. saatavuusperiaate, jonka mukaisesti lainvalvontaviranomaiset voivat saada tehtäviensä hoitamiseen tarvitsemaansa tietoa toisesta jäsenvaltiosta. Osana tämän periaatteen toteuttamista hyväksyttiin vuonna 2006 puitepäättös EU:n jäsenvaltioiden lainvalvontaviranomaisten välisen tietojen ja tiedustelutietojen vaihdon yksinkertaistamisesta. Puitepäättöksen toimeenpano on vielä kesken ja sen vaikutusta tiedonvaihdon parantamiseen voidaan arvioida vasta tulevana vuosina. Neuvoston päätös tietojenvaihdosta tietyillä aloilla (Prüm-paketti) hyväksyttiin. Neuvoston päätös jäsenvaltioiden sisäisestä turvallisuudesta vastaavien viranomaisten ja Europolin pääsystä viisumitietojärjestelmään (VIS) hyväksyttiin vuonna 2008. Vastauksena saatavuusperiaatteen mukaiseen lisääntyneeseen tietojenvaihtoon hyväksyttiin vuonna 2008 puitepäättös rikosasioissa tehtävässä poliisi- ja oikeudellisessa yhteistyössä käsiteltävien henkilötietojen suojaamisesta. Haagin toimintaohjelmassa edellytettiin lainsäädäntöinstrumentin hyväksymistä sähköisten viestintäpalvelujen yhteydessä tuotettavien tai käsiteltävien tietojen säilyttämisestä. Tätä koskeva direktiivi hyväksyttiin vuonna 2006. Komissio selvitti lisäksi mahdollisuutta ottaa käyttöön järjestelmä rikoksentekijöiden sormenjälkien tunnistamisesta. Komissio teki ehdotuksen puitepäättökseksi lentoliikenteen matkustajatietojen (PNR) käsittelystä. Ehdotus on edelleen neuvoston käsiteltävänä.

Haagin ohjelmassa korostettiin tehokasta *terrorismin* ehkäisyä ja sen vastaista taistelua. EU:n terrorismin vastainen strategia hyväksyttiin joulukuussa 2005. Keskeisiä elementtejä terrorismin vastaisessa taistelussa ovat olleet radikalisaation ja rekrytoinnin estäminen, terrorismin rahoituksen estäminen ja räjähdeturvallisuuden parantaminen. Lisäksi EU on tukenut terrorismin uhreja rahoittamalla terrorismin uhrrien suojeluun suunnattuja projekteja. Komission toimeksiannosta ranskalainen tuomari Bruguière raportoi menettelytavoista, joita Yhdysvaltojen viranomaiset noudattavat käsitellessään SWIFTiltä peräisin olevia maksuliikennevälitystietoja terrorismin ehkäisemiseksi. Nämä tiedot ovat olleet erittäin arvokkaita terrorismin vastaisessa taistelussa niin Yhdysvalloissa kuin Euroopassa.

Haagin ohjelmakaudella keskeisiä *poliisiyhteistyön* painopisteitä ovat olleet lainvalvontayhteistyön kehittäminen ja Schengenin säännöstön kehittäminen rajatylittävän operatiivisen lainvalvontayhteistyön alalla, lainvalvontaviranomaisten väliset säännölliset vaihto-ohjelmat, operatiivisen yhteistyön parantaminen sekä poliisi- ja tulliviranomaisten yhteistyön parantaminen. Lainvalvontaviranomaisten välisen yhteistyön parantamisessa on keskeisin asema Europolilla ja sen toiminnalla. Euroopan poliisiakatemia (CEPOL) perustettiin vuonna 2006 ja se on järjestänyt lukuisia koulutukseen liittyviä tapahtumia ja ensimmäisen vaihto-ohjelman vuosina 2006–2008. Ohjelmakaudella neuvosto hyväksyi kaksi strategiaa, jotka liittyvät kolmannen pilarin tulliyhteistyöhön.

Haagin ohjelmassa korostettiin tehokasta *kriisinhallintaa EU:ssa*. Painopisteitä olivat kriittisten infrastruktuurien suojelu, pelastuspalvelun vahvistaminen ja yhteisön pelastuspalvelumekanismien luominen sekä EU:n yhdenmetyjen kriisinhallintajärjestelyjen luominen. EU:n elintärkeiden infrastruktuurien suojelun tehostamiseksi on otettu käyttöön välineitä. Komissio järjesti vihreän kirjan muodossa kuulemisen biouhkiin varautumisesta ja se aikoo tehdä lähiaikoina ehdotuksia, joiden tarkoituksena on vähentää sellaisten kemiallisten, biologisten, säteily- ja ydinuhkien mahdollisuutta, jotka voivat vahingoittaa tuhansia ihmisiä, tuhota maataloutta ja häiritä vakavasti elintarvikeketjua.

Järjestäytyneen rikollisuuden osalta Haagin ohjelman mukaisia prioriteetteja ovat olleet tietoverkkorikollisuuden, ihmiskaupan, lasten hyväksikäytön ja lapsipornon torjunta. Tietoverkkorikollisuuden torjunnassa on nähty tärkeäksi yhteistyö unionin ulkopuolisten valtioiden, kuten Venäjän, Yhdysvaltojen ja Ukrainan kanssa. Ohjelmakaudella hyväksyttiin puitepäätos, jolla pyritään ehkäisemään lasten seksuaalista hyväksikäyttöä ja lapsipornon levittämistä. Puitepäätos sisältää minimiharmonisointia kaikkein vakavimman lasten hyväksikäytön kriminalisoinneista sekä uhrien suojasta. Valitettavasti jäsenvaltioiden kansallisten lainsäädäntöjen määritelmät eroavat vielä niin paljon toisistaan, että luotettavia tilastotietoja ilmiön laajuudesta ei ole. Syynä tilastojen puutteellisuuteen on myös se, ettei tietoja kerätä riittävän laajasti, eikä läheskään kaikkia hyväksikäyttörikoksia ilmoiteta.

Korruption vastainen taistelu on edennyt neuvoston antamalla päätöksellä, jolla yhteisö ratifioi YK:n korruption vastaisen sopimuksen. Myös yhteistyöstä sellaisten jäsenvaltioiden toimistojen välillä, jotka vastaavat *rikoshyödyn konfiskaatiosta*, on annettu neuvoston päätös. Komissio on antanut ehdotuksen direktiiviksi teollis- ja tekijänoikeuksien noudattamisen varmistamiseen tähtäävistä rikosoikeudellisista toimenpiteistä ja se on parhaillaan käsiteltävänä neuvostossa ja parlamentissa. Väärennösten torjumiseksi on joihinkin kolmansien maiden kanssa tehtyihin vapaakauppasopimuksiin sisällytetty rikosoikeuden alaan kuuluvaa sääntelyä.

Euroopan huumausainestrategiassa (2005–2012) ja siihen liittyvissä toimintasuunnitelmissa on omaksuttu yhtenäinen lähestymistapa, joka kattaa huumeiden väärinkäytön ehkäisemisen, huumeista riippuvaisten auttamisen ja kuntouttamisen, laittoman huumekaupan torjumisen, huumausaineiden lähtöaineiden valvonnan, rahanpesun sekä kansainvälisen yhteistyön lujittamisen.

Oikeuden vahvistaminen

Euroopan oikeusalueen kehittäminen on alkanut tuottaa tuloksia jäsenvaltioille ja kansalaisille. Eurojust ja Euroopan oikeudellinen verkosto tarjoavat infrastruktuurin oikeudelliselle yhteistyölle, mutta ne eivät ole vielä tarpeeksi hyvin tunnettuja jäsenvaltioiden oikeusviranomaisten keskuudessa.

Ohjelmakaudella on annettu suuri määrä tuomioiden vastavuoroiseen tunnustamiseen perustuvaa sääntelyä *rikosoikeuden alalla*. Eurooppalainen pidätysmääräys on ollut selkein menestystarina. Se on selvästi lyhentänyt rikollisten luovuttamiseen menevää aikaa. Monien muiden rikosoikeudellisten EU-instrumenttien käyttö on ollut vähäistä tai ne odottavat vielä täytäntöönpanoa. Keväällä 2009 hyväksyttiin neuvoston päätös eurooppalaisesta rikosrekisteritietojärjestelmästä (ECRIS). Komissio tutkii edelleen, miten voitaisiin vaihtaa tietoja jäsenvaltiossa oleskelevien, kolmansien valtioiden kansalaisten saamista tuomioista.

Yksityis- ja kauppaoikeuden alalla on tapahtunut merkittävää edistystä. Vähäisten vaatimusten ja saatavien käsittely on nopeutunut. Ohjelmakaudella on yhdenmukaistettu sopimusvelvoitteisiin sovellettavaa lakia koskevia sääntöjä (Rooma I), sopimukseen perustumatonta vastuuta koskevia sääntöjä (Rooma II), sekä tarkistettu asiakirjojen tiedoksiantoa koskevia sääntöjä. Bryssel I –asetuksen soveltamisesta, pankkitalletusten takavarikoinnista sekä velallisen varallisuuden läpinäkyvyydestä on annettu vihreät kirjat. EY liittyi kansainvälistä yksityisoikeutta käsittelevään Haagin konferenssiin. *Perheoikeuden* alalla annettiin asetukset avioliitosta ja vanhempainvastuusta sekä elatusvelvoitteista. Säädösehdotus avioeroon sovellettavasta lainsäädännöstä (Rooma III)

on neuvoston ja parlamentin käsittelyssä. Komissio on tehnyt ehdotuksen yhteisön liittymisestä Haagin elatusapusopimukseen.

Vastavuoroinen tunnustaminen on tehostunut sekä lainsäädännöllisesti että operatiivisella tasolla. Näyttää siltä, etteivät jäsenvaltioiden oikeusviranomaiset vieläkään täysin luota toisten jäsenvaltioiden oikeusjärjestelmiin, mikä näkyy hitautena päätösten vastavuoroisessa tunnustamisessa ja täytäntöönpanossa. Luottamusongelmaa on pyritty helpottamaan mm. hyväksymällä sähköistä oikeudenkäyttöä (e-Justice) koskeva strategia ja toimintasuunnitelma. *E-Justice –portaali* on tarkoitus ottaa käyttöön joulukuussa 2009. Jäsenvaltioiden oikeusalan viranomaisten keskinäistä luottamusta vahvistamaan perustettiin oikeusalan foorumi. Tuomarien ja syyttäjien koulutusta on lisätty.

Ulkosuhteet

Vapauden, turvallisuuden ja oikeuden alan ulkosuhteiden temaattiset painopisteet vahvistettiin vuonna 2005 hyväksytyssä strategiassa. Ulkosuhdestrategian keskeisiä elementtejä on toteutettu EU:n laajentumisprosessin, Länsi-Balkanin stabilisaatio- ja assosiaatioprosessin, oikeus- ja sisäasioita koskevan uudistetun EU - Ukraina - toimintasuunnitelman sekä Euroopan naapuruuspolitiikkaa koskevien toimintasuunnitelmien kautta. Yhteistyö Välimeren maiden kanssa on lisääntynyt, ja oikeutta, vapautta ja turvallisuutta koskevat asiat muodostavat tärkeän osan EUROMED/Barcelonan prosessia. Barcelonan prosessin osaksi perustettiin Unioni Välimerta varten, joka tähtää yhteistyömahdollisuuksien kasvattamiseen Välimeren alueen valtioiden kanssa. Oikeuden, vapauden ja turvallisuuden sisäistä ja ulkoista ulottuvuutta tuetaan monien *rahoitusvälineiden* kautta.

Tähänastiset opetukset ja jatkotoimien aihepiirit

Suunnittelun ja toiminnan koordinoitua on syytä lisätä. EU:n tasolla tulisi vahvistaa maahanmuutto- ja turvapaikkapolitiikan, perusoikeuksien ja rajavalvonnan monialaiset painopisteet. Perusoikeuksien toteutumisesta on valvottava kaikissa vaiheissa sekä päätettäessä yhteisön sääntelystä että pantaessa sitä täytäntöön.

Sääntelyn täytäntöönpanoon ja soveltamiseen on keskityttävä nyt, kun oikeus- ja sisäasioiden oikeudellinen kehys on luotu. Erityisesti rikosoikeuden sektorilla on useita säädöksiä, joiden täytäntöönpano on viivästynyt tai jotka on pantu täytäntöön vain osassa jäsenmaita. Tarvitaan lisätoimia sen varmistamiseksi, että EU:n kansalaiset ovat tietoisia oikeuksistaan ja voivat luottaa siihen, että niitä myös kunnioitetaan. Komissio aikoo jatkossakin esittää vuosittain raporttinsa monivuotisen vapauden, turvallisuuden ja oikeuden alueen ohjelman ja toimintaohjelman toteutumisesta. Kutakin politiikka-alaa varten tarvitaan systemaattisempia *seuranta- ja arviointijärjestelmiä*, jotta toimenpiteiden vaikutuksista saataisiin vertailukelpoista tietoa. Lisäksi olisi sovittava selkeitä, horisontaalisia periaatteita, joita noudatettaisiin kaikissa arvioinneissa. Arviointien avulla voitaisiin helpommin selvittää kansalaisille, mitä lisäarvoa voidaan saada EU:n toimista vapauden, turvallisuuden ja oikeuden alalla.

Jos Lissabonin sopimus tulee voimaan, *Euroopan yhteisöjen tuomioistuimen* toimivalta laajenee kattamaan koko vapauden, oikeuden ja turvallisuuden alueen. Samalla tavalla laajenee myös komission mahdollisuus nostaa rikkomusmenettely jäsenvaltiota vastaan, joka ei ole noudattanut jäsenyysvelvoitteitaan.

Henkilötietojen suoja on jatkossakin yksi EU:n prioriteeteista. Ensiksi on syytä pohtia eri tietosuojasäädösten yhdistämisestä yhteen ja samaan säädökseen. Komissio tulee

julkaisemaan arviointiraportin tietosuojasääntelyn täytäntöönpanosta. Toiseksi on kehitettävä yhtenäinen lähestymistapa suhteessa kolmansiin maihin. Kolmanneksi on varmistettava Prüm-paketin tehokas täytäntöönpano sekä valmisteltava uusi, kattava strategia tietojenvaihdosta operatiivisessa yhteistyössä. Neljänneksi on ratkaistava, miten henkilötietojen suojaamisen valvonta olisi järjestettävä poliisi- ja oikeudellisessa yhteistyössä.

Taluskriisin seurauksena *muukalaisviha ja rasismi* ovat kasvussa, joten unionin toimenpiteitä näitä ilmiöitä vastaan on tehostettava. On pyrittävä parantamaan *lasten* sekä *väkivallan uhriksi joutuneiden naisen* oikeuksien toteutumista. Seuraavalla ohjelmakaudella saatetaan alkaa julkaista säännöllisin väliajoin EU-raporttia *korruption* torjunnasta. Raportissa vertailtaisiin tilannetta eri jäsenmaissa. Raportin laatimiseksi olisi tarpeen kerätä laadukasta ja vertailukelpoista tilastotietoa. *Syytettyjen ja epäiltyjen* vähimmäisoikeuksista rikosprosessissa valmistellaan uutta EU-sääntelyä. Seuraavalla ohjelmakaudella komissio teettää tutkimuksen siviiliprosessuaalisista minimioikeuksista.

Turvapaikkapolitiikan osalta keskeinen tulevaisuuden haaste on yhteisen eurooppalaisen turvapaikkajärjestelmän saaminen valmiiksi vuoteen 2012 mennessä. EU:n työikäisen väestön vähentyminen sekä EU:hun kohdistuvien muuttopaineiden kasvaminen asettavat haasteita, joihin on kyettävä vastaamaan. Euroopan yhteistä maahanmuuttopolitiikkaa koskevassa tiedonannossa sekä Euroopan maahanmuutto- ja turvapaikkasopimuksessa määritellään peruseriaatteen EU:n yhteisen *maahanmuutto- ja kotouttamispolitiikan* jatkokehittämiseksi. Maahanmuuton hallinnassa on keskeinen rooli tehokkaalla ja toimivalla *ulkorajojen valvonnalla*.

Terrorismin torjuntaan on kiinnitettävä tulevaisuudessa lisääntyvää huomiota. Huolimatta lukuisista merkittävistä edistysaskelista terrorismin torjunnan alalla, uudet terrorismin muodot ja tarve kehittää uusia terrorismin vastaisen taistelun välineitä vaativat jatkossa entistä suurempaa sitoutumista.

Järjestäytyneen rikollisuuden eri muotojen, erityisesti ihmiskaupan, torjunta vaatii tulevaisuudessa tehokkaampia toimia.

Rikosoikeudellista sääntelyä todisteiden vastaanottamisesta on olemassa jonkin verran, mutta se ei ole kattavaa. Uusi sääntely todisteiden vastaanottamisesta ja luovuttamisesta olisi omiaan helpottamaan oikeusalan toimijoiden työtä. Komissio aikoo antaa vihreän kirjan asiasta. Jäsenvaltioiden *ammattikieltoja* koskevat kansalliset lainsäädännöt eroavat toisistaan huomattavasti. Tulisi kuitenkin tutkia, voitaisiinko tällä alalla antaa yhteisön sääntelyä. *Todistajien ja uhrien suojelua* on pyrittävä parantamaan. Jäsenvaltioiden kansallista rikosoikeussääntelyä voi olla tarpeen yhdenmukaistaa, jos lainsäädännölliset erot hankaloittavat tuomioiden tai päätösten tunnustamista tai täytäntöönpanoa toisessa jäsenvaltiossa. Harmonisointi on tarpeen myös rajat ylittävien vakavien rikosten kohdalla.

Yhteisön siviilioikeudellisen sääntelyn laatua ja saatavuutta on parannettava. Keinoja on useita: lainsäädännön kodifiointi, konsolidointi ja yksinkertaistaminen sekä yhteisen sopimusoikeudellisen viitekehyksen käyttöönotto. Yksi tulevan ohjelmakauden prioriteetti on eksekvatuurista toisin sanoen menettelyistä, jossa tutkitaan toisessa jäsenvaltiossa annetun tuomion täytäntöönpanokelpoisuus, luopuminen. EU:n tasolla ei vielä ole annettu sääntelyä omaisuuden jaosta avio- tai asumuseron yhteydessä eikä aviovarallisuudesta. Yhteistä sääntelyä ei ole myöskään perintöjen ja testamenttien vastavuoroisesta tunnustamisesta tai virkatodistusten vastavuoroisesta tunnustamisesta. Perheoikeudessa on syytä toteuttaa seurantatutkimus vanhempainvastuusta.

Ulkosuhteiden osalta todetaan, että EU:n on parempi ennakoida haasteet kuin odottaa niiden ilmaantumista rajoille. Unionin olisi kampanjoitava sellaisten esimerkillisten normien (esim. tietosuojavaatimukset) puolesta, jotka voitaisiin ottaa käyttöön kansainvälisesti. Lisäksi on varmistettava OSA-ulkosuhteiden koherenssi niin OSA-sisäpolitiikan kanssa kuin muiden EU:n politiikka-alojen kanssa. Yhä useammin kolmannet maat lähestyvät EU:ta ehdottaakseen sopimukseen perustuvaa yhteistyötä. Olisi määriteltävä kriteerit, joiden perusteella tällaisia pyyntöjä asetetaan tärkeysjärjestykseen. Virastojen, kuten Europolin, Eurojustin ja Frontexin asiantuntemusta kannattaa hyödyntää OSA-ulkosuhdesektorilla. Seuraavalla ohjelmakaudella rikosoikeuden alan prioriteettina ovat sopimukset strategisten kumppanimaiden kanssa karkottamisesta ja vastavuoroisesta avunannosta. Siviilioikeudellista ulkosuhdetoimivaltaa käytettäessä on jatkossa otettava huomioon seuraavat näkökohdat: on vahvistettava yhteisön roolia Haagin konferenssissa; on varmistettava monenvälisten kansainvälisten sopimusten yhteensopivuus EY-sääntelyn kanssa; erityisesti tunnustamisesta ja täytäntöönpanosta on neuvoteltava kahdenvälisiä sopimuksia yhteisön ja kolmansien maiden kanssa; on hallittava menettely jäsenvaltioiden valtuuttamiseksi neuvottelemaan kahdenvälisiä sopimuksia kolmansien valtioiden kanssa.

Kansallinen käsittely:

EU jaosto 6, kirjallinen menettely 20.7.2009

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Muut mahdolliset asiaan vaikuttavat tekijät:

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EUROOPAN YHTEISÖJEN KOMISSIO

Bryssel 10.6.2009
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**KOMISSION TIEDONANTO NEUVOSTOLLE, EUROOPAN PARLAMENTILLE,
EUROOPAN TALOUS- JA SOSIAALIKOMITEALLE JA ALUEIDEN
KOMITEALLE**

OIKEUS, VAPAAUS JA TURVALLISUUS EUROOPASSA VUODESTA 2005:

HAAGIN OHJELMAN JA TOIMINTASUUNNITELMAN ARVIOINTI

{SEC(2009) 765}
{SEC(2009) 766}
{SEC(2009) 767}

I. JOHDANTO

Oikeus, vapaus ja turvallisuus ovat vauraan ja rauhanomaisen Euroopan kulmakivet. Näiden perusarvojen turvaamiseen tarvittavien valmiuksien luominen on pitkäkestoinen hanke. Euroopan on myös oltava joustava, jotta se voi vastata odottamattomiin ja ajoittain traagisiinkin tapahtumiin, kuten Lontoossa vuonna 2005 tehtyihin terroristihyökkäyksiin tai Välimerellä viimeisten kymmenen vuoden aikana tapahtuneisiin tuhansien EU:n alueelle pyrkineiden maahanmuuttajien kuolemiin. EU:n tätä alaa koskevalla politiikalla luodaan puitteet sille, miten sen toimielimet, jäsenvaltiot ja kansalaiset toimivat suhteessa toisiinsa ja kansainvälisillä foorumeilla.

Haagin ohjelman¹ avulla EU:n on toteuttanut visiotaan oikeussuojan saatavuuden, kansainvälisen suojelun, maahanmuuton ja rajavalvonnan, terrorismin ja järjestäytyneen rikollisuuden, poliisi- ja oikeusviranomaisten yhteistyön sekä vastavuoroisen tunnustamisen aloilla.

Komissio on seurannut tarkkaan ohjelman täytäntöönpanoa EU:ssa ja jäsenvaltioissa.² Komissio tai jäsenvaltiot ovat tehneet vertaisarviointeja ohjelman yksittäisistä välineistä. Tässä tiedonannossa käsitellään näiden arviointien yhteydessä esiin nousseita tärkeimpiä aiheita ja viitotetaan tietä sille, miten EU:n olisi vastattava tulevaisuuden haasteisiin. Tiedonantoon liittyy kolme pitkäkököä asiakirjaa: 1) ohjelman täytäntöönpanokertomus, jossa tarkastellaan tavoitteita, merkittäviä käännteitä ja tulevia haasteita toiminta-aloittain, 2) institutionaalinen tulostaulu, jossa luodaan katsaus ohjelman välineisiin ja tavoitteisiin, ja 3) tulostaulu täytäntöönpanosta kansallisella tasolla.

Tähänastisiin saavutuksiin perustuvat tulevan toiminnan painopisteet esitetään seuraavassa monivuotisessa ohjelmassa (nk. Tukholman ohjelma)³.

II. TAUSTA

Tampereella vuonna 1999 kokoontunut Eurooppa-neuvosto vahvisti ensimmäisen oikeus- ja sisäasioita koskevan monivuotisen toimintakehyksen. Sitä seuranneena viisivuotiskautena luotiin perusta yhteiselle turvapaikka- ja maahanmuuttopolitiikalle, rajavalvonnan yhdenmukaistamiselle sekä vastavuoroiseen luottamukseen ja tunnustamiseen perustuvalle, aikaisempaa tiiviille poliisi- ja oikeusviranomaisten yhteistyölle. Kyseisellä ajanjaksolla tehtiin New Yorkin (2001) ja Madridin (2004) terroristihyökkäykset, paisuvasta muuttoliikkeestä johtuva paine kasvoi ja järjestäytyneen rikollisuuden uhka lisääntyi. Nämä tapahtumat korostivat jatkuvan strategian tarvetta, jotta Eurooppa voisi selviytyä rajat ylittävistä haasteista kansalaisten perusoikeuksia täysimääräisesti kunnioittaen.

EU vastasi tähän tarpeeseen Haagin ohjelmalla, jonka tavoitteena on

¹ The Hague Programme: strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1), and 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 A Commission review of the progress made in the implementation of the Hague Programme by the European Institution and by Member States ("Scoreboard") has been presented every year since 2006. The references are as follows: COM(2006) 333 final; COM(2007) 373 final; COM(2008) 373 final.

³ KOM(2009) 262.

- *parantaa EU:n ja sen jäsenvaltioiden yleisiä valmiuksia turvata perusoikeudet, oikeusmenettelyn vähimmäistakeet ja oikeussuojan saatavuus;*
- *antaa suojelua sitä tarvitseville henkilöille pakolaisten oikeusasemaa koskevan Geneven yleissopimuksen ja muiden kansainvälisten sopimusten mukaisesti;*
- *säännellä muuttoliikkeitä ja valvoa EU:n ulkorajoja;*
- *torjua rajat ylittävää järjestäytyntä rikollisuutta ja terrorismin uhkaa;*
- *hyödyntää Europolin ja Eurojustin tarjoamat mahdollisuudet;*
- *laajentaa edelleen tuomioistuinten päätösten ja todistusten vastavuoroista tunnustamista sekä siviili- että rikosasioissa; sekä*
- *poistaa oikeudellisia ja menettelyllisiä esteitä siviili- ja perheoikeudellisissa riita-asioissa, joilla on rajat ylittäviä vaikutuksia.*

Merkittävät tapahtuvat EU:ssa ja muualla maailmassa ovat vaikuttaneet ohjelman täytäntöönpanon taustalla. Yhteensä 12 uuden jäsenvaltion liittyminen vuosina 2004 ja 2007 muutti EU:ta ja sitä, miten se toimii. Turvapaikkahakemusten määrä laski mutta alkoi nousta uudelleen vuonna 2007, ja EU:n eteläisiin ulkorajoihin kohdistuvat muuttopaineet ovat kasvaneet huomattavasti. Eurooppaa vaivaa työikäisen väestön väheneminen pitkällä aikavälillä, minkä lisäksi sen taloutta uhkaa nyt kasvava työttömyys ja yleinen epävarmuus.

III. KUNNIANHIMOINEN OHJELMA JA SEN NÄKYVÄT SAAVUTUKSET

Oikeuden, vapauden ja turvallisuuden alaa koskevat Euroopan laajuiset aloitteet ovat uusia verrattuna EU:n muuhun toimintaan, ja monet niistä tarvitsevat aikaa ennen kuin tuloksia alkaa näkyä. Alan aloitteilla on välitön vaikutus ihmisten elämään, ja mielipidekyselyiden mukaan EU:n kansalaisten odotukset niiden suhteet ovat korkealla. Tampereen työohjelman tapaan Haagin ohjelmassa omaksuttiin pitkän aikavälin perspektiivi mutta menttiin työohjelmaa pidemmälle siinä mielessä, että strategisten tavoitteiden saavuttamiseksi laadittiin yksityiskohtainen toimintasuunnitelma. Sen täytäntöönpanossa on edistytty vaihtelevasti, mutta näkyviäkin saavutuksia on.

III.1. Vapauden vahvistaminen

III.1.1 Perusoikeuksien suojelu

Järjestelmällinen ja tiukka valvontajärjestelmä⁴ on otettu käyttöön sen varmistamiseksi, että komission lainsäädäntöehdotukset noudattavat täysimääräisesti perusoikeuskirjaa. EU:n perusoikeusvirasto⁵ aloitti toimintansa 1. maaliskuuta 2007. Virasto auttaa EU:n toimielimiä ja jäsenvaltioita tutkimushankkeillaan ja tiedonkeruullaan. Lasten oikeuksien edistämiseksi otettiin käyttöön kokonaisvaltainen toimintamalli⁶, joka johti lasten oikeuksia käsittelevän

⁴ 'Compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring', COM(2005) 172 final.

⁵ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, p. 1.

⁶ 'Towards an EU strategy on the rights of the child', COM(2006) 367 final.

eurooppalaisen foorumin perustamiseen. Foorumi tarjoaa kaikille asiasta kiinnostuneille mahdollisuuden tehdä yhteistyötä lasten oikeuksien nostamiseksi keskiöön kaikessa EU:n toiminnassa. EU on myös tehnyt puitepäättöksen⁷, jolla jäsenvaltiot velvoitetaan rankaisemaan henkilöitä, jotka yllyttävät rasistiseen väkivaltaan tai vihaan.

EU on edistänyt henkilötietojen ja yksityisyyden suojaa koskevan oikeuden kunnioittamista sekä sisä- että ulkopoliitikassaan, mutta ymmärtää samalla, että lainvalvontaviranomaisten on voitava vaihtaa merkityksellisiä tietoja terrorismin ja vakavien rikosten torjunnassa. Rikosasioissa tehtävässä poliisi- ja oikeudellisessa yhteistyössä käsiteltävien henkilötietojen suojaamisessa on saavutettu lisätakeita.⁸ Komissio katsoo, että tietosuojadirektiivin⁹ ansiosta yksilöjä suojellaan yleiseltä tarkkailulta, kuluttajat luottavat siihen, ettei heidän kaupan yhteydessä luovuttamia tietoja käytetä väärin, ja yritykset voivat toimia EU:ssa ilman pelkoa niiden kansainvälisen toiminnan keskeytymisestä.¹⁰ Yksityisyyden suojaa parantavilla tekniikoilla¹¹ on voitu tukea sellaisten tietojärjestelmien suunnittelua, joissa henkilötietojen keruu ja käyttö on rajattu minimiin. Mitä tulee yhteistyöhön kolmansien maiden kanssa, EU on päässyt pitkän aikavälin sopimukseen Yhdysvaltojen, Kanadan ja Australian kanssa matkustajarekisteritietojen luovuttamisesta. Lisäksi on saatu turvatakeet sellaisten EU:sta peräisin olevien henkilötietojen, jotka ovat niitä käsittelevän elimen (SWIFT) hallussa, käytöstä terrorismin torjuntaan.

III.1.2 Unionin kansalaisuus

Sen jälkeen kun valvonta lopetettiin 25 maan muodostaman Schengen-alueen sisärajoilta, ihmiset ovat voineet matkustaa Iberian niemimaalta Baltian maihin ja Kreikasta Suomeen ilman rajatarkastuksia. Yli 400 miljoonaa EU:n kansalaista¹² voi hyötyä tästä järjestelystä, joka perustuu siihen, että jäsenvaltiot luottavat toistensa kykyyn valvoa tehokkaasti ulkorajoja EU:n puolesta ja myöntää koko Schengen-alueella kelpaavia viisumeja.

Huhtikuussa 2006 tuli voimaan direktiivi EU:n kansalaisten oikeudesta liikkua ja oleskella vapaasti jäsenvaltioiden alueella¹³. Direktiivin saattaminen osaksi kansallista lainsäädäntöä ei yleisesti ottaen ole edennyt tyydyttävästi¹⁴, ja komissio onkin tehostamassa toimia

⁷ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55.

⁸ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

⁹ 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, OJ L 281, 23.11.1995, p. 31.

¹⁰ 'Communication from the Commission to the European Parliament and the Council on the follow-up of the Work Programme for better implementation of the Data Protection Directive', COM(2007) 87 final.

¹¹ 'Communication from the Commission to the European Parliament and the Council on Promoting Data Protection by Privacy Enhancing Technologies (PETs)', COM(2007) 228 final.

¹² The total population of the 25 Schengen Member States is 411,310,500 (Estimation: Eurostat 2009).

¹³ Directive 2004/38/EC 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 States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77.

¹⁴ 'Report from the Commission to the European Parliament and the Council on the application 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', COM(2008) 840 final.

varmistakseen, että EU:n kansalaiset ja heidän perheensä voivat nauttia tämän käänteentekevän direktiivin heille suomista oikeuksista täysimääräisesti.

Konsuliviranomaisten EU:n kansalaisille antaman suojelun toteutumiseksi käytännössä on ehdotettu useita toimenpiteitä.¹⁵ EU:n ulkopuolella matkustavista EU:n kansalaisista arviolta 8,7 prosenttia eli 7 miljoonaa matkustajaa vierailee maissa, joissa heidän omalla jäsenvaltiollaan ei ole edustusta. Lisäksi 2 miljoonaa EU:n kansalaista asuu tällaisissa maissa. Vuosille 2007–2009 laaditussa toimintasuunnitelmassa¹⁶ pyrittiin ratkomaan näitä ja ennakoitavissa olevia puutteita.

III.1.3 Yhteinen eurooppalainen turvapaikkajärjestelmä

Yhteinen eurooppalainen turvapaikkajärjestelmä ilmentää vahvasti arvojamme, ihmisarvon kunnioitustamme ja sitoutumistamme vastuun jakamiseen. Järjestelmän ensimmäisessä vaiheessa vahvistettiin yhteiset vähimmäisnormit, jotka Nizzan sopimuksen mukaisesti mahdollistivat siirtymisen yhteispäätösmenettelyyn ja määräämismistöpäätöksentekoon. Laajan kuulemisen jälkeen¹⁷ järjestelmää alettiin Haagin ohjelman puitteissa viedä sen toiseen kehitysvaiheeseen vuonna 2008 hyväksytyn toimintasuunnitelman¹⁸ myötä. Suunnitelman mukaisesti vastaanotto-olosuhteita koskevaan direktiiviin samoin kuin Dublin- ja Eurodac-asetuksiin on jo tehty muutosehdotuksia. Kentältä saaduissa kokemuksissa on toistuvasti korostunut tarve käytännön yhteistyön tekemiseen, ja EU onkin pyrkinyt vastaamaan tähän haasteeseen johdonmukaisesti ja tehokkaasti ehdottamalla Euroopan turvapaikka-asioiden tukiviraston perustamista. Mitä tulee järjestelmän ulkoiseen ulottuvuuteen, eräissä kolmansissa maissa on käynnistetty suojelua koskevia alueellisia pilottiohjelmia maiden suojelevalmiuksien parantamiseksi.

III.1.4 Maahanmuutto ja kotouttaminen

EU on tehnyt työtä muuttoliikkeiden hallinnoinnin parantamiseksi ja kansallisten kotouttamispolitiikkojen yhteensovittamiseksi. On otettu käyttöön oikeudenmukaisuutta, johdonmukaisuutta ja oikeusvarmuutta koskevat vähimmäisvaatimukset. Lisäksi on toteutettu toimia EU:ssa jo oleskelevien kolmansien maiden kansalaisten käyttämättömän työvoimapotentialin hyödyntämiseksi pyrkien samalla torjumaan aivoviennin haittavaikutuksia lähtömaissa.

Vihreän kirjan¹⁹ perusteella laaditussa toimintapoliittisessa suunnitelmassa²⁰ esiteltiin laillista maahanmuuttoa koskevat, vuosina 2006–2009 toteutettavat aloitteet. Osana suunnitelman

¹⁵ Green Paper 'Diplomatic and consular protection of Union citizens in third countries', COM(2006) 712 final.

¹⁶ 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009, COM(2007) 767 final.

¹⁷ Green Paper on the future of the Common European Asylum System, COM(2007) 301 final.

¹⁸ 'Policy plan on asylum - An integrated approach to protection across the EU', COM(2008) 360 final.

¹⁹ Green Paper on an EU approach to managing economic migration, COM(2004) 811 final.

²⁰ 'Policy Plan on Legal Migration', COM(2005) 669 final.

täytäntöönpanoa vahvistettiin ehdot kolmansien maiden kansalaisten maahantulolle, työnteolle ja oleskelulle²¹, ja EU:n sininen kortti²² on tarkoitus ottaa pian käyttöön.

Sen lisäksi, että laillisesta maahanmuutosta saatava taloudellinen hyöty pyrittiin maksimoimaan, laitonta maahanmuuttoa samoin kuin ihmisten salakuljetuksesta ja ihmiskaupasta voittoa saavia tahoja torjuttiin yhteistoimin. Koko EU:n tasolla tarkasteltuna laitton maahanmuutto ei ole lisääntymässä, mutta Välimeren alueen jäsenvaltioille siitä aiheutuva taakka kasvaa koko ajan. Erityisen huolestuttava on vaarallisiin merimatkoihin turvautuvien maahanpyrkijöiden määrä.²³ Mahdollisuus laittomaan työnteekoon johtaa yksilöiden riistoon ja vääristää EU:n taloutta. Komission direktiiviehdotus²⁴ maassa laittomasti oleskelevien kolmansien maiden kansalaisten työnantajiin kohdistettavien seuraamusten säättämisestä oli tarkoitus hyväksyä vuoden 2009 ensimmäisellä puoliskolla. Siinä EU tekee selväksi, ettei se aio sietää laitonta maahanmuuttoa varsinkaan, jos sen taustalla on häikäilemättömiä työnantajia.

Kolmansien maiden kansalaisten kotouttamiselle laadittiin yhteiset perusperiaatteet ja puitteet²⁵, kuten politiikantekijöille ja käytännön työtä tekeville tarkoitettu kotouttamisen käsikirja, kotouttamisasiat yhteen kokoava EU:n verkkosivusto ja Euroopan kotouttamisfoorumi. Jäsenvaltioiden näissä puitteissa toteuttamia toimia tuetaan Euroopan kotouttamisrahastosta²⁶, josta on myönnetty 825 miljoonaa euroa vuosille 2007–2013.

Kaiken kaikkiaan komission tiedonanto Euroopan yhteisestä maahanmuuttopolitiikasta²⁷ ja pian sen jälkeen laadittu Euroopan maahanmuutto- ja turvapaikkasopimus²⁸ olivat tulosta kymmenen vuoden työstä ja loivat perustan yhtenäiselle lähestymistavalle tulevaisuudessa.

III.1.5 Rajavalvonta

Hallittu maahanmuutto edellyttää rajojen turvallisuuden varmistamista. EU:n alueella on 1 636 nimettyä maahantulopaikkaa. Arvioiden mukaan 25 jäsenvaltion EU:ssa ulkoraja ylitettiin noin 900 miljoonaa kertaa ja alueella oli noin 8 miljoonaa laitonta maahanmuuttajaa vuonna 2006. Samana vuonna EU:n alueella pysäytettiin 500 000 laitonta maahanmuuttajaa heidän henkilöllisyytensä selvittämiseksi; heistä 40 prosenttia on sittemmin palautettu lähtömaihin.

²¹ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM(2007) 638 final.

²² The proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM(2007) 637 final, has been adopted by the Council on 25.5.2009.

²³ 'Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents', SEC(2009) 320.

²⁴ Proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, COM(2007) 249 final.

²⁵ 'Common Basic Principles', Council document 14615/04, p. 15; 'A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union', COM(2005) 389 final.

²⁶ Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows, OJ L 168, 28.6.2007, p. 18.

²⁷ 'A common immigration policy for Europe: Principles, actions and tools', COM(2008) 359 final.

²⁸ 'European Pact on Immigration and Asylum', Council document 13440/08.

Jäsenvaltioiden välistä ulkorajayhteistyötä koordinoivalla Frontex-virastolla on ollut keskeinen asema EU:n pyrkiessä vastaamaan näihin haasteisiin. Vuosina 2005–2008 Frontex toteutti 50 yhteistä operaatiota ja 23 pilottihanketta, joihin osallistui useita jäsenvaltioita. Schengenin rajasäännöstö²⁹ on tullut voimaan kaikissa jäsenvaltioissa. Siinä vahvistetaan vaatimukset ja menettelyt, joita jäsenvaltioiden on noudatettava niiden valvoessa henkilöiden liikkumista EU:n sisä- ja ulkorajojen yli. Komissio on tehnyt useita ehdotuksia, joissa yhdennetyn rajaturvallisuuden saavuttamiselle asetetaan uudet välitavoitteet: maahantulo- ja maastapoistumisjärjestelmä³⁰, joka antaa automaattisesti ilmoituksen oleskeluajan ylittymisestä, EU:n eteläisten ja itäisten ulkorajojen valvontajärjestelmä (EUROSUR)³¹ sekä Frontexin arviointi ja jatkokehitys³². Palauttamisdirektiivissä³³ vahvistettiin laittomien maahanmuuttajien palauttamisessa noudatettavat tehokkaat ja inhimilliset vaatimukset.

Nykyaikaisen, yhdennetyn rajavalvontajärjestelmän kehittämisessä hyödynnetään uusia teknologioita. Biometriset passit otettiin käyttöön vuonna 2006. Schengenin tietojärjestelmästä ja viisumitietojärjestelmästä kehitetään parhaillaan seuraavan sukupolven järjestelmiä ja niiden oikeusperustat on vahvistettu. Järjestelmien ansiosta uusien teknologioiden, etenkin biometriikan, käyttö lisääntyy, mikä on omiaan parantamaan Schengen-alueen turvallisuutta ilman, että tietosuojavaatimusten täysimääräinen noudattaminen vaarantuisi.

III.1.6 Viisumipolitiikka

Viisumitietojärjestelmän (VIS) täytäntöönpanolle ja toiminnalle vahvistettiin oikeusperusta vuonna 2008.³⁴ Sen myötä tarkastukset ulkorajoilla olevilla ylityspaikoilla ja viisumitietojen vaihto jäsenvaltioiden kesken helpottuvat. Komissio on ehdottanut oikeusperustan luomista, jotta jäsenvaltiot voivat ottaa viisuminhakijoilta pakolliset biotunnisteet, ja oikeudellisen kehyksen käyttöönottoa jäsenvaltioiden konsulaattien organisointiin.³⁵ Yhteinen konsuliohjeisto laadittiin uudelleen ja viisumisäännöstöä koskeva ehdotus³⁶ tehtiin avoimuuden ja oikeusvarmuuden lisäämiseksi ja menettelyjen yhdenmukaistamiseksi. Viisumien myöntämistä helpottavat sopimukset on neuvoteltu Venäjän, Ukrainan, Moldovan tasavallan, Albanian, Bosnia ja Hertsegovinan, entisen Jugoslavian tasavallan Makedonian,

²⁹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

³⁰ 'Preparing the next steps in border management in the European Union', COM(2008) 69 final.

³¹ 'Examining the creation of a European border surveillance system (EUROSUR)', COM(2008) 68 final.

³² 'Report on the evaluation and future development of the FRONTEX Agency', COM(2008) 67 final.

³³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

³⁴ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60; and Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

³⁵ 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, COM(2006) 269 final.

³⁶ Draft proposal for a Regulation of the European Parliament and of the Council establishing a Community Code on Visas, COM(2006) 403 final.

Serbian ja Montenegron kanssa. Sopimukset tulivat voimaan vuosina 2007 ja 2008. Niillä yksinkertaistettiin menettelyjä, joita sovelletaan kyseisten maiden kansalaisiin, jotka haluavat matkustaa EU:hun lyhytaikaista oleskelua varten. Viisumikohtelussa päästiin täyteen vastavuoroisuuteen³⁷ Costa Rican, Israelin, Malesian, Meksikon, Nicaraguan, Panaman, Paraguayn, Singaporen, Uruguayn, Uuden-Seelannin ja Venezuelan kanssa. Vastavuoroisuus kehittyi myönteisesti myös Australian, Brunei Darussalamin valtion, Kanadan ja Yhdysvaltojen kanssa. Ehdotusta yhteisten viisumikeskusten perustamisesta³⁸ ei ole vielä hyväksytty, mutta kaksi pilottikeskusta on jo perustettu.

III.1.7 Turvapaikka- ja maahanmuuttoasioiden ulkoinen ulottuvuus

Maailmanlaajuisiin ongelmiin tarvitaan maailmanlaajuiset ratkaisut. Maahanmuuttoa koskeva kokonaisvaltainen lähestymistapa, joka perustuu aitoon kumppanuuteen kolmansien maiden kanssa, on osoitus siitä, että EU on sitoutunut tarkastelemaan kolmansista maista EU:hun suuntautuvien muuttovirtojen syitä ja seurauksia mahdollisimman laajasta perspektiivistä. Maahanmuutto on entistä kiinteämpi osa komission kehitysohjelmaa ja EU:n muuta ulkopolitiikkaa. Kyseessä oli perustavanlaatuinen muutos, kun turvallisuuslähtöisen suhtautumistavan sijaan omaksuttiin muuttoliikkeen kaikkien näkökohtien syvällisempään ymmärtämiseen perustuva lähestymistapa. Näin avautui uusia kanavia kumppanuuksien solmimiseen ja rakentamaan vuoropuheluun EU:n naapurialueiden sekä Afrikan, Aasian ja Latinalaisen Amerikan kanssa. Keskustelujen tueksi on toteutettu käytännön toimia, joiden tavoitteena on valjastaa maahanmuutto ja liikkuvuus palvelemaan kehitystä, hallita paremmin laillista maahanmuuttoa sekä torjua ja vähentää laitonta maahanmuuttoa. Käytännössä kokonaisvaltaista lähestymistapaa on sovellettu yhteisön yhteistyövälinein, joilla on rahoitettu monia näiden alojen hankkeita ja pakolaisten suojeluun liittyviä hankkeita. Tarkoitusta varten on perustettu maahanmuutto- ja turvapaikka-asioiden temaattinen ohjelma, jonka määrärahat vuosille 2007–2013 ovat 384 miljoonaa euroa. Lisäksi on kehitetty uusia välineitä ja käsitteitä, esimerkiksi EU:n ja kolmansien maiden väliset liikkuvuuskumppanuudet.

III.2. Turvallisuuden vahvistaminen

III.2.1 Terrorismi

EU:ssa viime vuosina tehdyistä terroriteoista Madridin (2004) ja Lontoon (2005) pommi-iskut olivat kaikkein järkyttävimmät. Niiden lisäksi on kuitenkin ollut huolestuttava määrä muita iskuyrityksiä, joista monet ovat jääneet huomiotta. Vuoden 2007 aikana yhteentoista EU:n jäsenvaltioon kohdistui lähes 600 terroristi-iskua, joista osa epäonnistui, osa saatiin estetyksi ja osa toteutui suunnitelmien mukaisesti.³⁹

EU on rahoittanut monia terrorismin ehkäisemiseen suunnattuja hankkeita, muun muassa käsikirjan suhtautumisesta vankien radikalisoitumiseen. Epäilyttäviä liiketoimia koskeva ilmoitusvelvollisuus ulotettiin muihin kuin rahoitusalan yrityksiin, myös kasinoihin ja

³⁷ Four "reciprocity reports" have been published: COM(2006) 3 final; COM(2006) 568 final; COM(2007) 533 final; COM(2008) 486 final/2.

³⁸ 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, COM(2006) 269 final.

³⁹ Europol, 'EU Terrorism Situation and Trend Report 2007', available at: <http://www.europol.europa.eu/publications/TESAT/TESAT2007.pdf>

lakimiehiin, rahoitusjärjestelmän käytön estämisestä terrorismin rahoitukseen annetulla direktiivillä⁴⁰. Vuonna 2005 annetun asetuksen⁴¹ seurauksena EU:n alueelle saapuvat tai sieltä lähtevät matkustajat, joilla on mukanaan vähintään 10 000 euroa käteistä, joutuvat antamaan asiasta kirjallisen ilmoituksen. EU:n lainsäädännössä on kriminalisoitu terroristien koulutus ja värväys sekä julkinen, myös internetin välityksellä tapahtuva yllytys terrorismirikoksiin.⁴² EU:n laajuisen räjähdewaroitujärjestelmän perustamiseen on myönnetty varoja. Järjestelmä varoittaa viranomaisia kadonneisiin tai varastettuihin räjähteisiin liittyvistä uhkista.

EU:n elintärkeän infrastruktuurin – maanteiden, rautateiden, sähköverkkojen ja voimalaitosten – suojelun tehostamiseksi on otettu käyttöön välineitä⁴³. Komissio järjesti vihreän kirjan⁴⁴ muodossa kuulemisen biouhkien varautumisesta. Se aikoo tehdä piakkoin ehdotuksia, joiden tarkoituksena on vähentää sellaisten kemiallisten, biologisten, säteily- ja ydinuhkien mahdollisuutta, jotka voivat vahingoittaa tuhansia ihmisiä, tuhota maataloutta ja häiritä vakavasti elintarvikeketjua.

III.2.2 Poliisiyhteistyö

EU:n toiminta viimeisten viiden vuoden aikana on perustunut ”saatavuuden periaatteeseen”, jonka mukaan yhden jäsenvaltion lainvalvontaviranomainen voi saada virkatehtäviä hoitaessaan tietoja toisesta jäsenvaltiosta silloin kun niitä on saatavilla.

Tietojen ja tiedustelutietojen vaihtoa yksinkertaistettiin.⁴⁵ Prömin sopimuksen sisällyttäminen EU:n lainsäädäntöön⁴⁶ mahdollisti välillisen pääsyn jäsenvaltioiden sormenjälki- ja DNA-tietokantoihin ja valvotun välittömän pääsyn ajoneuvorekistereihin. Tämä on omiaan parantamaan poliisiyhteistyötä merkittävästi koko EU:ssa, koska poliiseilla on nyt tieto siitä, mitä kaikkea tietoa on saatavilla. Turvallisuussyihin perustuvalle viisumitietojärjestelmään pääsulle vahvistettiin ehdot⁴⁷, ja jäsenvaltioiden enemmistö saattoi osaksi kansallista

⁴⁰ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15.

⁴¹ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, OJ L 309, 25.11.2005, p. 9.

⁴² Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, OJ L 330, 9.12.2008, p. 21.

⁴³ Communication from the Commission on a European Programme for Critical Infrastructure Protection, COM(786) final, and Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection, OJ L 345, 23.12.2008, p. 75.

⁴⁴ Green Paper on bio-preparedness, COM(2007) 399 final.

⁴⁵ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006, p. 89.

⁴⁶ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 1 and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 12.

⁴⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

lainsäädäntöään ehdot⁴⁸ sähköisten liikenne- ja paikkatietojen säilyttämiselle kiinteissä verkoissa ja matkaviestintäverkoissa tapahtuvan puhelintoiminnan osalta.

Euroopan poliisiviraston (Europol) perustamisesta ja aiemman yleissopimuksen korvaamisesta tehdyllä neuvoston päätöksellä⁴⁹ virasto saa joustavammat toimintaedellytykset vastata rikollisuuden eri suuntauksiin aiempaa nopeammin. Europolin tietojärjestelmä on suunniteltu vakavia rajat ylittäviä rikoksia koskevien tietojen keräämiseen ja vaihtamiseen. Järjestelmän lisäksi jäsenvaltioiden lainvalvontaviranomaiset saavat Europolin analyysitietokantojen välityksellä tiedustelutietoja määrättyistä rikollisista ilmiöistä, esimerkiksi ihmiskaupasta, terrorismista, luottokorttipetoksista ja synteettisten huumeiden kaupasta.

III.2.3 Järjestäytynyt rikollisuus

Järjestäytyneiden rikollisryhmien osallistuminen huumeiden ja varastettujen autojen kauppaan, ryöstöihin ja huipputeknologiaan liittyviin rikoksiin kuten väärän henkilöllisyyden käyttöön ovat uhka EU:lle. Nämä ja erilaiset talousrikokset – petokset, väärennökset ja rahanpesu – tuottavat kaikki suuria voittoja ja vahingoittavat EU:n taloutta. Jäsenvaltioita on kannustettu perustamaan varallisuuden takaisin hankinnasta vastaavia toimistoja varojen nopeampaan jäljittämiseen koko EU:n alueella.⁵⁰ Näiden uhkien käsittelyssä on suosittu tiedustelutietoihin perustuvaa lähestymistapaa. Rahanpesun torjumiseksi on perustettu FIU.NET. Kyseisessä rahanpesun selvittelykeskusten verkostossa EU:n rahanpesun selvittelykeskukset voivat tehokkaasti vaihtaa rahanpesua koskevaa tiedustelutietoa. Järjestäytyneen rikollisuuden torjuntaa koskeva uusi väline⁵¹ lisää jäsenvaltioiden yhteistyömahdollisuuksia. Komissio ehdotti toukokuussa 2007 useita toimenpiteitä tietoverkkorikollisuuden torjuntaa koskevan koordinoinnin parantamiseksi⁵² sekä lainvalvontaviranomaisten keskuudessa että niiden ja yksityissektorin kesken. Tietoverkkorikollisuus käsittää myös lasten riiston. Lapsipornografian vastainen taloudellinen liittoutuma (Financial Coalition against Child Pornography) toimii komission, luottokorttien myöntäjien, lainvalvontaviranomaisten ja internet-palvelujen tarjoajien yhteistyöfoorumina kaupallisen lapsipornografian torjunnassa. Liittoutuma kohdistaa toimensa maksujärjestelmiin, joilla tätä laitonta toimintaa rahoitetaan. Komissio teki keväällä 2009 kaksi ehdotusta puitepäätökseksi⁵³: toisella tehostetaan lasten seksuaalisen riiston ehkäisy- ja torjuntatoimia ja toinen koskee ihmiskaupasta vuonna 2005 laaditun toimintasuunnitelman jatkotoimia.

⁴⁸ 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, p. 54.

⁴⁹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

⁵⁰ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103.

⁵¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.

⁵² 'Towards a general policy on the fight against cyber crime', COM(2007) 267 final.

⁵³ Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, COM(2009) 315 final; proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM(2009) 316 final.

III.2.4 EU:n huumausainestrategia

EU:n huumausainestrategiassa (2005–2012)⁵⁴ ja siihen liittyvissä toimintasuunnitelmissa⁵⁵ on omaksuttu tasapainoinen ja yhtenäinen lähestymistapa, joka kattaa huumeiden väärinkäytön ehkäisemisen, huumeista riippuvaisten auttamisen ja kuntouttamisen, laittoman huumekaupan torjumisen, huumausaineiden lähtöaineiden valvonnan, rahanpesun sekä kansainvälisen yhteistyön lujittamisen. Euroopan huumausaineiden ja niiden väärinkäytön seurantakeskuksen hankkiman näytön perusteella heroisiin, kannabiksen ja synteettisten huumeiden käyttö on tasaantunut, mutta kokaiinin käyttö on lisääntymässä monissa jäsenvaltioissa. EU pyrkii puuttumaan eri päihteiden laajalle levinneeseen käyttöön ja väärinkäyttöön, joka on monimutkainen yhteiskunnallinen ilmiö, ja keskittyy enenevässä määrin toimiin, joiden tavoitteena on korjata huumeista yksilöille ja yhteiskunnalle aiheutuvia haittoja.

III.3. Oikeuden vahvistaminen

Euroopan oikeusalueen kehittäminen Haagin ohjelman puitteissa on alkanut tuottaa tuloksia jäsenvaltioille ja EU:n kansalaisille. Eurojust ja Euroopan oikeudellinen verkosto tarjoavat tarvittavan infrastruktuurin oikeudelliselle yhteistyölle sekä tutkinnan ja syytetoimien koordinoinnille yli sisärajojen. Sellaisenaan sovellettavien asetusten ansiosta kansalaisilla ja yrityksillä, jotka ovat osallisina rajat ylittävissä yksityisoikeudellisissa riita-asioissa, on tietoa siitä, millä tuomioistuimella on kulloinkin toimivalta ja mitä sääntöjä sovelletaan toisessa jäsenvaltiossa annetun tuomion tunnustamiseen.

III.3.1 Rikosoikeudellinen yhteistyö

Eurooppalainen pidätysmääräys on merkittäväällä tavalla lyhentänyt rikollisten luovuttamiseen menevää aikaa ja vähentänyt siihen liittyvää työmäärää. Aikaisemmassa menettelyssä luovutus kesti yli vuoden, nyt siihen menee 11 vuorokaudesta 6 viikkoon. Vuonna 2007 rekisteröitiin 2 667 annettuihin pidätysmääräyksiin perustunutta luovutusta, ja vuonna 2005 eurooppalaista pidätysmääräystä käytettiin yhden Lontoon pommi-iskujen tekijän nopeaan palauttamiseen Italiasta Yhdistyneeseen kuningaskuntaan. Vakaviin rikoksiin liittyvässä tutkinnassa ja syytteenpanossa jäsenvaltiot ovat turvautuneet yhä useammin Eurojustiin: vuonna 2007 tapauksia oli 1 000 verrattuna vuonna 2002 rekisteröityyn 192 tapaukseen.

III.3.2 Rajat ylittävien yksityisoikeudellisten menettelyjen helpottaminen

Yksityis- ja kauppaoikeuden alalla on tapahtunut merkittävää edistystä. EU:n kansalaisilla on nyt käytössään yksinkertaisemmat ja nopeammat keinot vähäisten vaatimusten ja saatavien käsittelyyn.⁵⁶ EU on ottanut käyttöön yhdenmukaistetut säännöt yksityisoikeudelliseen vastuuseen ja sopimuksiin sovellettavasta laista⁵⁷. Oikeudellista yhteistyötä parannettiin

⁵⁴ EU Drugs Strategy (2005-2012) endorsed by the Council in 2004, Council Document 15074/04.

⁵⁵ On the basis of the Communication on a EU Drugs Action Plan (2005-2008), COM(2005) 45 final, the Council endorsed the 'EU drugs action plan (2005-2008)' in 2005, OJ C 168, 8.7.2005, p. 1. On the basis of the Communication on a EU Drugs Action Plan for 2009-2012, COM(2008) 567 final, the Council endorsed the 'EU drugs action plan for 2009-2012' in 2005, OJ C 326, 20.12.2008, p. 7.

⁵⁶ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1; Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

⁵⁷ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

tarkistamalla asiakirjojen tiedoksiantoa koskevia sääntöjä⁵⁸. Oikeudellisen yhteistyön ulkoinen ulottuvuus kehittyi merkittävästi.⁵⁹ Esimerkkeinä mainittakoon EY:n liittyminen kansainvälistä yksityisoikeutta käsittelevään Haagin konferenssiin⁶⁰ ja komission valmistelutoimet tuomioiden täytäntöönpanon parantamiseksi EU:ssa⁶¹. Tiettyjä sovittelun näkökohtia siviili- ja kauppaoikeuden alalla otettiin tarkasteluun vaihtoehtojen tarjoamiseksi riitojen ratkaisuun.⁶²

Avioliittoa ja vanhempainvastuuta koskevista asioista annetulla uudella asetuksella turvataan lasten säännölliset yhteydet molempiin vanhempiin eron jälkeen ja vahvistetaan selvät säännöt lapsikaappausten estämiseksi koko EU:n alueella, kun taas toisella asetuksella, sitten kun se on ratifioitu, nopeutetaan elatussaatavien perintää EU:ssa.⁶³ Säädösehdotus avioeroon sovellettavasta lainsäädännöstä (joka tunnetaan nimellä Rooma III) on parhaillaan neuvoston ja parlamentin käsittelyssä.

III.3.3 Vastavuoroinen tunnustaminen

Vastavuoroinen tunnustaminen on oikeudellisen yhteistyön kulmakivi. EU on edistynyt siinä merkittävästi sekä lainsäädännön osalta että operatiivisella tasolla. Sähköistä oikeudenkäyttöä koskevan strategian ja toimintasuunnitelman⁶⁴ täytäntöönpanon myötä EU:n kansalaiset saavat tietoa EU:n oikeusalueen palveluista, minkä lisäksi oikeusviranomaisten välinen viestintä ja yhteistyö helpottuu. Toimintalinjoja ja käytäntöjä koskevan säännöllisen

⁵⁸ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10.12.2007, p. 79.

⁵⁹ Council Decisions 2006/325-326/EC concerning the conclusion of the Agreement between the European Community and Denmark, OJ L 120, 5.5.2006, p. 22 and p. 23; Council Decision 2007/712/EC of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the 'Lugano Convention'), OJ L 339, 21.12.2007, p. 1; and Council Decision 2008/431/EC of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law - Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, OJ L 151, 11.6.2008, p. 36.

⁶⁰ Council Decision 2006/719/EC of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law, OJ L 297, 26.10.2006, p. 1.

⁶¹ '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', COM(2006) 203 final; Green Paper 'Effective enforcement of judgments in the European Union: the transparency of debtors' assets', COM (2008) 128 final; and Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts, COM(2006) 618 final.

⁶² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008, p. 3.

⁶³ Council Regulation (EC) No 2201/2003 of 27 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, OJ L 338, 23.12.2003, p. 1; Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009, p. 1.

⁶⁴ 'Towards a European e Justice Strategy', COM(2008) 329 final.

vuoropuhelun käymiseen perustetun oikeusalan foorumin on tarkoitus lujittaa keskinäistä luottamusta, joka on vastavuoroisen tunnustamisen keskeinen osatekijä.

Tehokas yhteistyö alkaa sillä, että etulinjassa työskentelevät ihmiset saavat riittävän koulutuksen. Komissio on asettanut oikeusalan tutkimukseen, koulutukseen ja vaihto-ohjelmiin liittyvän rahoituksen etusijalle – pelkästään vuonna 2007 vaihtoon osallistui 400 tuomaria ja syyttäjää.

III.4. Ulkosuhteet

Oikeuden, vapauden ja turvallisuuden alan sisä- ja ulkopoliittikat ovat kiinteästi kytköksissä toisiinsa. Osana Haagin ohjelmaa komissio ja pääsihteeri / korkea edustaja valtuutettiin esittämään neuvostolle strategia, joka kattaa kaikki vapauden, turvallisuuden ja oikeuden alan EU-politiikan ulkoiset näkökohdat. Strategiassa⁶⁵, jonka neuvosto vahvisti vuonna 2005, esitellään temaattiset painopisteet (ihmisoikeudet, heikon hallintotavan ja valtion toimintakyvyttömyyden korjaaminen, oikeudellinen yhteistyö, terrorismin torjunta, järjestäytynyt rikollisuus, korruptio, huumeet ja muuttovirtojen hallinta) sekä taustalla olevat periaatteet ja yhteistyömekanismit. Strategiassa edistymisestä on tehty kaksi raporttia⁶⁶. Edellä luetellut painopisteet sisällytettiin vuonna 2003 laadittuun Euroopan unionin turvallisuusstrategiaan, jossa nimetään Euroopan tärkeimmät uhkat. Joulukuussa 2008 julkaistiin selvitys strategian täytäntöönpanosta⁶⁷.

III.5. Rahoitusvälineet

EU:ssa ja jäsenvaltioissa toteutettavien toimien tukemiseksi on luotu erilaisia rahoitusvälineitä. Maahanmuuttopolitiikkaa tuetaan yhteisvastuuta ja muuttovirtojen hallintaa koskevasta ohjelmasta⁶⁸: maahanmuuttokysymyksiin on myönnetty lähes 4 miljardia euroa vuosiksi 2007–2013. Turvallisuutta ja vapauksien suojelua koskeva puiteohjelma⁶⁹ (745 miljoonaa euroa vuosiksi 2007–2013) auttaa EU:ta jatkamaan terrorismin ja rikollisuuden torjuntaa. Perusoikeuksien ja oikeusasioiden ohjelmasta⁷⁰ (yhteensä 542 miljoonaa euroa) myönnetään varoja sähköisen oikeudenkäytön suunnitelmalle ja Daphne-ohjelmalle (lapsiin, nuoriin ja naisiin kohdistuvan väkivallan torjuntaohjelma).

Tutkimuksen ja teknologian kehittämisen seitsemännessä puiteohjelmassa on käytettävissä 1,5 miljardia euroa valmiuksien parantamiseen kansalaisten, rajojen ja infrastruktuurin suojelemiseksi terrori-iskuilta ja muilta uhkilta. Varoja on saatavilla myös rikollisuuden

⁶⁵ 'Strategy for the external dimension of JHA: Global freedom, security and justice', Council document 15446/05.

⁶⁶ 'Progress report on the implementation of the Strategy for the External Dimension of JHA: Global freedom, security and justice', SEC(2006) 1498; 'Second progress report on the implementation of the Strategy for the External Dimension of JHA: Global freedom, security and justice', SEC(2008) 1971.

⁶⁷ 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', Council document 17104/08.

⁶⁸ Four Funds exist under this programme: three Funds adopted under co-decision procedure (European Return Fund, European Refugee Fund and External Borders Fund) and one Fund under consultation procedure (Fund for the Integration of third-country nationals).

⁶⁹ Two specific programmes exist under this framework programme: "Prevention of and fight against Crime" (third pillar legal basis) and "Prevention, preparedness and Consequence Management of Terrorism and other Security related risks" (based on Article 308 of the TEC).

⁷⁰ This framework programme has five specific programmes: Civil Justice, Daphne III and Drugs programmes (under co-decision), Fundamental Rights and Citizenship (based in Article 308 TEC) and Criminal Justice (third pillar legal basis).

sosioekonomiseen tutkimukseen ja perusoikeuksien suojeluun. Euroopan turvallisuustutkimus- ja -innovaatiofoorumi (ESRIF) perustettiin, jotta julkisen ja yksityisen sektorin toimijat voisivat laatia keskipitkän/pitkän aikavälin yhteisen toimintasuunnitelman siviiliturvallisuuteen liittyvästä tutkimuksesta ja innovoinnista.⁷¹

Oikeuden, vapauden ja turvallisuuden ulkoista ulottuvuutta tuetaan monista ulkoisen avun rahoitusvälineistä: liittymistä valmisteleva tukiväline, eurooppalainen naapuruuden ja kumppanuuden väline, vakautusväline, Euroopan kehitysrahasto ja kehitysyhteistyön rahoitusväline. Viimeksi mainittu käsittää muuttoliikettä ja turvapaikka-asioita koskevan aihekohtaisen ohjelman.

IV. VAIHTELEVAA EDISTYSTÄ

Useiden Haagin ohjelmassa asetettujen kunnianhimoisten tavoitteiden toteuttamisessa on edistytty harppauksin ja useimmat siinä esitetyt erityistoimenpiteet on toteutettu. Näistä toimenpiteistä monien tulokset näyttäytyvät kokonaisuudessaan vasta pidemmällä aikavälillä. Eräillä ohjelman aloilla edistys on kuitenkin ollut vaihtelevaa tai vähäistä.

Vaihtelevuus selittyy pitkälti oikeuden, vapauden ja turvallisuuden alan ainutlaatuisilla haasteilla: alaa koskeva yhteisön säännöstö on suhteellisen uutta, Euroopan parlamentin rooli tietyillä politiikan aloilla on riittämätön, yhteisöjen tuomioistuimen toimivalta on rajallinen, komission toimivalta rikkomusmenettelyn aloittamisessa on rajallinen ja päätöksenteon edellytyksenä on useilla aloilla yksimielisyys. Näistä syistä toimenpiteiden tavoitetasoa on jouduttu laskemaan tiettyjen alojen, esimerkiksi laillisen maahanmuuton, osalta.

Haagin ohjelmaa ei ole pantu täytäntöön kokonaisuudessaan, mikä johtuu lähinnä siitä, ettei perustuslakisopimusta ole saatu ratifioiduksi. Euroopan unioni ei ole voinut liittyä Euroopan ihmisoikeussopimukseen, koska sen oikeusperustaksi olisi tarvittu perustuslakisopimus. Oikeusperustaksi käy myös Lissabonin sopimus, mutta sen on ensin tultava voimaan.

Edistyminen on ollut verraten hidasta rikosasioiden vastavuoroisen tunnustamisen ja poliisiyhteistyön osalta. Kolmannen pilarin päätöksentekoprosessin (SEU:n VI osasto) edellytyksenä on yksimielisyys. Tämä johtaa usein pitkiin, avoimeksi jääviin keskusteluihin tai siihen, että alun perin kunnianhimoiset ehdotukset typistyvät pienimmän yhteisen nimittäjän ympärille rakentuviksi teksteiksi. Prosessuaalisia oikeuksia koskeva puitepäättös on yksi esimerkki Haagin ohjelman puitteissa tehdystä ehdotuksesta, jota ei hyväksytty siitäkään huolimatta, että alan ammattilaiset pitävät sitä tärkeänä.

Kolmannen pilarin oikeudellisesti sitovien asiakirjojen (yhteiset kannat, puitepäättökset, päätökset ja yleissopimukset) osalta tilanne on se, että virallisia rikkomusmenettelyjä ei käytetä riittävästi asianmukaisen täytäntöönpanon varmistamiseen ja viiveet EU:n säädösten saattamisessa osaksi kansallista lainsäädäntöä ovat ajoittain huomattavia. Tämä on joiltain osin johtanut ”virtuaalisen” oikeuskehyksen syntymiseen, mistä on vain vähän, jos lainkaan, hyötyä EU:n kansalaisille.

⁷¹ 'Communication from the Commission to the European Parliament and the Council on Public-Private Dialogue in Security Research and Innovation', COM(2007) 511 final.

V. TÄHÄNASTISET OPETUKSET JA JATKOTOIMIEN AIHEPIIRIT

EU:n on otettava opikseen aiemmista toimistaan, hyödynnettävä menestykseksi osoittautuneet strategiat täysimääräisesti ja korjattava se, minkä olisi voinut tehdä paremmin. Oikeuden, vapauden ja turvallisuuden alalla jatkossa toteutettavien toimien olisi rakennuttava seuraavien aihepiirien ympärille.

V.1. Ideoinnin ja toiminnan koordinointi

Euroopan suuret haasteet, olivatpa ne sitten lyhytkestoisia kriisejä tai pitkän aikavälin suuntauksia, edellyttävät suunnittelun ja toiminnan koordinoitua. Kaikilla Haagin ohjelman näkökohdilla on merkitystä niin oikeuden, vapauden kuin turvallisuudenkin kannalta. On tärkeää pyrkiä johdonmukaisuuteen oikeus- ja sisäasioiden piiriin perinteisesti kuuluvassa toiminnassa mutta myös kaikessa muussa yhteisön politiikassa.

Maahanmuutto- ja turvapaikkapolitiikassa on huolehdittava siitä, että laittoman maahanmuuton ja turvapaikkajärjestelmän väärinkäytön ehkäisy- ja torjuntatoimilla ei evätä suojelua, johon turvapaikanhakijoilla on oikeus. Perusoikeuksien toteutumista EU-politiikoissa on valvottava jatkossakin, ja valvonta on laajennettava koskemaan kaikkia päätöksenteon ja yhteisön säännösten täytäntöönpanon eri vaiheita jäsenvaltioissa. Rajavalvonta on EU:n turvallisuuden kannalta ratkaisevan tärkeää, samoin kuin poliisiyhteistyö on laittoman maahanmuuton torjunnassa. Näille aloille olisi vahvistettava monialaiset painopisteet EU:n tasolla.

Henkilötietojen suoja rikosasioihin liittyvässä poliisi- ja oikeusviranomaisten yhteistyössä on perustunut tapauskohtaiseen lähestymistapaan. Tietosuojavaatimuksista on säädetty eri pilareihin kuuluvissa säädöksissä, ja niiden soveltamisala ja luonne ovat kytköksissä kulloisenkin säädöksen tavoitteisiin. Hiljattain tehty puitepäätos⁷² ei ratkaise kaikilta osin tätä yhdenmukaisuuden puutetta. Lähivuosina alalla onkin kiinnitettävä erityistä huomiota johdonmukaisuuteen.

Muilla monialaisilla lähestymistavoilla voitaisiin parantaa politiikan vaikuttavuutta esimerkiksi lapsen oikeuksien puolustamisen sekä muukalaisvihan ja rasismien torjunnan aloilla, koska talouden kriisiaikoina tällaisen toiminnan tarve valitettavasti kasvaa.

Maahanmuuttoa koskeva kokonaisvaltainen lähestymistapa rakentuu eri välineistä, jotka voitaisiin yhdistää yhdeksi kattavaksi ja tasapainoiseksi vuoropuhelu- ja yhteistyökehikseksi. Uusiin haasteisiin on tartuttava järjestelmällisesti. Poliittiset, taloudelliset sekä ympäristöön ja väestöön liittyvät pitkän aikavälin muutokset vaikuttavat EU:n ja kolmansien maiden välisiin suhteisiin, erityisesti maahanmuuttoon ja liikkuvuuteen. Maahanmuuttopolitiikka on liitettävä tiiviimmin EU:n ulkosuhdestrategiaan; tässä yhteydessä olisi hyötyä myös ulkosuhdehallinnon perustamisesta.

Uusien teknologioiden tarjoamat mahdollisuudet on hyödynnettävä täysimääräisesti. Lisäksi tietoyhteiskunta on synnyttänyt korkean tason verkko- ja tietoturvallisuuden tarpeen koko Euroopassa. Tietoverkkorikollisuuden ja -terrorismin torjunta edellyttää, että sidosryhmät osallistuvat aktiivisesti toimiin, joilla pyritään parantamaan tieto- ja viestintätekniikan

⁷² Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

infrastruktuurien ja palvelujen valmiutta, turvallisuutta ja sietokykyä. Näihin pitkän aikavälin haasteisiin on perehdyttävä perusteellisesti Euroopan tasolla.⁷³

Turvallisuutta koskevaa tutkimusta ja innovointia on tehtävä yhteistyössä yksityisen ja julkisen sektorin kanssa ja edellytyksenä on myös loppukäyttäjätahojen täysipainoinen osallistuminen.

V.2. Enemmän huomiota täytäntöönpanoon ja soveltamiseen

On huolestuttavaa, että Haagin ohjelman ja sen toimintasuunnitelman puitteissa sovittujen toimenpiteiden täytäntöönpano vaihtelee jäsenvaltioittain. Nyt kun oikeudellinen kehys on saatu luoduksi, tulevaisuudessa olisi keskityttävä konsolidointiin ja soveltamiseen. Komissio auttaa tässä konsolidoimalla voimassa olevaa yhteisön säännöstöä, helpottamalla parhaiden toimintatapojen yhteensovittamista ja vaihtoa jäsenvaltioiden kesken (esim. järjestämällä täytäntöönpanoseminaareja), myöntämällä rahoitusta ja tukemalla koulutusta. Lisäksi olisi pyrittävä laajentamaan rikkomusmenettelyjen käyttöä. Komissio on tukenut EU:n kansalaisten oikeutta liikkua ja oleskella vapaasti EU:n alueella. Tarvitaan kuitenkin lisätoimia sen varmistamiseksi, että EU:n kansalaiset ovat tietoisia oikeuksistaan ja voivat luottaa siihen, että niitä myös kunnioitetaan. Olemassa olevien virastojen ja verkostojen on otettava kaikki valmiudet käyttöön, lisättävä keskinäistä yhteistyötä ja hyödynnettävä mahdolliset synergiat.

V.3. Arvioinnin parempi hyödyntäminen

Kansalaiset odottavat, että EU:n politiikat tuottavat tuloksia. Osana Haagin ohjelmaa on otettu käyttöön useita välineitä ja perustettu useita virastoja. Niistä monien tehokkuutta on liian aikaista arvioida konkreettisin tuloksin. Järjestäytyneen rikollisuuden torjunnassa, poliisi- ja tulliyhteistyössä sekä rikosoikeuden alalla toteutettuja toimia on edelleen vaikea arvioida, koska jäsenvaltioilla ei useinkaan ole täytäntöönpanoon liittyvää raportointivelvollisuutta.

Kutakin politiikan alaa varten tarvitaan vakaampia ja järjestelmällisempiä seuranta- ja arviointijärjestelmiä, jotta EU:n toiminnan vaikutuksista saataisiin vertailukelpoista tietoa. Tällöin arviointien tuloksia voidaan käyttää politiikanteon kehittämiseen ja EU:n toimista saatavan lisäarvon selittämiseen EU:n kansalaisille.

Arviointi voi parantua vain, jos saatavilla on ajantasaisia, objektiivisia, luotettavia ja vertailukelpoisia tietoja. Esimerkiksi muuttoliikettä koskevista yhteisön tilastoista on nyt yhteiset säännöt⁷⁴, ja lisäksi on perustettu Euroopan muuttoliikeverkosto. Komissio on yhdessä jäsenvaltioiden kanssa kehittänyt parametreja ihmiskauppaa ja rahanpesua koskevien tietojen keräämiseksi sekä niiden ja alan suuntausten analysoimiseksi ja vertailemiseksi. Monilta aloilta, esimerkiksi oikeuden alalta, tietoja ei kuitenkaan ole ollut saatavilla. Silloinkin kun tiedonkeruujärjestelmät ovat käytössä tai sellaisia ollaan luomassa, niiden suhteen olisi harkittava sitovampia säännöksiä, myös kun on kyse rikoksista ja varsinkin huumausaineista. Alan osaamisen kehittämistä olisi jatkettava tutkimuksen ja teknologian

⁷³ 'Protecting Europe from large scale cyber-attacks and disruptions: enhancing preparedness, security and resilience', COM(2009) 149 final.

⁷⁴ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L 199, 31.7.2007, p. 23.

kehittämisen puiteohjelmasta ja muista asiaankuuluvista ohjelmista myönnettävällä rahoituksella.

Seuraavan monivuotisen ohjelman uskottavuus riippuu siitä, miten hyvin EU onnistuu raportoimaan ohjelman vaikutuksista tarkoituksenmukaisella tavalla.

V.4. Sisäpolitiikan täydentäminen ulkoisilla toimilla

Jäsenvaltioiden, neuvoston ja komission on yhdessä lujitettava kolmansien maiden kanssa solmittuja kumppanuuksia. On tärkeää turvata oikeuden, vapauden ja turvallisuuden alaa koskevien EU:n sisä- ja ulkopoliittikkojen jatkuvuus ja johdonmukaisuus, jotta ne tuottaisivat tulosta ja niillä voitaisiin vastata globalisaation haasteisiin. EU:n on parempi ennakoida haasteet kuin odottaa niiden ilmaantumista rajoillemme, ja sen olisi kampanjoitava sellaisten esimerkillisten normien (esim. tietosuojavaatimukset) puolesta, jotka voitaisiin ottaa käyttöön kansainvälisesti. Oikeuden, vapauden ja turvallisuuden alan politiikkojen ulkoinen ulottuvuus on sisällytettävä kokonaisuudessaan EU:n ulkoisiin toimiin ja politiikkoihin (esim. kehitysyhteistyöpolitiikka) ja on varmistettava niiden keskinäinen yhdenmukaisuus.

Yhä useammin kolmannet maat lähestyvät EU:ta ehdottaakseen sopimukseen perustuvaa yhteistyötä. Tällaiset ehdotukset voidaan joutua panemaan tärkeysjärjestykseen. Olisi määriteltävä kriteerit, joiden perusteella päätetään, miten näihin yhteistyöpyyntöihin suhtaudutaan ja olisiko ne aiheellista sisällyttää osaksi laajempaa sopimusta. Yhteistyöaloitteilla olisi vastattava erityisolosuhteisiin maissa, jotka valmistautuvat liittymään EU:hun. EU:n ulkosuhteiden painopisteet olisi otettava paremmin huomioon Europolin, Eurojustin ja Frontexin kaltaisten virastojen toiminnan priorisoinnissa. Virastojen operationaalisesta asiantuntemuksesta, etenkin silloin kun ne ovat tehneet sopimuksia tai sopineet työjärjestelyistä kolmansien maiden kanssa, sekä niiden vuosikertomuksista voisi olla suurta hyötyä EU-tason päätöksenteossa.

VI. PITKÄN AIKAVÄLIN TOIMIA EDELLYTTÄVÄT PITKÄKESTOISET HAASTEET

Komissio järjesti vuoden 2008 syksyllä julkisen kuulemisen⁷⁵ siitä, millaiset tulevaisuuden painopisteet Euroopassa pitäisi asettaa oikeuden, vapauden ja turvallisuuden alalla. Osallistuminen oli vilkasta ja vastauksia saatiin kansalaisilta, kansalaisyhteiskunnalta ja jäsenvaltioilta. Kuulemista edelsi eräiden jäsenvaltioiden ministereistä muodostettujen ”tulevaisuusryhmien” arvokas ja perusteellinen työ.⁷⁶

Päätelmät ovat yksiselitteiset.

EU:n kansalaiset haluavat asua ympäristössä, jossa heidän oikeuksiaan kunnioitetaan ja heidän turvallisuutensa on taattu. He haluavat voida matkustaa vapaasti ja asua tilapäisesti tai pysyvästi toisessa EU-maassa, olipa sitten kyse opiskelusta, työnteosta tai perheen perustamisesta. EU:n kansalaisten huomattava enemmistö haluaisi, että EU:lla olisi

⁷⁵ Flash Eurobarometer 252, 'Awareness of key-policies in the area of Freedom, Security and Justice'; the contributions to and the results of the public consultation are available at: http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0001_en.

⁷⁶ 'Freedom, Security, Privacy – European Home Affairs in an open world: Report of the Informal High Level Advisory Group on the Future of European Home Affairs Policy', June 2008; 'Proposed Solutions for the Future EU Justice Programme: High-Level Advisory Group on the Future of European Justice Policy', June 2008.

nykyistäkin suurempi rooli seuraavilla aloilla: järjestäytyneen rikollisuuden, ihmiskaupan ja terrorismin torjunta, poliisi- ja oikeusviranomaisten hallussa olevien tietojen vaihto jäsenvaltioiden kesken, huumeiden väärinkäytön torjunta, perusoikeuksien edistäminen ja suojeleminen, ulkorajojen valvonta sekä turvapaikka- ja maahanmuuttopolitiikka.

Vuoden 2008 lukuihin verrattaessa EU:n työikäisen väestön ennustetaan vähenevän 15 prosenttia eli lähes 50 miljoonalla hengellä vuoteen 2060 mennessä. Vuonna 2007 koko 27 jäsenvaltion EU:ssa oleskeli 18,8 miljoonaa kolmannen maan kansalaista, eli heidän osuutensa EU:n kokonaisväestöstä oli 3,8 prosenttia.⁷⁷ Suuntauksen uskotaan jatkuvan, koska EU:hun kohdistuvat muuttopaineet ovat omiaan kasvamaan lähitulevaisuudessa. Maahanmuuttoa ei voi enää tarkastella muista asioista erillään.

EU:n on syytä olla ylpeä tähänastisista saavutuksistaan. Vaikka Haagin ohjelma laadittiinkin suhteellisen lyhyessä ajassa, sen vahvuus perustuu ohjelmassa omaksuttuun pitkän aikavälin perspektiiviin. Lähivuosien haasteena on säilyttää ohjelman dynaamisuus ja jatkaa nykyisten saavutusten pohjalta, saaduista kokemuksista viisastuneena. Euroopan on löydettävä näihin pitkäkestoisiin haasteisiin yhtenäinen ja kansalaisten etujen mukainen vastaus.

⁷⁷ Eurostat, EUROPOP 2008 Convergence Scenario; Eurostat, Migration Statistics.

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EUROPEISKA GEMENSKAPERNAS KOMMISSION

Bryssel den 10.6.2009
KOM(2009) 263 slutlig

**MEDDELANDE FRÅN KOMMISSIONEN TILL RÅDET,
EUROPAPARLAMENTET, EUROPEISKA EKONOMISKA OCH SOCIALA
KOMMITTÉN SAMT REGIONKOMMITTÉN**

**RÄTTVISA, FRIHET OCH SÄKERHET I EUROPA SEDAN 2005:
EN UTVÄRDERING AV HAAGPROGRAMMET OCH HANDLINGSPLANEN**

{SEK(2009) 765}
{SEK(2009) 766
{SEK(2009) 767}

I. INLEDNING

Rättvisa, frihet och säkerhet är förutsättningar för en Europeisk union med välstånd och fred. Att bygga upp kapaciteten att bevara dessa grundläggande värden är ett projekt på lång sikt. EU behöver också bättre flexibilitet för att kunna hantera oväntade och ibland tragiska händelser såsom terrorattackerna i London 2005 eller de många tusen människor som förolyckats på Medelhavet under det senaste decenniet i försöken att nå EU:s territorium. Europeiska unionens politik i dessa frågor ger ramar för samspelet mellan EU-institutionerna, medlemsstaterna, medborgarna och det internationella samfundet.

Haagprogrammet¹ är EU:s plan för att förverkliga målsättningarna i fråga om tillgång till domstolsprövning, internationellt skydd, migration och gränskontroll, insatser mot terrorism och organiserad brottslighet, i fråga om polisiärt och rättsligt samarbete eller ömsesidigt erkännande.

Kommissionen följer uppmärksamt hur Haagprogrammet genomförs i EU och medlemsstaterna.² Enskilda rättsakter har utvärderats av kommissionen eller av medlemsstaterna genom inbördes utvärdering. Det här meddelandet bygger vidare på dessa erfarenheter och betonar de frågor som väckts. Meddelandet behandlar också hur EU kan bemöta framtida utmaningar. Meddelandet åtföljs av tre längre dokument, för det första en rapport om genomförandet av programmet som går igenom mål, utveckling och framtida utmaningar på de olika politikområdena, för det andra en resultattavla för institutionerna som går igenom programmets instrument och målsättningar och för det tredje en resultattavla över genomförandet i medlemsstaterna.

Nästa fleråriga program (Stockholmsprogrammet)³ kommer att innehålla prioriteringar för det fortsatta arbetet utifrån tidigare framsteg.

II. BAKGRUND OCH SAMMANHANG

Vid Europeiska rådets möte i Tammerfors 1999 fastställdes den första fleråriga politiska ramen för rättsliga och inrikes frågor. Under de därpå följande fem åren lades grunden till en gemensam asyl- och invandringspolitik, harmonisering av gränskontroller och närmare polisiärt och rättsligt samarbete med utgångspunkt i ömsesidigt förtroende och ömsesidigt erkännande. Under denna period inträffade terrorattackerna i New York 2001 och i Madrid år 2004, samtidigt som trycket från migrationsflödet ökade och den organiserade brottsligheten tilltog. Detta ökade EU:s behov av en löpande strategi för att hantera gränsöverskridande problem och samtidigt kunna garantera medborgarnas grundläggande fri- och rättigheter.

¹ The Hague Programme: strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1), and 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 A Commission review of the progress made in the implementation of the Hague Programme by the European Institution and by Member States ("Scoreboard") has been presented every year since 2006. The references are as follows: COM(2006) 333 final; COM(2007) 373 final; COM(2008) 373 final.

³ COM(2009)262

Haagprogrammet blev EU:s svar på behovet. Syftet med programmet var

- att förbättra unionens och dess medlemsstaters gemensamma kapacitet när det gäller att säkerställa grundläggande rättigheter och ett minimum av rättssäkerhetsgarantier och tillgång till domstolsprövning,
- att erbjuda skydd i enlighet med Genèvekonventionen om flyktingar och andra internationella fördrag som gäller människor i nöd,
- att reglera migrationsflöden och kontrollera unionens yttre gränser,
- att bekämpa organiserad gränsöverskridande brottslighet och hålla tillbaka terroristhotet,
- att förverkliga Europol och Eurojusts potential,
- att gå vidare med det ömsesidiga erkännandet av rättsliga avgöranden och intyg på både det civilrättsliga och det straffrättsliga området, och
- att undanröja rättsliga och juridiska hinder i gränsöverskridande civil- och familjerättsliga tvister.

Programmet har genomförts mot bakgrund av viktiga skeenden inom EU och globalt. När ytterligare tolv medlemsstater anslöt sig till EU år 2004 och 2007 förändrades unionens sammansättning och funktion. Asylansökningarna minskade för att återigen öka 2007, medan invandringstrycket på EU:s yttre gräns i söder har tilltagit rejält. EU:s ekonomi som redan brottas med en minskande arbetsför befolkning på längre sikt står nu inför en period med stigande arbetslöshet och ekonomisk osäkerhet.

III. ETT AMBITIÖST PROGRAM SOM GIVIT KONKRETA RESULTAT

Insatser för rättvisa, frihet och säkerhet inom hela EU är något ganska nytt jämfört med unionens övriga verksamhet, och i många fall kommer det att ta tid innan arbetet ger frukt. Men förslagen påverkar oss alla direkt och opinionsundersökningar visar att EU-medborgarnas förväntningar är högt ställda. Liksom Tammerforsprogrammet har Haagprogrammet ett långsiktigt perspektiv, men är mer långtgående eftersom de strategiska målen åtföljdes av en detaljerad handlingsplan för hur de skulle uppfyllas. Framgångarna har varierat, men resultaten är högst påtagliga.

III.1. Ökad frihet

III.1.1 Skydd av de grundläggande fri- och rättigheterna

Ett systematiskt och strikt kontrollsystem inrättades⁴ för att se till att kommissionens lagförslag är förenliga med Europeiska unionens stadga om de grundläggande rättigheterna. Europeiska unionens byrå för grundläggande rättigheter⁵ inledde sin verksamhet den 1 mars

⁴ 'Compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring', COM(2005) 172 final.

⁵ Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, p. 1.

2007 och bistår nu EU:s institutioner och medlemsstater med forskningsprojekt och informationsinsamling. En omfattande strategi för att främja barns rättigheter⁶ antogs och utmynnade i inrättandet av ett europeiskt forum för barnets rättigheter. Forumet ger alla berörda möjlighet att samverka om att sätta barnens rättigheter i centrum för EU:s insatser. EU antog vidare ett rambeslut som kräver att medlemsstaterna ska straffa den som uppmanar till rasvåld eller rashat.⁷

Både i de inrikes frågorna och i de yttre förbindelserna ivrade EU för skyddet av personuppgifter och den personliga integriteten med samtidig hänsyn till de rättstillämpande myndigheternas behov av att kunna utbyta relevanta uppgifter i kampen mot terrorism och grov brottslighet. Ytterligare garantier har ställts för skyddet av sådana personuppgifter som behandlas inom ramen för polissamarbetet och det straffrättsliga samarbetet.⁸ Kommissionen uppger att direktivet om skydd av personuppgifter⁹ ger enskilda individer en garanti mot allmän övervakning, att konsumenterna därmed kan lita på att uppgifter som lämnas i affärstransaktioner inte kommer att missbrukas och att företagen också kan verka inom EU utan att behöva frukta avbrott i sin internationella verksamhet.¹⁰ Integritetsfrämjande teknik¹¹ stöddes för att IT-systemen ska hålla insamlingen och användningen av personuppgifter på ett minimum. I samarbete med tredjeländer nådde EU ett långsiktigt avtal med USA, Kanada och Australien om överföringen av passageraruppgifter och har fått garantier för hur personuppgifter från EU i bearbetningsorganet SWIFT ska få användas för att bekämpa terrorism.

III.1.2 Unionsmedborgarskap

Avskaffandet av kontrollerna vid de inre gränserna i Schengenområdets tjugofem länder gör att vi nu kan resa från iberiska halvön till Baltikum eller från Grekland till Finland utan att behöva passera någon gränskontroll. Detta kan gynna över 400 miljoner EU-medborgare¹² och innebär att medlemsstaterna litar på varandras kapacitet att effektivt kontrollera de yttre gränserna för EU:s räkning och att utfärda viseringar som gäller i hela Schengenområdet.

Direktivet om unionsmedborgarnas rätt att fritt röra sig och uppehålla sig i medlemsstaterna trädde i kraft i april 2006.¹³ Genomförandet har hittills i stort sett varit en besvikelse¹⁴ och

⁶ 'Towards an EU strategy on the rights of the child', COM(2006) 367 final.

⁷ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55.

⁸ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

⁹ 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, OJ L 281, 23.11.1995, p. 31.

¹⁰ 'Communication from the Commission to the European Parliament and the Council on the follow-up of the Work Programme for better implementation of the Data Protection Directive', COM(2007) 87 final.

¹¹ 'Communication from the Commission to the European Parliament and the Council on Promoting Data Protection by Privacy Enhancing Technologies (PETs)', COM(2007) 228 final.

¹² The total population of the 25 Schengen Member States is 411,310,500 (Estimation: Eurostat 2009).

¹³ Directive 2004/38/EC 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 States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77.

kommissionen ökar nu sina insatser för att se till att unionsmedborgarna och deras familjemedlemmar ska kunna komma i fullt åtnjutande av sina rättigheter enligt detta banbrytande direktiv.

En rad åtgärder har förslagits för att förverkliga unionsmedborgarnas rätt till konsulärt skydd.¹⁵ Man beräknar att cirka 8,7 % av EU-medborgarna, dvs. sju miljoner människor, reser i länder utanför EU där deras hemland inte har någon beskickning. Ytterligare två miljoner EU-medborgare lever i sådana länder. Handlingsplanen för 2007–2009¹⁶ ska råda bot på aktuella och förutsebara brister på området.

III.1.3 Det gemensamma europeiska asylsystemet

Det gemensamma europeiska asylsystemet ger ett viktigt uttryck för våra värderingar, respekten för den mänskliga värdigheten och våra åtaganden i fråga om delat ansvar. Den första etappen innebar att man fastställde gemensamma miniminormer som antogs med medbeslutandeförfarandet och kvalificerad majoritet enligt Nicefördraget. Enligt Haagprogrammet och efter en bred remissrunda¹⁷ gick systemet in i etapp två i och med att den strategiska planen antogs 2008.¹⁸ Som ett led i arbetet har man redan föreslagit ändringar i direktivet om mottagningsförhållanden och i Dublin- och Eurodacförordningarna. De praktiska erfarenheterna visar konsekvent på behovet av samarbete, och den europeiska byrå för samarbete i asylfrågor som man vill inrätta skulle ge EU möjligheter att hantera utmaningarna konsekvent och effektivt. När det gäller de yttre förbindelserna ökade flera tredjeländers skyddsmöjligheter genom pilotprogrammen för regionalt skydd.

III.1.4 Migration och integration

EU arbetar för att förbättra hanteringen av migrationsflöden och samordna medlemsstaternas integrationspolitik. Miniminormer för rättvisa, konsekvens och rättssäkerhet utformades och insatser gjordes för att dra nytta av hittills oanställda tredjelandsmedborgare som redan är bosatta i EU och samtidigt kunna förebygga de negativa följderna av kunskapsflykt från hemländerna.

Med utgångspunkt i en grönbok¹⁹ inrättades en strategisk plan²⁰ med förslag avseende laglig invandring vilka bör genomföras mellan 2006 och 2009. I samband med att planen

¹⁴ 'Report from the Commission to the European Parliament and the Council on the application 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', COM(2008) 840 final.

¹⁵ Green Paper 'Diplomatic and consular protection of Union citizens in third countries', COM(2006) 712 final.

¹⁶ 'Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009, COM(2007) 767 final.

¹⁷ Green Paper on the future of the Common European Asylum System, COM(2007) 301 final.

¹⁸ 'Policy plan on asylum - An integrated approach to protection across the EU', COM(2008) 360 final.

¹⁹ Green Paper on an EU approach to managing economic migration, COM (2004) 811 final.

²⁰ 'Policy Plan on Legal Migration', COM(2005) 669 final.

genomfördes fastställdes villkor för inresa, sysselsättning och uppehållstillstånd för tredjelandsmedborgare²¹ och EU:s ”blåkort” kommer snart att införas.²²

Insatser för att maximera de ekonomiska vinsterna av den lagliga invandringen åtföljdes av insatser mot olaglig invandring och de som tjänar på människosmuggling och människohandel. Den olagliga invandringen ökar inte i EU som helhet, men Medelhavsländerna bär en allt större del av bördan. Särskilt oroande är hur många som anländer genom farliga överfarter till sjöss.²³ Olagliga anställningar bidrar till att enskilda utnyttjas och snedvrider ekonomin i EU. Kommissionens förslag till direktiv om påföljder för arbetsgivare som anställer olagligt inresta tredjelandsmedborgare kommer förhoppningsvis att antas under första halvåret 2009.²⁴ Detta ger en tydlig signal om att EU inte tolererar olaglig invandring, och i synnerhet inte stöd från skrupelfria arbetsgivare.

Man utarbetade gemensamma principer och en ram för integration av tredjelandsmedborgare²⁵, integrationshandböcker för beslutsfattare och verksamma på fältet samt en central europeisk webbplats om integration och ett europeiskt forum för integration. Medlemsstaternas insatser i dessa frågor av gemensamt intresse får stöd från Europeiska fonden för integration av tredjelandsmedborgare²⁶, som fått 825 miljoner euro i anslag för perioden 2007–2013.

Kommissionens meddelande om en gemensam invandringspolitik för Europa²⁷ och den påföljande europeiska pakten för invandring och asyl²⁸ summerade tio års arbete och lade grunden för en sammanhållen framtida politik.

III.1.5 Gränsförvaltning

För att hantera migration krävs god gränskontroll. Det finns 1 636 inreseorter på EU:s territorium. Under 2006 skedde cirka 900 miljoner gränspassager och 8 miljoner människor invandrade olagligen till EU:s 25 medlemsländer. Samma år greps 500 000 olagliga invandrare i EU, varav 40 % återfördes till hemlandet.

Till största delen hanterar EU dessa utmaningar via Frontex, den byrå som samordnar medlemsstaternas samarbete om gränskontroller. Mellan 2005 och 2008 utförde byrån 50 gemensamma insatser och 23 pilotprojekt med flera av medlemsstaterna. Kodexen om

²¹ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, COM(2007) 638 final.

²² The proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, COM(2007) 637 final, has been adopted by the Council on 25.5.2009

²³ 'Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents', SEC(2009) 320.

²⁴ Proposal for a directive of the European Parliament and of the Council providing for sanctions against employers of illegally staying third-country nationals, COM(2007) 249 final.

²⁵ 'Common Basic Principles', Council document 14615/04, p. 15; 'A Common Agenda for Integration: Framework for the Integration of Third-Country Nationals in the European Union', COM(2005) 389 final.

²⁶ Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows, OJ L 168, 28.6.2007, p. 18.

²⁷ 'A common immigration policy for Europe: Principles, actions and tools', COM(2008) 359 final.

²⁸ 'European Pact on Immigration and Asylum', Council document 13440/08.

Schengengränserna²⁹ trädde i kraft i alla EU medlemsstater. Den innehåller normer och förfaranden som länderna måste följa när de kontrollerar människors resande över EU:s inre respektive yttre gränser. Ett annat viktigt steg på vägen mot en integrerad gränsförvaltning var kommissionens förslagspaket om ett system för in- och utresa³⁰ med automatisk varning om en visering går ut utan att någon utresa registrerats, ett gränsövervakningssystem för EU:s yttre gränser i söder och öst (Eurosur)³¹ och om utvärderingen och den kommande utvecklingen av Frontex.³² Återvändandedirektivet³³ innehåller effektiva och humana normer för återsändande av olagliga invandrare.

Ny teknik utnyttjas för att utveckla ett modernt, integrerat gränsförvaltningssystem. Biometrisk pass infördes 2006. Den andra generationen av Schengens informationssystem och informationssystemet för viseringar är under utarbetande och den rättsliga ramen har fastställts. Systemen kommer att göra det möjligt att i högre grad använda ny teknik, i synnerhet biometri, och bidrar därmed till säkerheten i Schengenområdet samtidigt som man kan fullgöra kraven på skydd av personuppgifter.

III.1.6 Viseringspolitik

En rättslig ram för genomförandet och bruket av informationssystemet för viseringar antogs 2008³⁴ vilket underlättade kontrollerna vid de yttre gränserna och utbytet av viseringsuppgifter mellan medlemsstaterna. Kommissionen föreslog att man skulle inrätta en rättslig grund så att medlemsstaterna kan ta obligatoriska biometrisk uppgifter från viseringssökande och att man skulle inrätta en rättslig ram för medlemsstaternas konsulära beskickningar.³⁵ De gemensamma konsulära anvisningarna omarbetades och en gemenskapskodex om viseringar föreslogs³⁶ för att ge bättre insyn, enhetligare förfaranden och ökad rättssäkerhet. Avtal om viseringslättnader förhandlades fram med Ryssland, Ukraina, Moldavien, Albanien, Bosnien och Hercegovina, f.d. jugoslaviska republiken Makedonien, Serbien och Montenegro. Avtalen trädde i kraft 2007 och 2008 och förenklar förfarandena för medborgare i dessa länder som vill resa in till EU för korttidsvistelse. Full viseringsfrihet³⁷ nåddes med Costa Rica, Israel, Malaysia, Mexico, Nya Zeeland, Nicaragua,

²⁹ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

³⁰ 'Preparing the next steps in border management in the European Union', COM(2008) 69 final.

³¹ 'Examining the creation of a European border surveillance system (EUROSUR)', COM(2008) 68 final.

³² 'Report on the evaluation and future development of the FRONTEX Agency', COM(2008) 67 final.

³³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

³⁴ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60; and Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

³⁵ 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, COM(2006) 269 final.

³⁶ Draft proposal for a Regulation of the European Parliament and of the Council establishing a Community Code on Visas, COM(2006) 403 final.

³⁷ Four "reciprocity reports" have been published: COM(2006) 3 final; COM(2006) 568 final; COM(2007) 533 final; COM(2008) 486 final/2.

Panama, Paraguay, Singapore, Uruguay och Venezuela. Framsteg gjordes även med Australien, Brunei Darussalam, Kanada och Förenta staterna. Förslaget om att inrätta gemensamma ansökningskontor för viseringar³⁸ har ännu inte antagits, men två försökskontor har inrättats.

III.1.7 Den externa dimensionen av asyl och migration

För att lösa globala problem krävs det globala lösningar. Den övergripande strategin för migration bygger på partnerskap med tredjeländer och har ett så brett perspektiv som möjligt på pådrivande krafter och följder av migrationsflöden från tredjeland till EU. Migrationsfrågorna är nu bättre integrerade i kommissionens utvecklingspolitik och EU:s politik för övriga yttre förbindelser. Det är en klar kursomläggning, från en i första hand säkerhetsinriktad hållning till en attityd som bottnar i en djupare förståelse av alla aspekter på migration. Nu finns kanaler för nya partnerskap och en konstruktiv dialog med EU:s grannländer och med Afrika, Asien och Latinamerika. Diskussionerna åtföljs av konkreta insatser för att göra invandring och mobilitet till positiva krafter som driver utvecklingen framåt, för att bättre förvalta den lagliga invandringen samt förebygga och minska den olagliga invandringen. Gemenskapens samarbetsinstrument konkretiserade den övergripande strategin genom att finansiera många projekt på dessa områden eller för flyktingskydd. Det tematiska programmet om migration och asyl inrättades i just detta syfte med en budget på 384 miljoner euro för perioden 2007–2013. Under tiden har nya verktyg och begrepp också införts, t.ex. partnerskap för rörlighet mellan EU och tredjeland.

III.2. Stärkt säkerhet

III.2.1 Terrorism

Bombattackerna i Madrid 2004 och i London 2005 var de värsta på många år i EU. Men det har också förekommit oroande många försök till angrepp som i många fall gick oss spårlöst förbi. Under 2007 drabbades elva av EU:s medlemsstater av nästan 600 terrorangrepp, varav en del misslyckades och en del stoppades medan andra fullbordades.³⁹

EU finansierade flera förebyggande projekt, till exempel en handbok om radikaliserings i fängelsemiljö. Skyldigheten att rapportera misstänkta transaktioner enligt direktivet om åtgärder för att förhindra att det finansiella systemet används för finansiering av terrorism utvidgades och omfattar nu inte bara finansieringsinstitut utan även t.ex. kasinon och advokater.⁴⁰ Enligt en förordning som antogs 2005 måste den som reser till eller från EU med 10 000 euro eller mer i kontanter lämna en skriftlig anmälan.⁴¹ EU har också antagit lagstiftning som kriminaliserar utbildning och rekrytering av terrorister samt uppvigling till

³⁸ 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, COM(2006) 269 final.

³⁹ Europol, 'EU Terrorism Situation and Trend Report 2007', available at: <http://www.europol.europa.eu/publications/TESAT/TESAT2007.pdf>

⁴⁰ Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15.

⁴¹ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, OJ L 309, 25.11.2005, p. 9.

terrorbrott, även via Internet.⁴² Medel anslogs också till ett system för tidig varning inom EU för att underrätta myndigheterna om hot i samband med saknade eller stulna sprängämnen.

Man antog också bestämmelser som ska ge ett bättre skydd av kritisk infrastruktur inom EU, t.ex. vägar, järnvägar, elnät och kraftstationer.⁴³ Kommissionen utarbetade en grönbok om bioberedskap⁴⁴ för att få in synpunkter i frågan och kommer snart att lägga fram ett paket med förslag som ska minska risken för kemiska, biologiska, radiologiska och nukleära hot som skulle kunna skada tusentals människor, förstöra jordbruket och allvarligt skada livsmedelsförsörjningen.

III.2.2 Polissamarbete

EU:s arbete under de senaste fem åren har byggt på tillgänglighetsprincipen, som innebär att medlemsstaternas poliser i tjänst ska kunna få ut tillgängliga uppgifter från andra medlemsstater.

Informations- och underrättelseutbytet har förenklats.⁴⁵ När Prümfördraget inarbetades i gemenskapslagstiftningen⁴⁶ blev det möjligt att få indirekt tillgång till medlemsstaternas databaser med fingeravtryck och DNA-uppgifter samt direkt kontrollerad tillgång till fordonsregistren. Detta förväntas avsevärt förbättra polissamarbetet i EU och göra det lättare att se vilka uppgifter som är tillgängliga. Man antog säkerhetskrav på åtkomsten till informationssystemet för viseringar⁴⁷ och de flesta medlemsstaterna införlivade villkoren för registrering av uppgifter om elektronisk kommunikation och lokalisering⁴⁸ med avseende på fasta telefoninät och mobiltelefoni.

Rådets beslut om inrättande av Europeiska polisbyrån (Europol) ersätter den äldre konventionen och ger Europol större operativ flexibilitet så att byrån snabbare kan reagera på brottsutvecklingen.⁴⁹ Utöver Europol's informationssystem, som innehåller uppgifter om grov

⁴² Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, OJ L 330, 9.12.2008, p. 21.

⁴³ Communication from the Commission on a European Programme for Critical Infrastructure Protection, COM(786) final, and Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection, OJ L 345, 23.12.2008, p. 75.

⁴⁴ Green Paper on bio-preparedness, COM(2007) 399 final.

⁴⁵ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006, p. 89.

⁴⁶ Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 1 and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 12.

⁴⁷ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

⁴⁸ 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, p. 54.

⁴⁹ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2009, p. 37.

gränsöverskridande brottslighet och som underlättar utbytet av dessa uppgifter, är också Europols analysregister ett gott verktyg som ger medlemsstaternas rättstillämpande myndigheter underrättelse om särskilda brottsfenomen som människosmuggling, terrorism, kreditkortsbedrägerier eller smuggling av syntetiska droger.

III.2.3 Organiserad brottslighet

EU hotas av ligor som bedriver organiserad brottslighet och som hanterar droger, stulna fordon, utför rån eller sådana IT-brott som t.ex. identitetsstöld. Tillsammans med ekobrott som bedrägerier, penningförfalskning och penningtvätt ger sådan brottslighet stora vinster och skadar EU:s ekonomi. För att inom EU snabbare kunna spåra tillgångar som härrör från brott⁵⁰ har man verkat för inrättandet av nationella kontor för återvinning av tillgångar och en underrättelsebaserad hantering av dessa hot. För att motverka penningtvätt inrättades FIU.NET, ett decentraliserat datornätverk som kopplar samman EU:s finansunderrättelseenheter och effektiviserar utbytet av underrättelser om ekobrott. Nya bestämmelser om kampen mot organiserad brottslighet⁵¹ ger medlemsstaterna möjlighet att gå vidare i samarbetet. I maj 2007 föreslog kommissionen en rad åtgärder för att öka samordningen mellan rättstillämpande myndigheter och näringslivet avseende IT-brott.⁵² Ibland berör denna brottslighet även sexuellt utnyttjande av barn. Med hjälp av den finansiella koalition mot barnpornografi som inrättats kan kommissionen, utfärdare av kreditkort, rättstillämpande myndigheter och Internetleverantörer nu samarbeta mot kommersiell barnpornografi genom att slå till mot de betalningssystem som finansierar sådan verksamhet. För att skärpa det förebyggande arbetet och insatserna mot sexuellt utnyttjande av barn lade kommissionen under våren 2009 fram ett förslag till rambeslut, tillsammans med ett förslag till rambeslut om människosmuggling för att följa upp 2005 års handlingsplan.⁵³

III.2.4 Den europeiska strategin mot narkotika

EU:s narkotikastrategi (2005–2012)⁵⁴ och handlingsplaner⁵⁵ ger en välbalanserad och sammanhållen metod för att förebygga drogmissbruk, ge stöd och rehabilitering av drogmissbrukare, ingripa mot olaglig narkotikasmuggling, kontrollera prekursorer, ingripa mot penningtvätt och stärka det internationella samarbetet. Uppgifterna från Europeiskt centrum för kontroll av narkotika och narkotikamissbruk visar att missbruket av heroin, cannabis och syntetiska droger ligger fast medan kokainmissbruket ökar i flera medlemsstater. EU försöker bemästra det komplicerade sociala fenomen som drogbruk och missbruk utgör

⁵⁰ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103.

⁵¹ Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime, OJ L 300, 11.11.2008, p. 42.

⁵² 'Towards a general policy on the fight against cyber crime', COM(2007) 267 final.

⁵³ Proposal for a Council Framework Decision on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA, COM(2009) 315 final; proposal for a Council Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA, COM(2009) 316 final.

⁵⁴ EU Drugs Strategy (2005-2012) endorsed by the Council in 2004, Council Document 15074/04.

⁵⁵ On the basis of the Communication on a EU Drugs Action Plan (2005-2008), COM(2005) 45 final, the Council endorsed the 'EU drugs action plan (2005-2008)' in 2005, OJ C 168, 8.7.2005, p. 1. On the basis of the Communication on a EU Drugs Action Plan for 2009-2012, COM(2008) 567 final, the Council endorsed the 'EU Drugs Action Plan for 2009-2012', OJ C 326, 20.12.2008, p. 7.

och lägger allt större tyngd vid åtgärder som ska hantera de skador som narkotikan åsamkar enskilda individer och samhället.

III.3. Stärkt rättvisa

Det europeiska området för rättvisa som inrättades enligt Haagprogrammet har nu börjat ge resultat för medlemsstaterna och EU-medborgarna. Eurojust och de europeiska rättsliga nätverken ger en infrastruktur för rättsligt samarbete och samordning av internationella förundersökningar och åtal inom EU. På det civilrättsliga området ger förordningar med direkt tillämpning medborgare och näringsidkare som är invecklade i gränsöverskridande tvister klart besked om vilka domstolar som är behöriga och vilka bestämmelser som gäller i fråga om erkännande av domar som meddelats i en annan medlemsstat.

III.3.1 Straffrättsligt samarbete

Den europeiska arresteringsordern minskade väsentligt den tid och de ansträngningar som krävdes för att få brottslingar utlämnade. Utlämningsärenden som behandlades enligt de äldre bestämmelserna tog ofta över ett år, medan det idag tar mellan elva dagar och sex veckor. Under 2007 verkställdes 2 667 utlämningar med hjälp av arresteringsorden och år 2005 användes ordern för att snabbt få en av gärningsmännen bakom bombattentaten i London utlämnad från Italien till Storbritannien. Medlemsstaterna utnyttjar allt oftare Eurojust för att utreda och åtala grova brott. Under 2007 registrerade man där över 1 000 ärenden, jämfört med 192 år 2002.

III.3.2 Underlätta civilrättsliga förfaranden över gränserna

Väsentliga framsteg gjordes på det civilrättsliga området. EU-medborgarna förfogar nu över enklare och snabbare sätt att hantera småmål och betalningsförelägganden.⁵⁶ EU har infört harmoniserade lagvalsregler om skadeståndsansvar och inomobligatoriskt ansvar.⁵⁷ Det rättsliga samarbetet förbättrades när man omarbetade bestämmelserna om delgivning av handlingar.⁵⁸ Väsentliga framsteg i det rättsliga samarbetet gjordes även med avseende på yttre aspekter⁵⁹ såsom anslutningen av EG till Haagkonferensen för internationell privaträtt⁶⁰

⁵⁶ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1; Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

⁵⁷ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

⁵⁸ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10.12.2007, p. 79.

⁵⁹ Council Decisions 2006/325-326/EC concerning the conclusion of the Agreement between the European Community and Denmark, OJ L 120, 5.5.2006, p. 22 and p. 23; Council Decision 2007/712/EC of 15 October 2007 on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the 'Lugano Convention'), OJ L 339, 21.12.2007, p. 1; and Council Decision 2008/431/EC of 5 June 2008 authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law - Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and

eller kommissionens förberedelser för att förbättra verkställigheten av domar inom EU.⁶¹ Frågor kring medling i civilrättsliga ärenden togs upp för att ge möjlighet till alternativ tvistlösning.⁶²

En ny förordning om äktenskapsmål och föräldraansvar gör att barn får rätt att hålla regelbunden kontakt med båda föräldrarna efter en skilsmässa. Förordningens klara och tydliga bestämmelser ska också motverka bortförande av barn inom EU. En annan förordning kommer så snart den ratificerats att påskynda indrivning av underhåll inom EU.⁶³ Ett förslag till rättsakt om tillämplig lag på skilsmässa (Rom III) diskuteras för närvarande i rådet och parlamentet.

III.3.3 Ömsesidigt erkännande

Ömsesidigt erkännande är en av grundstenarna i det rättsliga samarbetet. EU har gjort väsentliga framsteg både lagstiftningsmässigt och rent praktiskt. Genomförandet av den europeiska strategin och handlingsplanen för e-juridik⁶⁴ ger EU-medborgarna tillgång till information om sina rättsliga möjligheter i EU och underlättar samtidigt kommunikationen och samarbetet mellan de rättsliga myndigheterna. Rättsforumet är en plattform för regelbunden dialog om policy och praxis som bör stärka det ömsesidiga förtroende som är en förutsättning för ömsesidigt erkännande.

Ett effektivt samarbete kräver också lämplig utbildning av dem som arbetar i främsta ledet. Kommissionen prioriterar finansieringen av program för utbyte, utbildning och praktik mellan domstolar. Bara under 2007 deltog 400 domare och åklagare i sådana utbytesprogram.

III.4. Yttre förbindelser

De interna aspekterna på området rättvisa, frihet och säkerhet är nära kopplade till de yttre förbindelserna. Genom Haagprogrammet fick kommissionen och generalsekreteraren eller den höga representanten behörighet att för rådet lägga fram en strategi för alla yttre aspekter på EU:s politik för frihet, säkerhet och rättvisa. Den strategi som antogs av rådet 2005⁶⁵ fastställer tematiska prioriteringar avseende mänskliga rättigheter, svagt styre eller

Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, OJ L 151, 11.6.2008, p. 36.

⁶⁰ Council Decision 2006/719/EC of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law, OJ L 297, 26.10.2006, p. 1..

⁶¹ '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', COM(2006) 203 final; Green Paper 'Effective enforcement of judgments in the European Union: the transparency of debtors' assets ', COM (2008) 128 final; and Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts, COM(2006)618 final.

⁶² Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008, p. 3..

⁶³ Council Regulation (EC) No 2201/2003 of 27 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, OJ L 338, 23.12.2003, p. 1; Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009, p. 1.

⁶⁴ 'Towards a European e Justice Strategy', COM(2008) 329 final.

⁶⁵ 'Strategy for the external dimension of JHA: Global freedom, security and justice', Council document 15446/05.

statsupplösning, rättsligt samarbete, insatser mot terrorism, organiserad brottslighet, korruption, narkotika och hantering av migrationsflöden. Strategin omfattade även underliggande principer och verktyg. Två framstegsrapporter har lagts fram om strategin.⁶⁶ Prioriteringarna togs även in i 2003 års europeiska säkerhetsstrategi, som behandlar de främsta hoten mot EU. En rapport om genomförandet offentliggjordes i december 2008.⁶⁷

III.5. Finansiella instrument

Olika finansiella instrument skapades för att stödja åtgärder på EU-nivå och i medlemsstaterna. Ramprogrammet för solidaritet och hantering av migrationsströmmar⁶⁸ finansierar invandringspolitiken. Nära 4 miljarder euro ägnades åt migrationsfrågorna under 2007–2013. Ramprogrammet för säkerhet och skydd av friheter⁶⁹ (som fick 745 miljoner euro 2007–2013) hjälper EU fortsätta kampen mot terrorism och brottslighet. Ramprogrammet om grundläggande rättigheter och rättvisa⁷⁰ (542 miljoner euro totalt) finansierar handlingsplanen för e-juridik och Daphneprogrammet (om våld mot barn, ungdomar och kvinnor).

Enligt det sjunde ramprogrammet för forskning och teknisk utveckling ska upp till 1,5 miljarder euro ställas till förfogande för att bygga upp kapaciteten att skydda medborgare, gränser och infrastruktur mot terrorism och andra hot. Det finns också medel tillgängliga för socioekonomisk forskning om brott eller om skyddet av de grundläggande fri- och rättigheterna. Europeiskt forum för forskning och innovation på säkerhetsområdet (Esrif) inrättades för att föra samman offentliga och privata samarbetsparter kring en gemensam handlingsplan för forskning och innovation på området för civilskydd på medellång till lång sikt.⁷¹

När det gäller bistånd till tredjeland stöder flera finansiella instrument de yttre aspekterna på rättvisa, frihet och säkerhet. Däribland kan nämnas instrumentet för stöd inför anslutningen, det europeiska grannskaps- och partnerskapsinstrumentet, stabilitetsinstrumentet, Europeiska utvecklingsfonden och finansieringsinstrumentet för utvecklingssamarbete, som även omfattar det tematiska programmet om migration och asyl.

IV. VARIERANDE FRAMGÅNG PÅ VISSA OMRÅDEN

Många av målen i Haagprogrammet har lett till väsentliga framsteg och de flesta av de särskilda åtgärder som planerades har antagits. Men resultaten av många av åtgärderna blir

⁶⁶ 'Progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice', SEC(2006) 1498; 'Second progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice', SEC(2008) 1971.

⁶⁷ 'Report on the Implementation of the European Security Strategy – Providing Security in a Changing World', Council document 17104/08.

⁶⁸ Four Funds exist under this programme: three Funds adopted under co-decision procedure (European Return Fund, European Refugee Fund and External Borders Fund) and one Fund under consultation procedure (Fund for the Integration of third-country nationals).

⁶⁹ Two specific programmes exist under this framework programme: "Prevention of and fight against Crime" (third pillar legal basis) and "Prevention, preparedness and Consequence Management of Terrorism and other Security related risks" (based on Article 308 of the TEC).

⁷⁰ This framework programme has five specific programmes: Civil Justice, Daphne III and Drugs programmes (under co-decision), Fundamental Rights and Citizenship (based in Article 308 TEC) and Criminal Justice (third pillar legal basis).

⁷¹ 'Communication from the Commission to the European Parliament and the Council on Public-Private Dialogue in Security Research and Innovation', COM(2007) 511 final.

tydliga först på längre sikt. På vissa områden är framgångarna dock varierande eller begränsade.

De ojämna framgångarna kan till stor del förklaras av de särskilda utmaningarna på området rättvisa, frihet och säkerhet. Regelverket är relativt nytt, Europaparlamentets roll är kringskuren i vissa frågor och både EG-domstolens behörighet och kommissionens möjligheter att inleda överträdelseförfaranden är begränsade. En annan förklaring är kravet på enhälliga beslut på vissa områden. Ofta måste man därför justera ner ambitionerna i förslagen på vissa områden, t.ex. avseende laglig invandring.

Att vissa punkter i Haagprogrammet inte genomförts bottnar i att fördraget om upprättande av en konstitution för Europa inte ratificerats. Man kunde till exempel inte ansluta EU till Europeiska konventionen om skydd för de mänskliga rättigheterna och de grundläggande friheterna i avsaknad av rättslig grund enligt det konstitutionella fördraget, något som Lissabonfördraget kan ge om det träder i kraft.

Framstegen med ömsesidigt erkännande i brottmål och i det polisiära samarbetet har varit relativt långsamma. Beslut som fattas enligt den så kallade tredje pelaren (avdelning VI i EU-fördraget) kräver enhällighet. Detta leder ofta till långdragna diskussioner eller till att ambitiösa förslag utmynnar i urvattnade kompromisser. Ett exempel är ramförslaget om processuella rättigheter enligt Haagprogrammet som inte alls kunde antas, trots att det var hett efterlängtat av rättstillämpare i hela EU.

Om rättsakter som antas enligt den tredje pelaren (gemensamma ståndpunkter, rambeslut, vissa andra beslut och konventioner) inte genomförs på ett lämpligt sätt är det inte möjligt att inleda ett formellt överträdelseförfarande. Eftersom medlemsstaterna dessutom ibland är mycket sena med att genomföra rättsakterna leder detta till en sorts virtuell lagstiftning som är till liten, om ens någon, nytta för EU-medborgarna.

V. ERFARENHETER OCH FRAMTIDA ÅTGÄRDER

EU måste dra lärdom av gjorda erfarenheter, till fullo utnyttja framgångsrika strategier och rätta till sådant som kunde gjorts bättre. Det kommande arbetet på politikområdet för rättvisa, frihet och säkerhet bör styras av nedanstående.

V.1. Göra gemensamma insatser för planering och åtgärder

De viktiga frågor EU ställs inför, oavsett om det gäller kriser på kort sikt eller den långsiktiga utvecklingen, kräver gemensam planering och åtgärder. Rättvisa, frihet och säkerhet är relevant för alla enskilda aspekter på Haagprogrammet. Det är viktigt att uppnå konsekvens på de olika politikområdena, inte bara på det klassiska verksamhetsområdet för rättvisa och inrikes frågor utan på alla gemenskapens politikområden.

När det gäller migration och asyl bör insatserna för att förebygga och hantera olaglig invandring och missbruk av asylsystemen inte hindra asylsökande från att få tillgång till det skydd de är berättigade till. Vi bör fortsätta att kontrollera att EU:s politik respekterar de grundläggande fri- och rättigheterna och kontrollerna bör utvidgas till att omfatta alla etapper i beslutsprocessen och medlemsstaternas genomförande av gemenskapens regelverk. Gränsförvaltningen är liksom det polisiära samarbetet mot olaglig invandring viktig för EU:s säkerhet. Övergripande prioriteringar för EU bör utarbetas på dessa områden.

Skyddet av personuppgifter vid polisiärt och rättsligt samarbete i brottmål har hanterats från fall till fall. Kravet på skydd av personuppgifter upprepas i många olika rättsakter inom alla pelare, och dess omfattning och natur beror på de enskilda rättsakternas målsättningar. Problemet med bristande harmonisering har inte helt och hållet undanröjts genom det rambeslut som nyligen antogs.⁷² Under de kommande åren bör därför särskild uppmärksamhet ägnas åt att få konsekvens i denna fråga.

Andra övergripande frågor kan vara att göra politiken mer effektiv, t.ex. när det gäller barns rättigheter eller kampen mot främlingsfientlighet och rasism, som tyvärr ofta ökar i ekonomiskt svåra tider.

Den övergripande strategin för migration omfattar olika instrument som kan integreras i en omfattande och balanserad ram för dialog och samarbete. Nya utmaningar bör hanteras på ett systematiskt sätt. Långsiktiga politiska, ekonomiska, miljömässiga och demografiska förändringar påverkar EU:s förbindelser med tredjeländer och får avsevärd genomslagskraft på migration och mobilitet. Invandringspolitikerna bör ytterligare integreras med EU:s strategi för yttre förbindelser och kan komma att stödjas av från en europeisk avdelning för yttre åtgärder.

Vi bör lära oss att till fullo utnyttja den nya teknikens möjligheter. Informationssamhället har också skapat behov av god nät- och IT-säkerhet inom EU. Kampen mot IT-brottslighet och cyberterrorism förutsätter att alla aktörer deltar aktivt i insatserna för att förbättra beredskapsnivån, säkerheten och motståndskraften i IKT-infrastruktur och IKT-tjänster. Dessa långsiktiga utmaningar kräver noggrant övervägande på europeisk nivå.⁷³

Arbetet med forskning och innovation på säkerhetsområdet forskning och innovation bör gå vidare i samverkan med näringslivet och den offentliga sektorn och med fullt deltagande av slutanvändarorganisationer.

V.2. Ägna uppmärksamhet åt genomförande och tillämpning

Det är bekymmersamt att framgångarna med åtgärderna i Haagprogrammet och handlingsplanen inte fått genomslag i motsvarande nationella genomföranden, vilka istället givit varierande resultat. När nu en relativt omfattande rättslig ram införts bör de framtida insatserna fokusera på att befästa och verkställa denna. Kommissionen kan bidra genom att konsolidera gemenskapens befintliga regelverk, underlätta samordning och utbyte av bästa praxis mellan medlemsstaterna genom t.ex. genomförandeseminarier, och genom att lämna ekonomiskt stöd och främja utbildning. Man bör också överväga en utvidgad användning av överträdelseförfarandet. Kommissionen har verkat för EU-medborgarnas rätt att fritt resa och bosätta sig inom hela EU, men det behövs mer arbete för att upplysa medborgarna om deras rättigheter och för att de ska kunna vara säkra på att dessa rättigheter tillgodoses. Befintliga byråer och nätverk bör utnyttja sina möjligheter, utvidga sitt inbördes samarbete och utforska möjligheterna till synergieffekter.

⁷² Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

⁷³ 'Protecting Europe from large scale cyber-attacks and disruptions: enhancing preparedness, security and resilience', COM(2009) 149 final.

V.3. Utnyttja utvärderingar bättre

Medborgarna vill se konkreta resultat av EU:s politiska arbete. Många bestämmelser har antagits och många byråer inrättats enligt Haagprogrammet. I många fall är det för tidigt att utvärdera vilka resultat arbetet givit och om det varit effektivt. Det är fortfarande svårt att utvärdera insatserna mot organiserad brottslighet, för polisiärt samarbete och tullsamarbete när det gäller rättskipning i brottmål eftersom medlemsstaterna i många fall inte är formellt skyldiga att rapportera om hur åtgärderna genomförts.

En mer robust och systematisk övervakning och utvärdering av varje politikområde behövs för att kunna jämföra resultaten av EU:s insatser. Utvärderingarna kan sedan användas för att förbättra det politiska beslutsfattandet och för att visa på det mervärde EU:s åtgärder haft.

Goda utvärderingar är beroende av aktuella, objektiva, tillförlitliga och jämförbara uppgifter. När det gäller t.ex. migration förfogar gemenskapen nu över enhetlig statistik⁷⁴ och ett europeiskt migrationsnätverk. Kommissionen och medlemsstaterna har också utvecklat parametrar för att samla in, analysera och jämföra uppgifter om och tendenser i fråga om människosmuggling och penningtvätt. Men det saknas uppgifter om många områden, t.ex. det rättsliga området. Också när system för insamling av uppgifter finns eller håller på att inrättas, t.ex. i fråga om brott och i synnerhet narkotikabrott, bör man överväga att införa mer tvingande bestämmelser. Finansieringen från ramprogrammet för forskning och teknisk utveckling och andra relevanta program bör fortsätta för att öka kunskaperna i dessa frågor.

Tillförlitligheten i nästa fleråriga program är beroende av att EU kan rapportera om åtgärdernas effektivitet på ett meningsfullt sätt.

V.4. Komplettera den inre politiken med externa åtgärder

Medlemsstaterna, rådet och kommissionen bör samarbeta för att stärka partnerskapet med länderna utanför EU. För att nå resultat och möta de utmaningar som globaliseringen innebär krävs kontinuitet och konsekvens mellan EU:s inre politik och de yttre åtgärderna för rättvisa, frihet och säkerhet. EU bör föregripa utmaningarna istället för att avvakta att konsekvenserna når våra gränser och EU bör också internationellt föregå med gott exempel genom normering, t.ex. om skydd av personuppgifter. De yttre aspekterna på politikområdet rättvisa, frihet och säkerhet bör vara fullt integrerade och samstämmiga med EU:s externa åtgärder och biståndspolitik.

Tredjeländer närmar sig allt oftare EU för att söka samarbete med utgångspunkt i särskilda avtal. Detta kan kräva inbördes prioritering. Man bör överväga kriterier för att bestämma hur vi ska svara på sådana närmanden och om de bör inarbetas i omfattande avtal. Förslagen till samarbete bör motsvara de särskilda förutsättningarna i de länder som förbereder sig för att ansluta sig till EU. EU:s prioriteringar för de yttre förbindelserna bör också i högre grad ligga till grund för och styra prioriteringen av arbetet vid sådana byråer som Europol, Eurojust och Frontex. Byråernas operativa erfarenheter, i synnerhet om de slutit avtal eller inrättat gemensamma arbetsformer med tredjeländ, kan tillsammans med deras årsrapporter bidra med värdefull information för beslutsprocessen på EU-nivå.

⁷⁴ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L 199, 31.7.2007, p. 23.

VI. STÅENDE UTMANINGAR SOM KRÄVER LÅNGSIKTIGA ÅTGÄRDER

Under hösten 2008 genomförde kommissionen en remissrunda om EU:s kommande prioriteringar på området rättvisa, frihet och säkerhet.⁷⁵ Många svar lämnades av enskilda, det civila samhället och medlemsstaterna. Detta skedde i förlängningen av de värdefulla och ingående analyser som gjorts av de framtidsgrupper som var sammansatta av ministrar från flera medlemsstater.⁷⁶

Slutsatserna är otvetydiga.

EU-medborgarna vill att deras rättigheter ska respekteras och att deras säkerhet ska garanteras. De vill kunna resa fritt och välja att tillfälligt eller permanent stanna i ett annat EU-land oavsett om det är för att studera, arbeta eller bilda familj. En bred majoritet av EU:s medborgare ser gärna att EU får än större inflytande på kampen mot organiserad brottslighet, människohandel och terrorism, på utbytet av polisiära och rättsliga uppgifter mellan medlemsstaterna, kampen mot narkotikamissbruk, insatserna för att främja och skydda de grundläggande fri- och rättigheterna, kontrollera de yttre gränserna samt på politiken för asyl och invandring.

I förhållande till 2008 års nivåer väntas befolkningen i arbetsför ålder inom EU minska med 15 % fram till 2060, vilket motsvarar nära 50 miljoner människor. År 2007 var 18,8 miljoner medborgare i tredjeländer bosatta i någon av EU:s 27 medlemsstater. De utgör därmed 3,8 % av den sammanlagda befolkningsmängden.⁷⁷ Utvecklingen lär fortsätta eftersom migrationsflödena väntas öka under överskådlig framtid. Därför är det inte längre möjligt att återgå till att hantera invandringspolitiken i isolering.

EU kan med rätta vara stolt över de framgångar som hittills uppnåtts. Trots att Haagprogrammet utvecklades under en relativt kort period låg dess styrka i det långsiktiga perspektivet. Utmaningarna för de kommande åren blir att hålla farten uppe, bygga vidare på dessa framgångar och dra lärdom av tidigare erfarenheter. Medborgarnas bästa kräver att EU hanterar dessa långsiktiga utmaningar på ett sammanhållet sätt.

⁷⁵ Flash Eurobarometer 252, 'Awareness of key-policies in the area of Freedom, Security and Justice'. Remissvaren och resultatet av remissrundan finns på: http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0001_en.

⁷⁶ 'Freedom, Security, Privacy – European Home Affairs in an open world: Report of the Informal High Level Advisory Group on the Future of European Home Affairs Policy', June 2008; 'Proposed Solutions for the Future EU Justice Programme: High-Level Advisory Group on the Future of European Justice Policy', June 2008.

⁷⁷ Eurostat, EUROPOP 2008 Convergence Scenario; Eurostat, Migration Statistics.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.6.2009
SEC(2009) 765 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

JUSTICE, FREEDOM AND SECURITY IN EUROPE SINCE 2005:

AN EVALUATION OF THE HAGUE PROGRAMME AND ACTION PLAN

**Follow-up of the implementation of legal instruments in the fields of justice, freedom
and security at national level**

Implementation Scoreboard

**{COM(2009) 263 final}
{SEC(2009) 766 final}
{SEC(2009) 767 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
1. GENERAL ORIENTATIONS ⁴				
1.2. Respect for and active promotion of fundamental rights				
• Protection of personal data				
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 ⁵	24 October 1998	Report from the Commission on the implementation of the Directive of 15.5.2003 ⁶ , report prepared on behalf of the Commission on the economic evaluation of the Directive dated May 2005 ⁷ as well as the Communication of 7.3.2007 on the follow-up of the Work Programme ⁸	All Member States have adopted and communicated legislation under the Directive.	Even though all Member States have now transposed the Directive, some of them have failed to incorporate a number of its important provisions. In other cases, transposition or practice has not been conducted in line with the Directive or has fallen outside the margin of manoeuvre left to Member States. This has resulted in a number of infringement proceedings. In two cases concerning incorrect implementation and application of the Directive, Germany was sent a reasoned opinion on 29 June 2007 in one case and referred to the Court on 22 November 2007 (case C-518/07, still pending) in another case.

¹ Taking into account only the instruments for which the deadlines for implementation or for entry into force had passed by the cut-off date of 31 March 2009.

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

³ At the cut-off date of 31 March 2009.

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

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 Communication from the Commission to the European Parliament and the Council on the follow-up of the Work Programme for better implementation of the Data Protection Directive – COM(2007) 87 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
1.4. European strategy on drugs				

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 Drugs Action Plan (2005-2008) in the framework of the EU Drugs Strategy 2005-2012	2008	Commission annual progress review on implementation of the Action Plan by all stakeholders (Member States, Commission, EMCDDA, Europol). The first progress review was presented in December 2006 followed by a progress review presented in December 2007 ⁹ . Final evaluation was presented on 18 September 2008. ¹⁰	Not applicable in a legal sense, but there is consensus among the Member States to report to the Commission under the Action Plan. There are regular reporting activities from Member States to the Commission, the EMCDDA (through the Reitox network) and Europol.	The 2007 Progress Review reports on progress achieved by all stakeholders (Member States, Commission, EMCDDA, Europol) and on aspects to improve. The 2008 Final Evaluation showed that the objectives of the Plan have been partly achieved: - Although drug use in the EU remains at high levels, available data suggest that the use of heroin, cannabis and synthetic drugs has stabilised or is declining but that cocaine use is rising in a number of Member States. - Data available for comparable countries in other parts of the world show that the consumption of cannabis, cocaine, and amphetamines in the EU is significantly lower than, for instance, in the US. - Evidence shows that the EU is succeeding in at least containing the complex social phenomenon of widespread substance use and abuse in the population, and that it is increasingly focusing on measures to address the harm caused by drugs to individuals and society. - In terms of international cooperation, there is now better coordination of EU positions in international fora on drugs. Moreover, the EU's integrated and balanced approach to drugs is increasingly serving as a model for other countries worldwide. While progress has been made in many areas, weaknesses have also been identified. Policy coordination problems persist in many areas, within the Commission, between Member States, and within Member States, and even if the quality of information on the EU situation regarding drug use, prevention and treatment has consistently improved, considerable knowledge gaps remain.

⁹ Communication from the Commission on the 2007 Progress Review of the implementation of the EU Action Plan on Drugs (2005-2008) – COM(2007) 781 final.

¹⁰ Communication on an EU Drugs Action Plan (2009-2012), accompanied by a Final Evaluation of the EU Drugs Action Plan 2005-2008 – COM(2008) 567/4 and SEC(2008) 2456. The evaluation was carried out by the Commission with the support of the Member States, the European Monitoring Centre on Drugs and Drug Addiction (EMCDDA), Europol, and European NGO networks represented in the Civil Society Forum.

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 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	A report from the Commission is due by 12 May 2009 under the Framework Decision, which should serve as a basis for the report from the Council, due by 12 November 2009.	Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, France, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden have communicated their transposition measures. Ireland, Greece, Spain, Italy, Cyprus, Malta and UK have not yet fulfilled their communication obligation.	The report on transposition is not yet available. Details will be provided in the Commission's report, due by 12 May 2009. Amendments are likely to be called for.
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 this Decision.	If the Council decides to submit a new psychoactive substance to control measures, Member States shall report the measures taken to the Council and the Commission.	The 2006 report from the EMCDDA and Europol analysed the first months of implementation. The 2007 Report reflected on the implementation of the instrument in 2006: 7 new substances were notified. The EMCDDA and Europol produced a Joint Report on one of them, called BZP. On 23 March 2007 the Council requested a risk assessment on psychoactive substance BZP to be carried out by the extended Scientific Committee of the EMCDDA. On 16 July 2007 the Commission decided on the basis of the evidence collected through the risk assessment procedure to propose to the Council to make the BZP subject to drug control measures and criminal provisions. The proposal was discussed and approved by the Horizontal Working Party on Drugs on 10 September 2007. The Council adopted the Decision on 7 March 2008 (2008/206/JHA) ¹³ and Member States shall take the necessary measures no later than one year from this date.

¹¹ OJ L 335, 11.11.2004, p. 8.

¹² OJ L 127, 20.5.2005, p. 32.

¹³ OJ L 64, 7.3.2008, p. 45

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. 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 the provisions of Part Two of the Treaty on “citizenship of the Union”		Five Commission reports on Citizenship of the Union, dated 20.12.1993 ¹⁴ , 27.5.1997 ¹⁵ , 7.9.2001 ¹⁶ , 26.10.2004 ¹⁷ and 15.2.2008 (from 1.5.2004 to 30.6.2007) ¹⁸ .	Not applicable.	All Commission reports focus on the provisions of Part Two of the EC Treaty related to the rights of Union citizens. The Commission's 5 th Report on Citizenship of the Union, which covers the first years following the Union's enlargement to 12 new Member States, highlights a number of developments and problems encountered in this area.

¹⁴ COM(1993) 702 final.
¹⁵ COM(1997) 230 final.
¹⁶ COM(2001) 506 final.
¹⁷ COM(2004) 695 final.
¹⁸ COM(2008) 85 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
Directives 90/364 of 28 June 1990 ¹⁹ , 90/365 of 28 June 1990 ²⁰ and 93/96 of 29 October 1993 ²¹ on the right of residence of inactive persons, pensioners and students	Expired ²²	Two Commission reports were adopted on 17.3.1999 ²³ (period 1992-1999) and 5.3.2003 ²⁴ (period 1999-2002). A third and last report was adopted by the Commission on 5.4.2006 ²⁵ (period 2003-2005).	All Member States have adopted and communicated national transposing measures.	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. Netherlands was ruled against by the Court for non-compliance with the Directive 90/364 on 10 April 2008 (case C-2006/398). The Netherlands has adopted legislation to comply with the judgement but the Commission is still examining how this applies in practice. On 17 October 2007 the Commission decided to refer France to the Court for non-compliance with Directives 90/364, 90/365 and 93/96. Belgium was ruled against by the Court for non-compliance notably with Directive 90/364 on 23 March 2006 (case C-408/03). On 23 October 2007 the Commission sent a reasoned opinion under Article 228 of the EC Treaty for non-compliance with the judgement of the Court. New legislation adopted by Belgium appears to rectify the infringement.

¹⁹ OJ L 180, 13.7.1990, p. 26.

²⁰ OJ L 180, 13.7.1990, p. 28.

²¹ OJ L 317, 18.12.1993, p. 59.

²² The three Directives were repealed with effect from 30 April 2006 by Directive 2004/38/EC of 29 April 2004.

²³ 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.

²⁴ 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.

²⁵ Third Commission report to the Council and 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 – COM(2006) 156 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
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 health²⁶; Directive 72/194 of 18 May 1972 extending to workers exercising the right to remain in the territory of a Member State after having been employed in that State the scope of the Directive of 25 February 1964²⁷; 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 services²⁸; Directive 75/34 of 17 December 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity²⁹; 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 capacity³⁰.	Expired ³¹	A Commission report on Directive 64/221 was adopted on 19 July 1999³².	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. Netherlands was ruled against by the Court in two cases of incorrect application of Directive 64/221 in expulsion cases, on 7 June 2007 (joint cases C-2006/050). The Commission is examining the measures adopted by the Netherlands (the Aliens Circular) to comply with the judgement. Belgium was ruled against by the Court for non-compliance notably with Directive 90/364 on 23 March 2006 (case C-408/03). On 23 October 2007 the Commission sent a reasoned opinion under Article 228 of the EC Treaty for non-compliance with the judgement of the Court. New legislation adopted by Belgium appears to rectify the infringement. Italy was sent a reasoned opinion on 1 December 2008 for incorrect application of Directives 68/360 and 73/148.

²⁶ OJ L 41, 1964, p. 850, English special edition Series I Chapter 1963-1964, p. 117.

²⁷ OJ L 121, 26.5.1972, p. 32, English special edition Series I Chapter 1972(II), p. 474.

²⁸ OJ L 172, 28.6.1973, p. 14.

²⁹ OJ L 14, 20.1.1975, p. 10.

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
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 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 ³³	Implementation due by 30 April 2006	A Commission report on Directive 2004/38 was adopted on 10 December 2008.	All Member States have adopted and communicated national transposing measures.	The Commission Report shows that the overall transposition of Directive 2004/38 is rather disappointing. Not one Member State has transposed the Directive effectively and correctly in its entirety. Not one Article of the Directive has been transposed effectively and correctly by all Member States. On the other hand, in some areas Member States adopted transposition measures that are more favourable to EU citizens and their family members than required by the Directive itself. In the thirty months since the Directive has been applicable, the Commission has received more than 1800 individual complaints, 40 questions from the Parliament and 33 petitions on its application. It has registered 115 complaints and opened five infringement cases for incorrect application of the Directive. The problems revealing persistent violation of the core rights of EU citizens are mostly related to: - the right of entry and residence of third country family members (problems with entry visas or when crossing the border, conditions attached to the right of residence not foreseen in the Directive and delayed issue of residence cards); - the requirement for EU citizens to submit with the applications for residence additional documents not foreseen in the Directive. The difficult issues of interpretation which have arisen so far can be addressed by issuing guidelines following further discussion and clarification.

³⁰ OJ L 14, 20.1.1975, p. 14.

³¹ The three Directives were repealed with effect from 30 April 2006 by Directive 2004/38/EC of 29 April 2004.

³² COM(1999) 372 final.

³³ OJ L 158, 30.4.2004, p.77.

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
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 on its application were adopted on 7 January 1998 ³⁵ and on 18 December 2000 ³⁶ . On 12 December 2006 the Commission adopted a third report: Communication on European elections 2004 ³⁷ .	Communication of national measures is considered satisfactory.	Conformity of the legislation of the 12 newest Member States with the Directive is currently being assessed by the Commission. Requirement of a permanent residence or other additional conditions imposed on EU citizens are amongst difficulties that the assessment revealed. Discussions and contacts with the Member States shall take place in 2009 in view of ensuring correct implementation of the Directive. In 2006 the Commission proposed to amend the Directive 93/109 by introducing measures that lighten the burden on candidates and Member States while providing the necessary guarantees against abuses ³⁸ . Implementation by the 12 new Member States is currently being assessed by the Commission.
1976 Act ³⁹ on the election of representatives of the European Parliament by direct universal suffrage as amended by Council Decision 2002/772/EC, Euratom ⁴⁰	Implementation due by 1 April 2004	No report provided for under the Decision.	Not applicable	A study for assessing conformity of the legislation of the Member States with the Act has been launched in 2008. Final results are expected for 2009.

³⁴ OJ L 329, 30.12.1993, p. 34.

³⁵ COM(1997) 731.

³⁶ COM(2000) 843.

³⁷ Commission report on the participation of European Union citizens in the Member State of residence (Directive 93/109/EC) and on the electoral arrangements (Decision 76/787/EC as amended by Decision 2002/772/EC, Euratom) – COM(2006) 790 final.

³⁸ Proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain 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 – COM(2006) 791 final.

³⁹ The Act is annexed to Decision 76/787/EEC, Euratom of 20 September 1976 (OJ L 278, 8.10.1976, p. 5).

⁴⁰ OJ L 283, 21.10.2002.

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 ⁴¹	Implementation due by 1 January 1996	A Commission report was adopted on 30 May 2002 ⁴² , together with two reports, dated 22 November 1999 and 22 August 2005, on granting derogation pursuant to Article 19(1) of the EC Treaty, presented under Article 12(4) of Directive 94/80 ⁴³ . A second Commission report is envisaged in 2009.	Communication of national measures can be considered satisfactory for all Member States.	Implementation by the 12 newest Member States is currently being assessed by the Commission. Requirement of a permanent residence or additional conditions imposed on EU citizens are amongst problems that the assessment revealed. Discussions and contacts with the Member States shall take place in 2009 in view of ensuring correct implementation of the Directive. Legal implementation was considered satisfactory for the Member States covered by the 2002 report ⁴⁴ . 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.

⁴¹ OJ L 368, 31.12.1994, p. 38. Directive as last amended by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded (OJ L 236, 23.9.2003, p. 33).

⁴² COM(2002) 260.

⁴³ COM(1999) 597 and COM(2005) 382.

⁴⁴ Luxemburg 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				
Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ⁴⁵	Entry into force: 17 January 2007	Two years after SIS II is brought into operation and every two years thereafter the Commission or, when it is established, the management authority is to produce a report on the technical functioning of SIS II and the communication infrastructure. Three years after SIS II is brought into operation and every four years thereafter, the Commission is to produce a report on an overall evaluation of SIS II.	Not applicable.	Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports.

⁴⁵ OJ L 381, 28.12.2006, p. 4. This Regulation, as well as Regulation 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates (OJ L 381, 28.12.2006, p. 1) form a package with Council Decision 2007/533/JHA (OJ L 205, 7.8.2007, p. 63).

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 Decision 2007/533/JHA of 12 th June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)	Entry into force: 2nd July 2007	Two years after SIS II is brought into operation and every two years thereafter the Commission or, when it is established, the management authority is to produce a report on the technical functioning of SIS II and the communication infrastructure. Three years after SIS II is brought into operation and every four years thereafter, the Commission is to produce a report on an overall evaluation of SIS II.	Not applicable.	Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports.
Regulation (EC) No 767/2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) ⁴⁶ .	Entry into force: 2nd September 2008	Two years after the VIS is brought into operation and every two years thereafter, the Commission or, when it is established, the Management Authority is to submit a report to the European Parliament, the Council and the Commission on the technical functioning of the VIS. Three years after the VIS is brought into operation and every four years thereafter, the Commission is to produce an overall evaluation of the VIS. The Commission is to transmit the evaluation reports to the European Parliament and the Council.	Not applicable.	Member States shall provide the Management Authority and the Commission with the information necessary to draft the reports.

⁴⁶

OJ L 218 of 13.8.2008, p. 60.

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 Decision 2008/633/JHA concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences ⁴⁷	Entry into force: September 2008	Two years after the VIS is brought into operation and every two years thereafter, the Commission or, when it is established, the Management Authority is to submit to the European Parliament, the Council and the Commission a report on the technical functioning of the VIS. Three years after the VIS is brought into operation and every four years thereafter, the Commission is to produce an overall evaluation of the VIS. The Commission is to transmit the evaluation to the European Parliament and the Council.	Not applicable.	Member States and Europol shall provide to the Management Authority and the Commission the information necessary to draft the reports.
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 ⁴⁸	Entry into force: 15 December 2000	Annual Commission reports were adopted on 5 May 2004 ⁴⁹ , 20 June 2005 ⁵⁰ , 15 September 2006 ⁵¹ , 11 September 2007 ⁵² and 26 January 2009 ⁵³ .	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, such as excessive delay for the transmission of data to the EURODAC Central Unit, low quality of data sent by some Member States or proper respect of data protection rules.

⁴⁷ OJ L 218 of 13.8.2008, p. 129.

⁴⁸ OJ L 316, 15.12.2000, p. 1.

⁴⁹ SEC(2004) 557.

⁵⁰ SEC(2005) 839.

⁵¹ SEC(2006) 1170.

⁵² SEC(2007) 1184.

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 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 balance of efforts between Member States in receiving such persons and bearing the consequences thereof ⁵⁴	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 report has been drafted.	All Member States have adopted and communicated national transposing measures ⁵⁵ .	
Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ⁵⁶	Implementation due by 6 February 2005	A report from the Commission was adopted on 26 November 2007 ⁵⁷ .	All Member States have adopted and communicated national transposing measures ⁵⁸ .	According to the Commission's Report, overall, the Directive has been transposed satisfactorily in the majority of Member States. Only a few horizontal issues of incorrect transposition or misapplication of the Directive are highlighted.
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 ⁵⁹	Entry into force: 17 March 2003	An evaluation report was adopted on 6 June 2007 ⁶⁰ .	Not applicable.	According to the Commission's Report, overall, the objectives of the Dublin system, notably to establish a clear and workable mechanism for determining responsibility for asylum applications, have to a large extent been achieved. Owing to the lack of precise data it was not possible to evaluate the cost of Dublin system. Nevertheless some concerns remain, both on the practical application and the effectiveness of the system.

⁵³ COM(2009) 13 final.

⁵⁴ OJ L 212, 7.8.2001, p. 12.

⁵⁵ Denmark and Ireland are not bound by this Directive.

⁵⁶ OJ L 31, 6.2.2003, p. 18.

⁵⁷ Report from the Commission to the Council and to the European Parliament on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers – COM(2007) 745 final.

⁵⁸ Denmark and Ireland are not bound by this Directive.

⁵⁹ OJ L 50, 25.2.2003, p. 1.

⁶⁰ Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system – COM(2007) 299 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
Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted ⁶¹	Implementation and communication due by 10 October 2006	A Commission report will be presented by October 2009. After the first report the Commission has a reporting obligation every five years.	Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, Ireland, France, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovakia and Slovenia have adopted and communicated national transposing measures ⁶² . Sweden and UK have partially fulfilled their obligation. Spain and Finland have not yet fulfilled their obligation ⁶³ .	

⁶¹ OJ L 304, 30.9.2004, p. 12.

⁶² Denmark is not bound by this Directive.

⁶³ Spain, Finland, Sweden and UK were referred to the Court in June – July 2008 (cases respectively C-2008/272, C-2008/293, C-2008/322, C-2008/256). Finland was ruled against by the Court on 5 February 2009.

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 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ⁶⁴	Implementation and communication due by 1 December 2007 and 1 December 2008 (Article 15 only)	A Commission report will be presented by 1 December 2009. After the first report the Commission has a reporting obligation every two years.	Bulgaria, Czech Republic, Germany, Estonia, Greece, France, Italy, Latvia, Lithuania, Luxembourg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia and UK have adopted and communicated national transposition measures for the obligation expiring 1 December 2007 ⁶⁵ . The Commission is examining national transposition measures communicated for the obligation expiring 1 December 2008. Belgium, Ireland and Sweden have partially fulfilled their obligation. Spain, Cyprus and Finland have not yet fulfilled their obligation ⁶⁶ .	

⁶⁴ OJ L 326, 13.12.2005, p.13.

⁶⁵ Denmark is not bound by this Directive.

⁶⁶ Spain, Cyprus, Finland and Sweden were sent letters of formal notice on 29 January 2008. Belgium was sent a reasoned opinion on 23 September 2008.

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
2.4. Legal Migration Including Admission Procedures				
Council Directive 2003/86 of 22 September 2003 on the right to family reunification ⁶⁷	Implementation and communication due by 3 October 2005	First report from the Commission was due on 3 October 2007 under the Directive. Publication of the report in October 2008 ⁶⁸ only due to late transposition of the Directive by Member States and in order to take account of the results of the Odysseus conformity checking study. Report will be followed-up by a Green paper in the first half of 2009.	All Member States have adopted and communicated national transposition measures ⁶⁹ .	Overall, the Directive has been transposed satisfactorily in the majority of Member States. However a few horizontal issues of incorrect transposition or misapplication of the Directive had to be highlighted. In addition the main application problem is that some "may" provisions of the Directive enabling Member States to introduce or maintain certain requirements for the exercise of the right to family reunification (e.g. fees, waiting period, stable and regular resources, integration measures such as language and other test) are applied in a too broad or excessive way, restricting the right to family reunification to an extent which runs counter the effet utile of the Directive.
Council Directive 2003/109 of 25 November 2003 concerning the status of third-country nationals who are long-term residents ⁷⁰	Implementation and communication by 23 January 2006	Report from the Commission due by 23 January 2011 under the Directive.	Belgium, Bulgaria, Czech Republic, Germany, Estonia, Greece, France, Italy, Cyprus, Latvia, Lithuania, Luxemburg, Hungary, Malta, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland and Sweden have adopted and communicated national transposing measures ⁷¹ . Spain ⁷² has not yet fulfilled its obligation.	

⁶⁷ OJ L 251, 3.10.2003, p. 12.

⁶⁸ COM (2008) 610 final.

⁶⁹ Denmark, Ireland and UK are not bound by this Directive.

⁷⁰ OJ L 16, 23.1.2004, p. 44.

⁷¹ Denmark, Ireland and UK are not bound by this Directive.

⁷² Spain was ruled against by the Court for non-communication on 15 November 2007 (case C-2007/059) and has not yet complied with the judgment. On 24 February 2009 the Commission sent a reasoned opinion under Article 228 of the EC Treaty to Spain.

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 2004/114 of 13 December 2004 on the conditions of admission of third-country nationals for the purpose of studies, pupil exchange, unremunerated training or voluntary service ⁷³	Implementation and communication by 11 January 2007.	A Commission report will be presented by 12 January 2010, in the light of the spring 2009 proposal for a Directive amending Directive 2004/114 to extend its scope of application to remunerated trainees and au-pairs. After the first report the Commission has a periodical reporting obligation.	Germany, Estonia, Greece, France, Italy, Cyprus, Luxemburg, Malta, Poland, Portugal, Romania, Slovakia and Finland national transposing measures ⁷⁴ . The Commission is examining national transposition measures communicated by Belgium, Bulgaria, Czech Republic, Latvia, Lithuania, Hungary, Netherlands, Austria, Slovenia and Sweden. Spain has not yet fulfilled its obligation ⁷⁵ .	
Council Directive 2004/81 of 29 April 2004 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 ⁷⁶	Implementation and communication by 5 August 2006.	A Commission report was due by 6 August 2008 but has been postponed, awaiting the entry into force of the Lisbon Treaty. After the first report the Commission has a reporting obligation every three years.	Belgium, Czech Republic, Germany, Estonia, Greece, France, Italy, Cyprus, Latvia, Luxemburg, Malta, Poland, Portugal, Slovakia and Sweden have adopted and communicated national transposing measures ⁷⁷ . The Commission is examining national transposition measures communicated by Bulgaria, Lithuania, Hungary, Netherlands, Austria, Romania, Slovenia and Finland. Spain has not yet fulfilled its obligation ⁷⁸ .	

⁷³ OJ L 375, 23.12.2004, p. 12.

⁷⁴ Denmark, Ireland and UK are not bound by this Directive.

⁷⁵ On 19 March 2009 the Commission took a decision to send a reasoned opinion to Spain.

⁷⁶ OJ L 261, 6.8.2004, p. 19.

⁷⁷ Denmark, Ireland and UK are not bound by this Directive.

⁷⁸ Spain was referred to the Court on 19 June 2008 (case C-2008/266).

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 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research ⁷⁹	Implementation and communication due by 12 October 2007	A Commission report was due to be presented by 13 December 2008 but has been delayed to 2009.	Czech Republic, Estonia, Greece, France, Italy, Latvia, Lithuania, Luxemburg, Malta, Poland, Slovenia, Slovakia, Finland and Sweden have adopted and communicated national transposition measures ⁸⁰ . The Commission is examining national transposition measures communicated by Belgium, Bulgaria, Germany, Ireland, Hungary, Netherlands, Austria, Portugal and Romania. Spain and Cyprus have not yet fulfilled their obligation ⁸¹ .	

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 ⁸²	Implementation and communication due by: 2 December 2002 for EU-15 Member States; 21 December 2007 for EU-9 Member States	No report provided for under the Directive.	All the EU-15 Member States ⁸³ have adopted and communicated national transposing measures. Latvia, Lithuania, Hungary, Poland and Slovenia have adopted and communicated national transposition measures. Czech Republic, Estonia, Malta and Slovakia have partially fulfilled their obligation.	
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⁷⁹ OJ L 289, 3.11.2005, p.15

⁸⁰ Denmark and UK are not bound by this Directive.

⁸¹ Cyprus was sent a reasoned opinion on 8 May 2008. Spain was referred to the Court on 27 November 2008 (case C-2008/523).

⁸² OJ L 149, 2.6.2001, p. 34.

⁸³ The EU-12 Member States are not bound to transpose Directive 2001/40/EC 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
Council Directive 2001/51 of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985 ⁸⁴	Implementation and communication due by 11 February 2003	No report provided for under the Directive.	All Member States have adopted and communicated national transposing measures ⁸⁵ .	
Council Directive 2002/90 of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence ⁸⁶	Implementation and communication due by 5 December 2004	No report provided for under the Directive. Evaluation of impact, possible shortcomings and recast have been announced by the Commission ⁸⁷ .	All Member States have adopted and communicated national transposing measures ⁸⁸ .	
Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air ⁸⁹	Implementation and communication due by 6 December 2005	No report provided for under the Directive.	All Member States have adopted and communicated national transposition measures ⁹⁰ , except Spain ⁹¹ . The Commission is examining national transposition measures communicated by Belgium ⁹² .	

⁸⁴ OJ L 187, 10.7.2001, p. 45.

⁸⁵ Denmark and Ireland are not bound by this Directive.

⁸⁶ OJ L 328, 5.12.2002, p. 17.

⁸⁷ Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals – COM(2006) 402 final.

⁸⁸ Denmark and Ireland are not bound by this Directive.

⁸⁹ OJ L 321, 6.12.2003, p. 26.

⁹⁰ Denmark, Ireland and UK are not bound by this Directive.

⁹¹ Spain was ruled against by the Court for non-communication on 14 February 2008 (case C-2007/058) and has not yet complied with the judgment. On 23 September 2008 it was sent a letter of formal notice under Article 228 of the EC Treaty.

⁹² Belgium was ruled against by the Court for non-communication on 8 November 2007 (case C-2007/003).

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 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data ⁹³	Implementation and communication due by 5 September 2006	No reporting obligation under the Directive.	Belgium, Bulgaria, Germany, Estonia, Spain, Italy, Cyprus, Luxembourg, Hungary, Malta and Netherlands have adopted and communicated national transposing measures ⁹⁴ . The Commission is examining national transposition measures communicated by Czech Republic, Ireland, Greece, France, Latvia, Lithuania, Austria, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and UK. Poland has not yet fulfilled its obligation ⁹⁵ .	

3. STRENGTHENING SECURITY

3.2. TERRORISM⁹⁶

Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences ⁹⁷	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).
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⁹³ OJ L 261, 6.8.2004, p. 24.

⁹⁴ Denmark is not bound by this Directive.

⁹⁵ On 19 March 2009 the Commission decided to send a reasoned opinion to Poland.

⁹⁶ 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).

⁹⁷ 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
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 participate in a criminal organisation in the Member States of the European Union ⁹⁸	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.	Joint Action repealed by the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime ⁹⁹ .
Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (2000/642/JHA) ¹⁰⁰	17 October 2003	Under the Decision only the Council has a reporting obligation (the deadline was 17 October 2004), but the Council asked the Commission to prepare a report, which was adopted on 20 December 2007 ¹⁰¹ .	Not applicable, but on 24 May 2006 the Commission asked Member States to communicate transposition measures ¹⁰² . 26 Member States have communicated their transposition measures. Ireland sent an interim reply to date. Some replies were fairly incomplete.	Member States can be largely considered as <i>legally</i> compliant with most of the key requirements of the Decision. However, there seems to be lack of clarity about the applicable legal framework on financial intelligence units related data protection issues. Also, more needs to be done in terms of operational cooperation among EU financial intelligence units.

⁹⁸ OJ L 351, 29.12.1998, p. 1.

⁹⁹ OJ L 300, 11.11.2008, p. 42.

¹⁰⁰ OJ L 271, 24.10.2000, p. 4.

¹⁰¹ Report from the Commission on the implementation of the Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (2000/642/JHA) - COM(2007) 827 final.

¹⁰² Bulgaria and Romania were requested to do so by letter of 24 January 2007.

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
3.4. Police and customs cooperation				
Convention of 18 December 1997 on Mutual Assistance and Cooperation between customs administrations: (Naples II-Convention) ¹⁰³	Subject to adoption by the Member States in accordance with their respective constitutional requirements. The Convention has been ratified by all Member States except Italy so far.	In 2004, a project group evaluated the implementation of Naples II-Convention. An update of that evaluation is ongoing by means of a new project group, under Germany's leadership and ISEC funding. A report should analyse the importance of assistance between customs administrations pursuant to the Naples II-Convention for the cooperation referred to in Title VI of the EU Treaty. The report should also indicate what practical, political and legal procedures are required to ensure that the best possible use is made of the Naples II instruments.	Not applicable: there is no obligation to communicate national measures under the Convention.	The Convention has still not been fully implemented.

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OJ C 24, 23.1.1998, 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
Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol ¹⁰⁴	Implementation due by December 2005	The Commission's first report on the operation of Council Common Position was adopted on 21 April 2006 ¹⁰⁵ . It should be followed by a Council report. A second report from the Commission was adopted on 1 August 2008 ¹⁰⁶ .	All Member States have answered the second questionnaire that was sent out by the Commission in order to gather the information to be provided by the member States according to Article 4 of the Common Position (June 2007).	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. The second Commission report noticed a substantial improvement in the operation of the Common position since 2006. Member States have taken various steps in order to comply with their obligations. However, the implementation of the Common Position in the fullest sense of the term is still incomplete and requires a more proactive and committed effort on the part of the Member States.
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 ¹⁰⁷	Implementation due by 15 September 2007 18 Member States have elected the option of delaying the implementation of certain provisions until 15 March 2009	The Commission is to submit to the European Parliament and the Council an evaluation of the application of this Directive and its impact on economic operators and consumers no later than 15 September 2010.	Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Spain, France; Italy, Cyprus, Latvia, Hungary, Malta, Portugal, Romania, Slovenia, Slovakia and Finland have adopted and communicated national transposing measures. The Commission is examining national transposition measures communicated by Lithuania, Luxemburg and UK. Ireland, Greece, Netherlands, Austria, Poland and Sweden have not yet fulfilled their communication obligation ¹⁰⁸ .	The Directive being in an advanced stage of its process of implementation, its impact on enhancing security can only be fully assessed in the years to come because of the complexity of the retention of the data, notably those communicated over Internet.

¹⁰⁴ Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol (OJ L 27, 29.1.2005, p. 61).

¹⁰⁵ COM(2006) 167 final and SEC (2006) 502.

¹⁰⁶ Report from the Commission to the Council: Second Monitoring and Evaluation Report on the Operation Council Common Position 2005/69/JHA - COM(2008) 502 final.

¹⁰⁷ OJ L 105, 13.4.2006, p. 54.

¹⁰⁸ On 23 September 2008 the Commission sent a reasoned opinion to all these Member States.

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
3.5. Management of crisis within the European Union				
4. STRENGTHENING JUSTICE				
4.2. Judicial cooperation in criminal matters				
• Mutual recognition principle				

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 Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA) ¹⁰⁹	Implementation due by 31 December 2003	Reports from the Commission of 23 February 2005¹¹⁰ and of 24 January 2006 (revised version concerning Italian legislation)¹¹¹. An updating report was adopted on 11 July 2007¹¹². A 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 is conducted in the 25 Member States from 2006 to 2009. In mid-2007 the Council published a report summarising the key findings in the first 10 Member States visited.	All Member States have communicated their implementing measures.	Despite an initial delay of up to 16 months (Italy) and hiccups caused by constitutional difficulties in at least two Member States (Germany during part of 2005 and 2006, Cyprus), the implementation of the Framework Decision has been a success. The European arrest warrant has been operational throughout all the Member States including Bulgaria and Romania since 1 January 2007. Although the need for certain improvements in transposition became apparent in 2005, these corrections remain peripheral to the process. The list of those Member States which need to make an effort to comply fully with the Framework Decision is still a long one. Currently the practical application of the EAW in the Member States is evaluated in the 4th round of mutual evaluations. This round will be finished in 2009. An overall report, based on the evaluation reports on the individual MSs will be drafted by the Councils General Secretariat.

¹⁰⁹ OJ L 190, 18.7.2002, p. 1.

¹¹⁰ 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.

¹¹¹ 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 final and SEC(2006) 79.

¹¹² 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(2007) 407 final and SEC(2007) 979.

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 Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence ¹¹³	Implementation due by 2 August 2005	A report from the Commission was adopted on 22 December 2008 ¹¹⁴ . According to the Framework Decision, the report from the Council, based on the Commission's report, was due by 2 August 2006 but slow implementation by the Member States held the report up.	Belgium, Bulgaria, Czech Republic, Denmark, Spain, Estonia, France, Latvia, Lithuania, Hungary, Netherlands, Austria, Poland, Slovakia, Finland, and Sweden have communicated their transposition measures. Cyprus, Slovenia and UK have partially fulfilled their communication obligation. Germany, Greece, Ireland, Italy, Luxembourg, Malta, Portugal and Romania have not yet fulfilled their communication obligation.	The Commission report concludes that implementation of the Framework Decision is not satisfactory. This conclusion is mainly drawn from the low number of notifications, of which some implementing laws do not even refer to the Framework Decision (provisions were adopted in view of implementation of some other international law instruments). Cyprus and United Kingdom have only partially covered the provisions of the Framework Decision. The legislation sent by Slovenia shows that it has not implemented the principle of mutual recognition in that regard. National legislation received from 19 Member States indicates numerous omissions and misinterpretations. There is still room for improvement, especially concerning direct contact between judicial authorities, grounds for refusal to recognise or execute the freezing order and also reimbursement. However, the swift execution of freezing orders seems ensured.
Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ¹¹⁵	Implementation due by 22 March 2007	The Council was to assess the extent to which Member States have complied with this Framework Decision by 22 March 2008, on the basis of a report established by the Commission, adopted on 22 December 2008 ¹¹⁶ .	Czech Republic, Denmark, Estonia, France, Latvia, Lithuania, Hungary, Netherlands, Austria, Slovenia and Finland have communicated their transposition measures. Belgium, Bulgaria, Germany, Ireland, Greece, Spain, Italy, Cyprus, Luxemburg, Malta, Poland, Portugal, Romania, Slovakia, Sweden and UK have not yet fulfilled their communication obligation.	The Commission report concludes that the degree of implementation of the Framework Decision in the national legislation of the Member States cannot be fully assessed at this stage. The transposition is not satisfactory as only eleven notifications have been provided by Member States. The national implementing provisions generally are in line with the Framework Decision, especially regarding the most important issues such as abolishing dual criminality checks and the recognition of decisions without further formality. Unfortunately the analysis of grounds for refusal of recognition or execution proved once again that whereas almost all Member States transposed them, they were implemented mostly as obligatory grounds. Furthermore, some additional grounds were added. This practice is clearly not in line with the Framework Decision.

¹¹³ OJ L 196, 2.8.2003, p. 45.

¹¹⁴ Report from the Commission based on Article 14 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence - COM(2008) 885 final.

¹¹⁵ OJ L 076, 22.3.2005, p. 16.

¹¹⁶ Report from the Commission based on Article 20 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties - COM(2008) 888 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
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders ¹¹⁷	Implementation due by 24 November 2008	The Council is to assess the extent to which Member States have complied with this Framework Decision by 24 November 2009, on the basis of a report established by the Commission.	Only four Member States - Austria, Romania, Finland and Sweden – have communicated their transposition measures before the set deadline.	It is likely that the preparation of the implementation report of the Commission will have to be delayed due to the very low number of notifications received at the time of the set deadline.

¹¹⁷ OJ L 328, 24.11.2006, p. 59.

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
• Approximation				
Convention on the protection of the European Communities' financial interests (PFI) of 26 July 1995 ¹¹⁸ and its protocols ¹¹⁹	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 ¹²⁰ . Ratification of the 2nd Protocol by Italy is still awaited ¹²¹ .	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 and its protocols ¹²² . On 14 February 2008 the Commission adopted a second report on the implementation of the Convention and its protocols ¹²³ .	All EU-15 Member States, as well as Bulgaria, Estonia, Cyprus, Latvia, Lithuania, Romania, Slovenia and Slovakia, 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 States.	According to the first report, although the level of effective criminal-law protection of the EC's financial interests has increased, gaps and loopholes in the law which allow offences to go unpunished remain possible. The second report reflects the state of play of transposition in the EU-15 Member States in the light of conclusions of the previous report as well as with regard to the EU-12 Member States. Notwithstanding some progress which was achieved since 2004 there are still considerable deficits and shortcomings in criminal law protection of the Community's financial interests, delays in ratification and incorrect implementation.

¹¹⁸ OJ C 316, 27.11.1995, p. 49.

¹¹⁹ 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).

¹²⁰ The Convention, the 1st Protocol and the ECJ Protocol have also entered into force for Bulgaria, Estonia, Cyprus, Latvia, Lithuania, Romania, Slovenia and Slovakia, while the ECJ Protocol – for Cyprus, Latvia, Lithuania and Slovakia.

¹²¹ In addition to the EU-15 Member States, Estonia, Cyprus, Latvia, Lithuania and Slovakia have also ratified the 2nd Protocol.

¹²² COM(2004) 709 and SEC(2004) 1299.

¹²³ COM(2008) 77 final and SEC(2008) 188.

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 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) ¹²⁴	Implementation due by 31 December 2000 (Article 5a) and 29 May 2001 (other Articles) ¹²⁵	Two Commission reports, dated 13 December 2001 ¹²⁶ and 3 September 2003 ¹²⁷ , served as a basis for the Council reports, the latest one being dated 25 October 2004 ¹²⁸ . The third report from the Commission was adopted on 17 September 2007 ¹²⁹ .	By now all Member States have finally provided the information to the Commission.	The third report looks at the state of play of transposition of the Framework Decision in the 15 Member States in the light of the conclusions of the second report, as well as at the legislative situation in the 12 "new" Member States. According to the third report the transposition of the FD is estimated to be satisfactory overall, despite some failures to transpose. The offences and penalties proposed in the Framework Decision have indeed been incorporated into the Member States' legislation. The euro is therefore protected by the efficient and effective measures called for by the Framework Decision. The Framework Decision has therefore achieved its objective.

¹²⁴ 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.

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

¹²⁶ 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.

¹²⁷ 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.

¹²⁸ DROIPE 25, rev.2.

¹²⁹ Third 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(2007) 524, 17.9.2007 and SEC(2007) 1158.

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 Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA) ¹³⁰	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 2004¹³¹. The Council report, dated 24 February 2005¹³², endorses in substance the Commission's conclusions. A supplementary report is planned for the EU-10 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. A third report on Article 10, for which the deadline for transposition is 22 March 2006, should also be adopted. The Commission plans to present a single report combining these two reports in April 2009.	Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, Ireland, Spain, France, Italy, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovakia, Finland, Sweden and United Kingdom have communicated their transposition measures. Greece, Cyprus, Latvia and Malta, and have not fulfilled their communication obligation.	The Commission has made a concerted effort to obtain all outstanding information concerning transposition of this Framework Decision. A consolidated report is to be adopted in April 2009 showing the state of transposition for all Member States for all articles. The implementation in Member States of the Framework Decision is rather poor. The obligations are too vague to be implemented in a way that guarantees an effective service and proper protection. Better compliance with the Framework Decision probably cannot be achieved with the current text.

¹³⁰ OJ L 82, 22.3.2001, p. 1.

¹³¹ 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.

¹³² 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
Council Framework Decision of 28 May 2001 on combating fraud and counterfeiting of non-cash means of payment (2001/413/JHA) ¹³³	Implementation due by 2 June 2003	The report from the Commission of 30 April 2004 ¹³⁴ served as a basis for the Council's report of 25 October 2004 ¹³⁵ . The Commission adopted a second report on 20 February 2006 ¹³⁶ .	Greece, Luxembourg¹³⁷, Cyprus¹³⁸, Estonia, Hungary, Malta and Slovenia had not yet fully fulfilled their communication obligation.	The second Commission report showed that most of the Member States which had communicated their national transposition measures to the Commission were complying 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 proceeds from crime (2001/500/JHA) ¹³⁹	Implementation due by 31 December 2002	The report from the Commission of 5 April 2004 ¹⁴⁰ served as a basis for the report from the Council dated 25 October 2004 ¹⁴¹ . A second report was released on 21 February 2006 ¹⁴² . 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 ¹⁴³ .	At the date of adoption of the Commission's second report, all EU Member States had communicated their transposition measures, with the exception of Malta¹⁴⁴ .	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 . Communication transmitted by Greece are to be evaluated. Minor flaws also seem to exist in Austria, Hungary and Latvia.

¹³³ OJ L 149, 2.6.2001, p. 1.

¹³⁴ COM(2004) 346 and SEC(2004) 532.

¹³⁵ DROIPEN 38, rev.2.

¹³⁶ COM(2006) 65 and SEC(2006) 188.

¹³⁷ Greece and Luxemburg reported that their transposition legislation is before their Parliament.

¹³⁸ Cyprus has not given the Commission adequate information for a full evaluation of the conformity of its legislation with the Framework Decision.

¹³⁹ OJ L 182, 5.7.2001, p. 1.

¹⁴⁰ COM(2004) 230 and SEC(2004) 383.

¹⁴¹ DROIPEN 24, REV 2.

¹⁴² COM(2006) 72 and SEC(2006) 219.

¹⁴³ Last version dated 24 May 2006, SEC(2006) 686.

¹⁴⁴ The information provided by Greece was incomplete but Greece fulfilled its communication obligation in August 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
Council Framework Decision of 13 June 2002 on combating terrorism (2002/475/JHA) ¹⁴⁵	Implementation due by 31 December 2002	The first report from the Commission of 8 June 2004 ¹⁴⁶ served as a basis for the Council's report dated 25 October 2004 ¹⁴⁷ . The second report from the Commission was adopted on 6 November 2007 ¹⁴⁸ .	At the current stage, all Member States have communicated their transposition measures, although they are not always complete.	Most Member States evaluated for the first time have satisfactory achieved implementation of the main provisions contained in the Framework Decision. Nevertheless, some major issues stand out. Concerning the Member States evaluated for the second time, the additional information they have sent has allowed the Commission to generally conclude that there is a higher level of compliance. However, most of the main deficiencies identified in the first evaluation report remain unchanged.
Council Framework Decision of 19 July 2002 on combating trafficking in human beings (2002/629/JHA) ¹⁴⁹	Implementation due by 1 August 2004	A report from the Commission's based on Article 10 of the Council Framework Decision was adopted on 2 May 2006 ¹⁵⁰ . The report from the Council, based on the Commission's report, was due on 1 August 2005.	Luxembourg¹⁵¹, Portugal, Lithuania and Ireland have not yet fulfilled their communication obligation.	Subject to the missing notifications from four Member States, the Commission report suggests that the general level of implementation is quite satisfactory, although some improvements are still needed on some provisions.

¹⁴⁵ OJ L 164, 22.6.2002, p. 3.

¹⁴⁶ 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.

¹⁴⁷ DROIPEN 40, rev.2.

¹⁴⁸ Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism - COM(2007) 681 final, 6.11.2007 and SEC(2007) 1463.

¹⁴⁹ OJ L 203, 1.8.2002, p. 1.

¹⁵⁰ COM(2006) 187 final and SEC(2006) 525.

¹⁵¹ Luxemburg 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
Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA) ¹⁵²	Implementation due by 5 December 2004	A report from the Commission based on Article 9 of the Council Framework Decision was adopted on 6 December 2006 ¹⁵³ . Evaluation of impact, possible shortcomings and recast has been announced ¹⁵⁴ .	Greece, Cyprus, Luxembourg, Austria and Portugal have not yet fulfilled their communication obligation. Estonia, Spain, Malta and Sweden have only partially fulfilled their communication obligation.	According to the Commission's report, not all Member States have transmitted to the Commission in a timely manner all the relevant texts of their implementing provisions. Further evaluation on the basis of more reliable information may be necessary.
Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector ¹⁵⁵	Implementation due by 22 July 2005	A report from the Commission was adopted on 18 June 2007 ¹⁵⁶ . According to the Framework Decision, the report from the Council, to be based on the Commission's report, was due by 22 October 2005.	Belgium, France, Italy, Luxemburg, Hungary, Austria, Portugal, Slovenia, Slovakia, Finland, Sweden and UK have communicated their transposition measures. Greece, Spain, Cyprus and Malta have not yet fulfilled their communication obligation ¹⁵⁷ . Czech Republic has only communicated draft legislation.	20 Member States have provided the Commission with transposition commentaries and legislation. No Member State can be considered to have fully implemented the Framework Decision. In particular the Articles 2 and 7 are poorly implemented. The Commission has in its report expressed its concern regarding the fact that the transposition of the Framework Decision is still at an early stage among Member States.

¹⁵² OJ L 328, 5.12.2002, p. 1.

¹⁵³ Report from the Commission based on Article 9 of the Council Framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence: COM(2006) 770 final, 6.12.2006 and SEC(2006) 1591.

¹⁵⁴ COM(2006) 402 final.

¹⁵⁵ OJ L 192, 31.7.2003, p. 54.

¹⁵⁶ COM(2007) 328 final and SEC/2007/808.

¹⁵⁷ 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
Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography ¹⁵⁸	Implementation due by 20 January 2006	A report from the Commission was adopted on 16 November 2007 ¹⁵⁹ . The report from the Council, based on the Commission's report, was due in 2008.	Belgium, Czech Republic, Denmark, Germany, Estonia, Spain, France, Ireland, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Netherlands, Austria, Poland, Slovakia, Slovenia, Finland, Sweden and UK have communicated their transposition measures. At the time of the implementation report, Greece, Malta and Portugal had not yet fulfilled their communication obligation. In the meantime, Portugal has communicated its implementation measures.	According to the Commission's Report, the requirements set out in the Framework Decision have been met by almost all of the Member States. However, full information has not been received on many points, and it is in particular not possible to provide a precise assessment of the range of exemption from criminal liability concerning some types of child pornography.

¹⁵⁸ OJ L 13, 20.1.2004, p. 44.

¹⁵⁹ Report from the Commission based on Article 12 of the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography - COM(2007) 716 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
Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property ¹⁶⁰	Implementation due by 15 March 2007	The Council is to assess the extent to which Member States have complied with this Framework Decision by 15 June 2007, on the basis of a report established by the Commission. A report from the Commission was adopted on 12 December 2007 ¹⁶¹ .	Belgium, Bulgaria, Czech Republic, Denmark, Germany, Estonia, France, Italy, Cyprus, Latvia, Lithuania, Luxemburg, Hungary, Netherlands, Austria, Portugal, Romania, Slovenia, Finland and Sweden have communicated their transposition measures. Spain, Ireland, Greece, Malta, Poland, Slovakia and UK had not yet fulfilled their communication obligation at the time of the adoption of the report, but Malta, Poland and UK have later communicated full transpositions measures.	Ten of the Member States have in principle transposed the Framework Decision, while six Member States (Bulgaria, Ireland, Lithuania, Malta, Romania and Sweden) have transposed it in part.
Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems ¹⁶²	Implementation due by 16 March 2007	The Council is to assess the extent to which Member States have complied with this Framework Decision by 16 September 2007, on the basis of a report established by the Commission. The Commission adopted a report on 14 July 2008 ¹⁶³ which should serve as a basis for the Council's report.	Belgium, Czech Republic, Denmark, Germany, Cyprus, Lithuania, Latvia, Luxemburg, Italy, Hungary, Netherlands, Austria, Portugal, Romania, Slovenia, Finland and Sweden have communicated their transposition measures. Spain, Ireland, Greece, Malta, Poland, Slovakia and UK have not yet fulfilled their communication obligation.	According to the Commission's report, the Framework Decision is still being implemented in Member States. Significant progress has been made in practically all the 20 Member States assessed, and the level of implementation has been found to be relatively good.

¹⁶⁰ OL L 068, 15.3.2005, p. 49.

¹⁶¹ Report from the Commission pursuant to Article 6 of the Council Framework Decision of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities and property (2005/212/JHA) - (COM(2007) 805 final).

¹⁶² OJ L 069, 16.3.2005, p. 67.

¹⁶³ Report from the Commission to the Council: based on Article 12 of the Council Framework Decision of 24 February 2005 on attacks against information systems - COM(2008) 448 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
• Other instruments in the field of judicial cooperation in criminal matters				
Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams ¹⁶⁴	<i>Implementation due by 1 January 2003</i>	The Commission adopted a report on 7 January 2005 ¹⁶⁵ , 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 ¹⁶⁶ .	After the adoption of the Commission's report, Belgium, Czech Republic, Ireland, Cyprus, Poland and Slovakia communicated national transposing measures. Lithuania and Hungary sent further legislation. Greece, Italy and Luxembourg informed that draft bill were to be discussed.	Legal implementation of the Framework Decision is very unsatisfactory. At the date of adoption of the Commission's report ¹⁶⁷ , Spain was the only Member State fully complying (the remaining then 24 EU Member States were not). The other legislation assessed by the Commission in its report has been considered as not, or not fully, compliant with the Framework Decision.
Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union ¹⁶⁸	<i>Implementation due by 19 December 2008</i>	The Council is to assess the extent to which Member States have complied with this Framework Decision by 19 December 2011, on the basis of a report established by the Commission by 19 December 2010.	No information available yet.	
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime ¹⁶⁹	<i>Implementation due by 18 December 2008</i>	The Council is to assess the extent to which Member States have complied with this Framework Decision by 18 December 2010, on the basis of a report established by the Commission.	No information available yet.	

¹⁶⁴ OJ L 162, 20.6.2002, p. 1.

¹⁶⁵ 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.

¹⁶⁶ Last version dated 24 May 2006, SEC(2006) 686.

¹⁶⁷ Required information was forwarded by Denmark, Germany, Spain, France, Latvia, Lithuania, Hungary, Malta, Netherlands, Austria, Portugal, Finland, Sweden and UK.

¹⁶⁸ OJ L 386, 29.12.2006, p. 89 and corrigendum OJ L 75, 15.3.2007, p. 26.

¹⁶⁹ OJ L 332, 18.12.2007, p. 103.

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) ¹⁷⁰	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 ¹⁷¹ . A Communication from the Commission and the Parliament on the future of Eurojust, comprising the second report and proposals for strengthening Eurojust and its relationship with the European Judicial Network was adopted on 23 October 2007 ¹⁷² .	Not applicable: there is no obligation to communicate national measures under the Decision.	According to the Communication, the implementation of the Eurojust Decision by Member States is uneven. Some Member States have amended their legislation, others have not. There are significant differences in the status of national members regarding e.g. the term of office of national members and the powers that Member States have conferred on them. These differences hamper Eurojust to operate as efficiently as possible and to use its full potential.
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¹⁷⁰ OJ L 63, 6.3.2002, p. 1.

¹⁷¹ 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.

¹⁷² Communication from the Commission to the Council and the European Parliament on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the European Union - COM(2007) 644 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
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 ¹⁷³	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. 2009/JLS/046 Report on the application of the Council Directive on legal aid proposed to be postponed to 2010.	All Member States have adopted and communicated national transposing measures ¹⁷⁴ .	
Council Directive 2004/80 of 29 April 2004 relating to compensation to crime victims ¹⁷⁵	Implementation due by 1 January 2006	A report from the Commission was due by 1 January 2009 under the Directive. 2008/JLS/125 Report on Council Directive relating to compensation to crime victims - adoption postponed to 7 April 2009.	All Member States have adopted and communicated national transposing measures, except Greece ¹⁷⁶ .	

¹⁷³ OJ L 26, 31.1.2003, p. 41.

¹⁷⁴ Denmark is not bound by this Directive.

¹⁷⁵ OJ L 261, 6.8.2004, p. 15.

¹⁷⁶ Greece was ruled against by the Court for non-communication on 18 July 2007 (case C-2007/026) and has not yet complied with the judgment. It was sent a reasoned opinion under Article 228 of the EC Treaty on 23 September 2008.

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 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 ¹⁷⁷	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	A study on application of this Regulation has been launched in 2006. Final report of the study was delivered in mid-2007. The report of the Commission (first five-yearly report) was adopted on 5 December 2007 ¹⁷⁸ .	Not applicable.	The report concludes that the application of the Regulation has generally improved, simplified and accelerated the cooperation between the courts on the taking of evidence in civil or commercial matters. The Regulation has achieved its two main objectives, namely to simplify the cooperation between Member States and to accelerate the performance of the taking of evidence, to a relatively satisfactory extent. Simplification has been brought about mainly by the introduction of direct court-to-court transmission (although requests are still sometimes or even often sent to central bodies), and by the introduction of standard forms. As far as acceleration is concerned, it can be concluded that most requests for the taking of evidence are executed faster than before the entry into force of the Regulation and within 90 days as foreseen by the Regulation.
Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ¹⁷⁹	Entry into force on 1 March 2002	A report from the Commission is due five years after the entry into force of this Regulation. An evaluation study of application of Regulation 44/2001 was launched in 2005. It was delivered end 2007.	Not applicable.	In September 2009 the Commission is to adopt: - Evaluation report on the application of the Brussels I Regulation. - Green Paper in order to make a new legislative proposal for the amendment and the modernisation of this Regulation.

¹⁷⁷ OJ L 174, 27.6.2001, p. 1.

¹⁷⁸ Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of the Council Regulation (EC) 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 - COM(2007) 769 final.

¹⁷⁹ OJ L 12, 16.1.2001, 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
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 ¹⁸⁰	Entry into force on 31 May 2001	The first five-yearly report from the Commission was adopted on 1 October 2004 ¹⁸¹ . After the adoption of the new Regulation on the service of documents in November 2007, another report is expected in 2011 and every 5 years thereafter.	Not applicable	The Commission's report shows that the Regulation has generally improved and expedited the transmission and service of documents between Member States. Nevertheless, the application of certain provisions was not fully satisfactory. For this reason, on 13 November 2007, the Regulation (EC) No 1393/2007 of the European Parliament and of the Council was adopted.

¹⁸⁰ 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.

¹⁸¹ 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
Regulation (EC) No 1393/2007 of the European Parliament and of the Council on 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000 ¹⁸²	Entry into force on 13 November 2008	No later than 1 June 2011, and every five years thereafter, the Commission shall present to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Regulation.	Not applicable	As of 13 November 2008, the new Regulation replaces 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. The main modifications with respect to Council Regulation (EC) No 1348/2000 are: • Introduction of a rule providing that the receiving agency shall take all necessary steps to effect the service of the document as soon as possible, and in any event within one month of receipt. • Introduction of a new standard form to inform the addressee about his right to refuse to accept the document to be served at the time of service or by returning the document to the receiving agency within one week. • Introduction of a rule providing that costs occasioned by recourse to a judicial officer or to a person competent under the law of the Member State addressed shall correspond to a single fixed fee laid down by that Member State in advance which respects the principles of proportionality and non-discrimination. Introduction of uniform conditions for service by postal services (registered letter with acknowledgement of receipt or equivalent).

¹⁸²

OJ L 324, 10.12.2007., p. 79.

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 Regulation (EC) No 2201/2003 of 27 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") ¹⁸³	Entry into force on 1 March 2005, with the exception of Articles 67, 68, 69 and 70, which will apply from 1 August 2004.	No later than 1 January 2012, and every five years thereafter, the Commission will present a report on application of the Regulation.	All Member States have communicated information relating to courts and redress procedures.	It seems necessary to improve knowledge of the instrument and training for practitioners and central authorities ¹⁸⁴ . A Practise Guide conceived by the Commission has been disseminated in 2006 among the EU judges; an information campaign is foreseen in 2008.

¹⁸³ OJ L 338, 23.12.2003, p. 1.

¹⁸⁴ For this purpose, in 2005 the Commission published a practical guide to application of the Brussels II bis Regulation.

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.6.2009
SEC(2009) 766 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

JUSTICE, FREEDOM AND SECURITY IN EUROPE SINCE 2005:

AN EVALUATION OF THE HAGUE PROGRAMME AND ACTION PLAN

An extended report on the evaluation of the Hague Programme

{COM(2009) 263 final}
{SEC(2009) 765 final}
{SEC(2009) 767 final}

1. ABOUT THIS DOCUMENT

1.1. Purpose

This document evaluates in detail the extent to which implementation of the Hague Programme¹ and the related Action Plan² has helped strengthen freedom, security and justice in the European Union. It forms part of the Commission communication, 'Justice, Freedom and Security since 2005: An evaluation of the Hague Programme and Action Plan', which is published together with the Communication on the future priorities for the next multi annual programme ("Stockholm Programme").

1.2. Background and scope

The multi-annual programme to strengthen the area of freedom, security and justice – the Hague Programme – was endorsed by the European Council of 4-5 November 2004. It was followed by the Action Plan, presented by the Commission and endorsed by the Council, for translating the priorities set out in the programme into concrete actions with a specific timetable for implementation. In presenting this Action Plan, the Commission identified ten main and equally-important priorities on which efforts should be concentrated³.

Other plans and strategic papers in specific policy areas are also covered by this document. These include:

- the EU Action Plans on Drugs of 2005⁴ and 2008⁵, following the European Strategy on Drugs 2005-2012⁶;
- the Communication on perspectives for the development of mutual recognition of decisions in criminal matters and of mutual trust⁷;

¹ European Council Presidency conclusions 14292/1/04 rev 1, Annex 1 to the Presidency Conclusions of the 4-5 November Brussels European Council, December 2004.

² Council and Commission Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union, 2005/C 198/01, OJ C 198, 12.8.2005, p. 1.

³ COM(2005) 184 final, "The Hague Programme: ten priorities for the next five years". The priorities identified are: 1) fundamental rights and citizenship: creating fully fledged policies; 2) the fight against terrorism: working toward a global response; 3) a common asylum area: establishing an effective harmonized procedure in accordance with the European Union's values and humanitarian tradition; 4) migration management: defining a balanced approach; 5) integration: maximising the positive impact of migration on our society and economy; 6) internal borders, external borders and visas: developing integrated management of external borders for a safer Europe; 7) privacy and security in sharing information: striking the right balance; 8) organised crime: developing a strategic concept; 9) civil and criminal justice: guaranteeing an effective European area of justice for all; 10) freedom, security and justice: sharing responsibility and solidarity. Specific emphasis was placed on implementation and evaluation.

⁴ COM(2005) 45 final, Communication on a EU Drugs Action Plan (2005-2008); EU drugs action plan (2005-2008) endorsed by the Council in 2005, 2005/C 168/01, OJ C 168, 8.7.2005, p. 1.

⁵ COM(2008) 567 final, Communication on a EU Drugs Action Plan for 2009-2012; EU Drugs Action Plan for 2009-2012 endorsed by the Council in 2008, 2008/C 326/09, OJ C 326, 20.12.2008, p. 7.

⁶ EU Drugs Strategy (2005-2012) endorsed by the Council in 2004, Council Document 15074/04.

- the Communication “developing a strategic concept on tackling organised crime”⁸,
- the Communication on the common immigration policy⁹; and
- the policy plan on asylum¹⁰.

This report also takes account of the contributions made by the recently created general financial programmes on "fundamental rights and justice", "solidarity and management of migration flows" and "security and safeguarding liberties"¹¹ to help achieve the multi-annual policy objectives.

In 2006, the Commission presented a first intermediate political assessment of the Hague Programme¹², which gave fresh impetus to implementation of the programme, proposing adjustments on specific issues and highlighting the principal shortcomings that needed to be overcome¹³.

Evaluations and implementation reports of specific and individual instruments, scoreboards published annually by the Commission since 2006¹⁴, impact assessments published by the Commission for each major initiative, and outcomes of consultations with stakeholders are also sources of information for this document.

1.3. Structure

This document deals with each of the policy areas in the order, by and large, in which they appear in the Hague Programme. To aid cross-referencing, the corresponding sections of the Hague Programme and the Communication are indicated in contents pages at the end of this report. The Communication seeks to draw out the principal themes from the lessons learned, and therefore there is not always a strict correspondence between the structure of this document and the communication.

Each policy area is evaluated in three sections.

I. **Objectives** set out in the Hague Programme and, where applicable in other relevant strategies.

⁷ COM(2005) 195 final, Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States.

⁸ COM(2005) 232 final.

⁹ COM(2008) 359 final.

¹⁰ COM(2008) 360 final..

¹¹ COM(2005) 122 final, 123 final and 124 final respectively.

¹² COM(2006) 331 final.

¹³ The sectors concerned were: (1) fundamental rights and citizenship, (2) development of the second phase of asylum, (3) migration management, (4) integrated management of external frontiers and interoperability of information systems, (5) follow-up of mutual recognition programmes (in civil and criminal justice), (6) access to information needed to combat terrorism and organised crime, (7) fight against terrorism and organised crime, including the future of Europol, (8) financial perspectives in the area of FSJ, (9) external dimension of FSJ, (10) implementation and evaluation of FSJ. In addition, the Commission proposed a "bridging clause" to overcome a number of recurrent problems in the decision-making process, particularly concerning Title VI EU.

¹⁴ COM(2006) 333 final, COM(2007) 373 final and COM(2008) 373 final.

II. **Main developments** in terms of implementation at EU or Member State level with regard to the objectives, including achievements, progress and lessons learnt.

III. **Future challenges** which, on the basis of the main developments and future projections, are expected to require EU action in the area in the next multi annual programme.

A final chapter identifies **common trends** that should guide future work in all JLS policy areas.

2. GENERAL ORIENTATION

2.1. Protection of fundamental rights

I. Objectives

One of the underlying objectives of the Hague Programme was to improve the common capability of the Union and its Member States to guarantee fundamental rights. The Hague Programme and the Action Plan called not only for the full respect of fundamental rights, but also for active promotion of those rights. The Programme referred to the incorporation of the Charter of Fundamental Rights into the Constitutional Treaty and to the accession to the European Convention for the protection of human rights and fundamental freedoms. It also recalled the Union's firm commitment to opposing any form of racism, anti-Semitism and xenophobia and welcomed the Commission's Communication on the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia towards a Fundamental Rights Agency¹⁵. Finally, it referred to the mainstreaming of fundamental rights in certain specific JLS areas, such as in the integration of third-country nationals policy, the return and re-admission policy, biometrics and information systems, exchange of information, fight against terrorism and judicial cooperation in civil matters.

II. Main developments

The new EU **Fundamental Rights Agency** (FRA) opened its doors in early 2007. It built on the existing European Monitoring Centre on Racism and Xenophobia (EUMC), whose mandate was broadened to become the FRA. To make the Agency fully operational, a number of measures had to be adopted, in particular a multi-annual framework that determines the thematic areas of its activities¹⁶ and an agreement between the Community and the Council of Europe¹⁷.

The same year, in the absence of a multi-annual framework, the FRA carried out its tasks on the same thematic areas as the EUMC, i.e. fight against racism, xenophobia and related intolerance, homophobia and children's rights, following specific requests from the European Parliament and the Commission. The Agency adopted its first work programme under the new FRA multi-annual framework in 2008¹⁸.

Since it was only created recently, it is too early to evaluate the work of the Agency. However, since its creation, the FRA has already provided input on racism, xenophobia and homophobia.

¹⁵ COM(2005) 280 final.

¹⁶ Council Decision 2008/203/EC of 28 February 2008 implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007-2012, OJ L 63, 7.3.2008, p. 14.

¹⁷ Agreement between the European Community and the Council of Europe on cooperation between the European Union Agency for Fundamental Rights and the Council of Europe, OJ L 186, 15.7.2008, p.7.

¹⁸ FRA Annual Work Programme 2009, available at:
http://fra.europa.eu/fraWebsite/attachments/wp09_en.pdf.

Important work was carried out in the area of **data protection**¹⁹. The first Commission report on the implementation of the 1995 data protection directive²⁰ concluded that there was considerable scope for improving its implementation and included a specific work programme for that purpose. An assessment of the work conducted under this programme²¹ suggests that the directive lays down a general legal framework which is substantially appropriate and technologically neutral, and outlines the prospects for the future as a condition for success in a number of policy areas in the light of Article 8 of the European Charter of Fundamental Rights, which recognise the protection of personal data as a fundamental right.

The Commission announced that it will continue to monitor implementation of the data protection directive, to work with all stakeholders to further reduce national divergences, and to study the need for sector-specific legislation to apply data protection principles to new technologies in order to satisfy public security needs.

The Commission is encouraging the use of privacy-enhancing technologies (PETs)²², which can help to design information and communication systems and services in a way that minimises the collection and use of personal data and facilitates compliance with data protection rules. The use of PETs should make breaches of certain data protection rules more difficult and/or help to detect them. The Communication on PETs expresses the intention to continue to promote these technologies and support their development, and to encourage data controllers and consumers to use them.

When adopting the Communication "**Towards an EU Strategy on the Rights of the Child**"²³, the Commission proposed to establish a cross-cutting approach to both the internal and the external dimension of a wide range of EU policies (such as civil and criminal justice, social protection, development cooperation, trade negotiation, education and health). The document included specific short-term measures, such as a single telephone number for missing and exploited children and also an analysis of possible public-private partnerships with the banking and credit card sectors to curb the purchase of images on the internet depicting sexual abuse of children. The Communication also anticipated the need to identify priorities for future EU action, to improve the effectiveness of EU policies vis-à-vis the rights of the child, to increase co-operation with stakeholders and to help children to enforce their rights.

Within this Strategy, the European Forum for the rights of the child was created with the aim of increasing the mainstreaming of children's rights in EU legislation, policies and programmes. Several meetings took place to discuss possible mechanisms for the future participation of children in the Forum, how to protect children against sexual exploitation, child poverty (with special attention on the situation of Roma children) and the possible introduction of "Child Alert" mechanisms in all Member States. The Forum brings together the Member States, the European Institutions, the Council of Europe, UNICEF, the Ombudsman and NGOs and is chaired by the Commission.

¹⁹ For personal data processed in the framework of police and judicial co-operation in criminal matters, see section 3.1 "Improving the exchange of information".

²⁰ COM(2003) 265 final.

²¹ COM(2007) 87 final.

²² COM(2007) 228 final.

²³ COM(2006) 367 final.

Work has been launched to promote "Child Alert" systems in the Member States, the aim being to involve the public in the search for information about an abducted child. Effective trans-border cooperation is possible if national systems are in place, with clear contact points and readily transmissible data when trans-border cases occur. The Commission presented a staff working paper on best practices for launching cross-border child abduction alerts to the authorities of the Member States²⁴, describing possible ways of cooperation among Member States when such situations occur. The Council's conclusions of 28 November 2008 supported this initiative²⁵.

Other measures, such as the hotline for reporting missing children, were not followed up by Member States²⁶.

The objective of the 2005 Communication on a methodology for **systematic and rigorous monitoring of compliance with the Charter of Fundamental Rights**²⁷ was to ensure that all draft proposals were checked systematically and thoroughly for their respect of fundamental rights. To achieve this objective, there is systematic monitoring of the respect of fundamental rights during the drafting of legislative proposals before they are adopted by the Commission (including in the impact assessment, when appropriate). Moreover, for the most relevant cases, follow-up is provided by the Group of Commissioner on **Fundamental Rights, Anti-discrimination and Equal Opportunities**, as well as throughout the legislative procedure.

On 12 December 2007, the Presidents of the Commission, the European Parliament and the Council signed and solemnly proclaimed the Charter on Fundamental Rights of the EU in Strasbourg. This second proclamation was considered necessary since the Lisbon Treaty provides for the Charter to have the same legal value as the Treaties and the Charter proclaimed in 2000 required some adaptation for it to have such legally binding effects.

European funding was provided to support the EU's and Member States' actions in the area of fundamental rights through the specific programme on "fundamental rights and citizenship"²⁸, a specific programme within the general programme "Fundamental Rights and Justice", which will continue to provide funding for the period 2007-2013. It is premature to assess its real impact, as the first set of projects financed is still ongoing. A mid-term evaluation of the programme will take place in 2011 to assess how well this programme contributed to the achievement of the overall policy on fundamental rights.

The Daphne III programme, a specific financial programme on the fight against **violence against children, young people and women and to protect victims and groups at risk**,

²⁴ SEC(2008) 2912 final.

²⁵ Council document 16325/1/08 rev 1, p. 34, adopting Council document 14612/2/08.

²⁶ On 15 February 2007, the Commission adopted the Decision 2007/116/EC on reserving the national numbering range beginning with 116 for harmonised numbers for harmonised services of social value, to establish a hotline for reporting missing children: 116 000. At today, the numbers is operational in 10 Member States: Belgium, France, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Romania and Slovakia.

²⁷ COM(2005) 172 final.

²⁸ Council Decision No 2007/252/JHA of 19 April 2007 establishing for the period 2007-2013 the specific programme Fundamental rights and citizenship as part of the General programme Fundamental Rights and Justice, OJ L 110, 27.4.2007, p. 33.

was adopted in 2007²⁹. This programme follows on from the Daphne I and II programmes, which were also designed to prevent and combat violence. Daphne provides for funding on the exchange of best practices, protection of victims and data collection. The programme was much appreciated by its beneficiaries and other stakeholders since it clearly responded to a need and did not duplicate other national, regional or international initiatives. The evaluation positively assessed the management of the programme and its well established procedures and support mechanisms. A mid-term evaluation of the Daphne III programme will take place in 2011.

III. Future challenges

There is a need to address the increased demand for Commission's action on **fundamental rights** issues within the EU. Since 2005, a number of requests for EU action have been addressed to the Commission by the European Parliament³⁰, the Council and civil society.

Fundamental rights issues are being raised more and more by the Court of Justice, in particular on issues involving JLS legislation:

Period	ECJ decisions referring to Fundamental Rights in their reasoning	ECJ decisions referring to Fundamental rights and relating to the JLS areas	ECJ decisions referring to Fundamental rights by the Grand Chamber
2000-2005 (i.e. 5 years)	± 36	± 7	± 19
2005-now (i.e. 4 years)	± 50	± 19	± 23

In 2006, the European Court of Justice referred explicitly for the first time to the Charter of Fundamental Rights in its reasoning concerning the action for annulment of certain provisions of the directive on the right to family reunification³¹. Since this ruling, the Court has referred to the Charter in its reasoning in more than 10 cases, the majority of which by the Grand Chamber.

The number of citizen's letters complaining about alleged breaches of fundamental rights is very high. Most of them raises questions of respect for fundamental rights in the Member States in areas that do not relate to Community legislation. According to Eurobarometer, 72%

²⁹ Decision No 779/2007/EC of the European Parliament and of the Council of 20 June 2007 establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme Fundamental Rights and Justice, OJ L 173, 3.7.2007, p. 19.

³⁰ The number of parliamentary questions whose title refers to "fundamental rights" quadrupled between 2002 and 2007.

³¹ Case C-540/03, *European Parliament v. Council of the European Union*.

of EU nationals would favour greater European influence in the protection of fundamental rights, including children's rights, while 18% expressed the opposite opinion³².

The Commission can only intervene as guardian of the Treaties if the situation relates to the implementation of the EU law. This role will become much more important given the increasing amount of legislation in the JLS domain which has to be implemented by Member States. The challenge for the future will be to address the increasing demand for action in the area of fundamental rights. There will be a need to focus fundamental rights policy on strategic objectives that can be achieved within the remit of EU powers. The intervention by the Commission is also required in domains outside its competence or following complaints based on article 7 of the Treaty on the European Union (TEU), which establishes a mechanism of last resort that has never been used by the Commission and the European Parliament.

This high level of expectations reveals that there is a clear need for more explanations of what the Commission can do in this area and on the Charter of Fundamental Rights. This is shown and confirmed by the above-mentioned Eurobarometer survey, according to which, on average, one EU citizen in three would like to be better informed about the promotion and protection of fundamental rights, including children's rights (33%). A deeper analysis revealed that in 18 of the 27 Member States the promotion and protection of fundamental rights is the aspect on which the largest number of European citizens would like greater information. Interest in this regard across all EU countries varies from 25% in Spain and Poland to 55% in Cyprus. Moreover, another survey on citizenship concluded that "respondents' awareness of the 'Charter of Fundamental Rights of the European Union' is far from widespread – half of those interviewed have never heard of it"³³.

No stabilisation of the legislative activity in the JLS domain was recorded during the Hague Programme. In relation to the 2000-2004 period, the number of adopted instruments in the JLS area since 2005 has constantly increased (since 2005: ± 218 ; between 2000-2004: ± 208). This trend is expected to continue the development and implementation of this *acquis* will require particular attention as regards fundamental rights aspects..

As stated earlier, the Commission has already adopted a specific methodology for a systematic and rigorous check of legal initiatives against the Charter of Fundamental Rights. The practical enforcement of which will need to be strengthened. In particular, it is important to ensure that the proposals of the Commission remain compliant with fundamental rights throughout the negotiations in Parliament and Council.

The Treaty of Lisbon provides the legal basis for accession of the European Union to the European Convention of Human Rights. The accession, which will complete the system of protection of fundamental rights in the EU, will be an important goal in the years to come.

The Union's action against **racism and xenophobia** should be intensified, in particular in the light of the economic crises, which spark off bouts of xenophobia.

³² Special Eurobarometer 290, "The role of the European Union in Justice, Freedom and Security policy areas".

³³ Flash Eurobarometer 213, "European Union Citizenship".

Since 2005, trends reveal that these phenomena are still all too present in the EU. According to the FRA Agency's 2008 Annual Report³⁴, even if it is difficult to make generalisations because of the weaknesses in statistics, it has to be noted that the majority of the eleven Member States collecting data on racist crime experienced a general upward trend in recorded crime in the period 2000-2006. Three out of the four Member States collecting data on anti-Semitic crime experienced a general upward trend between 2001 and 2006; and two out of the four Member States collecting data on crime with an extremist right-wing motive experienced a general upward trend between 2000 and 2006.

In addition to this, the 2008 Eurobarometer survey on discrimination in the EU³⁵ shows that 62% of Europeans think that discrimination due to ethnic origin is widespread in their country; 51% due to sexual orientation, 45% due to disability, 42% due to religion/belief or age and 36% due to gender.

The implementation of the Framework Decision on racism and xenophobia³⁶ will add to the existing EU legal framework and offers a new tool for fighting racism and xenophobia.

Eurobarometer surveys and several studies and discussions at EU level have demonstrated that the awareness of **data protection** issues and rules need to be enhanced, particularly – but not only – in the light of new technologies. According to a 2008 Eurobarometer³⁷, a majority of EU citizens showed concern about data protection issues: 64% of survey participants said they were concerned as to whether organisations that held their personal data handled this data appropriately and not even half of respondents (48%) thought that their data were properly protected in their own countries. A majority even feared that national legislation could not cope with the growing number of people leaving personal data on the internet (54%). A vast majority also felt that their fellow citizens had low levels of awareness about data protection (77%). Most European internet users feel uneasy when transmitting their personal data over the internet: 82% of internet users reasoned that data transmission over the web was not sufficiently secure.

The current legal framework on data protection is divided among several legal bases, which can undermine its effectiveness. How existing secondary law (especially of the data protection directive) operates needs to be examined to improve implementation, interpretative guidelines and/or possible amendments to the current framework.

Against this background, there should perhaps be an open reflection on the data protection legal framework in the light of possible developments towards a single regime. The Commission has already set up a group of experts (GEX-PD) to help it identify the challenges involved in protecting personal data in the EU, bearing in mind the development of new technologies, globalisation and matters of public security, and to put forward proposals to successfully address the new challenges.

³⁴ Available at: http://fra.europa.eu/fraWebsite/attachments/ar08p2_en.pdf.

³⁵ Special Eurobarometer 296, "Discrimination in the European Union: Perceptions, Experiences and Attitudes".

³⁶ Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, OJ L 328, 6.12.2008, p. 55.

³⁷ Flash Eurobarometer 225, "Data Protection in the European Union. Citizens' Perceptions".

In the age of globalisation and enhanced cooperation on law enforcement, there is an ever increasing need to exchange personal data with third countries. The EU is faced with growing demands from stakeholders to facilitate international data transfers from the EU, be it a wider use of its adequacy policy or through new instruments for such transfers. Hence, third countries have to deal increasingly with the European data protection system. Therefore, there is a need to develop a comprehensive approach in this area in our relations with third countries. The EU needs to play a major role in developing global standards through international instruments. To that end, the EU should be present in international forums and play a leading role in promoting international standards.

On **totalitarian crimes** – or crimes perpetrated by totalitarian regimes and committed on other grounds – and as requested by the Council, the Commission is due to report to the Council on whether an instrument is needed to cover publicly condoning, denying or grossly trivializing crimes of genocide, crimes against humanity and war crimes directed against a group of persons defined by reference to criteria other than race, colour, religion, descent or national or ethnic origin, such as social status or political convictions. The European Union's role can only be to facilitate this process by encouraging discussion and furthering the sharing of experiences. It is of course for the Member States to find their own way forward when it comes to dealing with victims' expectations and promoting reconciliation.

The situation of **children** around the world remains very difficult: the condition of poverty, neglect and exploitation in which millions of children live cannot be disregarded. Despite major progress in some areas, much remains to be done. The violence inflicted on children both within and outside the EU is varied in nature, such as within their family, at school or by organised crime. In the EU, 19% of children are at risk of poverty, which dramatically decreases their chances of having a good life and increases their risk of exclusion. The 2008 Eurobarometer on the rights of the child³⁸ showed that 33% of the children interviewed were not aware of their rights and that 82% said that neither they, nor anyone else in their age group that they knew, had ever tried to seek help when they thought that their rights had been violated; moreover, 79% of the respondents would not know how to go about defending their rights and whom to contact. All this clearly show the need to step up EU action and to defend the rights of children within and outside the EU.

As regards **violence against women**, in a study from 2006, the Council of Europe estimated that one-fifth to one-quarter of all women in Europe have experienced physical violence at least once during their adult lives, and more than one-tenth have suffered sexual violence involving the use of force. Figures for all forms of violence, including stalking, are as high as 45%. More significantly, for women – unlike men, who also encounter a great deal of physical violence – the majority of such violent acts are carried out by men in their immediate social environment, most often by partners and ex-partners³⁹.

Although the Commission has a limited mandate to initiate legislation in the domain of violence against women (restricted to trafficking and sexual exploitation), it has shown via a number of actions, in particular the Daphne Programme, that combating violence has become

³⁸ Flash Eurobarometer 235, "The Rights of the Child".

³⁹ Council of Europe, "Combating violence against women – Stocktaking study on the measures and actions taken in the Council of Europe member states", 2006.

an issue of paramount importance. In particular, one of the priority areas for EU action on gender equality that the Commission included in its "Roadmap for equality between women and men (2006-2010)"⁴⁰ was the eradication of gender-based violence and trafficking. The political pressure on the Commission to take concrete measures is increasing and calls for a clear long-term strategy.

⁴⁰

COM(2006) 92 final.

2.2. Evaluation and monitoring

I. Objectives

In a bid to provide European citizens with better and more effective instruments in the area of Justice, Freedom and Security, the Hague Programme called for regular assessments of the implementation and effects of the measures adopted. To this end, the Commission was asked to present annual implementation reports on the Hague Programme, along with systematic, objective and impartial assessment of the effectiveness of those measures and recommended solutions to the problems encountered.

II. Main developments

The Commission responded in 2006 and presented a package of communications on the implementation and evaluation of JLS policies.

The Communication "Evaluation of EU Policies on Freedom, Security and Justice"⁴¹ launched a debate on the establishment of a strategic evaluation mechanism of JLS policies. This mechanism was based on a three-step approach: (1) information gathering and sharing; (2) analysis of the information and data collected; (3) in-depth specific evaluations of selected areas. This mechanism did not gain the necessary support within the Council, as Member States perceived it as too demanding and burdensome, and therefore was not fully implemented. However, in line with the Commission's long-standing commitment to evaluation, specific legislation, instruments, actions and programmes have been assessed through the period of the Hague Programme, providing useful appraisal of how they operate and proposing constructive recommendations for possible improvements (the evaluation of the Dublin regulation and of the EU Drugs Action Plan 2005-2008 can be mentioned as examples).

The peculiarity of JLS policy, a complex, multilayer and diverse domain, is reflected in the way in which evaluations are currently organised: they are very different in objective (internal and external evaluations, progress reports, peer reviews, etc.) and in scope (evaluation of programmes, legislation, policies) and are often at a different stage of development. Furthermore, it is still difficult and sometimes problematic to collect and compare statistical data: improving this situation will continue to be a priority in the coming years. However, to increase the quality, reduce discrepancies and enhance the comparability and usefulness of evaluation results, it is essential to apply clear and specific horizontal principles to all JLS evaluations.

Finally, the Communication "Report on the implementation of the Hague programme for 2005"⁴² presented the first yearly implementation report (or "scoreboard"), giving a snapshot of the measures implemented both at the EU level (whether the EU institutions adopted the planned measures on time) and at national level (whether the national administrations

⁴¹ COM(2006) 332 final.

⁴² COM(2006) 333 final.

implemented the adopted measures in good time). This kind of implementation reports have been published every year since 2006⁴³.

III. Future challenges

The Commission is willing to maintain the established practice of presenting an annual scoreboard on the implementation of the actions foreseen in the next multi-annual programme.

To make evaluation more systematic and effective, the idea of launching new evaluation mechanisms for sectors that still lack systematic monitoring and evaluation should be considered. This would make for a clearer assessment of the use and impacts of these instruments. Sector-based mechanisms (such as the specific tracking method provided for by the European Pact on Immigration and Asylum) can meet the specific needs of each policy field more quickly and efficiently and enhance policy-making.

The introduction of clear common horizontal principles for all evaluations should allow the comparability of their results. New sector-based mechanisms and clear horizontal principles for evaluation should allow for the evaluation of the impact of the instruments adopted, of each policy area as well as coherence and contribution to the development of the JLS area. It should not add – insofar as possible – any unnecessary burden on Member States and existing evaluation mechanisms.

This will help the Commission to assess the impact of JLS policies in good time, in particular before proposing the next multi-annual programme. In return, the evaluation will increase transparency and further contribute to good governance, as it will provide European citizens and policy-makers with extensive information on the implementation and impact of JLS policies.

⁴³ COM(2007) 373 final and COM(2008) 373 final respectively .

3. STRENGTHENING FREEDOM

3.1. Promotion of European Citizenship

I. Objectives

The Hague Programme and the Action Plan underlined that the rights of EU citizens to move and reside freely in the Member States is the central right of citizenship of the Union. Full implementation of the Directive 2004/38/EC, which mainly codifies legislation and case-law in the area of free movement, was considered in the Programme as an important element in order to ensure that EU citizens enjoy this right. The Action Plan also provided for the adoption of specific measures on consular protection and European elections.

II. Main developments

The fifth report on citizenship of the Union⁴⁴ shows that, on 1 January 2006, approximately 8.2 million EU citizens were exercising their right to reside in a Member State of which they were not nationals.

The Commission published a report in 2008⁴⁵ on the control of transposition, compliance and correct application of Directive 2004/38/EC on **free movement**⁴⁶. It provides a comprehensive overview of how the directive is transposed into national law and how it is applied in everyday life. The report concluded that the overall transposition of the directive is rather disappointing. Not one Member State has transposed the directive effectively and correctly in its entirety and not one article of the directive has been transposed effectively and correctly by all Member States. No legislative amendments to the directive were proposed in the report. Consequently, the directive still needs to be implemented more effectively by Member States.

In 2007, the Commission adopted the Action Plan 2007-2009 on **consular protection of EU citizens in third countries**⁴⁷, designed to ensure the protection of EU citizens when travelling to countries where their Member State is not represented. It is estimated that 8.7% of the EU citizens travelling outside the EU travel to third countries where their Member States are not represented. Based on the number of trips made annually by EU citizens, it is estimated that the number of "unrepresented" EU nationals travelling to third countries each year is around 7 million. It is estimated that around 2 million EU expatriates live in a third country where their Member State is not represented. Around 0.53% of EU citizens who travel to third countries need consular assistance, which would amount to approximately 425,000 requests for

⁴⁴ COM(2008) 85 final.

⁴⁵ COM(2008) 840 final. The third report COM(2006) 156 final on the application of Directives 90/364/EEC, 90/365/EEC and 93/96/EEC on free movement and residence, which were repealed by the Directive 2004/38, was adopted in 2006.

⁴⁶ Directive 2004/38/EC 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 States, amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.4.2004, p. 77.

⁴⁷ COM(2007) 767 final.

consular services by EU citizens per year in third countries. It is estimated that at least 37,000 of these cases come from Union citizens whose Member States are not represented in the third country. The Eurobarometer on consular protection carried out in 2006 showed that only 23% of the citizens were aware of this right⁴⁸.

As regards the **right to vote** for the European Parliament, the Commission used the report on the 2004 European elections⁴⁹ to present a proposal to amend the Directive laying down the arrangements for the exercise of the right to vote and stand as a candidate in the European elections⁵⁰. The objective of the proposal was to improve efficiency and to remove the burdensome administrative procedures, to prevent multiple voting and multiple candidacies. This proposal could not be adopted on time for the 2009 European elections because there was no agreement among the Member States in the Council.

III. Future challenges

The focus of the Commission's action on **free movement and residence** should be on the enforcement of existing legislation, and on ensuring that Directive 2004/38/EC is correctly transposed and implemented across the EU and that EU citizens are informed of their rights. As a first step in this direction, the Commission established in September 2008 a group of experts from Member States to discuss the application of the Directive. The Commission is also preparing interpretative guidelines on the Directive.

In the year to come, the Commission will continue to remain active on **consular protection** should remain an area of active focus in the years to come. The demand for consular protection will almost certainly increase in the future as EU citizens become more aware of their rights under article 20 EC and as more people travel to third countries. Awareness of European consular protection rights need to be raised among citizens and execution of the Action Plan 2007-2009 should be assessed.

In 2007, 49% of European citizens indicated that they are "not well informed" about their rights, the less well-known rights being **electoral rights relating to European Parliament elections** (54% aware) and municipal elections (37% aware)⁵¹. The Parliament is working on a possible amendment of the Act of 1976 on the European elections⁵². The Commission has launched a study on certain issues concerning the organisation of European elections. The Commission will prepare an assessment on the 2009 European elections.

⁴⁸ Flash Eurobarometer 188, "Consular Protection".

⁴⁹ COM(2006) 790 final.

⁵⁰ COM(2006) 791 final.

⁵¹ See footnote 48.

⁵² Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278, 8.10.1976, p. 5.

3.2. Asylum, migration and border policy

3.2.1 Asylum (Common European Asylum System)

I. Objectives

In the area of asylum, the Hague programme set the ambitious objectives establishing a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. This should have been done through the full and inclusive application of the Geneva Convention on Refugees and other relevant Treaties. The Programme also set other objectives, notably the facilitation of practical cooperation involving the national asylum services of the Member States, the full implementation and evaluation of the "first phase" instruments, the presentation of a number of studies on innovative aspects of asylum policy, the sound use of existing financial incentives (the European Refugee Fund in particular) and more cooperation with third countries to help improve their capacity to protecting refugees.

II. Main developments

The first major achievement in the area of asylum was the adoption of the **asylum procedures directive**⁵³ in 2005. This was the only part of the "first phase" of the Common European Asylum System (CEAS) that had not been adopted by the end of the transitional period established in the Amsterdam Treaty (before 1 May 2004). Adoption of this directive entailed a shift in the decision-making process in the area of asylum: from that moment on, any new legislation would have been adopted by co-decision between the Council and the European Parliament and by qualified majority voting in the Council. This marked an important advance in the construction of the CEAS.

Given the very late adoption of the asylum procedures directive, the objective of achieving a **common asylum procedure** before 2010 became difficult to meet. Member States needed time to transpose the directive before any amendments to it could be proposed. Such amendments, leading to a common procedure, will be presented in 2009, which means that the instrument defining the common procedure could be in place by 2012.

As far as the establishment of a **uniform status** is concerned, the situation is similar to the one described above, as the deadline for transposition for the qualification directive⁵⁴, which sets the statuses of refugees and persons enjoying subsidiary protection, only expired in October 2006. Amendments to the directive will also be tabled in 2009 in order to meet the uniform status goal.

Practical cooperation between national asylum services has been enhanced. A Commission Communication in 2006⁵⁵ put forward ideas on how to facilitate such cooperation. Since then,

⁵³ Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13.12.2005, p. 13.

⁵⁴ Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30.9.2004, p. 12.

⁵⁵ COM(2006) 67 final.

the Commission has financed a number of projects on practical cooperation issues, e.g. on country of origin information (COI) and on a common curriculum (training) for asylum case handlers. A pilot project for the establishment of a Common Portal on COI has also been set up. All these activities needed structural support, better coordination and sustained funding, which is why the Commission proposed in February 2009 the establishment of a European Asylum Support Office (EASO)⁵⁶, whose tasks will cover all practical cooperation activities. The creation of the EASO will also help Member States faced with particular pressures on their asylum systems by coordinating asylum expert teams, and possibly assisting overburdened Member States.

Full **evaluations** of the implementation of the Dublin system (Dublin⁵⁷ and Eurodac⁵⁸ regulations) and of the Reception Conditions Directive⁵⁹ were presented by the Commission in June⁶⁰ and November⁶¹ 2007 respectively. They provided the basis for the preparation of amendments to those instruments, which were adopted by the Commission in December 2008⁶². The amendments to the Dublin system set out to increase the efficiency of the system and to enhance legal guarantees and protection standards, while the amendment to the Reception Conditions Directive were designed to ensure better and more harmonised reception standards across the Union, including the specific needs of vulnerable persons. Evaluations of the implementation of two other instruments, notably of the qualification and procedures directives, will be presented by the end of 2009.

The **studies** requested by the Hague programme on joint processing of asylum applications within and outside the EU were not conducted as the timing was not considered the most appropriate. However, with a view of completing the second phase of the CEAS, this study will be commissioned in 2009-2010.

As far as the **financial support** is concerned, the European Refugee Fund (ERF) was amended in 2007⁶³ to align it with the three new funds on integration, border control and

⁵⁶ COM(2009) 66 final.

⁵⁷ 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, OJ L 50, 25.2.2003, p. 1.

⁵⁸ 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, OJ L 316, 15.12.2000, p. 1.

⁵⁹ Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18.

⁶⁰ COM(2007) 299 final.

⁶¹ Available at: http://ec.europa.eu/justice_home/doc_centre/asylum/studies/doc_asylum_studies_en.htm.

⁶² COM(2008) 815 final, Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast); COM(2008) 820 final, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast); COM(2008) 825, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast).

⁶³ Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity

return. The amendment also introduced an increase in financial support for practical cooperation activities and the possibility of offering additional financial incentives for the resettlement of refugees in EU Member States. The resources of the ERF have been increased, reflecting the importance of asylum issues, and have had an impact on improving national asylum systems. The ERF also made it possible to finance, in parallel with the national programmes, actions of Community interest, and to cover the specific needs of Member States faced with particular asylum pressures (emergency measures). The 2007 amendment also has eased the conditions for triggering these emergency measures. However, it is not possible now to assess the overall impact of the ERF: the Commission will submit a final evaluation of the old ERF to the European Parliament and to the Council by the end of 2009.

Although not envisaged by the Hague Programme, the Commission decided to launch a broad consultation of all stakeholders about the future of the CEAS before presenting proposals for the "second phase". This took the form of a **Green Paper** issued in June 2007⁶⁴ and a public hearing in November the same year. The results of the consultation were used to draw up the **Policy Plan on Asylum** presented in 2008⁶⁵. This Policy Plan contained the Commission's ideas about the form that the second phase of the CEAS should take and a roadmap for proposals to be submitted in the coming years. Moreover, it identified three main lines of action for achieving the objectives of the CEAS: better and more harmonised standards of protection through further alignment of Member States' asylum laws; effective and well-supported practical cooperation; a higher degree of solidarity and responsibility between Member States, and between the EU and third countries. The first concrete proposals were the above-mentioned adoption in December 2008 of the amendments to the Dublin system (Dublin II and Eurodac Regulations) and to the Reception Conditions Directive.

III. Future challenges

While important progress in the area of asylum has been already made, work must continue in order to complete the CEAS by 2012 and to establish a real level playing field across the EU, where all asylum seekers will be treated in the same way, with the same high-standard guarantees and procedures, wherever in the EU they make their asylum claim. This will also help to reduce secondary movements.

In 2008, the asylum requests introduced in the EU by third-country national were about 240,000. Some Member States are more affected than others, either because of the total number of requests received, or because of the share of requests received in relation to their total population. In 2007, in 25% of first instance decisions a need for protection has been recognised (refugee status or subsidiary protection). This average is the results of different practices among Member States: some of them are more reluctant and recognize this status in few cases, while others grant the refugee status to about 50% of applicant.

For this purpose, specific challenges will need to be tackled in the years to come. First and foremost, the potential of the future EASO should be tapped to the maximum, making it a useful operational support tool in the field of asylum. Furthermore, an efficient asylum system

and Management of Migration Flows' and repealing Council Decision 2004/904/EC, OJ L 144, 6.6.2007, p. 1.

⁶⁴ COM(2007) 301 final.

⁶⁵ COM(2008) 360 final.

with high quality protection standards throughout the asylum process will help prevent and avoid possible abuse. In this perspective, it must be ensured that legitimate measures and practices against irregular immigration do not hamper access to protection in the EU for asylum seekers.

The CEAS should help to reduce divergent national practices which can lead to significant differences in the recognition of protection in the Member States, causing inequalities in the level of protection across the EU. Moreover, it should increase solidarity and burden-sharing among Member States, supporting those countries in particular where asylum systems are overburdened, notably because of their geographical location and high migratory pressures.

The idea of harmonising other protection statuses should be also taken into account as people are increasingly seeking protection for reasons not envisaged in the traditional refugee regime (Geneva Convention) and are receiving protection statuses with lower guarantees. The protection of particularly vulnerable asylum seekers, especially minors, should be enhanced and the prospects of integration of those in need of protection in their host societies improved. The EU should strengthen its solidarity towards countries outside the EU in order to enhance their capacity to offer effective protection and lasting solutions, whilst ensuring that the Union is ready to assume its fair share of responsibility.

3.2.2. Migration

I. Objectives

The Hague Programme called for effective management of migration flows. In the area of immigration, the Programme call on, the Commission to present a Policy Plan on legal migration⁶⁶ including admission procedures capable of responding promptly to fluctuating demands for migrant labour. It also noted that the informal economy and illegal employment can act as pull factors for illegal immigration and can lead to exploitation. Finally, it was emphasized that a common analysis of up-to-date information and data on all relevant migratory developments was of key importance to future policy development.

II. Main developments

In this area the main objectives have been met. More ambitious and long-term results could have been achieved, in particular in the area of legal migration, had there been the co-decision procedure in place instead of the existing unanimity rule in the Council.

In 2005, a directive setting out a specific procedure for the admission of researchers from third countries was adopted⁶⁷ in a bid to make Europe a more attractive, competitive and knowledge-based economy. The directive had to be transposed by October 2007. The Commission provided support to the Member States at various meetings arranged to discuss the interpretation of the provisions of the directive. It is too early to already assess the impacts of the directive. A report on the implementation of this directive will be published in 2009.

⁶⁶ COM(2005) 669 final.

⁶⁷ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 3.11.2005, p. 15.

In reply to the call of the Hague programme for "admission procedures capable of responding promptly to fluctuating demands for migrant labour", a Policy Plan on **legal migration** was presented in 2005 containing a roadmap for a range of initiatives that the Commission intended to take in between 2006 and 2009.

On the back of this Policy Plan, the Commission adopted two proposals for directives in 2007: a proposal for a directive "on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment" ("Blue Card")⁶⁸ and a proposal for a directive "on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State"⁶⁹. The "Blue Card" directive has been adopted on 25 May 2009. The result clearly lags behind the Commission's more ambitious proposal and cannot be considered as much more than a first step towards harmonisation, in particular regarding the (limited) possibility for "Blue Card" holders to move to and reside in other Member States. Two other proposals from the Policy Plan (directives on the entry and residence of seasonal workers and intra-corporate transferees) are scheduled for adoption by the Commission in 2009.

A Communication on "policy priorities in the fight against illegal immigration of third-country nationals" was presented in 2006⁷⁰ and identified a number of measures to fight **illegal immigration** at all stages of the illegal immigration chain, including cooperation with third countries, reinforcing external borders and tackling illegal employment. The proposal for a directive "providing for sanctions against employers of illegally staying third-country nationals" of 2007⁷¹ specifically addressed the pull factor of illegal immigration, in particular the possibility of finding illegal work. The directive has been adopted on 25 May 2009. The directive on common standards and procedures in Member States for returning illegally staying third-country nationals was tabled in 2005⁷² and was formally adopted by the Council and the European Parliament in 2008⁷³, as the first legislative instrument in this area adopted under the co-decision procedure. Once transposed, Member States' return policies will be governed by clear, transparent and fair common rules that allow efficient return procedures for illegally staying third-country nationals while guaranteeing them a set of rights.

In the areas of **data collection**, analysis and (early) exchange of information, three instruments were adopted: first, the regulation on Community statistics on migration and international protection⁷⁴ of 2007 and second, following a broad consultation process triggered by a Green Paper in 2005⁷⁵, the Council decision establishing the European

⁶⁸ COM(2007) 637 final.

⁶⁹ COM(2007) 638 final.

⁷⁰ COM(2006) 402 final.

⁷¹ COM(2007) 249 final.

⁷² COM(2005) 391 final.

⁷³ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

⁷⁴ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers, OJ L 199, 31.7.2007, p. 23.

⁷⁵ COM(2005) 606 final.

Migration Network (EMN) of 2008⁷⁶. The EMN is a crucial element to meeting the information needs of Community institutions and of Member States authorities and institutions on migration and asylum. It provides up-to-date, objective, reliable and comparable information on migration and asylum and this contributes to support policy-making in the European Union in these areas. Moreover, in 2006 the Council adopted a mutual information mechanism on national measures taken in the areas of asylum and immigration, which could affect other Member States⁷⁷. This system is currently underused by the Member States, unlike the secure web-based information and coordination network for Migration Management services (ICONet) established in 2005⁷⁸.

III. Future challenges

As a result of diverse shifts in the demographic features of the EU population, the working age population is projected to decline appreciably in the coming years (the loss of working age population is estimated to be almost 50 million - or 15% - by 2060 compared to 2008 figures⁷⁹). Although, due to the existing economic and financial crisis, it is difficult at present to forecast the precise impact this will have on the labour markets and the employment situation in Europe, in the long run it is very likely to have adverse consequences on pension expenses, health spending and long-term care, the dependency ratio and, more broadly, the dynamism of the economy. Immigration can be one of the various responses to this situation. The common immigration policy will have to be further developed in the coming years, especially with regard to possible EU rules for further categories of migrants, the recognition of their diploma and the identification of skills needs in Europe, taking into account that Member States have exclusive competence in determining the volume of admissions.

Despite the important legislative framework and the measures taken at national and European level to combat illegal immigration, this phenomenon is still a major concern across Europe. The number of illegally staying persons in the EU cannot be quantified with precision. It is estimated that there were up to 8 million illegal immigrants within the EU-25 in 2006. An estimated 80% were within the Schengen area. It is likely that over half of illegal immigrants enter the EU legally but become illegal due to overstaying their right to stay. In 2006, around 500,000 illegal immigrants were apprehended in the EU-27 (429,000 in 2005 and 396,000 in 2004) and it is estimated that around 40% of these were removed. In 2006, the EURODAC database stored 25,162 fingerprints of people who were detected crossing borders irregularly. Data collected at national level indicate that more than 75% of the illegal immigrants that were apprehended on the territory of Member States in 2006 were from third countries where visas to visit the EU are required. It is therefore likely that most overstayers originate from these third countries. An effective response to this phenomenon is therefore needed in the future to ensure that the instruments on legal migration work properly.

⁷⁶ Council Decision 2008/381/EC of 14 May 2008 establishing a European Migration Network, OJ L 131, 21.5.2008, p. 7.

⁷⁷ Council Decision 2006/688/EC of 5 October 2006 on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration, OJ L 283, 14.10.2006, p. 40.

⁷⁸ Council Decision 2005/267/EC of 16 March 2005 establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services, OJ L 83, 1.4.2005, p. 48.

⁷⁹ Eurostat, EUROPOP 2008 Convergence Scenario; Eurostat, Migration Statistics.

The Communication on "A Common Immigration Policy for Europe: Principles, actions and tools"⁸⁰ and the European Pact on Immigration and Asylum⁸¹ laid down the basic principles for the further development of the EU's common policy in the area of immigration and integration. In the years ahead, therefore, priority must be given to implementing existing measures, including monitoring application of the main legislative framework⁸² and revising it where necessary, in particular as regards family reunification⁸³, the status of long-term residents and existing rules for the admission of students and researchers. Moreover, the works announced in the 2005 Policy Plan on Legal Migration must be completed by adopting and implementing the proposed legislative instruments and setting up the EU Immigration Portal. Further common admission schemes for categories of immigrants other than those identified in the Policy Plan need to be examined, it being given that promoting further channels for legal immigration should match the skills of immigrants against national labour market needs. The fight against illegal immigration must be stepped up by supporting the practical cooperation identified in a 2007 Staff Working Document⁸⁴ and the exchange of best practices at EU level with regard to the illegal employment of third-country nationals.

⁸⁰ COM(2008) 359 final.

⁸¹ Council document 13440/08.

⁸² A Communication on a tracking method for monitoring the implementation of the European Pact on Immigration and Asylum has been adopted on 10.6.2009.

⁸³ The Commission presented a report on the application of the family reunification Directive 2003/86 (COM(2008) 610 final), which revealed a few cross-cutting issues in relation to the transposition or application of the directive, such as the provisions on visa facilitation, granting autonomous residence permits, taking into account the best interest of the child, legal redress and more favourable provisions for the family reunification of refugees.

⁸⁴ SEC(2007) 596.

3.3. Border management

I. Objectives

The Hague programme set the objective of consolidating the area without internal border controls by ensuring a high level of security at the external borders, while facilitating smooth and fast border crossings for legitimate travellers (EU citizens and third-country nationals alike) and ensuring solidarity and a fair share of responsibility between Member States.

II. Main developments

Over 400 million citizens⁸⁵ in twenty-five countries can now enjoy the benefit of the Schengen passport-free area. Uninterrupted travel is possible from Portugal to Estonia and from Malta to Iceland without border checks. Lifting internal border controls needed mutual trust and accompanying security measures. Member States must be confident in each others' ability to guard effectively the external borders on behalf of the whole EU and to issue visas valid for the whole Schengen area. The Schengen Agreement has benefited from new technology for sharing information on individuals who are wanted, missing or barred from residence and on lost and stolen property.

Implementation of the Hague Programme saw the establishment of three fundamental components of the EU's border strategy: the consolidation of the Schengen *acquis*, the establishment of the Frontex Agency and the launch of the External Border Fund.

The consolidation of the relevant parts of the Schengen *acquis* on internal and external borders in the form of the Schengen Borders Code⁸⁶ is the first of the three fundamental components. In addition, as indicated by the Hague Programme, the local border traffic regulation was adopted in 2006⁸⁷. The publication of a report on the implementation of this regulation is expected in 2009.

The Council decision on the full application of the provisions of the Schengen *acquis* to 9 out of the 10 Member States that joined the EU in 2004 was adopted in 2007⁸⁸. The evaluations for lifting internal border controls with Bulgaria and Romania will start in 2009.

The lifting of internal border controls required the use of the Schengen Information System (SIS), which was established to maintain public policy and public security, including national

⁸⁵ The total population of the 25 Schengen Member States is 411,310,500 (estimation: Eurostat, 2009).

⁸⁶ Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 105, 13.4.2006, p. 1.

⁸⁷ Regulation (EC) No 1931/2006 of the European Parliament and of the Council of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, OJ L 405, 30.12.2006, p. 1.

⁸⁸ Council Decision 2007/801/EC of 6 December 2007 on the full application of the provisions of the Schengen *acquis* in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic, OJ L 323, 8.12.2007, p. 34.

security, on the basis of the Schengen Convention⁸⁹. The second-generation Schengen Information System (SIS II) was established in 2006⁹⁰ and the following year a Council decision on the establishment, operation and use of the SIS II was adopted⁹¹. The aim of the SIS II is to ensure a high level of security within the area of freedom, security and justice of the European Union, including the maintenance of public security and public policy and the safeguarding of security in the territories of the Member States, and to apply the provisions of Title IV of Part Three of the EC Treaty relating to the movement of persons in their territories, using information communicated via this system. These instruments were complemented by the regulation on the access to the SIS II by the services in the Member States responsible for issuing vehicle registration certificates, which was adopted in 2006⁹².

Currently, the Schengen States continue to rely on the old SIS 1+. SIS II will become operational once all the relevant tests have been completed, in accordance with the founding Council decision and regulation. Two Council Decisions⁹³ were adopted to extend the period of the Commission's mandate for developing SIS II until 31 December 2008. In addition, the Commission submits a progress report every six months to the Council and the European Parliament on the development of SIS II⁹⁴. A Council regulation⁹⁵ and a Council decision on the migration from the SIS 1+ to the SIS II⁹⁶ were also adopted in 2008. Migration to SIS II can take place only after completion of all the technical steps necessary, including further testing with the Member States.

The legal instruments governing SIS II were completed by the adoption by the Commission of the SIRENE Manual and other implementing measures for the SIS II in 2008⁹⁷.

⁸⁹ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.09.2000, p. 19.

⁹⁰ Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 381, 28.12.2006, p. 4.

⁹¹ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II), OJ L 205, 7.8.2007, p. 63.

⁹² Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates, OJ L 381, 28.12.2006, p. 1.

⁹³ Council Regulation (EC) No 1988/2006 of 21 December 2006 amending Regulation (EC) No 2424/2001 on the development of the second generation Schengen Information System (SIS II), OJ L 411, 30.12.2006, p. 1 and Council Decision 2006/1007/JHA of 21 December 2006 amending Decision 2001/886/JHA on the development of the second generation Schengen Information System (SIS II), OJ L 411, 30.12.2006, p. 78.

⁹⁴ COM(2009) 133 final, Progress Report July – December 2008; COM(2008) 710 final, Progress Report January 2008 – June 2008; COM(2008) 239 final, Progress Report July – December 2007; SEC(2008) 35, Progress Report January - June 2007; SEC(2007) 408, Progress Report January - December 2006.

⁹⁵ Council Regulation (EC) No 1104/2008 of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II), OJ L 299, 8.11.2008, p. 1.

⁹⁶ Council Decision 2008/839/JHA of 24 October 2008 on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II), OJ L 299, 8.11.2008, p. 43.

⁹⁷ Commission Decision 2008/334/JHA of 4 March 2008 adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II), OJ L 123, 8.5.2008, p. 39.

In 2008, the Regulation on the Visa Information System (VIS)⁹⁸ and a Council Decision concerning access for consultation of the VIS⁹⁹ were adopted. Once operational, the VIS will allow more accurate checks at external border crossing points and within the territory of the Member States with the use of biometrics. It will also help to identify any person who may not, or may no longer, fulfil the conditions for entry to and short stay on the territory of the Member States.

VIS will start operations with biometrics from the outset. Following the political agreement on the VIS legal instruments, a new project schedule has been drawn up, taking account of biometrics and the finalised legal requirements. In the latter part of 2008, Member States requested new guidelines on VIS, adding 6 additional months to VIS planning and postponing the availability of the system for operations to December 2009. The date for the start of operations will depend on the readiness of the Member States.

Following the success of Eurodac, the Commission implemented a Biometric Matching System (BMS) to be used in VIS. The BMS was built using commonly available standards to enable seamless integration with other automated fingerprint identification systems.

In accordance with the regulation and the decision on the SIS II and with the regulation on the VIS, the Commission is entrusted with the operational management of these information systems during a transitional period. In joint statements accompanying the SIS II and VIS legal instruments¹⁰⁰, the European Parliament and the Council called on the Commission to make a substantive analysis of alternatives from a financial, operational and organisational perspective through an impact assessment, and to present the necessary legislative proposals to entrust an agency with the long-term operational management of the Central SIS II, the VIS and parts of the Communication Infrastructure. The Commission is expected to present in 2009 the legislative proposals to entrust an agency with the long-term operational management of the Central SIS II, VIS and parts of the Communication Infrastructure. At a later stage or in parallel, the Agency could potentially be given responsibility for other large-scale IT systems in the area of freedom, security and justice.

To ensure compliance with the Schengen *acquis* in its entirety, the Hague Programme had provided for the modernisation of the Schengen evaluation mechanism with regard to those states already fully applying the Schengen *acquis* in full. The proposals, covering the whole of the Schengen *acquis*, were adopted by the Commission in early 2009¹⁰¹, and will mark the full integration of the Schengen *acquis* into the Community framework.

⁹⁸ Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation), OJ L 218, 13.8.2008, p. 60.

⁹⁹ Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences, OJ L 218, 13.8.2008, p. 129.

¹⁰⁰ Joint statement 235/06 on the long-term management of SIS II and VIS.

¹⁰¹ COM(2009) 102 final, Proposal for a Council Regulation on the establishment of an evaluation mechanism to verify the application of the Schengen *acquis* and COM(2009) 105 final, Proposal for a Council Decision on the establishment of an evaluation mechanism to monitor the application of the Schengen *acquis*.

The second fundamental component of the border management policy consisted of establishing the Frontex Agency for the coordination of operational cooperation between Member States¹⁰². Four years after its establishment, the Agency is fully operational and the reasons for setting it up are still perfectly valid, as the 2008 evaluation showed¹⁰³. The 2009 external evaluation of FRONTEX¹⁰⁴ confirms the positive results achieved by the Agency in respect of the main objectives set in the founding regulation. The regulation setting up the Rapid Border Intervention Teams (RABIT) and extending the powers of guest officers taking part in joint Frontex operations was adopted in 2007¹⁰⁵. While the preparatory measures for setting up the teams and a number of exercises have been completed, no Member State has as of yet requested the deployment of such teams.

Cooperation between the Member States has dramatically grown since the establishment of the Frontex Agency. As just one example, the total number of days of joint operations has gone up from 613 in 2007 to 1,922 in 2008. In 2006 and 2007, Frontex conducted 33 joint operations and 10 pilot projects, with a further 28 operations and projects in 2008. The duration of these operations is limited, some lasting a week, others several months. Because they were short-term, operations conducted in high risk areas in 2006 and 2007 were not sufficient to ensure effective border control and surveillance, due largely to the lack of human and financial resources. As a result, joint operations need to be more permanent in nature (throughout the year) in specific high-risk areas. Moreover, participation with equipment such as vessels and aircrafts is limited, with only 2-3 Member States providing such equipment for individual operations. The example of the "Hera" operation, off the Canary Islands, demonstrates that the efficiency of Frontex operations is greatly enhanced if combined with proactive cooperation with third countries¹⁰⁶, and that further efforts are needed in this domain with regard to other exposed regions at the southern maritime borders.

The Frontex regulation stipulates that the Agency "shall provide the necessary assistance for organising joint return operations of Member States". The Agency has provided this kind of assistance on 28 occasions over the past two years (2007-2008), involving a total of 1,229 returnees. These low figures illustrate that there is a lack of return operations involving the Agency and that most of the return operations are organised by the Member States on a

¹⁰² Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ L 349, 25.11.2004, p. 1.

¹⁰³ COM(2008) 67 final.

¹⁰⁴ Frontex, "External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union", available at: http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvZW4vZGVmYXVsdF9vcGlzeS82Mi8xLzE/cowi_report_final.doc.

¹⁰⁵ Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers, OJ L 199, 31.7.2007, p. 30.

¹⁰⁶ 18 working arrangements have been concluded with Third Countries and International Bodies (Switzerland, Croatia, Russia, Ukraine, Moldova, Georgia, UHNCR, IOM, Europol, FYROM, Albania, Serbia, CEPOL, Bosnia-Herzegovina, the United States, Interpol, ICMPD and Montenegro), negotiations with Cape Verde and Turkey are ongoing and in 6 cases a mandate for negotiating working arrangements has been given but negotiations have not started yet (Senegal, Mauritania, Libya, Egypt, Brazil and Belarus).

bilateral basis with third countries, or in a joint effort undertaken by a group of Member States. In those cases Frontex was not involved in those cases.

It should be stressed in this context that management of the Union's southern external border has taken on a much greater priority than anticipated at the time of the launch of the Hague Programme, due to increasing migratory pressure, using mainly unseaworthy means and putting migrants' lives at risk. The Commission responded with a series of measures, in particular to reinforce Frontex. Its budget dramatically rose and is already beyond the initial forecasts of the financial perspectives. For example, the 2008 budget was € 70 million, which is as high as the 2013 budget initially foreseen for the Agency.

Migratory pressure is expected to continue, especially at the southern borders, although attention should be paid to displacement effects. The tragic side of these flows, with a number of persons drowning at sea before even being detected and rescued, must be further addressed: this is primarily a humanitarian issue, and only secondly a border surveillance issue.

The Commission also issued a study on the international law instruments in relation to illegal immigration by sea¹⁰⁷. The study analyses the current legal framework for the exercise of control and surveillance powers at the maritime external border, as well as the main obstacles to the effective exercise of that surveillance, and suggests solutions that could involve, if necessary, the adoption of instruments amending or complementing the existing legal framework.

The third fundamental component of the border management policy consisted of launching the External Borders Fund¹⁰⁸, this policy area being supported with substantial financial means and giving a real meaning to the principles of solidarity and burden-sharing between Member States. It supports Member States with specific requirements regarding checks and surveillance of long or difficult stretches of external borders, or with special and unforeseen circumstances due to exceptional migratory pressures at their external borders. The annual resources available under the fund will rise from € 170 million in 2007 to € 481 million in 2013, making a total amount of € 1.82 billions. Since it was only launch recently, it is too early to assess the actual impact of this programme. An intermediate evaluation of the fund is planned in 2010.

III. Future challenges

Quantifying the situation with regard to external and internal borders is by its nature difficult. Passenger flows within the Union cannot be estimated due to the very fact that border controls have been abolished. However, its symbolic importance in unifying Europe cannot be underestimated, as witnessed by the Schengen enlargement to nine of the new Member States that joined in 2004.

At the external borders, passenger flows are influenced largely by economic factors: business trips and tourism generally increase or decrease depending on the overall economic situation

¹⁰⁷ SEC(2007) 691.

¹⁰⁸ Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows, OJ L 144, 6.6.2007, p. 22.

worldwide. No systematic collection of data is carried out by Member States, but an estimated total of close to 900 million external border crossings took place in 2006. However, the experience of the United States appears to indicate that overly cumbersome procedures for obtaining visas and for crossing the borders can stifle people flows and the EU will need to pay further attention to this issue in the future.

Flows have been growing in the recent years and are likely to increase. Taking into account the forecasts for international travel and how it is likely to develop in the medium term, the current infrastructure at border crossing points will have to be adapted to the growing number of travellers, which can only be dealt with through new systems and procedures or through considerable investment in physical infrastructure and human resources. The largest number of crossings of external border occurs at airports. Land border crossing points are the next most frequently used type of border crossing.

In 2008 the Commission presented a "border package" consisting of three communications on Frontex¹⁰⁹, on the establishment of a European Border Surveillance System (Eurosur)¹¹⁰ and on next steps in border management, including an entry/exit system and a registered traveller's programme¹¹¹. The Council welcomed the package in its conclusions of 5-6 June 2008¹¹². The first priority in the future will therefore be to ensure the follow-up to this package.

The main objective will remain to consolidate the area without internal border controls, by ensuring a high level of security at the external borders, while facilitating smooth and fast border crossings for legitimate travellers (EU citizens and third-country nationals alike) and guaranteeing solidarity and a fair share of responsibility between Member States. These new systems must at the same time also guarantee more security for citizens and a high level of protection of privacy. Technological developments and FRONTEX can provide extremely constructive support.

The steadily increasing role of technology and the gradual establishment of new IT tools may call for a more in-depth look at whether the EU should equip itself with an overarching e-borders strategy to provide a framework at European level for further developments and to promote interoperability and cost-efficiency. Making full use of all IT resources available, better coordination between the various European systems and ensuring the compatibility of national systems should be priorities for the future. In the longer run, how to coordinate and enhance more effectively the activities of the different authorities at the borders (especially customs and border control) should be considered.

¹⁰⁹ See footnote 129.

¹¹⁰ COM(2008) 68 final.

¹¹¹ COM(2008) 69 final.

¹¹² Council document 9956/08, p. 34, adopting Council document 9873/08.

3.4. Integration of third-country nationals

I. Objectives

In the area of **integration of third-country nationals**, the Hague Programme called for the establishment of a coherent European framework for integration, based on common principles that should form the foundation for future initiatives in the EU. It also underlined the need for greater coordination and exchange of experiences on national integration policies, and EU initiatives that should also be supported by an openly accessible website.

II. Main developments

A set of Common Basic Principles (CBPs) were adopted by the Council in November 2004¹¹³ to underpin a coherent European framework for the integration of third-country nationals. These should help Member States to formulate integration policies by offering them a guide against which they can judge and assess their own efforts.

The 2005 Communication "A Common Agenda for Integration – Framework for the Integration of Third-Country Nationals in the European Union"¹¹⁴ provided a coherent common EU framework for integration. It contained proposals for concrete measures to put the CBPs into practice, together with a series of EU support mechanisms, such as a network of National Contact Points; a Handbook on Integration for Policy-Makers and Practitioners; an Integration website, which has been set up to maintain an inventory of good practices; a European Integration Forum; and Annual Reports on Immigration and Integration. The Council approved this proposed framework and agenda in December 2005¹¹⁵, which have since formed the generally recognised framework for further activities in the area of integration at EU level.

The European Fund for the Integration of third-country nationals was established in 2007¹¹⁶. € 825 million is allocated for the period 2007-2013. The purpose of the fund is to support integration policies and measures in the Member States. It is too early to assess the impact of this fund; an intermediate evaluation is planned in 2010.

Work on an EU Integration Forum and on an EU website on integration (EWSI) started in 2006. They were both completed in April 2009, when the first official meeting of the EU Integration Forum was held and the EWSI went on-line and became publically accessible¹¹⁷. In 2006¹¹⁸ and 2007¹¹⁹ two annual reports on integration were adopted and two Ministerial Conferences on Integration took place (Potsdam in 2007 and Vichy in 2008). Finally, two

¹¹³ Council document 14615/04, p. 15.

¹¹⁴ COM(2005) 389 final.

¹¹⁵ Council document 14390/05, p. 36.

¹¹⁶ Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme Solidarity and Management of Migration Flows, OJ L 168, 28.6.2007, p. 18.

¹¹⁷ <http://ec.europa.eu/ewsi/>.

¹¹⁸ SEC(2006) 892.

¹¹⁹ COM(2007) 512 final.

editions of the "Integration handbook for policy-makers and practitioners" were published in 2004 and 2007¹²⁰ and the third edition will be presented in 2009.

III. Future challenges

The Communication on Common Immigration Policy for Europe, the European Pact on Immigration and Asylum and the Declaration of the Vichy Ministerial Conference of November 2008 (which were subsequently endorsed by the Council as Council conclusions¹²¹) laid down the basic principles and guidelines for the further development of the EU's common policy in the area of immigration and integration.

In 2007, 18.8 million third-country nationals were resident in the EU27, 3.8% of the total population¹²². Although a growing number of Member States recognise the vital importance of integration policies, which fall within their competence, and despite the increasing supporting role played by the EU, many integration challenges remain.

Mainstreaming integration has become an integral part of policy-making and implementation across a wide range of EU policies. However, effective sharing of information and coordinating with all tiers of authorities and stakeholders are still major challenges. Monitoring and evaluation of integration policies and programmes and identification of specific indicators have so far not been sufficient.

The integration of immigrants into the labour market is still a major challenge. The average educational attainment of non-nationals is generally substantially lower than that of nationals. In addition, improving immigrants' knowledge of the host society and of its language remains a major challenge.

More should be done to ensure that all residents, including immigrants, understand, respect, benefit from and are protected on an equal basis by the full range of values, rights, responsibilities and privileges established by the EU and Member States' laws. Future challenges therefore also include issues measures targeting the host society, prevention of alienation, developing common modules for the integration process and, above all, a systematic assessment of national integration policies.

All this argues in favour of continuing work on the implementation and development of the Common Agenda for Integration, namely by consolidating the mainstreaming approach and establishing measures to provide further incentives and support for Member States' action to promote integration.

¹²⁰ Available at:
http://ec.europa.eu/justice_home/doc_centre/immigration/integration/doc_immigration_integration_en.htm.

¹²¹ Council document 16325/1/08 rev 1, p. 19, adopting Council document 15251/08.

¹²² See footnote 102.

3.5. Visa policy

I. Objectives

The common visa policy is an essential flanking measure which is needed to maintain the integrity of an area without internal border controls and ensure a high level of security at the external borders while facilitating legitimate travel and tackling illegal immigration of third-country nationals required to hold a visa for short stays within the Schengen area. A coherent EU approach and harmonised solutions based on biometric identifiers were considered necessary to achieve this objective.

II. Main developments

Fundamental components of the EU's common visa policy were established in the period 2004-2009. As previously mentioned, the legislative framework for the implementation and operation of the VIS was adopted in 2008¹²³. As a system for the exchange of visa data between Member States, the VIS will support the implementation of the common visa policy and, for example, facilitate checks at external border crossing points.

As regards the widespread use of biometric identifiers, the Council has adopted the introduction of facial image and two fingerprints in residence permits for third country nationals¹²⁴ and in Member States' passports and other travel documents (except identity cards) with a validity of more than 12 months¹²⁵. Regarding the latter, in 2007 the Commission adopted a proposal for amending the regulation with the purpose of updating standards for security features and biometrics in passports and travel documents issued by EU Member States and harmonising exceptions to the general obligation to provide fingerprints for the travel documents issued by the Member States (will be exempt from the requirement to give fingerprints persons who are physically unable to give fingerprints and, on a provisional basis, children under the age of 12 years)¹²⁶. The amendment to the regulation has been approved by the Council in 2009¹²⁷.

In 2006, the Commission adopted a proposal to create the legal basis for Member States to take mandatory biometric identifiers (the facial image and ten flat fingerprints) from visa applicants and to provide a legal framework for Member States' consular offices to implement the VIS¹²⁸. In addition to the existing form of representation, the proposal aimed to create new forms of consular offices: limited representation, co-location and common application centres. Moreover, it provided for a legal framework for outsourcing the receipt of visa applications to external service providers. Political agreement on this proposal has been reached and formal adoption is expected in 2009.

¹²³ See footnotes 123-124.

¹²⁴ Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals, OJ L 115, 29.4.2008, p. 1.

¹²⁵ Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ L 385, 29.12.2004, p. 1.

¹²⁶ COM(2007) 619 final.

¹²⁷ Not yet published on the OJ.

¹²⁸ COM(2006) 269 final.

The Common Consular Instructions were recast and incorporated together with all legal instruments governing the conditions and procedures for issuing visas into the proposed Code on visas¹²⁹, thereby enhancing transparency and clarifying existing rules, introducing measures intended to increase the harmonisation of procedures, and increasing legal certainty and procedural guarantees.

The Commission has negotiated visa facilitation agreements with Russia, Ukraine, Moldova, Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Serbia and Montenegro. These agreements provide for simplification of the visa procedures for citizens of these countries wishing to travel to the EU for short stays. The agreements entered into force in June 2007 with Russia and in January 2008 with all the other countries.

The "visa reciprocity" reports published by the Commission¹³⁰ take stock of the approaches made to ensure that the citizens of all Member States can travel without a short-stay visa to all third countries whose nationals can travel to the EU without a visa. Full visa reciprocity has been achieved with Costa Rica, Israel, Malaysia, Mexico, New Zealand, Nicaragua, Panama, Paraguay, Singapore, Uruguay and Venezuela. Major progress has also been achieved with Australia, Brunei, Canada and the United States. However, no progress has been achieved with Japan in relation to the visa requirement for Romanian citizens. Negotiations on a visa waiver agreement are ongoing with Brazil.

One of the outstanding measures envisaged by the Hague programme was the proposal to create common visa application centres, presented in 2006¹³¹. The new arrangements on consular cooperation on common application centres, which is expected to be adopted in 2009, could be a first step towards an enhanced common visa policy with common visa offices, without prejudice to the future European External Action Service. Without awaiting the adoption of this new legislation, two common application centres have already been set up as pilot projects (one by Hungary in Moldova and one by Slovenia in Montenegro). Others centres will be financed as Community projects under the External Border Fund.

Some of these measures will only be implemented towards the end of 2009, including the start of operations of the VIS (the gradual regional "roll-out" will take at least two years, before all the consulates of the Member States are connected to this new system), the Visa Code and the Instructions on the practical application of the Code.

III. Future challenges

The lists of third countries under the visa obligation and those exempted from that requirement should be regularly revised in the light of the assessment of the risks of illegal immigration, internal security and the results of the ongoing visa dialogues with certain third countries.

The VIS will need to be put into effect, as will the new arrangements provided by the regulation amending the Common Consular Instructions concerning biometrics in the visa-

¹²⁹ COM(2006) 403 final.

¹³⁰ Four "reciprocity reports" have been published: COM(2006) 3 final; COM(2006) 568 final; COM(2007) 533 final; COM(2008) 486 final/2.

¹³¹ See footnote 155.

issuing procedure, consular organisation and cooperation and the Visa Code. A common curriculum for the training of consular staff on the rules and procedures for issuing visas could be considered.

The external aspects of the common visa policy should also be further developed through the conclusion, where appropriate, of new agreements on visa facilitation and on the exemption from visa obligation. Additionally, efforts should be made to promote initiatives designed to create common application centres or to encourage Member States to conclude representation arrangements.

In the long term, the implementation of the enhanced harmonisation provided by the Visa Code and the development of the different forms of consular cooperation should be assessed, with a view to developing a system for European short-stay visas

3.6. External dimension of asylum and migration

I. Objectives

The Hague Programme objectives regarding the external dimension of asylum and migration focused on establishing partnerships with third countries. The EU policy sets out to help third countries in full partnership using existing Community funds, in their efforts to improve their capacity for migration management and refugee protection; to prevent and combat illegal immigration; to provide information on legal channels for migration; to resolve refugee situations through durable solutions; to enhance the capacities of third countries to build their asylum systems; to build border-control capacity; to enhance document security; and to tackle return and readmission.

The Programme also called on the EU to continue the process of fully integrating migration into the EU's existing and future relations with third countries, intensifying cooperation and capacity building with third countries at the southern and eastern borders of the EU, and developing policies that link migration and development cooperation, including the integration of migration into the Country and Regional Strategy Papers of all relevant third countries.

II. Main developments

Achieving the objectives in the external dimension of asylum and migration has been mainly carried out through the Global Approach to Migration, which was adopted in 2005¹³² to establish an inter-sector framework to manage migration coherently through political dialogue and close practical cooperation with third countries.

Cooperation with third countries in the area of asylum was boosted by the progressive implementation of Regional Protection Programmes (RPPs), first proposed by the Commission in a Communication in 2005¹³³. Two pilot RPPs were set up in two regions: Tanzania (as part of the Great Lakes region in Africa) and the Western Newly Independent States (Ukraine, Moldova and Belarus). In parallel, the Commission and the Member States have been working towards the creation of a joint EU voluntary resettlement scheme with the aim to ensure access to protection in Europe especially for vulnerable cases, and to enhance the impact of RPP in the regions. The first tangible result of this was the commitment by the Council in December 2008 to resettle in the EU about 10,000 Iraqi refugees from Jordan and Syria¹³⁴. Concrete proposals on a joint resettlement scheme will be made by the Commission in July 2009. The pilot RPPs are currently being evaluated and the results will be available before summer 2009. In the light of the pilot experience, the Commission will consider expanding RPPs to other regions.

¹³² Council document 15914/1/05 rev 1, Presidency Conclusions of the 15-16 December 2005 Brussels European Council.

¹³³ COM(2005) 388 final.

¹³⁴ Council document 16325/1/08 rev 1, p. 23.

In the period 2005-2008, the Global Approach was the subject of four specific Commission Communications¹³⁵ and it was also covered by several specific and thematic communications.

The Global Approach to migration was gradually integrated into the EU's external policies with the aim to address migration and asylum issues in a comprehensive and balanced manner. The European Union gradually developed and defined the Global Approach, which was both thematic and geographical in scope and incorporated a number of innovative tools.

Initially applying the concept of "migratory routes", the Global Approach first focused on the South, and particularly on Sub-Saharan Africa. New forms of dialogue and cooperation were established, both at ministerial and practitioners level, which had hardly existed before. Migration was included in the political dialogue and cooperation with third countries, such as the Rabat Process, the EU-Africa Partnership on Migration, Mobility and Employment, Euromed and Regional and Country Strategy Papers. In 2007, the Global Approach was extended to the Eastern and South-eastern regions neighbouring the European Union, with consideration to certain Middle Eastern and Asian countries of origin along the migratory routes. Achievements in these regions were less visible since the Global Approach priorities for these regions were in line with already established cooperation frameworks, such as the European Neighbourhood policy, the pre-accession strategy and the enlargement process. The Global Approach to migration also inspired the EU/Latin American-Caribbean dialogue on migration called for by the Lima Summit in May 2008.

Thematically, the Global Approach has three key priorities: managing legal migration more effectively, preventing and reducing illegal migration, and promoting the positive and curbing the negative aspects of the relation between migration and development.

In terms of migration and development, much has been done to encourage a positive impact on development from the transfers of migrants' remittances: reducing transfer costs, engaging diaspora members in development, sharing information on legal migration opportunities and exploring circular migration, facilitating migration observatories and reducing the negative effects of the brain drain, in particular regarding healthcare professionals.

As regards labour migration and mobility, the EU has supported third countries' efforts to better manage legal migration. This has taken the form of strengthening the capacities of the national services or of autonomous centres responsible for informing and counselling potential migrants and/or their nationals abroad and exploring ways of developing labour-matching mechanisms and circular migration schemes. Much has also been achieved in the fight against illegal immigration through assistance for strengthening border management in third countries, enhancing capacity building for border guards and migration officials, developing the use of biometric technologies and making travel and identity documents more secure, informing on the risks related to irregular migration, supporting the improvement of reception conditions, fighting against trafficking and smuggling of human beings, and setting up an Immigration Liaison Officers Networks. Progress in this regard is described in three annual reports on a common policy on illegal immigration¹³⁶. As called for by the Council, a Commission Special Representative for a common readmission policy was appointed in 2005.

¹³⁵ COM(2005) 621 final, COM(2006) 735 final, COM(2007) 247 final/2 and COM(2008) 611 final.

¹³⁶ SEC(2004) 1349, SEC(2006) 1010 and SEC(2009) 320.

Since 2004, 11 readmission agreements have been concluded and have entered into force: Hong Kong, Macao, Sri Lanka, Albania, Russian Federation, Montenegro, the former Yugoslav Republic of Macedonia, Serbia, Bosnia and Herzegovina, Ukraine and Moldova. Negotiations with Pakistan were successfully completed in September 2008 and the agreement is in the process of ratification by both sides. The negotiations with Morocco and Turkey are still ongoing while the negotiations with China and Algeria have not been initiated yet due to the refusal to engage from those two countries. The Commission also presented recommendations to the Council for obtaining negotiating guidelines for readmission agreements with Cape Verde.

The tools of the Global Approach to migration have also been developed. These tools include migration missions, mobility partnerships, cooperation platforms, circular migration and migration profiles. While the tools still need to be further developed and made broadly known among partners and stakeholders, they translate into a promising overall framework for external migration cooperation. In addition, a more innovative approach to readmission agreements, linking them to these tools and to clear political leverage that can be obtained with a more flexible visa policy, could further increase the rate of success.

The most promising tool – mobility partnerships – brings all migration and asylum-related issues together in a package deal with third country partners, in which Member States can participate on a voluntary basis. This mechanism is still in an early exploratory phase, and will need to be further tested. Pilot mobility partnerships were agreed in June 2008 between Moldova and 15 Member States and between Cape Verde and 5 Member States; the Commission has subsequently been requested, together with the Council Presidency and interested Member States, to take exploratory talks forward with Senegal and Georgia.

Cooperation with third countries has been facilitated by a number of EU financial instruments. More than 100 projects were co-funded under the AENEAS programme and 54 new ones are now funded under the Thematic Programme of cooperation with third countries in the areas of migration and asylum. In addition, the "solidarity and management of migration flows" financial programme also addresses issues relating to return and readmission.

Other funds were provided through the geographic instruments, such as the MEDA, CARDS and the TACIS programmes, now replaced by the European Neighbourhood and Partnership Instrument (ENPI), the European Development Fund (EDF) for Africa, the Caribbean and the Pacific region and the Development Cooperation Instrument (DCI) for South Africa, the Middle east and Asian countries not covered by the ENPI, and Latin America.

Mobilisation of the various sources of funding was of key importance to achieving the objectives set by the Hague programme. There is thus a need to consider how best to combine in future these various resources in future (including funding from EU Member State and other outside sources).

III. Future challenges

Overall, the various instruments and tools of the Global Approach to Migration will need to be further consolidated as part of a comprehensive and balanced political and institutional framework of dialogue and cooperation. One of the main institutional challenges will be to integrate migration more deeply into the overall external relations of the European Union and the Member States. Another important challenge is to enhance the methods through which

development cooperation funding are used for migration-related initiatives, in particular with regard to their compliance with DAC/ODA criteria. Migration will also need to be integrated in a sustainable and coherent manner into other policy areas, such as trade, agriculture, employment, research and education and continue to be further integrated into development policy.

The Commission, the Member States and third-country governments should further enhance their capacity to implement the large number and diverse range of migration cooperation initiatives. Close coordination and synergies are crucial in order to ensure complementarity and avoid duplication of work.

New issues and challenges need to be tackled systematically. These include the long-term changes in the relationships between the European Union and other world regions that may affect migration and mobility, the effects of global population ageing and demographic challenges, global labour market dynamics and the changing power balances through emerging markets and new major players, recurrent political and economic crises, climate change and migration.

4. STRENGTHENING SECURITY

4.1. Improving the exchange of information

I. Objectives

The Hague Programme underlined the importance of strengthening security as part of a major general programme to set up an area of freedom, security and justice. To this end, the programme called for an innovative approach to the cross-border exchange of law enforcement information. It identified the "principle of availability" as the guiding principle to achieve this goal, while fully protecting fundamental rights, such as the right to protection of personal data. In particular, the Programme set out a number of specific actions including the retention of electronic communications data, simplifying the exchange of information and criminal intelligence between law enforcement authorities of the Member States, and exchange of information in specific areas such as DNA and fingerprints. The Action Plan also identified the exchange of Passenger Name Record (PNR) data as a specific means of strengthening security.

II. Main developments

The information-sharing priorities identified in the Hague Programme led to the adoption of a number of legislative instruments and international agreements, of which the main ones are listed below.

Principle of availability

The "principle of availability" implies that a law enforcement officer from one Member State can obtain information in the course of his duties from another Member State, and that a law enforcement agency in another Member State will make that information available for the stated purpose.

In 2005, the Commission adopted a proposal for a Framework Decision on the exchange of information under the "principle of availability"¹³⁷. It laid down an approach whereby information, wherever available in the EU, can be obtained by law enforcement officials to exercise their tasks under the same conditions as their peers in the Member State that controls the information. However, the proposal was never adopted by the Council, as it coincided with the Prüm Treaty, which establishes meaningful (albeit less wide) forms of online access to data, and in particular the intention of its signatories to bring this Treaty within the framework of the EU.

Exchange of information in specific areas (Prüm package)

¹³⁷ COM(2005) 490 final.

Hence, the Commission supported the initiative of Germany¹³⁸ and other signatories of the Prüm Treaty to transform the Treaty into a Council decision, which was adopted in 2008¹³⁹ after political agreement was reached in a record time within the Council in June 2007.

The Prüm Decision established the possibility for law enforcement authorities to gain direct access on a "hit/no-hit" basis to decentralised DNA and fingerprint databases, enabling them to find out whether DNA or fingerprint records exist, and to have full online access to vehicle registration databases. The Prüm Decision is a general framework that needs to be implemented by further measures, as laid down in the accompanying implementing decision¹⁴⁰. In addition, the Commission carried out preparatory work and analysis on the establishment of an EU Criminal Automated Fingerprint Identification System (CAFIS). This kind of system could support and add to the Prüm approach, in particular with a view to expanding the exchange of fingerprint data to all 27 Member States, where a centralised system would be more effective and simpler to use. Europol has set up a pilot project with 4 to 5 Member States to demonstrate the validity of the concept.

Simplifying the exchange of information and criminal intelligence (Swedish Initiative)

The above-mentioned proposal for a Framework Decision on the implementation of the "principle of availability" was drafted against the background of a legislative initiative that Sweden presented in 2004 to simplify the exchange of information and intelligence¹⁴¹. This so-called "Swedish initiative" was adopted by the Council in 2006¹⁴² and had to be implemented by 19 December 2008. This instrument replaces the information exchange on the basis of articles 39 and 46 of the Schengen Convention, introduces an obligation to answer a request for information even if there is no information to be provided, and makes it possible to streamline procedures that require intervention by judicial authorities.

Because the Prüm package and the "Swedish initiative" were only recently adopted, it is too early yet to assess the impact on the exchange of information between Member States under the "principle of availability". The "Swedish initiative" is in the process of being implemented and its impact on enhancing information exchange between Member States can only be fully assessed in the years to come.

¹³⁸ Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision 2007/.../JHA of ... on the implementation of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ C 267, 9.11.2007, p. 4.

¹³⁹ Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, p. 1.

¹⁴⁰ Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border, OJ L 210, 6.8.2008, p. 12.

¹⁴¹ Initiative of the Kingdom of Sweden with a view to adopting a Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, in particular as regards serious offences including terrorist acts, OJ C 281, 18.11.2004, p. 5.

¹⁴² Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006, p. 89.

As a result of the Prüm Decision and the "Swedish initiative", the Council revived the ad-hoc group on information exchange, giving it a mandate to discuss implementation of those instruments. Member States are considering extending the mandate of this group to discuss the wider issue of information exchange in the area of police and judicial cooperation. Within this group, the Commission will monitor and participate in the implementation of the Prüm Decision and the "Swedish initiative" in the years to come.

Access to visa data (Visa Information System)

The Council decision laying down the conditions under which Member States' authorities responsible for internal security and Europol may access the VIS¹⁴³ was in response to the Council conclusions on this issue of March 2005¹⁴⁴. Member States' authorities responsible for internal security are given access to the VIS in the course of their duties in relation to the prevention, detection and investigation of criminal offences, including terrorist acts and threats, subject to compliance with the rules governing the protection of personal data.

Because the VIS package was only recently adopted, it is too early yet to assess its impact on the exchange of information between Member States as part of the "principle of availability".

Protection of personal data¹⁴⁵

In 2005, the Commission submitted a 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. This proposal for a framework decision was adopted in 2008¹⁴⁶ and is in response to the increased exchange of information between EU Member States, notably under the "principle of availability", and to more requests from Member States for law enforcement agencies to have access to immigration databases. The framework decision seeks to strike a balance between the necessary investigative tools of law enforcement in the fight against serious crime and the necessary protection of the private sphere of citizens.

This instrument is applicable to cross-border exchanges of personal data as part police and judicial cooperation. Member States have to implement the instrument within a period of two years following its adoption in November 2008; hence it is too early yet for an assessment.

Because of the sensitivity of access to and use of personal data by law enforcement authorities, and also because this is the first instrument regulating this issue EU-wide, particular care has to be given to how it is implemented.

The Commission will present an evaluation report five years after adoption of the instrument, which will allow sufficient experience to be gained with application of the instrument within the EU. One of the important issues to be looked at will be whether this instrument should be applied also in future to domestic handling of personal data, its current scope being limited to cross-border data exchange.

¹⁴³ See footnote 124.

¹⁴⁴ Council document 6811/05, p. 15.

¹⁴⁵ On data protection in general, see section 2.1.

¹⁴⁶ Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

Access to commercial data

Data collected for commercial purposes that contain real-time and other information about travel and other trends have been identified by law enforcement agencies in the EU as providing additional information to help them in preventing and investigating terrorism and other serious crime. Similar trends can be observed outside the EU. So far three types of commercial data have been identified as enhancing law enforcement's capacity to protect the EU's internal security more effectively.

Retention of electronic communications data

Following the Madrid bombing, the EU identified the collection of electronic communications data as a means of stepping up its internal security. Hence, the Action Plan required a legislative instrument to be adopted 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.

The Data Retention Directive¹⁴⁷ was adopted in 2006 following a Commission proposal¹⁴⁸, and largely harmonised Member States' provisions on the processing and retention of electronic communications traffic and location data, to the effect that data can be made available to police and judicial authorities for the purpose of the prevention, investigation, detection and prosecution of serious crime. It requires Member States to oblige providers of public electronic communications services and networks to retain communications traffic data for a minimum of 6 months and a maximum of 2 years.

To date, all but 4 Member States have transposed the Directive. Member States had the right to opt to delay implementation of the directive's provisions relating to Internet access, Internet telephony and internet e-mail until 15 March 2009. Eighteen Member States have elected this option. The directive is at an advanced stage of implementation, but its impact on enhancing security can only be fully assessed in the years to come because of the complexity of the retention of data, especially data transmitted via the Internet.

The recitals to the directive implicitly acknowledge that a number of areas addressed by the directive will require further clarification, not least due to rapidly developing technologies. For this reason, the Commission set up a data retention experts group, which met for the first time in 2008.

The Commission will continue to seek the advice of the experts group and work closely with Member States to ensure that this instrument has a positive effect on the instruments available to law enforcement authorities without jeopardising the functioning of the internal market and without impinging on data protection. An evaluation report by the Commission on the application of the directive and its impact on operators and consumers is scheduled for September 2010.

¹⁴⁷ 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, p. 54.

¹⁴⁸ COM(2005) 438 final.

Access to Passenger Name Record data

The Hague Programme asks the Commission “to bring forward a proposal for a common approach to the use of Passenger Name Records for law enforcement purposes”. A coherent legal framework is needed at EU level regarding the obligation of air carriers to transmit passenger information to the relevant law enforcement authorities for the purposes of the prevention, investigation, detection and prosecution of organised crime and terrorism.

Following an in-depth impact assessment, the Commission submitted a proposal for a Framework Decision in 2007¹⁴⁹, which covers only international air travel. This instrument is still being discussed within the Council.

Access to financial transactions data

In June 2007, the United States Treasury Department gave a set of Representations to the European Union in which the Treasury Department undertook to process EU-originating data accessed from SWIFT by virtue of the US Treasury's Terrorist Finance Tracking Programme (TFTP). The Representations established that SWIFT data will be processed exclusively for the fight against terrorism, that such data will be deleted where they are no longer necessary for the fight against terrorism and that in any event they will not be retained for longer than specified periods. The United States also accepted that the Commission may appoint an "eminent European person" to verify its compliance with these unilateral commitments. The Commission designated the former French counter-terrorism Judge Jean-Louis Bruguière for this role. Judge Bruguière completed his first report in December 2008, which demonstrates that the United States Treasury Department has implemented effective controls and safeguards which ensure protection of personal data subpoenaed for the purpose of the TFTP Representations. Following his review of the TFTP and its privacy-related safeguards, Judge Bruguière formulated a series of recommendations to ensure that these measures are continued and, where possible, enhanced. As a result of the information Judge Bruguière had had access to during discussions with the US Treasury Department, it can be concluded that since its inception the TFTP has been and continues to be of significant value in the fight against terrorism in the United States, in Europe and beyond.

Strengthening external action

EU-US PNR agreements

In 2005, an EU team undertook a review of the 2004 PNR agreement with the United States on the transfer of PNR data. The EU team concluded that the US authorities had applied the agreement satisfactorily, in particular their Undertakings to processing PNR data from the EU under certain conditions, and made a number of recommendations.

Following the ruling of the Court of Justice of May 2006¹⁵⁰, in which the Court annulled the Council and Commission decisions (2004/496/EC and 2004/535/EC) allowing the 2004 agreement to enter into force, the EU decided to negotiate an interim agreement, which

¹⁴⁹ COM(2007) 654 final.

¹⁵⁰ Cases C-317/04 and C-318/04, *Parliament v. Council*.

became applicable in October 2006 and expired at the end of July 2007¹⁵¹. A long-term PNR agreement was signed with the United States in July 2007, thus ensuring that there was no loophole once the 2006 interim PNR agreement expired¹⁵². It is provisionally applicable and will enter into force as soon as all the Member States have finalised their domestic consultation procedures. The agreement strikes a reasonable balance between the fight against terrorism and the data protection and preservation of transatlantic passenger flows. The agreement provides for the United States to keep EU-originated PNR data for 7 years, while allowing a further 8 years of retention on a "dormant" basis (i.e. access after the 7 years will be much more restricted than during the first 7). In exchange, the United States accepted a joint review of the operation of the agreement by the Commissioner responsible for Justice, Freedom and Security and his US counterpart, and granted EU citizens the possibility of filing complaints and having access to their own PNR data if so requested. The Agreement will be valid for seven years.

A review of the 2007 US PNR agreement is scheduled for early 2009.

Other PNR agreements

An agreement on PNR has also been signed with Canada¹⁵³. A joint review of the operation of the agreement was carried out in November 2008. The results of the joint review will be presented in 2009. The PNR agreement with Canada will expire on 22 September 2009. Canada has expressed its wish to continue its co-operation with the EU on this matter.

An EU-Australia PNR agreement became provisionally applicable in June 2008¹⁵⁴. It only applies to EU-sourced PNR data for passengers travelling to, from or via Australia. Under the Agreement Australia undertakes to ensure that the Australian Customs Service complies with its commitments regarding the processing of EU PNR data. The Agreement will be valid for seven years. No joint review to assess implementation of the Agreement has been held yet.

A common feature of these PNR agreements is that they provide legal certainty for air carriers and EU-based reservation systems to transfer EU PNR data to third countries' law enforcement agencies in full compliance with EU data protection law. They also provide for the possibility of assessing implementation by means of a joint review.

EU-US High Level Contact Group

The EU-US High Level Contact Group on data sharing and data protection for law enforcement purposes, set up in November 2006, assesses a more permanent solution to data

¹⁵¹ Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security, OJ L 298, 27.10.2006, p. 29.

¹⁵² Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement), OJ L 204, 4.8.2007, p. 18.

¹⁵³ Agreement between the European Community and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data, OJ L 82, 21.3.2006, p. 15.

¹⁵⁴ Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian customs service, OJ L 213, 8.8.2008, p. 49.

protection issues relating to the US-EU exchange of information. Since its was established, discussions have focused on identifying common data protection principles. The results of these discussions were set out in a final report of May 2008¹⁵⁵ endorsed by both parties listing common language on 12 data protection principles. The report also stated that an international agreement is the best way forward to endorse these principles in US-EU data exchanges and identified a number of outstanding issues, including judicial redress. The results of further expert talks were embodied in a declaration adopted at the 2008 December JHA Ministerial meeting in Washington¹⁵⁶. Talks are continuing on outstanding issues relating to the wider international relationship. Should these discussions come to a successful conclusion, negotiations could be opened between the EU and the US to translate the results of these talks into a framework agreement on data protection .

III. Future challenges

Most of the instruments adopted under the "principle of availability" are of recent date and will be implemented over the coming years. This will be an important starting point for shaping an EU-wide policy on exchange of and access to information in the area of police and judicial cooperation, which will continue to be a high policy priority for the EU. In addition, the external component of this policy is likely to continue to play a major role, not in the least because of the global scope of terrorist threats and organised crime, which call for ongoing interaction between the European Union and key partners.

As regards the "principle of availability", the focus in the coming years must be on ensuring the effective implementation of the Prüm package and the "Swedish initiative". At the same time, however, there is a pressing need to establish an overarching strategic approach to law enforcement information exchange within the EU. This strategy on information exchange should include an assessment of operational needs of Member States' law enforcement authorities and identify the most effective ways of delivering those information needs. This also implies an assessment of data protection rules in the context of information exchange to ensure that these provide the requisite safeguards for citizens without unduly restricting exchange of information.

As regards requests for access to commercial data focus on electronic communications, PNR and financial transactions data, negotiations have to continue in the Council on the draft framework decision on establishing an EU PNR system. Depending on the outcome of these negotiations, the Commission will consider further action within the framework of the information strategy.

In the field of access to commercial data, priority should be given to implementing the Data Retention Directive, in particular by calling upon the expertise of the expert group accompanying this process and, if need be, the use of infringement procedures in cases of non-compliance.

The Framework Decision on data protection in police and judicial cooperation provides many of the safeguards needed for efficient exchange of information. It remains to be seen whether

¹⁵⁵ Council document 9831/08.

¹⁵⁶ Council document 16477/08.

a more fundamental review of the current EU approach to data protection should also be undertaken.

As part of the implementation of the Framework Decision, thought should be given to the manner in which the European Institutions and especially the Commission should be advised on data protection in the area of police and judicial cooperation and on how to efficiently organise oversight.

In the absence of a horizontal European Union instrument on the protection of personal data in police and judicial cooperation in criminal matters, the current approach is of the case-by-case variety and lacks harmonisation: data protection requirements have been laid down in a variety of legislative texts and the scope and nature of these requirements depend on the specific objective the legislative texts aim to regulate and on the personal data exchanged. Apart from the Prüm decision, and the legislation on the SIS and the VIS, there are several other legislative texts that contain data protection requirements¹⁵⁷. In many of the above cases, more time is needed to observe the level and quality of the implementation by the Member States of these instruments, before considering whether harmonisation beyond the Framework Decision on data protection is necessary. To this end, the following priorities should be taken into account:

- Monitoring the application of data protection requirements laid down in the relevant legal instruments, in particular the Framework Decision on the protection of personal data, with the aim to working towards further strengthening this policy area. In particular the Commission will issue an evaluation report on implementation.
- Depending on how the EU's constitutional framework evolves, starting a more fundamental review of the existing EU approach to data protection.
- Developing a new system of oversight and advice for the protection of personal data in the area of police and judicial cooperation.

In terms of external action, in the light of the experience gained since 2003 with the negotiations of a number of PNR agreements with third countries, the time has come to draw lessons from those negotiations and to further develop the EU policy in this area. To this end, an EU strategy on the exchange of PNR data with third countries should be formulated.

¹⁵⁷

In this context, reference should be made in particular to: the Convention on the use of information technology for custom purposes related to the Customs Information System (CIS); the Convention on mutual assistance and cooperation between customs administrations; the Convention on Mutual Assistance in criminal matters of the European Union; Council Decision concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information; Council Decision on the exchange of information extracted from the criminal record; Council Framework Decision on the standing of victims in criminal proceedings; Council Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union; Council Decision setting up Eurojust; Council Decision establishing the European Police Office (Europol).

4.2. Terrorism

I. Objectives

The Hague Programme underlined the importance of effectively preventing and combating terrorism while fully respecting fundamental rights. To this end, the Programme put strong emphasis on stepping up cooperation between the Member States with a view to protecting citizens and addressing the security of the Union as a whole. Underlining the importance of implementing the EU and Action Plan¹⁵⁸ on combating terrorism, the Programme identified a number of specific priorities for action including preventing radicalisation and recruitment, combating the financing of terrorism, improving the security of explosives and their precursors, ensuring a high level of exchange of information between security services, ensuring adequate assistance to victims of terrorism and consolidating external action.

II. Main developments

The counter-terrorism priorities identified in the Hague Programme have led to significant progress on addressing the threat of terrorism throughout the European Union. This process has included the adoption of numerous binding and non-binding measures designed to enhance the capacity of all Member States to prevent and combat terrorism. This effort is still in progress, however. Many¹⁵⁹ of the tools developed have been a success. Nevertheless, the emergence of new forms of terrorism, the need to make better use of new information technologies and security research, the full implementation of existing counter-terrorism measures and the identification of new tools will require a renewed dedication and commitment.

The period of implementation of the Hague Programme has seen greater EU cooperation in the fight against terrorism and in particular better use of Europol and Eurojust. Both Europol and Eurojust have set up dedicated means to facilitate the exchange of counter-terrorism-related information and increase operational cooperation on the threat posed by transnational terrorism.

In line with the EU Counter-Terrorism Strategy of December 2005¹⁶⁰, the EU has focused its efforts on four main objectives: preventing, protecting, pursuing and responding. The main developments outlined below are complemented by other initiatives of relevance to the fight against terrorism, such as on crisis management, civil protection, critical infrastructure protection, access to PNR and the external dimension, which are covered in other sections of this chapter.

Preventing radicalisation and recruitment

Preventing radicalisation that can lead to acts of terrorism and recruitment is at the core of the "preventing" strand of the European Union's counter-terrorism policy. Following the

¹⁵⁸ Council document 10586/04.

¹⁵⁹ See also European Council "Declaration on combating terrorism", available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/79637.pdf.

¹⁶⁰ Council document 14469/4/05 rev 4.

Communication on terrorist recruitment¹⁶¹, the Commission undertook a series of initiatives to deepen its knowledge of the radicalisation processes and to identify good practices in tackling this phenomenon.

The Commission set up an Expert Group on violent radicalisation in 2006, which produced a report in 2008 on the state of play of academic research in the field. The Commission also contracted four comparative studies¹⁶² on factors that could possibly trigger or affect violent radicalisation processes: the beliefs, ideologies and narrative of violent radicals; the methods through which violent radicals mobilise support for terrorism and find new recruits; and on best practices in cooperation initiatives between authorities and civil society designed to prevent and respond to violent radicalisation.

The studies provided an important backdrop for discussion surrounding the update of the EU Strategy¹⁶³ and Action Plan at the end of 2008 by the Council and constitute an important starting point for further discussions in the field within the network of experts on radicalisation set up by the Commission.

The Commission also held a conference in 2007 on the role of education in preventing radicalisation, which brought together educators, religious leaders and policy-makers. An analysis of the responses to a questionnaire sent to the Member States to map out policies to address violent radicalisation was also shared with the Member States.

Through its funding programme on "Prevention of and Fight Against Crime"¹⁶⁴, the Commission has given financial support to projects that tackle radicalisation leading to terrorism. An intermediate evaluation of this fund will be finalised in 2010. A joint Austrian-French-German project produced in the production of a "Handbook of Good Practices" to tackle radicalisation within prisons, which will serve as a basis for more work at the EU level. Another six projects are currently underway.

Radicalisation leading to acts of terrorism is a non-linear and multi-stage process of varying duration. There are multiple pathways to the process and no single root cause for it. However, a number of contributing factors may be singled out as facilitators. Individuals who have been involved in terrorist activities exhibit a diversity of social backgrounds and have been influenced by various combinations of motivations during their diverse radicalisation processes. The studies contracted by the Commission and other recent research¹⁶⁵ reveal that

¹⁶¹ COM(2005) 313 final.

¹⁶² Compagnie Européenne d'Intelligence Stratégique (CEIS), Paris, "Les facteurs de création ou de modification des processus de radicalisation violente, chez les jeunes in particulier"; The Change Institute, London, "Beliefs, ideology and narratives"; King's College, London, "Recruitment and Mobilisation for the Islamist Militant Movement in Europe"; The Change Institute, London, "Study on best practices in cooperation between authorities and civil society with a view to the prevention and response to violent radicalisation". These studies are available at: http://ec.europa.eu/justice_home/fsj/terrorism/prevention/fsj_terrorism_prevention_prevent_en.htm.

¹⁶³ Council document 15175/08.

¹⁶⁴ Council Decision 2007/125/JHA of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention of and Fight against Crime', OJ L 58, 24.2.2007, p. 7.

¹⁶⁵ Available at: http://ec.europa.eu/justice_home/fsj/terrorism/prevention/fsj_terrorism_prevention_prevent_en.htm.

radicalisation is a social phenomenon and does not normally take place in isolation. Despite the diverse social contexts within which radicalisation takes place, which should always be kept in mind, the studies also reveal that the trends, manifestations and dynamics of radicalisation leading to acts of terrorism exhibit striking similarities across Europe.

In parallel with this non-legislative work, in 2007, the Commission proposed an amendment to the Framework Decision on combating terrorism¹⁶⁶ designed to incorporate the specific offences of public provocation, training and recruitment to terrorism as criminal offences, following the ground-breaking Convention on the prevention of terrorism of the Council of Europe. This amendment was adopted by the Council in 2008¹⁶⁷, and thus it is too early to assess its impact.

That said, Member States' implementation of the original Framework Decision on combating terrorism¹⁶⁸ has been assessed twice: the first evaluation report was adopted in 2004 and covered Austria, Belgium, Denmark, France, Finland, Germany, Ireland, Italy, Portugal, Spain, Sweden and the United Kingdom¹⁶⁹; and the second report was adopted in 2007 and covered all Member States except Romania and Bulgaria¹⁷⁰. The last report concluded that implementation is generally satisfactory, despite a number of major issues concerning specific Member States. In particular, it was stated that the definition of terrorist offences raised concerns in some Member States, such as a catalogue of terrorist offences was missing, only a very general definition was applicable, and even the definition of a terrorist offence was completely lacking in one Member State. A staff working paper accompanying this report¹⁷¹ contains a detailed analysis of national measures taken to comply with the Framework Decision, plus a table specifying, in accordance with the information received by the Commission, the national provisions transposing each of the articles.

Since terrorism affects the security of all EU citizens, and since both radicalising efforts and planning of violent activities are often coordinated across different countries by individuals or groups espousing a similar ideology, EU action that is complementary to Member States' efforts should be beneficial and is likely to reduce the threat of radicalisation that may lead to acts of terrorism.

Combating the financing of terrorism

The Hague Programme emphasised the importance of measures to combat the financing of terrorism. It called for existing instruments to be made more efficient, such as the monitoring of suspicious financial flows and the freezing of assets, and for new tools dealing with cash transactions and the institutions involved in them. In addition, the Action Plan stressed the importance of preventing the misuse of charitable organisations for the financing of terrorism.

¹⁶⁶ COM(2007) 650 final.

¹⁶⁷ Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism, OJ L 330, 9.12.2008, p. 21.

¹⁶⁸ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism, OJ L 164, 22.6.2002, p. 3.

¹⁶⁹ COM(2004) 409 final.

¹⁷⁰ COM(2007) 681 final.

¹⁷¹ SEC(2007) 1463.

A broad range of instruments have been adopted. In terms of the impact of these measures, the Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹⁷² helped to improve the detecting of suspicious financial flows as it extended the obligation to report on suspicious transactions beyond financial institutions also to designated non-financial businesses and professions, such as casinos, lawyers and others. Better monitoring of financial flows was also facilitated by the 2006 regulation laying down rules for payment service providers to send information on the payer throughout the payment chain¹⁷³. This is done for the purposes of prevention, investigation and detection of money laundering and terrorist financing. The regulation transposes Special Recommendation VII (SRVII) of the Financial Action Task Force (FATF) into EU law and is part of the EU Plan of Action to Combat Terrorism. In terms of legislation concerning the freezing of funds of suspected terrorists, the Commission made suitable amendments to ensure that the lists of persons and entities whose assets have to be frozen are kept up-to-date.

As regards new tools designed to combat the risks caused by cash transactions, a regulation on controls of cash entering or leaving the Community was adopted in 2005¹⁷⁴. Under this legislation, travellers entering the EU from or leaving the EU for a third country with € 10,000 or more in cash are required to make a written declaration.

Finally, progress has been made on preventing the misuse of charitable organisations for the financing of terrorism. In 2005, the Commission submitted a Communication on this issue¹⁷⁵, which contained a code of conduct for non-profit organisations plus a number of recommendations. In December 2005, the Council agreed on five principles that should be taken into account when implementing measures aimed at preventing terrorist abuse of the non-profit sector¹⁷⁶. These principles, together with the FATF Interpretative Note to Special Recommendation VIII adopted in 2006, provide a basis for further Commission policy development. In addition, the Commission has launched two studies in this context and held two important meetings, in April 2008 and February 2009, with non-profit organisations and representatives from public authorities to discuss the outcome of these studies, which will serve as a basis for future proposals in this area.

The 2004 EU Strategy Paper on the Fight against Terrorism Financing was revised in 2008 and endorsed by the Council in 2008¹⁷⁷. This revised strategy aligns the core objectives of the EU and Commission's work in the fight against terrorist financing with current terrorist financing trends and threats. Some of the key issues in this regard include:

- Making efficient use of financial intelligence in terrorism-related investigations.

¹⁷² Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, OJ L 309, 25.11.2005, p. 15.

¹⁷³ Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds, OJ L 345, 8.12.2006, p. 1.

¹⁷⁴ Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community, OJ L 309, 25.11.2005, p. 9.

¹⁷⁵ COM(2005) 620 final.

¹⁷⁶ Council document 14390/05, p. 31.

¹⁷⁷ Council document 11778/1/08 rev 1.

- Promoting the use of financial investigation as a law enforcement technique in the EU-27 through common minimum training standards.
- Continuing to address the potential misuse of non-profit organisations for terrorist purposes.

Improving the security of explosives and their precursors

A major landmark in the area of security of explosives was the adoption by the Council in 2008 of the Action Plan on Enhancing the Security of Explosives¹⁷⁸, following a 2007 Communication¹⁷⁹. The Action Plan contains some 50 specific measures to be taken and is builds on the work of the Explosives Security Experts Task Force (ESETF), a forum of around 100 experts representing public and private stakeholders that was convened by the Commission in 2007.

In order to reduce the availability and accessibility of chemical precursors to explosives, a Standing Committee on Precursors, composed of experts from both the public and the private sector, was established. The Commission will use the Committee's conclusions as a basis for suggesting new concrete measures.

Priorities identified in the Action Plan on Enhancing the Security of Explosives are in the process of being implemented, many of them funded from the 2008 "Prevention of and Fight Against Crime" financial programme. Closer cooperation on response to incidents involving explosives will be enhanced through the European Explosive Ordnance Disposal Network set up in 2008. Response to incidents involving explosives will also be improved through better information exchange via the European Bomb Data System, currently under development by Europol, supported by EU funding. Funding was also provided for the installation of an EU-wide Early Warning System, which will serve to notify the authorities of any potential threats following missing or stolen explosives. Work on detection-related issues at EU level will be enhanced by contributions from a Network on the Detection of Explosives, which will provide expertise and support the Commission in its initiatives and activities in this sphere.

A number of other initiatives have also greatly contributed to enhancing the security of explosives. In particular, better identification and traceability of explosives has been enabled by the adoption of a Commission Directive¹⁸⁰, security of the transport of explosives has been enhanced by a 2008 Directive¹⁸¹, and the risk related to certain precursors has been decreased by the amendment of the old Council Directive 76/769/EEC, which limits sales of highly concentrated ammonium nitrate fertiliser to the general public¹⁸².

¹⁷⁸ Council document, 8311/08.

¹⁷⁹ COM(2007) 651 final.

¹⁸⁰ Commission Directive 2008/43/EC of 4 April 2008 setting up, pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses, OJ L 94, 5.4.2008, p. 8.

¹⁸¹ Directive 2008/68/EC of the European Parliament and of the Council of 24 September 2008 on the inland transport of dangerous goods, OJ L 260, 30.9.2008, p. 13.

¹⁸² Decision No 1348/2008/EC of the European Parliament and of the Council of 16 December 2008 amending Council Directive 76/769/EEC as regards restrictions on the marketing and use of 2-(2-methoxyethoxy)ethanol, 2-(2-butoxyethoxy)ethanol, methylenediphenyl diisocyanate, cyclohexane and ammonium nitrate, OJ L 348, 24.12.2008, p. 108.

Other measures

A significant effort has been made to provide support for victims of terrorist acts through funding of projects geared to the protection of terrorism victims. The specific impact of these measures will be assessed in due course as most of the projects are still ongoing. Most projects achieved their aims and helped to increase the capacity of victims' support organisations and, directly or indirectly, the victims of terrorist act themselves. These projects have successfully demonstrated the case for Commission involvement in this field and the scope for an enhanced engagement in this respect.

III. Future challenges

Despite the efforts made, the number of terrorist attacks continues to increase in the EU¹⁸³. According to Europol, 583 terrorist attacks were recorded in the EU in 2007, 91% of which were perpetrated by separatist terrorists. The use of home-made explosives continues to increase and there is a rapidly growing amount of terrorist propaganda being distributed over the Internet; the number of suspect terrorist arrested in the EU is also on the increase. These figures confirm that renewed commitment is needed to addressing the terrorist threat.

Priorities in the area of **prevention of radicalisation and recruitment** should focus on devising long-term strategies that make extremist ideologies unappealing, targeting those actively promoting the ideology and the places where it is propagated including on the internet.

The EU must help to engage with civil society and thus to establish stable, genuine and lasting partnerships to address the phenomenon. As the EU continues to deepen its knowledge and understanding of the phenomenon, through linking up more with academics and experts in the field, policies must continue to be devised and updated accordingly. The use of communication strategies as an enabling tool for delivery will continue to be a crucial aspect in successfully countering this phenomenon.

Combating the financing of terrorism continues to be a high priority. In this context, the Commission has commissioned two studies on non-profit organisations, one on their vulnerability in terms of financial crime, including terrorist financing, and one on their transparency and accountability. Working in close cooperation with the Counter-terrorism Coordinator, the Commission will use the results of these studies to guide further actions.

The EU still faces a number of challenges with regard to the **security of explosives and their precursors**.

Implementation of the Action Plan on Enhancing the Security of Explosives by all parties involved (European Institutions, Member States, private actors) should remain a priority. The challenge will be to support and supervise implementation by appropriate means, including financial support via the "Prevention of and Fight Against Crime" financial programme.

¹⁸³ Europol, EU Terrorism Situation and Trend Report TE-SAT 2008, available at: http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2008.pdf.

A harmonised framework for regulating precursors to explosives should be considered. On the one hand, the work of the Standing Committee on precursors has shown so far that there is a high need and demand for better regulation of precursors to explosives. On the other hand, it has also shown that whilst effective and acceptable regulation would increase the security of precursors not creating disproportionate burdens on industry poses a challenge.

4.3. Police cooperation

I. Objectives

The Hague Programme placed strong emphasis on improving law enforcement cooperation and developing the Schengen *acquis* in the field of cross-border cooperation. It underlined the importance of a specific programme of exchange of law enforcement officers and identifying actions to improve operational cooperation.

The Programme also stressed the need for intensified practical cooperation between Member States' police and customs authorities as well as with Europol and Eurojust. Joint customs, police and/or judicial operations should become a frequent tool of practical cooperation.

II. Main developments

Improvement of law enforcement cooperation and development of the Schengen *acquis* in respect of cross-border operational law enforcement cooperation

Europol has become a key contributor to this kind of cooperation. Customs co-operation in the 3rd pillar has also been strengthened.

Europol has made for a better understanding of organised crime in Europe through its annual "European Organised Crime Threat Assessment"¹⁸⁴ (OCTA). The priorities established by the Council every two years on the basis of the OCTA conclusions help to improve how police forces operate within the EU. Putting these priorities into practice was the subject of a report by the Council General Secretariat in 2007¹⁸⁵. Europol has also developed specific cooperation tools, such as the Information System and the Analytical Work Files (AWF). The Information System was based on Member States and Europol contributions (the latter, for data originating from third parties and AWF) and can be directly consulted by authorised national units, liaison officers and Europol officers. The number of record introduced is constantly growing but still below the actual capacity of the system, which limits the chances of finding useful matches. Evaluation tools have been introduced to help increase the quality and level of the use of the Information System.

The Analytical Work Files provide police services in Member States with data on specific categories of crime. Currently there are 18 AWP focusing on different crime phenomena, such as credit card fraud or synthetic drugs trafficking. The transfer of AWF should reduce the processing time up to 90% and improve Europol's analytical capabilities. A protocol to the Europol Convention entered into force in 2007¹⁸⁶ and allows Member States representatives and third organisations with which Europol has concluded operational cooperation agreements to exchange personal data and participate to the AWF system. Eurojust is associated to 12 of the 18 AWF.

¹⁸⁴ Available at: <http://www.europol.europa.eu/index.asp?page=publications>.

¹⁸⁵ Council document 8102/3/08 rev 3.

¹⁸⁶ Council Act of 27 November 2003 drawing up, on the basis of Article 43(1) of the Convention on the Establishment of a European Police Office (Europol Convention), a Protocol amending that Convention, OJ C 2, 6.1.2004, p. 1.

Europol is consequently at the heart of the exchange of information within the EU, which means that Member States should help it run smoothly and efficiently.

A 2005 Council decision¹⁸⁷ designated Europol as the central office for combating Euro counterfeiting. In fulfilling this mandate, Europol closely cooperates with EU Member States, Europol's partners and the European Central Bank (ECB). This status also qualifies Europol as the worldwide contact point for combating euro counterfeiting.

In May 2007, Europol joined forces with the ECB in the Hague to organise the first international conference on the protection of the Euro against counterfeiting. The project on euro counterfeiting spawned several initiatives focusing on operational action inside and outside the European Union and the Euro area. A number of operations carried out by the law enforcement authorities responsible were concluded with the support of Europol. For example, the largest ever seizure of counterfeit Euro banknotes outside Europe was made on 28 August 2008 in the capital of Colombia, Bogota. The police operation was carried out by the Colombian National Police jointly supported by officers from the Spanish Brigada de Investigacion del Banco de Espana and Europol: counterfeit money with a face value of more than € 11 million was seized.

The Council Decision establishing Europol and replacing the Convention will give the European Police Office greater operational flexibility to respond more rapidly to trends in crime¹⁸⁸. It will extend Europol's powers to all serious cross-border crime phenomena and give it the status of a European Agency. The role of the European Parliament will be strengthened since its budgetary powers will make it possible to exert stricter control on Europol's activities.

The new Europol Decision will also improve Europol's effectiveness in supporting Member States' police forces and thus step up police cooperation and the fight against certain forms of serious crime and terrorism. A revised Cooperation Agreement between Eurojust and Europol has been approved by the Council in June 2009¹⁸⁹, replacing the old 2004 agreement. This agreement establishes and reinforces the close cooperation between the two bodies in order to increase their effectiveness in combating serious forms of international crime which fall in the respective competence, and to avoid duplication of work. In particular, this will be achieved through the exchange of operational, strategic, and technical information, as well as the coordination of activities.

Europol currently produces an annual activity report, which is sent to the Council and is publicly accessible on the internet; the last version covers 2007 activities¹⁹⁰. The new Council Decision provides for the Europol management board to request an independent external

¹⁸⁷ Council Decision 2005/511/JHA of 12 July 2005 on protecting the euro against counterfeiting, by designating Europol as the Central Office for combating euro counterfeiting, OJ L 185, 16.7.2005, p. 35.

¹⁸⁸ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ L 121, 15.5.2008, p. 37.

¹⁸⁹ Not yet published on the Official Journal.

¹⁹⁰ Available at:
http://www.europol.europa.eu/publications/Annual_Reports/Annual%20Report%202007.pdf.

evaluation of the implementation of the Europol decision and activities every four years. This report will be addressed to the European Parliament, to the Council and to the Commission.

9 operational cooperation agreements¹⁹¹ and 19 strategic agreements¹⁹² are in force between Europol and third parties. 10 operational cooperation agreements¹⁹³ and 1 strategic agreement¹⁹⁴ are under negotiations.

Police – customs cooperation

The Council approved three Actions Plans for the strategy for customs cooperation in the third pillar¹⁹⁵. 40 actions have been carried out in the implementation of the customs strategy in the third pillar. These centred on new forms of cooperation and improving the existing cooperation processes. The Customs Cooperation Working Group – where the Commission is fully associated – introduced a new kind of working method to implement the Action Plan, based on "project groups". The Commission took part in most part of the project groups and funded some of them.

A report on the implementation of the work programme concerning customs cooperation during the period 2004-2006 was presented to the Council in 2007¹⁹⁶. It concluded that this has made a significantly contribution to efforts in the customs domain to boost the area of justice, freedom and security within the EU.

Joint operational police and customs actions focused on different threats, some of them more customs-orientated but often the police forces involved. 13 Joint Customs Operations (JCOs) mainly targeted smuggling and criminal groups involved in illicit activities concerning drugs, weapons, cigarettes and other highly taxed goods. The basic aim of JCOs is to improve the fight against smuggling drugs and other sensitive goods, and to step up operational cooperation between customs administrations. The vast majority of these JCOs have been funded by the EU programmes AGIS and its successor ISEC ("Prevention of and fight against crime"), managed by the European Commission.

Operations "Conquest 2" (targeting heroin, cocaine and others drug smuggling in maritime transport of containers, bulk goods and single consignments), "Fireball" (countering firearms smuggling) or "Red Nose"(fight against smuggling of cocaine by air passengers) are only a few of the success stories. The Commission also provided technical support and Europol is also becoming increasingly involved.

¹⁹¹ Interpol, Norway, Iceland, USA, Eurojust, Canada, Switzerland, Croatia, Australia.

¹⁹² EMCDDA, USA, ECB, WCO, European Commission, Russia, UNODC, OLAF, Turkey, Colombia, SitCen, Bosnia-Herzegovina, Albania, Moldova, FYROM, Frontex, Cepol, Montenegro, Serbia (the last two still to be ratified), ESDP civilian missions.

¹⁹³ Albania, Bosnia-Herzegovina, Colombia, ESDP EuLex Kosovo civilian missions, FYROM, Israel, Liechtenstein, Moldova, Monaco, Russia.

¹⁹⁴ Ukraine.

¹⁹⁵ 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 (2004-2006). The Article 36 Committee approved the first 3-year Action Plan in December 2003 (Doc. 15315/2/93 rev 2.) In 2006 and 2008, the Article 36 Committee approved the second and third action plan (Doc. 13424/2/06 rev 2 and 8284/1/08 rev 1) for periods of 18 months: 2007-first half 2008 and second half 2008/2009).

¹⁹⁶ Council document 5674/07.

It is important to continue to support the setting-up and development of Joint Police and Customs Co-operation Centres (PCCCs) through funding and awareness-raising initiatives. Sharing of best practices to specify further needs for improvement, and the creation and maintenance of a common methodology manual for setting up of joint customs and police operations should also be encouraged.

Exchange programmes between law enforcement agencies

The European Police College (CEPOL) began to operate as a European agency in 2006 and in the first year organised 62 training-related activities (i.e. courses, seminars, exchange conferences) with 1,368 participants; in 2007 the number of these activities rose to 85 with 1,922 participants. In 2007 the attendance was only 70% of the planned rate.

The first exchange programme on a European scale was carried out by means of an AGIS funded project of which CEPOL was the beneficiary. The project began in 2006 and was completed in 2008, and benefitted from a total grant of € 1.6 million. It involved 135 participants (police officers and trainers) from 20 countries in 2006 and 25 countries in 2007.

Assessments of the final results and outcomes of the exchange project will be essential to gauge the effectiveness of this kind of action and whether they should be promoted along the same lines in future. In the meantime, the Commission has agreed to co-fund CEPOL on this initiative – for 2009 only – to the tune of € 510,000.

As regards Europol, the training programme needs to be continued in order to improve police officers' knowledge of how CEPOL works and what its potential is.

The Commission will need to review the financing processes of its Programme to ensure that EU funds are more readily available and therefore to provide a quicker response to operational needs (such as setting up Joint Investigation Teams or JITs).

Improving operational cooperation

The financial programme "Prevention of and Fight against Crime" is a major tool for carrying out exchange programmes. Furthermore, the programme introduced a new form of cooperation based on larger, multi-annual projects with broader impact at EU level.

In particular, in 2007 € 3.5 million was allocated to law enforcement cooperation to set up JITs and to support Comprehensive Operational Strategic Planning for the Police (COSPOL). Initiatives to support cooperation with Europol had an € 800,000 budget. In 2008, the budget for implementation of the Prüm Treaty was € 3.8 million and for the fight against crime and supporting cooperation € 4 million. The same budget also set aside € 4.6 million in support of law enforcement cooperation. In 2009, the Commission has earmarked € 40.6 million for co-financing transnational and national projects and € 8 million for framework partners to enhance operational cooperation and cooperation with Europol.

About 40 JITs have been set up during the Hague Programme. Currently, Europol is associated to 3 JITs and took part to 5 JITs, now closed. Moreover, 8 "threat assessments" on different subjects (drugs, cigarettes and mineral oils, firearms, precursors, etc.) were delivered by customs administrations within the remit of the Customs Cooperation Working Party.

Further work is needed to improve the use of JITs and the potential of existing bodies should be tapped more fully. Europol and Eurojust should be more clearly involved in the

investigation phase of cross-border organised crime cases and in JITs. Joint customs, police and/or judicial operations should become a frequent tool of practical cooperation, and how JITs operate, in legal and operational terms, should be evaluated to them an every-day tool in the cross-border fight against crime. This general assessment was also confirmed by a study conducted by the European Parliament in 2009¹⁹⁷, which also stressed the need for Member States to make more extensive use of this instrument.

The Task Force of EU Police Chiefs was established in 1999 as an operational liaison mechanism for European police forces to exchange, in cooperation with Europol, experiences, best practices and information on cross-border crime trends, thereby improving the organisation of police operations. Since its first meeting, 45 items have been put on the agenda of the strategic and/or operational meetings. Following these discussions, various initiatives were launched, which were then endorsed by the Council and led to the adoption of legal acts, the establishment of experts networks and to the opening of COSPOL projects, some of which registered good results. The COSPOL project on illegal immigration, for example, was supported by the AWF CHECKPOINT, has been the basis for many operations, including the "Trufas" operation that led to the arrest of 65 people, and the "Pigeon" operation that led to the arrest of 21 people. The quasi-systematic alignment of Europol AWF and the Task Force of EU Police Chiefs' COSPOL projects gave the Task Force better analytical support to coordinate operations and dismantle organised crime networks. Currently, the Task Force of EU Police Chiefs manages 7 COSPOL projects.

The alignment effort between COSPOL and AWF should be continued, either by changing the action plan in support to this COSPOL project, or by changing the opening order of the corresponding AWF, or even by creating new AWFs (a AWF on organised crime making use of ICT technologies has been established in 2009).

The minimum standards for the cross-border use of investigation techniques, mentioned in the Action Plan, were not drawn up because consultations with MS did not show any immediate interest in taking this project forward.

III. Future challenges

In a Europe there are no longer any internal borders, the Commission aims to prevent and fight against all forms of cross-border crime. This objective is translated into measures to help Member States combating the threats to civil society more effectively.

Since operational activities fall under Member States' responsibility and legal instruments in most cases already exist, the role of the Commission will mainly consist of supporting and catalysing Member States' resources and initiatives and helping to build their capabilities, notably by establishing networks and providing financial support for transnational projects. The Commission will also monitor the implementation of the EC instruments, facilitate access to information and shelp increase cross-border cooperation.

¹⁹⁷ European Parliament, "Implementation of the European Arrest Warrant and the Joint Investigation Teams at EU and National level", 2009, available at: <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=24333>.

The Commission should make full use of the security research agenda, and push for an ever more innovation in security applications and systems in a bid to understand the problems and how best to respond to them. These efforts should be made in close cooperation with both the private and public sectors. New technology has a key role to play. Police cooperation based on new technologies is the cornerstone for successful cooperation among Member States. Efficient and effective use of technologies in all areas of justice, freedom and security policies should be at the heart of our approach to security, in combination with greater use of results of socio-economic research in the field.

Developing **Europol's** role to provide intelligence-led law enforcement at European level is crucial.

An open reflection should be launched on the overall architecture of internal security to counter existing needs and threats. The scaling-up of threats and the development of European means of internal security highlight the need for better coordination and for more thought to be put into this.

As regards training, extending CEPOL courses to specialized middle rank police officers could further spread the culture of cooperation in Europe. Following on from the Erasmus programme for university students, a situation might also be envisaged whereby every police officer who is a candidate for an international cooperation position would have to spend a period in a law enforcement department of another Member State. Following the evaluation of CEPOL's performance to be carried out by 2011, it could be envisaged the regrouping of all police and customs' training activities at European level within Europol.

4.4. Management of crises within the EU with cross-border effects

I. Objectives

The Hague Programme emphasised the importance of effective management of crises with cross-border effects on citizens, critical infrastructure and public order and security. The Programme specifically addressed the issue of strengthening civil protection and critical infrastructure and called for the establishment of integrated and coordinated EU crisis-management arrangements.

II. Main developments

Critical infrastructure protection

Implementation of the Hague Programme included the establishment of the European Programme for Critical Infrastructure Protection (EPCIP)¹⁹⁸, which provided a horizontal platform for critical infrastructure protection activities in the European Union. The EPCIP policy package included a number of interlinking initiatives aiming at enhancing the protection of critical infrastructure in the EU, in particular measures designed to facilitate the implementation of EPCIP, including an EPCIP Action Plan; the Critical Infrastructure Warning Information Network (CIWIN); the use of CIP expert groups at EU level; CIP information-sharing processes and the identification and analysis of interdependencies; the identification and designation of European Critical Infrastructure and the assessment of the need to improve protection of such infrastructure (addressed in detail by way of a proposed Directive); optional support for Member States concerning National Critical Infrastructures (NCI); contingency planning; and an external dimension.

The process of identifying and designating European Critical Infrastructure in specific sectors was put forward in a 2006 proposal for a directive on the identification and designation of European Critical Infrastructure¹⁹⁹, which was adopted by the Council in 2008²⁰⁰. This directive focuses in the first phase on two key sectors: energy and transport. Other sectors (including the ICT and financial sectors) may be included in the future, following an assessment of the impact of the directive.

The first evaluation on threats, risks and vulnerabilities encountered in each European Critical Infrastructure sector will be done in 2010-2012. It will show whether other measures are needed at the EU level. Work has also advanced on the establishment of the CIWIN system, which will facilitate the exchange of information concerning EU trans-boundary critical infrastructures. A proposal for a decision establishing CIWIN was adopted by the Commission in 2008²⁰¹.

¹⁹⁸ COM(2006) 786 final.

¹⁹⁹ COM(2006) 787 final.

²⁰⁰ Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection, OJ L 345, 23.12.2008, p. 75.

²⁰¹ COM(2008) 676 final.

Good progress was recorded in most areas of work of the EPCIP and the CIP Expert groups started their work. Two new expert groups are planned to be created in 2009, which will establish criteria for the identification of critical infrastructures in the financial and chemical sectors. The first results of the work of the three expert groups are expected by the end of 2009.

Assessing the impact of a policy designed to increase the resilience and the protection of infrastructure is clearly very difficult. It will never be possible to completely eliminate the risk of serious disruptions to services provided by infrastructures. Nevertheless, the EPCIP has taken a significant step towards minimising the risk of such disruptions and adverse cross-border effects.

It is still too early to perform a comprehensive evaluation of the success of EPCIP. It should be noted, however, that the process of developing EPCIP already produced several positive results. The broad consultations undertaken among all stakeholders resulted in a higher level of awareness of critical infrastructure protection issues. Meetings of national CIP Contact Points upped the exchange of information between Member States. The associated financial programme provided considerable funding for CIP-related activities, including the identification of good practices that could be shared among Member States. Finally, discussion on the EPCIP helped to establish national CIP strategies in a number of Member States. Implementation of the directive on European Critical Infrastructure will add to this positive process.

Among the financial programmes, the "Prevention, Preparedness and Consequence Management of Terrorism and other Security related Risks" specific financial programme provides financial support for critical infrastructure protection. Projects under the 2007 Annual Programme are currently ongoing, and the first results should be available in 2009. The Commission has also contracted 4 studies under the 2007 Work programme, which will help to develop this policy field further (critical dependencies of energy, finance and transport on ICT infrastructure; risk governance of European critical infrastructure in the ICT and energy sector; feasibility study on the European network of Secure test Centres for Reliable ICT – Controlled Critical Energy Infrastructures (SCADA); stocktaking of existing Critical Infrastructures Protection activities). The first results of the studies will be available in 2009.

Civil protection

The Community Civil Protection Mechanism²⁰² has developed into a genuine multi-threat instrument for helping participating States to respond to major disasters, and to prepare for them. Furthermore, the Commission has launched activities designed to integrate aspects of disaster prevention into an overall approach to disaster management.

Some 20 requests for assistance are received yearly by the Commission and the Mechanism is tasked with coordinating and facilitating the participating States' response to natural and man-made disasters (including acts of terrorism) both within the EU and world-wide. The EU's collective preparedness is being enhanced by an extensive programme comprising training

²⁰² The Council Decision 2007/779/EC, Euratom of 8 November 2007 establishing a Community Civil Protection Mechanism (recast), OJ L 314, 1.12.2007, p. 9, brings together 30 participating States (27 EU Member States and EEA countries).

courses, exchange of experts, simulation exercises and cooperation projects financed through the Civil Protection Financial Instrument²⁰³ adopted in 2007.

As called for by the European Council²⁰⁴ and the European Parliament in 2005²⁰⁵, measures have been taken to develop a rapid response capability, notably by:

- Creating civil protection modules. Standards have been developed for these task-oriented, autonomous, interoperable and rapidly deployable assets of one or more Participating States²⁰⁶. Over 80 have been registered covering Chemical, Biological, Radiological, Nuclear (CBRN) detection and sampling, search and rescue in CBRN conditions, pumping and purification of water, aerial fire fighting, urban search and rescue, medical assistance including medical evacuation and emergency shelter.
- Setting up the Common Emergency Communication and Information System (CECIS), to make for secure exchanges of information with the Participating States.
- Developing a logistical support role for the Monitoring and Information Centre (MIC) to help Participating States to access transport resources of other States and on the commercial market.

The new Mechanism's legal basis makes explicit reference to responding to terrorism threats, including CBRN, which has allowed the Commission to develop a number of activities in the areas of training, large-scale exercises and specialised exchange of experts. In autumn 2008, it funded a specific real-scale exercise on CBRN involving several participating States. The Commission also conducted an analysis of data provided by the participating States concerning the assistance that could be made available in the participating States in the event of a terrorist attack.

The Mechanism currently faces four main challenges: enhancing the availability of assistance, moving to contingency planning, improving the effectiveness of Europe's response and ensuring an integrated approach to disaster management:

The Council has called on the Member States to commit themselves to enhancing the availability of their civil protection modules and other intervention capabilities. Furthermore, projects launched under the Preparatory Action on a rapid response capability for testing various types of arrangements for enhancing the availability of response resources should allow the Commission to identify directions for future action in this area.

²⁰³ Council Decision 2007/162/EC, Euratom of 5 March 2007 establishing a Civil Protection Financial Instrument, OJ L 71, 10.3.2007, p. 9.

²⁰⁴ Council document 10255/1/05 rev 1, Presidency Conclusions of the 16-17 June 2005 Brussels European Council.

²⁰⁵ European Parliament document RSP/2005/2500, "Resolution on the recent tsunami disaster in the Indian Ocean and Union's aid for victims".

²⁰⁶ Commission Decision 2008/73/EC, Euratom of 20 December 2007 amending Decision 2004/277/EC, Euratom as regards rules for the implementation of Council Decision 2007/779/EC, Euratom establishing a Community civil protection, OJ L 20, 24.1.2008, p. 23.

Contingency planning for disasters needs to be improved. The Commission's ongoing work on scenarios for major disasters should provide a basis for moving to genuine contingency planning.

The effectiveness of Europe's civil protection response needs to be constantly improved, notably by enhancing the interoperability of modules through training, exercises and use of standard operating procedures. Developing assessment and coordination teams to the sites of disasters needs to be speeded up, and the MIC needs to be upgraded into a genuine operations centre with a proactive profile.

Finally, an integrated approach to disaster management needs to be established by building links between the Community's various tools and programmes.

Integrated and coordinated EU crisis-management arrangements

In response to the crisis-management objectives set out in the Hague Programme, the Council approved Emergency and Crisis Coordination Arrangements in Brussels (CCA)²⁰⁷. Without prejudice to existing crisis management systems (national, EU and international), the CCA take a cross-pillar approach to crisis management and are relevant both to external crises and to crises within the EU. They will provide Member States' Permanent Representations with a platform to exchange information and support political coordination during severe emergencies that have such wide-ranging impact or political significance that they require an exceptional response at EU level. The crisis coordination arrangements have been regularly tested by way of exercises and are continually being improved in a bid to respond more rapidly and more effectively to evolving threats.

The Commission added to its own crisis management procedures and system by setting-up ARGUS²⁰⁸, which allows the Commission to launch a robust response to emergencies and to play a fully part in CCA activities. The ARGUS system involves a quick consultation process for major crises. Following the adoption of the Communication on Reinforcing the Union's Disaster Response Capacity²⁰⁹, the Commission is trying to generate synergy between existing instruments.

The procedures and the adequacy of the CCA have been regularly tested and refined through lessons learned process. The mechanics of it (technical aspects, consultation process, information flow, format of the meeting) were shown to work well. However, the exercises highlighted the need to further evaluate the arrangements, and especially to clarify the roles of the CCA groups and non-affected Member States to make for enhanced strategic thinking and political advice.

A Situation Map has been proposed to facilitate the work of the Council Presidency when drawing up proposals for action. It rapidly identifies the relevant sectors, instruments and actors for possible actions at EU level and pinpoints actions that requires a political impetus.

²⁰⁷ Council document 16642/06.

²⁰⁸ COM(2005) 662 final.

²⁰⁹ COM(2008) 130 final.

III. Future challenges

Work on **Critical Infrastructure Protection** should build on the achievements of the Hague Programme and on the first evaluation of threats, risks and vulnerabilities encountered in each European Critical Infrastructure protection section (2010-2012). This will lead to a detailed examination of whether further measures at the EU level are necessary.

Most of the work within the EPCIP has concentrated so far on internal EU issues. The future will require a greater commitment to the external dimension of CIP, as the geographical and cross-sector interdependencies extend beyond the borders of the EU.

Despite marked progress, continued effort will be needed to implement the EPCIP in its entirety, and thus to address all the relevant sectors of economic activity and to eliminate potential weak links.

The Commission's objective for the period 2010-2014 in the field of **civil protection** is to ensure that the Mechanism is increasingly effective in helping participating States to prepare for and respond to large-scale disasters, including a Chemical, Biological, Radiological, Nuclear (CBRN) terrorist attack. This should be part of an integrated approach to disaster management that ties disaster prevention and effective coordination to other Community tools and policies.

The Commission will continue to help participating States to organise their civil protection assets more efficiently, including civil protection modules, with a view to enhancing the availability of assistance and reducing obstacles to its delivery. Where necessary, the Mechanism should complement the resources available for deployment in major disasters and to provide any logistical support that may be needed.

The Commission will improve its operational contribution by increasing the analytical, assessment and planning capacities of the MIC and by reinforcing its assessment and coordination teams at the sites of disaster. In this context, the Commission will look into the possible added value of innovative models for organising Europe's civil protection response as an expression of European solidarity.

4.5. Organised crime, corruption and crime prevention

I. Objectives

The Hague Programme stressed the importance of developing and implementing a strategic concept for tackling organised crime. With this in mind, a range of political, legislative and operational policies have been identified and defined for the years to come. The Hague programme also initiated a series of initiatives resulting in closer cooperation both with Europol and Eurojust and with third countries and other international organisations, and in better information access and sharing in general. One of the areas of special focus was acquiring better know-how and understanding of the dynamics of various forms of organised crime, some of which are developing at high speed, in line with technological developments. Finally, acknowledging that an effective organised crime policy cannot be based exclusively on strengthening tools and stepping up international cooperation, crime prevention continued to be the focus of attention.

II. Main developments

Fighting cyber crime

In 2007, the Commission presented a general policy on the fight against cyber crime²¹⁰. This was used in 2007 and 2008 to increase cooperation between law enforcement agencies and private sector. A Commission-led consultation of experts and stakeholders from both the public and the private sector resulted in EU recommendations on public-private cooperation in the fight against cyber crime²¹¹. Finally, the Council conclusions of November 2008²¹² included an overall strategy on cyber crime.

European coordination and cooperation between high-tech crime units in the Member States was actively supported by the Commission through the organisation of expert meetings and the development of the Council of Europe and G 8 network of contact points. The AGIS programme was used to support several cyber crime training programmes, including an EU cyber crime training curriculum.

As criminals can not only attack information systems or commit crimes from one Member State to another, but can easily do so from outside the EU's jurisdiction, relations with third countries have also been strengthened in the context of anti-cyber crime activities. The Commission has taken part in international forums such as the Council of Europe and the G8 Roma/Lyon High Tech Crime subgroup. Meetings with Russian cyber crime experts were organised in 2007 and 2009 and US and Ukrainian experts participated in the expert meetings organised by the Commission.

The financial programme "Prevention of and fight against crime" was largely implemented in this area, in particular in support of projects designed to enhance cooperation between all EU stakeholders against cyber crime.

²¹⁰ COM(2007) 267 final.

²¹¹ Press release IP/08/1429; Council conclusions of 27 November 2008 on a concerted work strategy and practical measures against cybercrime, OJ C 62, 17.3.2009, p. 16.

²¹² Council document 16325/1/08 rev 1, p. 39, adopting Council conclusions 15569/08.

Combating trafficking in human beings, child exploitation and child pornography

Trafficking is considered one of the most serious crimes world-wide, a gross violation of human rights and a modern form of slavery. Unfortunately, it is an extremely profitable business for organised crime. In conformity with the internationally agreed legal definition, trafficking consists of the recruitment, transfer or receipt of persons, carried out with coercive, deceptive or abusive means, for the purpose of exploitation including sexual or labour exploitation, forced labour, domestic servitude or other forms of exploitation. Women and children seem to be the most affected, but cases of trafficking involving young men, especially for the purpose of labour exploitation, are increasingly being reported. Therefore trafficking is considered a priority within EU policy and needs a robust response²¹³.

The Communication "Fighting trafficking in human beings: an integrated approach and proposals for an action plan"²¹⁴ formed the basis for the "EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings", which was endorsed by the Council in 2005²¹⁵. Following the 2008 report on the implementation of the Framework Decision on combating trafficking in human beings²¹⁶, a detailed study of national measures has been undertaken, making it possible to identify the scope for further legislative and non-legislative actions (i.e. regarding the facilitation of public-private cooperation and the involvement of Europol). Both the Communication and the report provided the basis for an impact assessment of the recently adopted Commission proposal²¹⁷ amending the 2002 Framework Decision on combating trafficking of human beings²¹⁸.

The first EU Anti-trafficking day was held on 18 October 2007. This has now been confirmed as a major annual event to raise awareness of the problems that human trafficking poses. The first anti-trafficking day also saw the adoption of the recommendations on the identification of and referral to services of the victims of trafficking in human beings, in which further measures to underpin the legal framework for preventing and combating trafficking in human organs, tissues and cells are still being looked into, partly because it is particularly difficult to find evidence concerning this problem.

The Commission established a Group of Experts on trafficking in human beings²¹⁹ in 2007. Its goal as to take account of the changes brought about by enlargement, and the need to provide specific expertise, especially in the field of trafficking for the purpose of labour exploitation. Trafficking is a priority in the 2007 and 2008 financial programmes "Prevention of and fight against crime" and in the Thematic Programme on Migration and Asylum. Nine projects directly related to trafficking in human beings have been selected for funding under the

²¹³ Patrick Belser, Michaelle De Cock, Fährad Mehran, "Minimum Estimate of Forced Labour in the World", ILO, Geneva, April 2005.

²¹⁴ COM(2005) 514 final.

²¹⁵ OJ C 311, 9.12.2005, p. 1.

²¹⁶ COM(2008) 657 final.

²¹⁷ COM(2009) 136 final.

²¹⁸ Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, OJ L 203, 1.8.2002, p. 1.

²¹⁹ Commission Decision 2007/675/EC of 17 October 2007 setting up the Group of Experts on Trafficking in Human Beings, OJ L 277, 20.10.2007, p. 29 and Commission Decision 2008/604/EC of 22 July 2008 on the appointment of members of the Group of Experts on Trafficking in Human Beings, OJ L 194, 23.7.2008, p. 12.

programme calls for proposals in 2007 and 2008, and another three awarded projects concern connected issues. The total amount of allocated funds was around € 3 million.

A Council Framework Decision against sexual exploitation and child pornography²²⁰ was adopted in 2004. It introduced a minimum of approximation of Member States' legislation to criminalise the most serious forms of child sexual abuse and exploitation, to extend domestic jurisdiction and to provide for a minimum of assistance to victims.

The Commission adopted a report on the implementation of the Framework Decision in 2007²²¹, which highlighted that there was still a need for more action in certain areas, in particular in IT-related areas such as 'grooming' through the Internet, and for new methods to detect these crimes. However, it also acknowledged that, while information from the Member States was incomplete, the requirements set had generally been met. The Commission stressed the importance of increasing social protection and respecting the rights of child victims, and suggested updating the Framework Decision, in particular regarding offences committed using IT.

However, while there is no doubt that the sexual abuse and exploitation of children is a serious problem, there are no and reliable statistics on the nature of the phenomenon and on the numbers of children involved, because of differences in national definitions of various child sexual abuse and exploitation offences, very significant underreporting by victims, and inadequate data collection mechanisms. Studies suggest that a significant minority of children in Europe, between 10% and 20% as an informed scientific estimate, will be sexually assaulted during their childhood²²². Research also suggests that this phenomenon is not decreasing over time, that child victims portrayed in pornography are getting younger, and the that images are becoming increasingly graphic and violent²²³.

In response to this problem, the Commission presented a proposal in early 2009 for a new Framework Decision on combating the sexual abuse and sexual exploitation of children²²⁴, updating the 2004 Framework Decision on this matter.

Fight against corruption

Corruption, traditionally seen as individual behaviour related to carrying out routine tasks in public affairs (awarding of contracts, awarding of grants, administration of public accounts, decision-making by agencies responsible for exercising executive power, etc.), has changed over time. Today, corruption is more widespread, its various components, while hiding the relationships that bind them together, encompass increasingly large areas, such as the complex administration of the State, and especially of corporate activities that go well beyond national borders.

²²⁰ Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography, OJ L 13, 20.1.2004, p.44.

²²¹ COM(2007) 716 final.

²²² May-Chahal, C., and Herczog, M., "Child sexual abuse in Europe", 2003.

²²³ International Centre for Missing and Exploited Children, "Child Pornography: Model legislation and global review", 2007.

²²⁴ COM(2009) 135 final.

There is a broad consensus that corruption undermines democracy and good governance, the trust in State structures and the overall legitimacy of government. In an economic setting, corruption creates distortions and inefficiency, increasing the cost for all economic subjects. According to estimates of the World Bank, the "global corruption industry" costs about 1 trillion US dollars per year²²⁵ and these figures only take account of the bribery – or active – aspects of corruption. Therefore it seems reasonable to assume that the actual costs are even higher²²⁶. Corruption is not a victimless crime: costs are borne by every citizen.

Estimates made by law enforcement authorities and researchers suggest that 90% of corruption offences remain undetected, while only 10% of all cases are treated by the criminal justice systems. Corruption levels in the EU are difficult to measure, especially because comparable statistics in all the EU Member States do not exist. However, according to a recent Special Eurobarometer survey²²⁷, on average three out of four EU citizens agree that corruption is a major problem in their country (75%).

The Commission's 2007 implementation report on the Framework Decision on corruption in the private sector²²⁸, which requires Member States to make active and passive corruption in the private sector a criminal offence, found that most Member States have not yet criminalised all circumstances in which corruption might occur in the private sector. The Commission plans in due course to carry out a second assessment of the implementation of this instrument.

Following a Council Decision in 2008²²⁹, the European Community ratified the UN Convention against corruption (UNCAC), the first comprehensive piece of legislation having a global scope. The Commission is encouraging Member States that have not yet done so to ratify the UNCAC.

In 2009, the network of contact points against corruption²³⁰ should start operating. It links the operational expertise of Member States authorities and agencies to prevent and combat corruption and to improve coordination in the field. The Commission, Europol and Eurojust are part of the network, which builds on previous work of the European Partners Against Corruption (EPAC). Furthermore, the Commission ordered a scientific study into the links between organised crime and corruption in 2008. The results are expected in autumn 2009. Finally, research projects have been funded under the 6th and 7th Research Framework Programme that also include the cultural aspects of corruption and to provide reliable cross-country comparisons.

Fighting financial crimes

²²⁵ Available at:
<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20190295~menuPK:34457~pagePK:34370~piPK:34424~theSitePK:4607,00.html>.

²²⁶ Available at: <http://www.un.org/events/10thcongress/2088b.htm>.

²²⁷ Special Eurobarometer 291, "The attitudes of Europeans towards corruption".

²²⁸ COM(2007) 328 final.

²²⁹ Council Decision 2008/801/EC of 25 September 2008 on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption, OJ L 287, 29.10.2008, p. 1.

²³⁰ Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption, OJ L 301, 12.11.2008, p. 38.

The Communication on the prevention of and fight against organised crime in the financial sector²³¹ states that financial investigations are a useful means of understanding the activities and behaviour of organised crime networks. Indeed, financial investigations can play a pivotal role in the strategy to dismantle organised crime. In the Communication "Developing a strategic concept on tackling organised crime"²³², the Commission calls for the spreading of investigation techniques and legal tools to rapidly identify illicit money transfers.

The 2008 Revised Strategy on Terrorist Financing²³³ provides that Member States should give priority to financial investigations and to financial criminal analysis in the fight against terrorism. Finally, in a 2008 Communication²³⁴ the Commission cites financial investigation, financial criminal analysis and better training as some of the priorities in the fight against crime.

In an effort to promote financial investigation, financial criminal analysis²³⁵ and financial intelligence, the Commission joined forces with Europol and national experts, sent questionnaires to the Member States, and defined the knowledge financial investigators should have and their level of expertise.

The Commission encouraged Member States police academies, including partnerships with universities, to establish specific training programmes with financial support from AGIS and the "Prevention and fight against crime" programme. The Commission also finances training programmes to establish common training standards on the basis of 8 themes identified by Excellence Centres, and to implement certification schemes for financial investigators.

In the fight against money laundering, the Commission facilitates cooperation and promotes the exchange of information between the Financial Intelligence Units (FIUs) of the Member States through the informal EU FIU Platform and the FIU-NET system.

The EU FIU Platform is an informal forum for discussion and exchange of best practices between FIUs supported by the Commission. The Platform has so far produced reports on feedback on money laundering and terrorist financing cases and typologies and on confidentiality and data protection in the activity of FIUs²³⁶. Future reports should address the content of suspicious transactions and international cooperation.

FIU-NET is a secure communication channel for the exchange of operational information between EU FIUs managed by the FIU-NET Bureau, which is hosted within the Ministry of Justice of the Netherlands. 17 Member States are connected (or are in the process of being connected) to the system and use of the system is steadily increasing. A project to further improve the FIU-NET system is currently ongoing with the financial support of the programme on "prevention of and fight against crime".

²³¹ COM(2004) 262 final.

²³² COM(2005) 232 final.

²³³ Council document 11778/1/08.

²³⁴ COM(2008) 766 final.

²³⁵ The Commission funded several projects on improving these techniques between 2002 and 2005.

²³⁶ Available at: http://ec.europa.eu/internal_market/company/financial-crime/index_en.htm#fiu-platform.

The Commission issued a report in 2007 on the implementation of Council Decision on the exchange of information and cooperation between FIUs²³⁷. The report concluded that Member States can be largely considered to be legally compliant with most of the key requirements of the decision, but that more needs to be done in terms of operational cooperation. The report also underlined the lack of legal clarity on how data protection rules may affect the exchange of information between EU FIUs. It highlighted the need for possible complementary measures, in particular operational guidelines. Many administrative FIUs cannot exchange police information or can provide such information only after a long delay. Some law enforcement FIUs might not be able to provide certain crucial information from their databases to administrative entities. There is no common understanding of what information is accessible to FIUs and what "relevant information" is to be exchanged.

Confiscation and asset recovery

The 2007 Council Decision on cooperation between Asset Recovery Offices (AROs)²³⁸ requires Member States to set up or designate national AROs, which would then promote the fastest possible EU-wide tracing of assets derived from crime. Some countries still need to notify the Commission of their designated authorities. At present 20 Member States have set up AROs²³⁹. These offices differ widely in structure, powers and practices.

In 2007 the Commission issued a first report reviewing Member States' implementation of the Framework Decision on extended confiscation²⁴⁰. The report shows that most EU Member States have been slow to putting in place measures to allow more widespread confiscation of the proceeds of crime.

In 2008, the Commission adopted a Communication on the proceeds of organised crime²⁴¹, which proposes ten strategic priorities to support the fight against organised crime by enhancing confiscation and asset recovery. It reviews existing EU legislation and its implementation and calls for it to be recast in a bid to increase the effectiveness of confiscation. However, on the advice from experts, practitioners and academics, the Commission did not propose new legislation at this stage, but preferred to discuss need for new legislation and its possible content with the Member States.

The Commission also conducted a study in 2007-2008 analysing Member States' practices in confiscation²⁴², focusing in particular on what has proven to be effective at national level with a view to promoting and exchanging of best practices. The study identified several obstacles, such as conflicting legal traditions, difficulties in securing and maintaining assets, lack of

²³⁷ COM(2007) 827 final.

²³⁸ Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103.

²³⁹ AROs have been established or designated in Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, the Netherlands, Poland, Slovakia, Spain, Sweden and United Kingdom.

²⁴⁰ COM(2007) 805 final.

²⁴¹ COM(2008) 766 final.

²⁴² Matrix, "Assessing the effectiveness of EU Member States' practices in the identification, tracing, freezing and confiscation of criminal assets", not yet published.

resources and training, limited cross-agency contacts and a lack of statistical data. It will be used as a basis for further initiatives.

Extensive use of Community funding programmes has been made in this area. The activities of the CARIN Network²⁴³ in particular have been regularly funded under AGIS and ISEC. A high-level pan-European conference funded under ISEC on establishing Asset Recovery Offices in the EU Member States took place in March 2008²⁴⁴. Relations with third countries have also been extended. The Commission participates in the Asset Recovery Working Group established under the UN Convention on Corruption (UNCAC), which provides for extensive international cooperation on the confiscation, disposal and return of assets acquired through corruption.

Some Member States do not regularly collect statistics on the number of freezing and confiscation procedures initiated, the orders issued and the assets recovered. However, at present the overall number of confiscation cases in the EU is relatively limited and the amounts recovered from organised crime are modest, especially if compared with the estimated revenues of organised criminal groups²⁴⁵.

There is evidence that the proceeds of crime are increasingly acquired in countries other than those where a criminal organisation normally operates or where a criminal conviction takes place. This will make the identification of the proceeds of crime and their seizure all the more difficult.

Europol and Eurojust are increasingly assisting financial investigators and magistrates in cross-border cases. In 2007, Europol supported 133 investigations to trace criminal proceeds. In 2007, 30 out of over 1000 cases dealt with by Eurojust related to asset freezing and confiscation. Close cooperation is needed not only within the EU, but also with third countries. However, international cooperation is not always satisfactory due to the varying degrees of willingness to cooperate.

Fight against counterfeiting

Counterfeiting and piracy involve organised criminal activities that can have direct effect on consumers. The Internet has fostered e-commerce across the globe. However, it is also being used by criminals as an international market for the production, sale and distribution of pirated and counterfeit goods that are easily available to the consumer and often dangerous. Different criminal penalties among Member States create an unbalanced enforcement regime within the internal market and slow down cross-border police cooperation. In addition, financial malevolencies attached to counterfeiting and piracy can also aggravate the current financial crisis.

²⁴³ CARIN includes experts from 52 countries, including 26 EU Member States. Its objectives are the exchange of best practices and the improvement of inter-agency cooperation in cross-border matters. Its Secretariat is held by Europol.

²⁴⁴ Organised by Europol and the Austrian and Belgian governments.

²⁴⁵ As shown by the statistics on confiscation included in the mutual evaluation reports on money laundering published by the FATF or the Council of Europe Moneyval Committee. In a recent study carried out in one Member State, the revenues of organised crime were put at around € 130 billion only in that country.

The Hague package referred to the legislative package (directive and framework decision)²⁴⁶ on counterfeiting. In 2006, this package was translated into an amended proposal for a Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights²⁴⁷. During the first reading, the proposed directive to strengthen the criminal law framework to combat intellectual property offences was amended by the European Parliament and transmitted to the Council. Discussion continues between the European Parliament, the Council, the Commission and the private sector.

The proposed amendment will help to adapt the EU instrument to the most recent legal and international developments, and also to the evolution of the threat of organised crime, in particular to public health and citizens' security. To date, only the civil²⁴⁸ and the customs²⁴⁹ dimensions of the issue have been the subject of Community harmonisation. Counterfeiting appears in Europol's and Eurojust's mandate and in certain legal instruments, such as the European Arrest Warrant, seizure of property or mutual recognition of financial sanctions.

In 2008, the Council adopted a resolution²⁵⁰ that mentioned the above-mentioned amended proposal of the directive on criminal measures aimed at ensuring the enforcement of intellectual property rights. This resolution calls for a European Counterfeiting and Piracy Observatory to be set up, for action to be taken to raise awareness, for coordination and evaluation of this phenomenon to promote among institutions involved in it and for the effectiveness of the legal framework enforcing intellectual property right to be appraised. The resolution welcomed the work on a multi-annual anti-counterfeiting trade agreement (ACTA), which includes a criminal enforcement.

Free trade agreements being negotiated with thirds countries also include a criminal section concerning actual implementation of the provisions on counterfeiting. The Commission plays an active part in the Council of Europe's drafting of the Convention on criminal proceedings on pharmaceutical products counterfeiting. Interpol and the WHO coordinate the IMPACT working group with the purpose of building up international strategic and operational cooperation. This situation reinforces the necessity for harmonised criminal measures.

Crime prevention

Although not expressly targeting crime prevention, many of the EU's policies contribute to crime prevention by promoting economic and social cohesion, growth and employment and a transparent economic environment. Objectives in the area of justice, freedom and security also include cooperation and the development of instruments and mechanisms to reduce opportunities for criminal activities, and thus to make crime more difficult and riskier and of reduce criminals' profits. Although much has been achieved, further efforts are needed.

²⁴⁶ COM(2005) 276 final.

²⁴⁷ COM(2006) 168 final.

²⁴⁸ Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, OJ L 157, 30.4.2004, p. 45.

²⁴⁹ Council Regulation (EC) No 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, OJ L 196, 2.8.2003, p. 7.

²⁵⁰ 2008/C 253/01, OJ C 253, 4.10.2008, p. 1.

The European Crime Prevention Network (EUCPN) was established by the Council in 2001 to promote and support crime prevention initiatives at local, national and European level. An external evaluation launched in 2008 to assess its effectiveness concluded that the EUCPN played a positive role in raising the profile of crime prevention and facilitating networking between Member States. A number of the Network's initiatives, such as the Best Practice Conferences, the European Crime Prevention Award and a database on projects and other local and national approaches on crime prevention, contributed to sharing information and expertise among practitioners, researchers, policy-makers and other stakeholders. Given that the potential of the EUCPN is far from being realised, there is a need for it to be further expanded with a renewed political approach and organisational improvements.

The website of the EUCPN has become an effective tool for providing information, both to practitioners and the general public, on strategic and operational developments in the field. Good progress has also been achieved as regards the development of a common methodology to prepare, implement and evaluate specific crime prevention projects. The inventory of projects put on the website relates to fields such as domestic violence, youth crime, public perception of safety, street crime and prolific offenders. The number of public hits on the EUCPN's web pages has been constantly on the increase in years.

Crime statistics

In an effort to improve the quality and comparability of data collected on crime, the Commission adopted an Action Plan on crime statistics²⁵¹ and established an Expert group to that effect²⁵². A Working group of producers of crime statistics was also subsequently established by Eurostat²⁵³.

Since the establishment of the expert group in 2007, much has been done to develop indicators in the areas of money laundering, human trafficking, and the effectiveness of criminal justice systems. Collecting data on identified money laundering began in 2008, and will continue throughout 2009.

These activities have resulted in the establishment of links between the Commission and the Financial Action Taskforce (money laundering), the International Labour Office (human trafficking), the Council of Europe (criminal justice systems, judicial cooperation, juvenile justice), and the UN Office of Drugs and Crime (criminal justice systems, juvenile justice and corruption). This has led to a more coordinated approach to the identifying data needs and the collecting data from Member States, and should both improve in the quality of data collected and minimise the reporting burden imposed on Member States' administrations.

In tandem with these activities, the Commission has pursued the development of crime and criminal justice survey instruments and methodologies. Projects ongoing in this area include: an EU crime victimisation survey; a commercial crime survey; a survey on the efficiency of criminal justice; a methodology to estimate the cost of crime; indicators on the confidence in

²⁵¹ COM(2006) 437 final.

²⁵² Commission Decision 2006/581/EC of 7 August 2006 setting up a group of experts on the policy needs for data on crime and criminal justice, OJ L 234, 29.8.2006, p. 29.

²⁵³ This group consists of JHA/law enforcement users of crime data from inter alia the EU-27 among others.

justice; and closer links between Justice and Home Affairs administrations and the research community.

III. Future challenges

Fighting cyber crime

It is difficult to assess the current situation in detail as comprehensive data are not available. Comparable and quality cyber crime statistics should be developed at EU level. By way of a general indication only, the following points can be cited:

- The number of attacks on important information infrastructures in the UK is put at several thousand a day²⁵⁴.
- The number of images of sexually abused children available on line quadrupled in the period 2003-2007²⁵⁵.
- The numbers of criminal URLs infecting PCs with password-stealing codes rose by 93% in the first quarter of 2008²⁵⁶.

It is therefore clear that cyber crime poses an increasingly significant threat to critical information infrastructure, society, business and citizens. It is also marked by rapid changes in criminal targets and methods, and by the increasing involvement of organized crime groups. This changing environment requires a constant update of anti-cyber crime policies, both at national and at European and international level.

The 2008 report²⁵⁷ on the implementation of Framework Decision on attacks against information systems undertook a detailed study of national measures, making it possible to identify the scope for further legislative and non-legislative actions.

Cooperation with third countries in the fight against cyber crime should be enhanced, in particular by involving third countries authorities in EU anti-cyber crime policies.

Action will be taken in particular to enhance and facilitate cross-border investigations and a secure exchange of information and cooperation between national cyber crime units and EU authorities (in particular Europol and Eurojust), for example, through EU funding programmes and reinforcement of the functions of existing international 24/7 networks of contact points in the EU, the development of a central platform for flagging illegal content on the Internet, and the establishment of best practices on the use of investigation techniques and tools. Financial programmes are an integral part of Commission's policy in this area.

Training programmes for EU cyber crime investigators and prosecutors should be further developed.

²⁵⁴ The Times, 23 August 2008.

²⁵⁵ Internet Watch Foundation statistics, as reported in the *Irish Examiner* of 17 April 2007.

²⁵⁶ Anti-Phishing working group (APWG), "Phishing Activity Trends Report Q1 2008", available at: http://www.antiphishing.org/reports/apwg_report_Q1_2008.pdf.

²⁵⁷ COM(2008) 448 final.

Combating trafficking in human beings, child exploitation and child pornography

According to estimates provided by the International Labour Organisation²⁵⁸, 12.3 million people are subjected to forced labour in the world, among them 1,390,000 in forced labour for commercial sexual exploitation, 7,810,000 in economic exploitation, and 610,000 in mixed or undetermined forms of forced labour. Approximately 20% of people in forced labour – around 2.45 million – have been victims of trafficking. The financial gain of those profiting from trafficking is put at more than 30 billion US dollars a year globally.

Relatively few criminals are prosecuted in this area. The total number of cases investigated in the EU was 195 in 2001, 453 in 2003, 1,060 in 2005, and 1,569 in 2006²⁵⁹. Despite the upward trend, the number of criminal proceedings is still not comparable with the presumed scale of the crime. Therefore, the problem is that trafficking in human beings is still a high profit and low-risk crime for both trafficking for sexual and labour exploitation, particularly regarding children. There is also a clear lack of effective policies in the field of victims' rights and victim support and prevention.

Action should be taken to enhance the exchange of information (both operational and strategic information, including threat assessments) and cooperation between national specialised units and EU authorities. The use of joint investigation teams and similar structures to enhance international law enforcement operational cooperation against trafficking networks must be further promoted.

Training programmes should be developed for investigators and prosecutors as well as for all officials likely to come to contact with potential and actual victims. National mechanisms for identification and referral to services of trafficking victims, and child protection systems designated to detect when trafficking occurs, will continue to be established and expanded.

Efforts to increase cooperation between all stakeholders (law enforcement, information security agencies, private sector operators, service providers, etc.) and to improve prevention will be continued. These include awareness raising and information targeted campaigns, and initiatives aimed at discouraging demand.

A new methodology of collecting data on specific types of trafficking and measuring the extent of the crime will be developed and current cooperation projects with third countries will be intensified.

Fight against corruption

Further action will focus on finding sustainable ways of assessing Member States' performances in the field of preventing and combating corruption. The possibility of a comprehensive EU corruption report, allowing a direct comparison of all Member States and published periodically, could be envisaged. To this end, comparable and quality corruption statistics should be collected at EU-level.

²⁵⁸ Patrick Belser, Michaelle De Cock, Fährad Mehran, *Minimum Estimate of Forced Labour in the World*, ILO, Geneva, April 2005.

²⁵⁹ The number of sentences is much lower. The total number in 2006 was 284 sentences for trafficking for sexual exploitation. See COM(2008) 657 final.

The Commission will continue to support anti-corruption initiatives and projects via its financial programmes, such as "Prevention and fight against crime" and the research programmes.

Training programmes for European investigators and prosecutors dealing with corruption could be further developed. Further action should be taken to facilitate cooperation between all stakeholders (law enforcement, information security agencies, private sector operators, etc.) to prevent and combat corruption.

Fighting financial crimes

Financial investigation techniques and financial criminal analysis should be encouraged at national level and, where necessary, at the European level. However, traditional instruments must be rethought if the fight against organised crime and how it is financed is to be effective, and illicit assets are to be recovered. Widespread financial investigation would intensify the fight against organised crime and the financing of terrorism.

Member States should further reinforce **Europol** in order to respond to the evolution of financial investigation needs; Europol should be more involved in financial investigations, in parallel with investigations into organised crime.

A methodology for the regular collection of comparable statistics on money laundering in the Member States should be promoted and implemented under the EU Action Plan on Crime Statistics in order to help assess the effectiveness of the anti-money laundering systems in place.

The exchange of information between FIUs and other parties (law enforcement, other authorities, private sector) should also be stepped up. A recent Commission study²⁶⁰ analyses the provision of feedback between the reporting entities, the FIUs and law enforcement authorities. It shows that feedback is not provided to the private sector in good time; that structural case-by-case feedback is provided only in a limited number of instances; and that more substantial feedback is generally required by the private sector. The Commission should continue to facilitate a secure exchange of information between FIUs by supporting technical improvements to the FIU-NET system and by promoting broader use of the system by the EU FIUs.

Following on from the work under the SUSTRANS Analysis Working File, an EU database on suspicious transaction reports could be set up to help establish links between suspicious transactions reported by a Member State and ongoing investigations carried out by law enforcement agencies in other Member States. If necessary new legislation could be introduced requiring Member States to provide data and allowing the exchange of such data between Member States. The €STR project, which receives financial support from the Commission and involves a number of Member States and Europol, is meant to increase the

²⁶⁰

B&S Europe, "Best practices in vertical relations between the Financial Intelligence Unit and i) law enforcement services and ii) money laundering and terrorist financing reporting entities, with a view to indicating effective models for feedback on follow-up to and effectiveness of suspicious transaction reports", not yet published.

effectiveness of Europol's Analysis Working File Sustrans and to enhance its value as a basic tool for financial intelligence-led policing

Confiscation and asset recovery

Regular meetings of the Informal EU Asset Recovery Offices Platform should continue to be organised in order to ensure effective exchange of information, coordination and cooperation. The Commission has to adopt an implementation report by December 2010 on the Council Decision on Asset Recovery Offices.

The creation of centralised registers and databases (e.g. land and property registers, bank account registers, vehicle registers, company registers) in the Member States (where necessary) should be promoted and supported in order to facilitate the identification and tracing of criminal assets.

Better and comparable statistics on assets frozen, confiscated and recovered should be regularly collected and published in order to help assess the effectiveness of the confiscation systems in place.

Fight against counterfeiting

In recent years, the number of confiscated articles at the EU borders has risen by 70%, reaching the level of some 130 millions articles in 2006 and 79 millions articles in 2007²⁶¹. Confiscated goods are an increasing danger to consumers and citizens' health and security. In 2006, more than 2,700,000 articles in the pharmaceutical sector (+ 400%) were detained, more than 4 millions (+51%) in 2007²⁶².

Cyber counterfeiting will be a challenge in the years to come. The criminal dimension of the European Counterfeiting and Piracy Observatory should be supported, in particular to boost the role of Europol and Eurojust.

The Commission hopes that a legislative instrument will rapidly harmonise criminal measures linked to the protection of intellectual property rights before the 2010-2014 period. In this case, the Commission will be able to consider reinforce EU legislation, particularly as regards penalties to be inflicted and horizontal and procedural matters, in order to be better prepared to tackle organised crime and health and security threats.

Intensifying financial investigation and financial crime analysis as a means of fighting counterfeiting and piracy must be a priority.

Crime prevention

The above-mentioned 2008 evaluation concluded that the full potential of the EU Crime Prevention Network has not yet been explored and tapped. It proposed a number of

²⁶¹ Available at:
http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm

²⁶² Ibidem.

operational and strategic recommendations to boost and professionalise the impact of the EUCPN on crime prevention.

The prevention of crime is a multi-faceted task that must be tackled primarily at local levels. However, effective national policies are essential to enabling local communities to achieve their objectives. Enhancing the exchange of experience and promising practices plays an increasingly important role inside the European Union and beyond, notably against the background of globalisation, borderless markets and fast technological developments (Internet).

Crime statistics

Midway through the Action Plan's 5-year life-cycle, the time has come to reflect on the fact that in order to produce comparable crime and criminal justice data in the EU 3rd pillar there is a need for both policy and operational measures to address the structural issues of how crime data are collected, classified and analysed. The Commission is currently funding initiatives and research projects aimed at encouraging convergence in the areas of police and judicial crime statistics, victim surveys, and an offence classification benchmark. The current deficit of comparable, reliable statistics at EU level significantly hampers the development of more effective policies in this area.

4.6. European strategy on drugs

I. Objectives

The EU Drugs Strategy 2005-2012²⁶³, which is an integral part of the Hague Programme, aims to protect and improve the well-being of society and the individual, to protect public health, to ensure a high level of security for the general public, and to strike a balance between the policy of prevention, assistance and rehabilitation of drug dependence, the policy of combating illegal drug trafficking and precursors and money laundering, and the intensification of international cooperation.

II. Main developments

The European Drugs Strategy 2005-2012 set the framework, objectives and priorities for two consecutive four-year Drug Action Plans to be brought forward by the Commission. The first Action Plan 2005-2008 was endorsed by the Council in 2005²⁶⁴. It contained over 80 individual measures and supplemented the Hague Action Plan. Its implementation was closely monitored by the Commission, which delivered annual implementation reports for the years 2006²⁶⁵ and 2007²⁶⁶.

In September 2008, the Commission adopted a Communication on an EU Drugs Action Plan for the period 2009-2012²⁶⁷, which was accompanied by a final evaluation of the EU Drugs Action Plan 2005-2008²⁶⁸. This evaluation was carried out by the Commission with the support of the Member States, the European Monitoring Centre on Drugs and Drug Addiction (EMCDDA), Europol and the European NGO networks represented in the Civil Society Forum. At the same time, an impact assessment to determine the most appropriate policy option to implement the EU Drugs Strategy was adopted²⁶⁹. The EU Drugs Action Plan 2009-2012 was endorsed by the Council in December 2008²⁷⁰.

The final evaluation of the Action Plan 2005-2008 is considered the most extensive assessment of EU drugs policy carried out so far and has resulted in a number of recommendations, many of which have been translated into the new EU Drugs Action Plan 2009-2012. The evaluation showed that the objectives of the Plan have been partly achieved.

- Although drug use in the EU remains high, available data suggest that the use of heroin, cannabis and synthetic drugs has stabilised or is declining, but that cocaine use is rising in a number of Member States. The total number of people in the EU who have at some time taken drugs ('lifetime prevalence') is put at 71 million for cannabis, 12 million for cocaine, 9.5 million for ecstasy, and 11 million for

²⁶³ Council document 15074/04.

²⁶⁴ On the basis of COM(2005) 45 final, the EU drugs action plan (2005-2008) was endorsed by the Council in 2004, 2005/C 168/01, OJ C 168, 8.7.2005, p. 1.

²⁶⁵ SEC(2006) 1803.

²⁶⁶ COM(2007) 781 final.

²⁶⁷ COM(2008) 567 final.

²⁶⁸ SEC(2008) 2456.

²⁶⁹ SEC(2008) 2455.

²⁷⁰ 2008/C 326/09, OJ C 326, 20.12.2008, p. 7.

amphetamines, while more than 600 thousand people are known to be receiving substitution treatment for drugs like heroin²⁷¹.

- Data available for comparison with third countries show that the consumption of cannabis, cocaine and amphetamines in the EU is significantly lower than, for example, in the United States.
- Evidence shows that the EU is succeeding in at least containing the complex social phenomenon of widespread substance use and abuse, and that it is focusing increasingly on measures to address the harm caused by drugs to individuals and society. It is important to note that over the period under review, world production of illicit opiate rose sharply and unprecedented traffic in cocaine rolled into the EU.
- In terms of international cooperation, there is now better coordination of EU positions in international forums on drugs, but the lack of a focused and structured second pillar remains a weakness. On the other hand, the EU's balanced approach to drugs is being used increasingly as a model for third countries.

While progress has been made in many areas, weaknesses have also been identified. In particular, policy coordination problems persist in many areas, within the Commission, between Member States and within Member States, and even if the quality of information on the EU situation regarding drug use, prevention and treatment has consistently improved, considerable knowledge gaps remain: there is a persistent lack of reliable data on drug supply but also on the scope and outcomes of drug-related assistance to third countries.

The current EU Drugs Action Plan 2009-2012 takes on board these lessons learnt and puts forward measures to address them.

During the period covered by the Hague programme, the Commission launched a series of initiatives to increase the role of civil society in drugs policies. In response to the Commission's Green Paper on the role of civil society in drugs policy²⁷², the Civil Society Forum on Drugs is one of the very first attempts to establish a permanent structure for public consultation on drugs in the area of freedom, security and justice. The Civil Society Forum helps to implement the European Transparency Initiative²⁷³ and reflects the importance of this kind of structured dialogue.

The Council Framework Decision on drugs trafficking²⁷⁴ called for a Commission report to be submitted to the Council and the European Parliament to assess Member States' compliance with these legal provisions. The report is being prepared by the Commission and will be presented in 2009.

²⁷¹ EMCDDA Annual Report 2008, available at: <http://www.emcdda.europa.eu/events/2008/annual-report>.

²⁷² COM(2006) 316 final.

²⁷³ COM(2008) 323 final.

²⁷⁴ 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, OJ L 335, 11.11.2004, p. 8.

III. Future challenges

Regarding future priorities for **EU Drugs Policy beyond 2012**, a decision will be taken on the basis of the evaluation of the existing EU Drugs Strategy (2005-2012) as to whether a new EU Drugs Strategy for the period post-2012 is needed and in what form. These plans will be drawn up during the last two years of the life of the Stockholm Programme. Any potential new Drugs Strategy and/or Drugs Action Plan should become an integral part of the Stockholm programme exercise. Future plans will be drawn up in close cooperation between the Commission, the Member States, civil society and the other EU Institutions, in particular the European Parliament. While abiding by the principles that form the basis for the "European Approach" to drugs, the future policy will very probably take new potential needs into account.

The current and past action plans are mainly conceived as coordination instruments containing non-legislative measures and recommendations for the implementation of drug policy.

The evaluation of the EU Drugs Action Plan (2005-2008) shows that, despite the non-binding nature of the current drug policy, there is a definite trend towards convergence among the Member States on this issue, whilst the principle of subsidiarity and the Member States' fundamental prerogatives in the field of drugs continue to be observed.

More substantial involvement of Civil Society at national level, in the formulation and implementation of EU policy on drugs should be encouraged. This may entail more structural consultation of civil society on drug policy beyond 2012. This could be achieved by encouraging Member States to establish specific consultation mechanisms at national level, although resistance should be expected here as some Member States take a dim view of the Commission getting involved in this. The European Commission's Civil Society Forum on Drugs can play a driving role in this respect, including at national levels.

The interim evaluation by 2010 of the first two years of activity of the "European Action on Drugs" initiative will provide valuable insights into effective methods of involve civil society. The new 'European Action on Drugs' initiative aims to mobilise a broad range of civil society, stakeholders and citizens, taking concrete steps to raise awareness, in particular among young people and increase a general commitment in European societies to dealing with the drug problem. This might consequently be follow up.

As regards international cooperation, the EU should continue to "export" its balanced approach in third country and to coordinate efforts in the drugs field, including for facing threat related to traditional – such Afghanistan – and "new" trafficking routes like West Africa.

5. STRENGTHENING JUSTICE

5.1. European Court of Justice

I. Objectives

Points of laws which arise in the area of freedom, security and justice need to be brought before the European Court of Justice (ECJ) and dealt with as swiftly as possible. This was recognised originally in Article III-369 of the Constitutional Treaty, and the Hague Programme called on the Commission to consider how requests for preliminary rulings in the area might be handled speedily and appropriately.

II. Main developments

Requests for preliminary rulings submitted to the ECJ which concern areas covered by Title VI of the EU Treaty or Title IV of Part Three of the EC Treaty often require a rapid response, which is not permitted by the Court's normal preliminary ruling procedure, nor by the accelerated procedure that can be applied only in exceptional cases. The Court therefore adopted an urgent preliminary ruling procedure in March 2008, which limits and simplifies the stages of the preliminary ruling procedure²⁷⁵. The application of this procedure may be requested by national courts or, exceptionally, by the ECJ itself where it deems it to be necessary.

III. Future challenges

There is currently an anomalous situation in which the Court of Justice does not have full jurisdiction in the area of freedom, security and justice. The Treaty of Lisbon would address this by giving the Court complete jurisdiction in this area, including in relation to police and judicial cooperation and the general regime of infringements and preliminary rulings. The Treaty does not extend the Court's jurisdiction to questions of the validity or proportionality of police operations and other measures taken by Member States to maintain law and order or safeguard internal security.

The extension of the Court's jurisdiction to police and judicial cooperation, and also of the Commission's powers to commence infringement proceedings, will be subject to a transitional period of up to five years after the Treaty enters into force. During the transitional period the Court's jurisdiction will remain as it currently is under the Third Pillar and Article 35(2) of the TEU. Five years after the Treaty enters in force, the UK will have the option of deciding whether to accept the Court's jurisdiction or opt out completely from the pre-existing Third Pillar *acquis*. If the UK decides to opt out, it will be able at any subsequent point to opt back in.

²⁷⁵ OJ L 24, 29.1.2008, p. 39.

5.2. Confidence-building and mutual trust

I. Objectives

Mutual trust is a precondition for mutual recognition. Only if practitioners trust the legal systems in the other Member State and the way it is applied in practice by their colleagues will they be willing to recognise and enforce foreign decisions without further formalities. However, despite good political intentions, in practice there appears to be a lack of mutual trust and courts or other judicial authorities are sometimes reluctant or slow to recognise and enforce foreign judgments or judicial decisions. Lack of mutual trust also has negative effects on the negotiations of instruments, particularly in cooperation in criminal matters where grounds of refusal and other exceptions or opt-outs are often introduced to counterbalance the obligation of mutual recognition.

To make it easier to apply the principle of mutual recognition, the Hague Programme highlighted the importance of increasing confidence and mutual trust through an impartial assessment of the implementation of EU measures in the field of justice, the support for a network of judicial organisations and institutions and exchange programmes and trainings schemes.

The Programme also underlined the need for citizens to have access to a judicial system that meets high quality standards, and for efforts to improve mutual understanding among judicial authorities and different legal systems.

II. Main developments

An important tool for improving access to information on the various justice and legal systems, for increasing mutual trust and understanding, and for ensuring access to high quality justice is European **e-Justice**. The Member States have been working on e-Justice at national level and since 2003 have also started cross-border pilot projects, some of which have been partially financed by Community funds (for example, interconnection of criminal records and insolvency registers). Following the call from the Council in June 2007 for an overall strategy for the use of information and communication technologies (ICT)²⁷⁶, the Commission issued a Communication on e-Justice in 2008²⁷⁷. Also in 2008, the Council adopted the European e-Justice Action Plan²⁷⁸, which calls for the Commission to launch and manage the European e-Justice portal in December 2009. In December 2008, the European Parliament adopted a report on e-Justice²⁷⁹ on which discussions are still ongoing.

While e-Justice was not explicitly mentioned in the Hague Programme, the respective work was based on achievements to date at national level and on decisions by the European institutions to use ICT tools to deal with specific problems in cross-border cases. European e-Justice will be essential to achieving the objectives of better access to high quality justice and mutual understanding among judicial authorities and differing legal systems.

²⁷⁶ Council document 10267/07, p. 43.

²⁷⁷ COM(2008) 329 final.

²⁷⁸ Council document 16325/1/08 rev 1, p. 31, adopting Council document 15315/08.

²⁷⁹ European Parliament document INI/2008/2125.

A systematic evaluation of the EU policies in the field of Justice is not in place, but several evaluations have already been carried out in the field of justice. Moreover, a Commission Communication on the creation of a Forum for discussing EU justice policies and practice has been adopted in 2008²⁸⁰. The Justice Forum provides a platform for a regular dialogue on policies and practice in the area of European justice. It aims to increase mutual trust, promote best practices and improve mutual recognition and access to justice. The Justice Forum brings together legal practitioners, academics and representatives of justice administrations from the Member States, who, during thematic meetings, provide the Commission with input for new initiatives as well as feedback on existing legal instruments and policies. In addition, the Commission will continue to support the initiatives of the Hague Conference on Private International Law aimed at increasing direct communications between judges²⁸¹.

In 2006, the Commission has published a Communication on judicial training in the EU²⁸², a development based on a pilot project for the exchange of magistrates (2005) and on preparatory action (2006).

In 2008, the European Parliament adopted a report on the role of judges in the European judicial system²⁸³, which shows that the measures currently in place regarding training in European matters are insufficient and that judges themselves say that they do not know European legislation well enough. In November 2008, a resolution calling on Member States to promote continuous training of the legal professions and additional language training was adopted by the Council²⁸⁴.

Practitioners say that they have insufficient knowledge of EU instruments, to what extent they are transposed into national legislation and how to use them. Studies²⁸⁵ show that national judges are in favour of more training on EU law and that they need to improve their linguistic skills. In the area of criminal law, insufficient knowledge of the national law implementing the EU instruments is also a problem. If a practitioner wants to know the rules in another Member State regarding a specific EU instrument he needs to access the national implementing legislation, which is often drafted in a language that he does not understand. In general, the lack of sufficient knowledge of foreign languages among judges and prosecutors poses a problem for judicial cooperation. The Commission has therefore financed training programmes for the legal professions throughout the Hague Programme

Exchanges of judges and public prosecutors between Member States was considered to be a good way to provide training on cross-border issues while developing mutual trust through personal contacts and better knowledge of another judicial system. Following several years of financing and an external assessment of this pilot project, the above-mentioned

²⁸⁰ COM(2008) 38 final.

²⁸¹ In January 2009, for example, a Joint conference with the European Commission on Direct Judicial Communications on Family Law Matters & the Development of Judicial Networks took place.

²⁸² COM(2006) 356 final.

²⁸³ European Parliament document INI/2007/2027.

²⁸⁴ Council document 14667/08, p. 22.

²⁸⁵ The European Parliament's report on the role of the national judge in the European judicial system, previously mentioned, and the study conducted by the Université Libre de Bruxelles on behalf of the European Commission, "Analysis of the future of mutual recognition in criminal matters in the European Union", available at:
http://ec.europa.eu/justice_home/doc_centre/criminal/recognition/docs/mutual_recognition_en.pdf.

Communication on judicial training launched a larger-scale programme. Exchanges began in 2007 and have involved around 400 judges and prosecutors. These programmes need substantial support from Member States to be sustainable.

The European Judicial Training Network, founded in 2000 and supported by the EU, promotes training in EU law by networking amongst national training institutes and organises exchange programmes for judges and prosecutors. The Commission has funding programmes for civil and criminal justice aimed at improving mutual recognition by fostering mutual knowledge of legal and judicial systems.

Further to the establishment of the European Rule of Law Initiative for Central Asia by the Commission and the Member States in 2007 and of the Euro-Mediterranean partnership in 2008, cooperation on judicial training between Member States and third countries is regarded as an important tool for establishing and underscoring the rule of law in all countries.

Other training programmes on environmental law, the fight against corruption and maritime law have targeted specific legal professionals such as administrative judges.

Dissemination of information and knowledge to national judges and public prosecutors is a task within the remit of the national contact points of the European Judicial Network in Civil and Commercial Matters (EJNCCM)²⁸⁶ and the European Judicial Network in Criminal Matters²⁸⁷. They assist national judges and public prosecutors by providing them with essential information on cross-border procedures. In addition, the websites and atlases of the two networks provide precise information on cross-border issues, and are used more and more extensively by the judiciary. An Internet-based information system for the public has been gradually established (hosted on the Europa website), which averages 100,000 visits per month. The European Judicial Atlases play a very practical role in helping individuals and businesses to access the information the need to initiate legal proceedings in another Member State (the civil Atlas averages 1,700 visitors per month, the criminal Atlas just under 8,000). Both these Networks link to the European Judicial Atlases, information technology tools developed to improve access to justice in cross border-cases and judicial cooperation, by allowing individuals and practitioners to find out which court or judicial authority to contact and to fill in the relevant forms on line and send them electronically.

III. Future challenges

Mutual trust is a precondition for mutual recognition to work. Knowing whether and how procedural rights are protected in other Member States may help to improve mutual trust. The Commission is currently preparing an instrument on procedural rights in criminal matters and will commission a study on minimum standards in civil procedural law.

²⁸⁶ Council Decision 2001/470/EC of 28 May 2001 establishing a European Judicial Network in civil and commercial matters, OJ L 174, 27.6.2001, p. 25.

²⁸⁷ Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network, OJ L 348, 24.12.2008, p. 130, which replace Joint Action 98/428/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation of a European Judicial Network, OJ L 191, 7.7.1998, p. 4.

The e-Justice portal²⁸⁸ is designed to improve judicial cooperation and facilitate access to justice by citizens and businesses across Europe. Work on the European e-Justice portal has started. The target date of December 2009 for the first release is ambitious and will focus on information for citizens and businesses. Functions – for judicial authorities and legal professionals – developed by the Member States in the context of pilot projects funded by the "Civil Justice"²⁸⁹ and "Criminal Justice"²⁹⁰ programmes are expected to be integrated if they are mature and technically ready. As from 2010, functions will be added to the portal incrementally. The potential offered by e-Justice must be fully tapped in order to facilitate and support citizens' access to justice.

The Commission should continue to request independent studies on specific topics in order to evaluate the extent of the problems in the justice area. Apart from quantitative evaluations, thorough and structural qualitative evaluations of the application of existing instruments will also be necessary. Community instruments usually contain evaluation obligations, calling on the Commission to assess their effectiveness and to report on the application of the instrument. Constructive and timely reactions on the part of the Member States to requests for information for such reports will be crucial to ensuring that these reports are of the highest quality and can act as a basis for discussions on the instrument in question. The peer review system²⁹¹ is another method already commonly used for evaluation, like in the case of the European Arrest Warrant. Peer review makes it possible for an evaluation team to use questionnaires and interviews with stakeholders to assess the performance of each Member State. At present, there is no coherent method of collecting data on justice, which makes it difficult to assess the effectiveness of EU instruments. Mechanisms and methodologies for collecting and comparing data should therefore be developed. The EJNs could provide useful support for data collection and national ministries of justice should also play a more active role in compiling statistics.

Although a systematic evaluation of EU policies in the field of Justice with a view to improving mutual trust and enhance the functioning of the European Justice Area is not in place, the Commission has launched a debate – following up a Dutch initiative – on the possible developments of this option in the future.

Exchange programmes, such as those arranged by the European Judicial Training Network, and networking are excellent ways of improving mutual knowledge and understanding of other Member States' judicial systems work. Initiatives for these programmes targeting public prosecutors and judges should be further encouraged and financially supported by the EU. Funding will be available for the European Judicial Training Network and its training activities, as well as for training courses for judges on specific topics, such as those at the

²⁸⁸ COM(2008) 329 final.

²⁸⁹ Decision No 1149/2007/EC of the European Parliament and of the Council of 25 September 2007 establishing for the period 2007-2013 the Specific Programme Civil Justice as part of the General Programme 'Fundamental Rights and Justice', OJ L 257, 3.10.2007, p. 16.

²⁹⁰ Council Decision 2007/126/JHA of 12 February 2007 establishing for the period 2007 to 2013, as part of the General Programme on Fundamental Rights and Justice, the Specific Programme Criminal Justice, OJ L 58, 24.2.2007, p. 13.

²⁹¹ Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime, OJ L 344, 15.12.1997, p. 7.

European Law Academy in Trier. In addition, the Criminal and Civil Justice financial programmes make it possible to fund other initiatives in this area.

With regard to judicial training, as necessary as European-level programmes are for legal professionals, they cannot enable all legal professionals to be trained at European level. Discussions regarding the promotion of "train the trainer" programmes or e-learning tools have begun and need to be encouraged. Training a restricted number of legal professionals to fulfil a training role at national level is the preferred method. E-learning tools are not yet completely adapted to the needs of legal professionals but an overall strategy on training should include such tools.

Action should be also taken to help national legislative officers to implement EU instruments: information seminars and/or country-specific help can be set up during the period between the adoption of the instrument and the date from which it must be applied. These seminars would also allow legislative officers of different Member States to meet and share their experience and best practice.

It is important that practitioners should have easy access to legislative texts and manuals. The websites of both Judicial Networks play an important role in improving the dissemination of information and should be further supported. Furthermore, the Commission should continue to contribute to drafting practice guides and manuals, where appropriate in cooperation with the EJNs.

5.3. Judicial cooperation in criminal matters

I. Objectives

The Hague Programme set ambitious objectives in the field of criminal justice cooperation, calling for the completion of the programme of mutual recognition and the development of equivalent standards for procedural rights in criminal proceedings; the approximation of substantial and procedural criminal law in order to facilitate mutual recognition; and the consolidation and further development of Eurojust in order to improve cooperation and coordination of investigations. In addition, the Hague package also envisaged the adoption of other instruments for strengthening judicial cooperation in criminal matters and the participation in and conclusions of international conventions.

II. Main developments

Mutual recognition in criminal matters

The mutual recognition programme in criminal matters was launched in 2000²⁹² and consolidated in 2005 by the Communication on mutual recognition of decisions in criminal matters and reinforcement of mutual trust between Member States²⁹³. It has been partially achieved, as some of its measures have been more successfully implemented and have had greater impacts than others. This overall assessment of developments in the field of criminal justice cooperation is also supported by a study commissioned by the European Parliament on the issue²⁹⁴.

Implementation of the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States²⁹⁵ is generally considered to be the biggest success in this field: the first report on implementation by 24 Member States was adopted in 2005²⁹⁶. A revised version to include Italy (implementation in May 2005) was adopted in 2006²⁹⁷. The second report on the implementation of the Framework Decision was adopted in 2007²⁹⁸. The practical application of the EAW is also assessed in a round of peer evaluations. This round started in 2006. An overall evaluation report is expected in mid-2009.

The EAW has been operational throughout all 27 Member States since 1 January 2007: the implementation reports (and the "peer reviews") are generally positive and demonstrate that the EAW is a well-functioning system, which has dramatically increased the number of persons surrendered between Member States, and sensibly reduced the time needed for surrender. Although there is no common statistical tool and not all Member States provide

²⁹² Programme of measures to implement the principle of mutual recognition of decisions in criminal matters, 2001/C 12/02, OJ C 12, 15.1.2001, p. 10.

²⁹³ COM(2005) 195 final.

²⁹⁴ European Parliament, "Progress Made and Existing Gaps in the Field of Judicial co-operation in criminal matters", 2007, available at: <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=18151>.

²⁹⁵ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, p. 1.

²⁹⁶ COM(2005) 63 final.

²⁹⁷ COM(2006) 8 final.

²⁹⁸ COM(2007) 407 final.

statistics, the data received seem to confirm that the European arrest warrant is now used as a matter of course everywhere and the general trends illustrated suggest that the procedure is effective. The figures in the table below speak for themselves.

	2005 ²⁹⁹	2006 ³⁰⁰	2007 ³⁰¹
Number of EAWs issued	6900	6750	11,000
Number of persons traced and/or arrested	1770	2040	4200
Numbers of persons surrendered	1530	1890	3400

In a majority of Member States surrender with consent takes place within 11 days and without consent within not more than about two months. Around 50% of surrenders take place with the consent of the sought person. On average around 25% of cases involve surrender of nationals for prosecution in another Member State.

Nevertheless, transposition in certain Member States can create problems that the absence of infringement procedures make difficult to solve. At the same time, some Member States tabled and amendment to the Framework Decision for *in absentia* judgments³⁰². This amendment to the EAW and other framework decisions has been adopted in 2009³⁰³.

A study conducted by the European Parliament³⁰⁴ confirms this overall assessment of the instrument and also stresses that the EAW could be used more efficiently, in particular through a greater involvement of both Europol and Eurojust.

The assessment of other instruments over the last few years does not show such a positive trend. The implementation report³⁰⁵ on the Framework Decision on the execution in the EU of

²⁹⁹ Council document 9005/5/06 rev 5.

³⁰⁰ Council document 11371/4/07 rev 4.

³⁰¹ Council document 10330/3/08 rev 3.

³⁰² Initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom and the Federal Republic of Germany with a view to adopting a Council Framework Decision 2008/.../JHA on the enforcement of decisions rendered in absentia and amending Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders, and Framework Decision 2008/.../JHA 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 European Union, OJ C 52, 26.2.2008, p. 1.

³⁰³ Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial, OJ L 81, 27.3.2009, p. 24.

³⁰⁴ European Parliament, "Implementation of the European Arrest Warrant and Joint Investigation Teams at EU and National level", 2009, available at: <http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=24333>.

³⁰⁵ COM(2008) 885 final.

orders freezing property or evidence³⁰⁶ showed that, by the end of October 2008, only nineteen³⁰⁷ Member States had sent their national implementing laws to the Commission and the Council and confirmed that implementation of the Framework Decision is not satisfactory. The report concluded that there have been few notifications and some implementing laws do not even refer to the Framework Decision. Furthermore, the 19 national legislations indicate numerous omissions and misinterpretations. There is room for improvement, especially as regards direct contact between judicial authorities, grounds for refusal to recognise or execute the freezing order and also reimbursement. However, swift execution of freezing orders seems to be the norm. Moreover, the Framework Decision is hardly used by practitioners. They consider the instrument to be too complicated and too specific compared to the existing mutual legal assistance regime and prefer to work on the basis of conventions such as the 1959 Council of Europe convention, the Schengen Implementing Agreement and the 2000 EU Convention.

The implementation report on the Framework Decision on the application of the principle of mutual recognition to financial penalties³⁰⁸ shows that, as at October 2008, only eleven Member States had sent their national implementation laws to the Commission and the Council. According to the report, this is why the degree of implementation of the Framework Decision could not be fully assessed at that stage. The national implementing provisions are generally in line with the Framework Decision, especially as regards the most important issues such as abolishing dual criminality checks and recognition of decisions without further formality. Unfortunately, an analysis of the grounds for refusal of recognition or execution showed that, whereas almost all Member States had transposed them, they were implemented mostly as obligatory grounds. Furthermore, a number of additional grounds were added. This practice is clearly not in line with the Framework Decision.

Other mutual recognition instruments have also been adopted in the area of judicial decision, such as the financial and custodial sentences³⁰⁹ and confiscation orders³¹⁰ framework decisions.

In the field of criminal, the lack of timely or correct transposition of EU framework decisions into national law causes problems at different levels. If the instrument is not transposed, practitioners cannot use it and have to use a mixture of instruments, which complicates matters rather than making them simpler for practitioners. In addition, trials would be shorter and more efficient if EU instruments were used properly, to the benefit of suspects, the courts and the administration of justice alike. More generally, full mutual recognition would improve the fight against transnational crime, to the benefit of society as a whole.

³⁰⁶ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45.

³⁰⁷ Since the publication of the implementation report the Commission has received two new notifications (RO and IE).

³⁰⁸ COM(2008) 888 final.

³⁰⁹ Council Framework Decision 2008/909/JHA of 27 November 2008 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 European Union, OJ L 327, 5.12.2008, p. 27.

³¹⁰ Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Properties, OJ L 68, 15.3.2005, p. 49.

Many developments have been registered in the field of exchange of information extracted from criminal records. As existing mechanisms of exchange of information did not yield reliable results, for example, the Commission has been developing a "criminal records package" since 2004 in order to ensure that information on criminal convictions circulates properly between the Member States and that this information can be taken into account. Interconnection of criminal records is part of the European e-justice project, although not part of the portal.

Responding to the Fourniret child abuse case of 2004, the Commission presented a proposal for a Council Decision on the exchange of information extracted from criminal records³¹¹, which was adopted by the Council in 2005³¹². This Decision in particular establishes the legal possibility of exchanging information on national criminal records for other purposes than criminal proceedings, which was a difficulty before, as demonstrated by the Fourniret case.

In 2005, the Commission presented a White Paper on exchanges of information on convictions and the effect of such convictions in the European Union³¹³, analysing the main obstacles to the exchange of information on convictions and putting forward proposals for a computerised information exchange system. As a result, in 2005 the Commission tabled a proposal for a Council Framework Decision on the organisation and content of exchange of information extracted from criminal records between the Member States³¹⁴, which has been adopted in 2009³¹⁵. The main objective of the Framework Decision is to ensure that the Member State of a person's nationality is in a position to provide exhaustive and complete information in relation to its nationals' criminal records upon request from another Member State. The Framework Decision also provides the basis for developing a computerised system to make for faster transmission of information on criminal convictions, in a form that Member States can understand and use more easily. The mechanism established by the Framework Decision aims among other things to ensure that a person convicted of a sexual offence against children is no longer able to conceal this conviction or prohibition in order to exercise professional activity related to the supervision of children in another Member State. This provision is applicable where the criminal record of that person in the convicting Member State contains such a conviction and, if imposed and entered in the criminal record, a disqualification arising from it.

In order to implement certain technical and legal aspects of the above Framework Decision, in 2008 the Commission adopted a proposal for a Council Decision on the establishment of the European Criminal Records Information System (ECRIS)³¹⁶. Political agreement on this Decision was reached in a record time of only three months of discussions in the Council, in

³¹¹ COM(2004) 664 final.

³¹² Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record, OJ L 322, 9.12.2005, p. 33.

³¹³ COM(2005) 10 final.

³¹⁴ COM(2005) 690 final.

³¹⁵ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States, OJ L 93, 7.4.2009, p. 23.

³¹⁶ COM(2008) 332 final.

October 2008, and it was adopted in April 2009³¹⁷. The proposal aims to build and develop a computerised conviction-information exchange system. The system would enable electronic interconnection of criminal records, where information exchanged on convictions between Member States is speedy, uniform and readily computer-transferable. To that end, it first sets up the general architecture for the electronic exchange of information, laying the foundations for future IT developments in the interconnection of national criminal records. Secondly, it creates a standardised European format of transmission of information on convictions. In this respect it provides for two reference tables of categories of offences and categories of sanctions which should facilitate machine translation and enable mutual understanding of the information transmitted by using a system of codes.

Since these mechanisms concern the exchange of information on EU nationals, the Commission identified the need to supplement them by an index of convicted third-country nationals, which would allow convicted third-country nationals in the EU Member States to be detected. In 2006, the Commission adopted a Working Document on the feasibility of an index of third-country nationals convicted in the European Union³¹⁸. Following an orientation debate in the Council in March 2008, the Commission is further examining the practical aspects of such an index, including the types of data it should contain and the respective cost implications, before presenting a legislative proposal. Apart from legislative steps, the Commission has also undertaken a number of technical and financial measures to help Member States put the technical infrastructure in place for connecting their criminal records systems. In 2009, the Commission will be able to provide Member States with the software they need to use this information exchange mechanism. Moreover, the Commission lends financial support to Member States' efforts to modernise police records. In 2007, about € 9 million was allocated to Member States for this purpose. € 12 million was available in 2008 for the European-wide interconnection works.

The Commission also adopted a Communication on "disqualifications arising from criminal convictions in the European Union" in 2006³¹⁹. However, the area of disqualifications is not yet covered by any instrument based on the mutual recognition principle.

Approximation of criminal law

Mutual recognition is difficult to apply when the differences between legal systems of the Member States are too wide, in particular in criminal law. Differences in national rules on procedural rights may lead to judges being reluctant to execute a foreign judgment or decision if they have concerns that these rights have not been fully respected. Differences in other areas, such as substantive criminal law, the level of sanctions imposed in practice or prison conditions can also be problematic. Furthermore, with the partial abolition of dual criminality checks in mutual recognition instruments, some Member States are becoming increasingly reluctant to execute foreign decisions, for example, to collect evidence by using coercive powers, without harmonising the definitions of the offences concerned.

³¹⁷ Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA, OJ L 93, 7.4.2009, p. 33.

³¹⁸ COM(2006) 359 final.

³¹⁹ COM(2006) 73 final.

The strengthening of mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters has been partially achieved. The Green Paper on Conflicts of Jurisdiction and Double Jeopardy (*ne bis in idem*)³²⁰ was the origin of the Czech initiative at beginning of 2009³²¹ for the adoption of a framework decision on conflict of jurisdiction, which is being discussed within the Council.

The 2004 Commission proposal for a Framework Decision on certain procedural rights³²² has been under discussion for three years in the Council Working Party on substantive criminal law (DROIPEN) but has not been adopted yet.

A Green Paper on presumption of innocence was adopted in 2006³²³ but it has not been followed up by a legislative proposal. The planned Green Paper on default (*in absentia*) judgments was not adopted and was superseded by the above-mentioned Member States' initiative for a Framework Decision on the subject³²⁴.

The Commission has published reports on the implementation of a number of measures, such as the second and third report on the implementation of the Framework Decision on the standing of victims in criminal proceedings³²⁵. In the first report published in 2004³²⁶, the Commission concluded that transposition of the Framework Decision was not satisfactory. In the 2009 report, the Commission concluded that implementation was still patchy, partly because the Framework Decision's provisions lack precision. The Commission therefore plans to introduce a proposal in 2009 to amend the Framework Decision.

Eurojust

During the period of implementation of the Hague Programme, Eurojust has been assessed and its contribution in furthering cooperation in criminal matters has been highlighted. The second report on the legal transposition of the Council Decision setting up Eurojust (included in the Communication on the future of Eurojust) was adopted in 2007³²⁷. It underlines the positive results achieved by Eurojust: "Eurojust's operational record is a positive one. In 2006, 771 operational cases were registered. This represents an increase of 31% over the year 2005. The quality and speed of the handling of cases are generally recognised". At the same time, the Commission recognised that "the development of Eurojust needs to be accompanied by a clarification and reinforcement of the powers of the national members and by greater authority for the College. In order to achieve this objective, the Decision ought to be amended" and proposed possible changes. This report was followed up by the Member States who presented an initiative in 2008³²⁸ with a view of adopting a new decision on Eurojust. In

³²⁰ COM(2005) 696 final.

³²¹ Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for a Council Framework Decision 2009/.../JHA on prevention and settlement of conflicts of jurisdiction in criminal proceedings, OJ C 39, 18.2.2009, p. 2.

³²² COM(2004) 328 final.

³²³ COM(2006)174 final.

³²⁴ See footnotes 339 and 340.

³²⁵ COM(2009) 166 final.

³²⁶ COM(2004) 54 final/2.

³²⁷ COM(2007) 644 final.

³²⁸ Initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the

December 2008, the Council adopted a decision on the strengthening of Eurojust and amending Council Decision setting up Eurojust in a bid to step up the fight against serious crime³²⁹. The main changes in the new decision include greater powers of national members and of the College, and establish a rapid reaction cell to deal with the most urgent cases.

It should be noticed three cooperation agreements between Eurojust and third countries have entered into force in recent years (Norway, Iceland and USA), whereas a further two were concluded but were still not in force at the end of 2008 (Croatia and Switzerland).. Moreover, 22 third countries have designed national contact points with Eurojust³³⁰.

Other instruments in the field of judicial cooperation in criminal matters

Other supplementary instruments were envisaged in the Hague package in support of judicial cooperation in criminal matters. For example, in order to facilitate the prosecution of road traffic offences, in 2008 the Commission adopted a proposal for a Directive aimed at facilitating the cross-border enforcement of traffic offences through technical measures³³¹ to enable EU drivers to be identified and thus sanctioned for offences committed in a Member State other than the one where the vehicle is registered. The proposal seeks to make it easier to deal with cross-border offences within the EU by way of a European network for the electronic exchange of data.

On the other hand, following an impact assessment carried out in 2007³³², the scheduled proposal on the protection of witnesses and collaborators with justice was not tabled, since it was considered not advisable at present to proceed with legislation of this sort at EU level.

The Decision establishing a specific financial programme on "Criminal Justice" was adopted in 2007³³³, with a budget of around € 200 million allocated for the period 2007-2013. It is premature to assess its real impact, as the first set of projects financed is still underway. A mid-term evaluation of the programme will take place in 2011.

International legal order

The conclusion and discussion of international agreements also made for closer cooperation in on criminal matters. One of the main developments was the inclusion of provisions on counter-terrorist assistance in the proposed revision of existing instruments governing external assistance: in 2004 the European Council called on the Commission "to mainstream

³²⁹ Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden with a view to adopting a Council Decision of ... on the strengthening of Eurojust and amending Decision 2002/187/JHA, OJ C 54, 27.2.2008, p. 4. The Decision was adopted by the Council on 16.12.2008, but it has not been published yet on the Official Journal.

³³⁰ Albania, Argentina, Bosnia-Herzegovina, Croatia, Canada, FYROM, Iceland, Israel, Japan, Liechtenstein, Moldova, Mongolia (official letter of appointment not yet received), Montenegro, Norway, Russia, Serbia, Singapore, Switzerland, Thailand, Turkey, Ukraine, USA (cut-off date: April 2008).

³³¹ COM(2008) 151 final.

³³² COM(2007) 693 final.

³³³ See footnote 327.

counter-terrorism objectives into external assistance programmes”³³⁴ and the Commission has been working with country and regional desks in order to introduce counter-terrorism objectives into country and regional strategy papers and action plans. The result has so far been mixed: the number of occurrences of counter-terrorism-related objectives in such texts has increased but this is not yet systematic. Moreover, the United Nations Convention against Corruption was concluded in 2008, thanks to the Council Decision on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption³³⁵. A number of other international agreements are under discussion, e.g. the agreement between the EU and Liechtenstein on extradition and the agreements between the EU and Norway and Iceland on mutual legal assistance. The conclusion on behalf of the EC of the United Nations Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition needs to await implementation of relevant EC legislation, notably Directive 91/577 and the Regulation on an export/import licensing system.

III. Future challenges

Mutual recognition

Instruments based on the mutual recognition principle have not yet been adopted in some areas. In criminal matters, obtaining evidence is a point of concern, it is only partly covered by these instruments. Indeed, the Framework Decision on freezing orders and the Framework Decision on the EAW only apply to obtaining existing evidence, such as objects or documents. Other forms of obtaining evidence, such as statements from suspects or witnesses or expert statements, are still covered by traditional mutual assistance instruments. Practitioners regard this as a problem because they have to use different instruments with different requirements and forms. New legislation should be based on experience with existing instruments, should give added value and should be easy to use for practitioners.

Disqualification is an area in which Member States' rules vary substantially. A careful analysis of the situation is needed before any legislation in this area is proposed. In any case, work will need to be done in this area to prevent that, for example, a person disqualified in one Member State from working with children because of sex offences could get a job working with children in another Member State if disqualification is not recognised.

Another area in need of exploration will be mutual recognition of judicial or administrative decisions granting protection to people at risk of intimidation, threat or violence such as witnesses.

Considering the large number of existing mutual recognition instruments, the need to consolidate approaches and instruments will emerge.

The Commission commissioned a study in 2008³³⁶ that demonstrates that mutual recognition of judgments is easier to apply than pre-trial decisions. In addition, the study identifies four

³³⁴ European Council "Declaration on combating terrorism", 25.3.2004, available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/ec/79637.pdf.

³³⁵ Council Decision 2008/801/EC on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption, OJ L 287, 29.10.2008.

³³⁶ See footnote 320.

main gaps in the mutual recognition system in the following areas: exercising the rights of the defence, future of the European evidence warrant, coordination of prosecutions and future of the EU criminal justice policy. The study also identified other horizontal methodological problems concerning negotiations of instruments, transposition and application of mutual recognition in practice.

Approximation of law

With experience it has become clear that approximation is a necessary companion and requirement for mutual recognition to work. The more Member States' legislation is aligned, the easier it will be to achieve true mutual recognition. This applies both to substantive law and to procedural law.

In the area of criminal law, grounds for refusal are to be introduced in areas where differences in legislation may pose problems for the Member State which is to recognise and execute judgments or decisions. Examples are national rules on judgments rendered *in absentia*, detention standards for prisoners, the *ne bis in idem* principle and the age of criminal liability. Priority should be given to the further approximation of serious cross-border crimes. If there were fewer differences between Member States in how these matters were dealt with, it would be much easier for the judicial systems to cooperate. Mutual trust should also be enhanced by the adoption of common minimum standards for fair trial rights and for the protection of victims of crime.

Furthermore, diverging rules on admissibility of evidence may lead to an undesirable situation where evidence lawfully gathered in one Member State cannot be used in criminal proceedings in another. This issue should be explored in the future (a Green Paper will be issued on this matter).

Eurojust

Over the next few years, special attention should be paid to proper implementation of the Council Decisions on the reform of Eurojust and of the European Judicial Network in Criminal Matters. The use of these two bodies by national practitioners will need to be promoted.

Particular attention will be paid to the promotion of specific financing programmes and to the development of the European Judicial Network website.

International legal order

The external dimension of judicial cooperation in criminal matters should be deepened through the conclusion of new extradition and mutual assistance agreements with countries belonging to strategic regions. This could be assisted by practitioners' forum with third countries, where practical implementation problems could be discussed.

5.4. Judicial cooperation in civil matters

I. Objectives

The principle of mutual recognition of judgments is the cornerstone of judicial cooperation in civil matters. It allows a judgment given in a court in one Member State to be recognised and enforced in another with a minimum of procedural steps. For individuals and companies to be able to exercise their rights in full wherever they might be in the European Union, any incompatibilities between judicial and administrative systems in the various Member States need to be removed, with the ultimate goal of abolishing "exequatur".

At the 1999 Tampere European Council, EU leaders acknowledged the importance of further enhancing judicial cooperation in civil matters and set precise priorities for action. The Justice and Home affairs Council adopted a programme of measures in 2000 for implementation of the principle of mutual recognition of decisions in civil and commercial matters³³⁷.

Along the same lines, the Hague Programme called for the facilitation of civil law procedure across borders, mutual recognition of decisions, enhanced cooperation, more coherence and quality in EU legislation and greater consistency with the international legal order.

II. Main developments

Facilitating civil law procedure across borders

The facilitation of cross-border procedures implies the continuous development of judicial cooperation in civil matters and completion of the 2000 programme of mutual recognition. Borders between countries in Europe should no longer be an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters.

Community initiatives therefore aimed to ensure that all EU citizens have the same access to justice throughout the EU. Without a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own, EU citizens cannot fully benefit from freedom of movement. Judgments and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Greater compatibility and more convergence between the legal systems of Member States must be achieved.

Ready access to justice also makes it easier to obtain justice across borders. A 2003 directive aims to ensure minimum standards on legal aid for citizens involved in cross-border cases³³⁸, who are often faced with a barrage of difficulties (not least language and costs) when it comes to defending their rights in another Member State. Furthermore, a 2004 directive relating to

³³⁷ Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters, OJ C 12, 15.1.2001, p. 1.

³³⁸ Council Directive 2002/8/EC 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, OJ L 26, 31.1.2003, p. 41.

compensation to crime victims³³⁹ provides that each Member State should have a national scheme in place which guarantees fair and appropriate compensation to victims of crime, whether or not they are citizens of that State. Moreover, the directive ensures that compensation is readily accessible in practice regardless of where in the EU a person becomes the victim of a crime, by creating a system for cooperation between national authorities. The 2009 report on the application of the directive on compensation to crime victims³⁴⁰ shows that Member States provide fair and appropriate compensation for victims of violent intentional crimes. As far as the procedural aspects of the directive are concerned, the reports show that the Deciding and Assisting Authorities and the claimants have different perceptions, the former being more positive about the way it operates than the latter. It is also confirmed that implementation of the directive needed to be improved, although without amending the directive, particularly in four main areas: data collection on the application of the directive; better information for citizens; compliance with language requirements; and greater transparency and clarity.

More recently, the mediation directive³⁴¹, which applies also to family law, encourages citizens to turn to mediation to settle their disputes, where possible, and tries to establish a sound relationship between civil procedures and alternative means of dispute resolution. EU Member States will have until 21 May 2011 to bring into force the necessary laws, regulations and administrative provisions to comply with this new directive.

Mutual recognition of decisions

Much progress has been made during the period of the Hague Programme in the area of civil justice. Most of the instruments provided for in the Hague package have been adopted, which has helped to achieve its objectives.

A large number of legislative measures implementing the principle of mutual recognition have been agreed since 1999, which have helped to usher in the basic principle of cross-border mutual recognition, a unique achievement in the world. Directly applicable regulations in the field of civil law advise citizens and businesses involved in cross-border legal disputes on which courts have jurisdiction and what rules apply to the recognition of a judgment given in another Member State (Brussels I regulation)³⁴². Matrimonial disputes and questions of parental responsibility have also been covered³⁴³ (the Brussels II (a) regulation replacing the Brussels II regulation³⁴⁴).

³³⁹ Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, OJ L 261, 6.8.2004, p. 15.

³⁴⁰ COM(2009) 170 final.

³⁴¹ Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, OJ L 136, 24.5.2008, p. 3.

³⁴² Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 12, 16.1.2001, p. 1.

³⁴³ Council Regulation (EC) No 2201/2003 of 27 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, OJ L 338, 23.12.2003, p. 1.

³⁴⁴ Council Regulation (EC) No 1347/2000 of 29 May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, OJ L 160, 30.6.2000, p. 19.

The ultimate goal of the mutual recognition programme is that a judgment obtained in one Member State should be recognized and enforceable in another Member State without the need for any intermediate procedures to declare that the foreign judgment is enforceable ("exequatur"). Mutual recognition of decisions is an effective means of protecting the rights of citizens and business, and securing the enforcement of such rights across European borders. The priority of completing the 2000 programme by 2011 led to the adoption of instruments on conflict of laws rules regarding non-contractual obligations ("Rome II")³⁴⁵ and contractual obligations ("Rome I")³⁴⁶, which specify which legal system is competent without the need to harmonise substantive law. The effectiveness of existing instruments on mutual recognition was increased by standardising procedures and documents, such as the European Order for Payment³⁴⁷ and the European Small Claims Procedure³⁴⁸, and developing minimum standards for aspects of procedural law, such as the service of judicial and extra-judicial documents³⁴⁹.

In family law, implementation of the regulation concerning matrimonial matters and parental responsibility (Brussels II(a)) ensured that children can maintain regular contact with both parents following a separation and provides clear rules to deter child abduction throughout the EU. Furthermore, a 2009 regulation will ensure swift and efficient recovery of maintenance obligations in the EU³⁵⁰. The Commission was also invited to submit green papers on successions³⁵¹ (a legislative proposal on successions and wills is expected to be adopted in 2009 in a bid to help solve the complex problems currently involved in a transnational succession), matrimonial property regimes³⁵², and divorce (Rome III)³⁵³. Rules on uniform substantive law should only be introduced as an accompanying measure, whenever necessary.

The European Enforcement Order³⁵⁴, which allows citizens to obtain quick and efficient enforcement of uncontested claims, has been one of the instruments used to facilitate procedures that are optional to national procedures. The Regulation establishing a European Payment Order procedure adopted in 2006³⁵⁵ and the European Small Claims Procedure (under € 2,000) adopted in 2007³⁵⁶ were also along these lines. These new procedures aim to simplify and speed up litigations concerning uncontested claims and small claims in cross-

³⁴⁵ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), OJ L 199, 31.7.2007, p. 40.

³⁴⁶ Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I), OJ L 177, 4.7.2008, p. 6.

³⁴⁷ Regulation (EC) No 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure, OJ L 399, 30.12.2006, p. 1.

³⁴⁸ Regulation (EC) No 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure, OJ L 199, 31.7.2007, p. 1.

³⁴⁹ 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, OJ L 160, 30.6.2000, p. 37.

³⁵⁰ Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7, 10.1.2009, p. 1.

³⁵¹ COM(2005) 65 final.

³⁵² COM(2006) 400 final.

³⁵³ COM(2005) 82 final.

³⁵⁴ Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, OJ L 143, 30.4.2004, p. 15.

³⁵⁵ See footnote 384.

³⁵⁶ See footnote 385.

border situations. The regulations became applicable between the end 2008 and the beginning 2009, and thus there as yet not information regarding their practical application.

Further preparatory work has started on how to improve the enforcement of judgments in the EU³⁵⁷.

Regulations relating to the service of documents in cross-border cases³⁵⁸ and concerning the taking of evidence in civil and commercial matters³⁵⁹ have been adopted in the area of cooperation between the Member States. The previously mentioned decision establishing a European judicial network in civil and commercial matters should also be mentioned in this connection.

With regard to financial programmes, a decision establishing a specific programme on "Civil Justice" was adopted in 2007³⁶⁰. It is premature to assess its real impact, as the first series of projects financed are still ongoing. A mid-term evaluation of the programme will take place in 2011.

Enhancing cooperation

For these instruments involving the cooperation of judicial or other bodies to operate smoothly, Member States should designate liaison judges or other competent authorities based in their own countries. Where appropriate, they could use their national contact point within the EJNCCM. The Commission was asked to organise EU workshops on the application of EU law and promote cooperation between members of the legal professions with a view to establishing best practice.

Close cooperation and direct contacts between the courts speed up cross-border judicial proceedings. The main areas of judicial cooperation in civil and commercial matters where the Community has facilitated the life of judges are the service of documents and the taking of evidence.

In November 2008, the aforementioned regulation on the service of judicial and extrajudicial documents (service of documents) replaced the 2000 Council regulation on the same matters and further clarified and streamlined procedures. It is too early to assess its impact, however.

The entry into force in 2004 of the aforementioned regulation on the taking of evidence generally appears to have improved, simplified and accelerated cooperation between the courts on the taking of evidence in civil or commercial matters. The regulation has achieved its two main objectives, firstly of simplifying cooperation between the Member States and

³⁵⁷ COM(2008) 128 final, Green Paper "Effective enforcement of judgments in the European Union: the transparency of debtors' assets"; COM(2006) 618 final, "Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts".

³⁵⁸ Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC) No 1348/2000, OJ L 324, 10.12.2007, p. 79

³⁵⁹ 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, OJ L 174, 27.6.2001, p. 1.

³⁶⁰ See footnote 326.

secondly of accelerating the taking of evidence, to a relatively satisfactory extent. Simplification has been brought about mainly by the introduction of direct court-to-court transmission (although requests are still sometimes or even often sent to central bodies) and by the introduction of standard forms. Most requests for the taking of evidence are executed faster than before. Finally, a practical guide for legal practitioners should convince them of the benefits of direct taking of evidence, an important innovation of the regulation.

As a result of the conclusions of the report on the EJNCCM³⁶¹, the Commission presented a proposal amending the founding decision in 2008³⁶². Its aim is to provide the Network with the means of establishing itself as the key instrument of cooperation between civil justice stakeholders within the European law enforcement area. The proposal followed wide-ranging consultation of the members of the network, the other institutions and civil society. It aims to strengthen the role of the contact points, which are the cornerstone of the network, and to ensure more effective practical application by judges and other members of the legal profession of the numerous instruments adopted since 2002 in the field of civil justice. The proposal also sets out to open the Network to the legal professions directly involved in civil judicial cooperation, to help it achieve its objectives more effectively. In addition, the tasks of the network would be extended to improve the information available, both to the public on their rights and to the judiciary on the content of the laws of other Member States. Finally, in order to achieve the objectives of the Hague Programme as regards improving judicial cooperation and citizens' access to justice, the proposal gives the Network a revised legal framework, a more effective form of organisation and greater means to consolidate its position within the European area of justice as the lynchpin of cooperation between everyone involved in civil justice. The Council and the European Parliament reached political agreement on the proposal on first reading in December 2008. The amending decision is expected to be adopted in 2009.

Ensuring coherence and upgrading the quality of EU legislation

Improving the quality of EU legislation is a permanent objective of the Commission.

As far as codification is concerned, the Commission launched a consultation procedure on the *acquis* review concerning the common frame of reference in the field of EU consumer contract law³⁶³.

In matters of contract law, the quality of existing and future Community law should be improved by measures to consolidate, codificate and streamline the legal instruments in force and by developing a common frame of reference. The Common Frame of Reference (CFR) work on consumer contract law issues, together with the results of other preparatory work, has served as a starting point for the above-mentioned Green Paper on the *acquis* review. Moreover, in 2007 the draft CFR prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (*Acquis* Group) was delivered to the Commission and later presented to the European Parliament.

International legal order

³⁶¹ COM(2006) 203 final.

³⁶² COM(2008) 380 final.

³⁶³ COM(2006) 744 final.

The external dimension of cooperation in civil matters focuses on building judicial cooperation on the basis of existing multilateral instruments and, consequently, promoting the accession of third countries to relevant international conventions in civil and commercial area, many of which were drawn up by the Hague Conference on Private International Law.

The Commission and the Hague Conference on Private International Law cooperate closely on subjects of common interest. In 2006, the Council adopted a decision on the accession of the Community to the Hague Conference on Private Law (HCCH)³⁶⁴ and actual accession took place in April 2007. The Commission proposed in September 2008 that the Community should sign the 2005 Hague Convention on the Choice of Courts Agreements³⁶⁵. In February 2009, the Commission presented a proposal for the conclusion by the EC of the Protocol on the Law Applicable to Maintenance Obligations (the so-called "Hague Protocol" on applicable law in maintenance issues)³⁶⁶.

The Commission enhanced the adoption of common international rules on parental responsibility and child protection by encouraging Member States to apply the Hague Convention of 19 October 1996 on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children. It also encouraged Member States to sign the Hague Convention on the international legal protection of vulnerable adults. Furthermore, the Commission has been active at international level to improve the application of the 1980 Hague Convention on the Civil Aspects of International Child Abduction. Finally, in the field of family law, the Commission has put forward a proposal for signing the 2003 Convention of the Council of Europe on contacts with children.

The new Lugano Convention on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters concluded by the Community and Norway, Iceland and Switzerland was signed on 30 October 2007. On the basis of a Commission proposal³⁶⁷, the Council decided in November 2008 to conclude the Convention³⁶⁸.

There have also been significant developments in the accession of Denmark to judicial cooperation (Brussels I, service of documents)³⁶⁹ and in 2009 the Commission has proposed amendments to the Council Decisions concerning the agreements with Denmark³⁷⁰.

Acting on the basis of Commission proposals, the Community has concluded the UNIDROIT Convention on International Interests and its Aircraft Protocol adopted in Cap Town in

³⁶⁴ Council Decision 2006/719/EC of 5 October 2006 on the accession of the Community to the Hague Conference on Private International Law, OJ L 297, 26.10.2006, p. 1.

³⁶⁵ COM(2008) 538 final.

³⁶⁶ COM(2009) 81 final.

³⁶⁷ COM(2008) 116 final.

³⁶⁸ The Community deposited instruments of approval on 18.5.2009.

³⁶⁹ Council Decision 2006/325/EC of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 120, 5.5.2006, p. 22 and Council Decision 2006/326/EC of 27 April 2006 concerning the conclusion of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters, OJ L 120, 5.5.2006, p. 23.

³⁷⁰ COM(2009) 100 final and COM(2009) 101 final.

November 2001³⁷¹; moreover, the Commission has proposed that the Community would sign the Rail Protocol³⁷².

III. Future challenges

Completing the mutual recognition programme and facilitating the life of citizens in administrative and judicial area

Abolishing the *exequatur* procedure will remain the overall objective to be achieved in the years to come.

As regards judicial cooperation in civil matters, some areas are not yet covered by mutual recognition instruments, although they may be covered by the Hague Conventions (for example, presumption of death or vulnerable adults). The property consequences of marriage are excluded from the existing legal framework, but, with the free movement of persons, increasingly couples come from different Member States, marry abroad, and/or have property in different Member States, making it difficult to make arrangements in the event of divorce or separation. The area of wills and succession is still not covered by the existing mutual recognition rules, which means, for example, that a person recognised as the beneficiary of a will in one Member State may not be recognised as such in another Member State. The same goes for matrimonial property regimes.

An additional area not yet covered by EU instruments on mutual recognition is that of civil status acts (birth, marriage and partnership, changing name and death). This is linked to the problem of non-recognition of so-called "authentic acts". If, for example, a birth certificate – an essential prerequisite to obtaining an identity card, social security, the right to vote, etc.– issued in one Member State is not legally recognised in another, the problems for that person and the negative consequences for his freedom of movement and residence rights are evident.

An additional and substantive step towards complete abolition of the *exequatur* procedure in civil and commercial law should be to make it easier for individuals and businesses to enforce judgments in their favour, thus improving effective access to justice and the functioning of the internal market. For this purpose, the Commission presented in 2009 a report on the application of the Brussels I Regulation³⁷³ accompanied by a Green Paper on the possible review of the regulation³⁷⁴.

Mutual recognition might also consist of approximating substantive law in certain areas: minimum standards for protective and provisional measures and standards for decisions relating to parental responsibility should be further explored.

Considering the growing mobility of European citizens, better instruments are needed for them to have easy and effective access to justice wherever in the EU. Against this background, the question of the cost of justice acquires additional importance, as do linguistic

³⁷¹ COM(2008) 508 final.

³⁷² COM(2009) 94 final.

³⁷³ COM(2009) 174 final.

³⁷⁴ COM(2009) 175 final.

and technical problems in transnational cases. The progress of new technologies and the development of e-Justice can be helpful in this respect.

Improving enforcement

Two Green Papers have been presented on the matter of improvement of enforcement: one on effective enforcement of judicial decisions through the creation of better rules concerning bank attachments, and another on the effective enforcement of judgments in the European Union concerning the transparency of debtors' assets. Following on from these, further initiatives should be taken to simplify people's lives when they have to complete administrative formalities.

There should also be concrete follow-up of the study on enforcement in the area of parental responsibility, so as to improve the practical enforcement of judgements relating for instance to custody, and thus help families in difficult circumstances to adapt to the new legal situation more efficiently and rapidly.

Ensuring coherence and upgrading the quality of EU legislation

In matters of contract law, the quality of existing and future Community law should be improved by measures to consolidate, codify and streamline the legal instruments in force and by developing a common frame of reference. A framework should be set up to explore ways of developing EU-wide standard terms and conditions of contract law, which could be used by companies and trade associations in the European Union.

As to the shape of the future framework, the idea was mooted that it should be designed as a "toolbox". The EU should continue to discuss the issue of consumer contract law in order to develop a "toolbox" to be used as a non-binding guide containing definitions of legal terms, fundamental principles and model rules of contract law.

A framework should also be set up to explore ways of developing EU-wide standard terms and conditions of contract law which could be used by companies and trade associations in the EU.

In the light of the better regulation agenda and the now large number of existing mutual recognition instruments, consolidation should be pursued in an effort to make the overall legal framework more accessible.

Improved implementation and evaluation of civil justice *acquis*

The implementation of the *acquis* is constantly monitored.

The EJNCCM play an important role in improving, simplifying and accelerating judicial cooperation between Member States. The Commission's proposal to amend the Decision establishing the EJNCCM will provide the Network with an updated legal framework, a more effective form of organisation and increased resources to make it a key instrument of cooperation within the European area of justice between all civil justice stakeholders. The Network will be open to all legal professions directly concerned with civil judicial cooperation, thus improving information on and proper application of the Community instruments.

Monitoring and evaluation in civil justice should be stepped up, as previously mentioned for the field of justice as a whole.

Full use of external competencies in the area of international cooperation

Since the 2006 opinion of the EJC on the Lugano convention³⁷⁵, it has been confirmed that the Community has exclusive powers in those areas of civil justice cooperation. The consequence is that the Community has to become an important international player and policy-maker in these issues. Four aspects must be considered for the application of these external powers: developing a global EC policy on international private law as a member of the Hague Conference; ensuring the coherence of multilateral international agreements with EC rules on civil justice; proposing and negotiating bilateral agreements in particular on recognition and enforcement, priority given to relations with countries of the European Economic Area, candidate countries, Stabilisation and Association countries and the main international partners like; and managing the procedure of authorizing the Member States to have bilateral agreements with third countries in certain areas of civil justice.

³⁷⁵ Opinion 1/03 pursuant to Article 300(6) EC.

6. EXTERNAL DIMENSION

I. Objectives

The Hague Programme mandated the Commission and the Secretary-General/High Representative to submit a strategy to the Council, by the end of 2005, covering all external aspects of EU policy on freedom, security and justice. Further to a Communication from the Commission³⁷⁶, a "Strategy for the external dimension of Freedom, Security and Justice" (hereinafter "the Strategy") was endorsed by the Council in December 2005³⁷⁷.

The Strategy set out a series of thematic priorities: counter-terrorism, organised crime, corruption, drugs and managing migration flows, as along with a number of underlying principles and delivery mechanisms³⁷⁸. These thematic priorities were also identified as the key threats in the European Security Strategy (ESS) of December 2003³⁷⁹, which was backed up by the "Report on Implementation of the European Security Strategy - Providing Security in a Changing World"³⁸⁰. A further goal of the Strategy was to advance the EU's external relations objectives by promoting the rule of law, respect for human rights and international obligations.

The Strategy provided for 18-monthly progress reports by the Commission and the Council General Secretariat. The Commission and the Council Secretariat issued progress reports in November 2006³⁸¹ and May 2008³⁸².

II. Main developments

II.1. Thematic dimension

The second progress report on the implementation of the Strategy recorded a **steady increase** in the size, quality and importance of **external relations in the area of freedom, security and justice**. Major initiatives have been taken in the field of migration, asylum, movement of persons and border management, protection of fundamental rights, protection of personal data, counter-terrorism and law enforcement and judicial cooperation.

In line with the Strategy, three of the five originally planned **Action Oriented Papers** (AOPs) have been adopted so far: the AOP on improving cooperation on organised crime, corruption,

³⁷⁶ COM(2005) 491 final.

³⁷⁷ Council document 14366/3/05 rev 3.

³⁷⁸ Work in partnership with third countries, promote international standards, differentiated and flexible approach, importance of working with EU's neighbours, use broad range of instruments across the pillars, Member States to mobilise resources alongside Commission - complementarity, monitoring and evaluation.

³⁷⁹ Available at: <http://www.consilium.europa.eu/showPage.aspx?id=266&lang=EN>.

³⁸⁰ Council document 17104/08.

³⁸¹ SEC(2006) 1498, "Progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice".

³⁸² SEC(2008) 1971, "Second progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice".

illegal immigration and counter-terrorism between the EU and the Western Balkans³⁸³; the AOP on increasing EU support for combating drugs production in and trafficking from Afghanistan³⁸⁴; and the AOP on implementing with Russia the common space of freedom, security and justice³⁸⁵.

The Council General Secretariat produced two progress reports on the state of implementation of the Western Balkans AOP³⁸⁶ and one on the Russia AOP³⁸⁷. As regards the former, the reports noted progress on activities and cooperation between the relevant Member States, EU bodies, other players and Western Balkan countries. At the same time, it deplored the limited response by Member States (only 19 of the 27 provided contributions to the report), which substantially limits the scope and seriously undermines the value of the exercise. The report on the Russia AOP highlighted the good progress made on the movement of persons, migration and border issues, while stressing that cooperation on justice matters could be enhanced. It also suggested that some security issues (e.g. money laundering) had received noticeably more attention than others (e.g. trafficking in human beings) and that the use of the liaison officers network could be put to greater use. Again, the value of the report was diminished by the fact that only 17 Member States provided contributions.

II.2. Geographical dimension

General

Key elements of the Strategy have been implemented through the **enlargement process**, the Stabilisation and Association Process with the **Western Balkans**, the revised action plan on Justice and Home Affairs with **Ukraine**³⁸⁸ and the **European Neighbourhood Policy** Action Plans with other countries³⁸⁹. Under the **Black Sea Synergy**³⁹⁰ the EU has also launched a number of initiatives related to migration and the fight against organised crime.

There has been an upturn in overall JLS cooperation with the **Mediterranean countries** since 11 September 2001 and the gradual introduction of European Neighbourhood Policy action plans, with their solid JLS component even though JLS subjects remain domestically sensitive issues. At regional level, the **EUROMED/Barcelona process** contains an important JLS component, notably with the adoption at the Barcelona Summit in 2005 of a 5-year action plan³⁹¹, including JLS matters, as well as a Code of conduct on terrorism³⁹². The EUROMED programme (migration, police, justice) has contributed to the implementation of policies in this field. Building on the Barcelona process, the **Union for the Mediterranean** has been

³⁸³ Council document 9306/06 JAI 248.

³⁸⁴ Council document 9305/06.

³⁸⁵ Council document 15534/1/06 rev 1.

³⁸⁶ Council document 15736/06 and 8827/2/08.

³⁸⁷ Council document 16303/1/08.

³⁸⁸ Available at: http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_jls-rev_en.pdf.

³⁸⁹ The Action Plans are available at: http://ec.europa.eu/world/enp/documents_en.htm.

³⁹⁰ COM(2007) 160 final.

³⁹¹ Available at: <http://www.euromedbarcelona.org/NR/rdonlyres/E364270B-58D7-44A5-B58D-8FE7672ED397/0/EUROMEDWorkProgrFINAL28NOV.pdf>.

³⁹² Available at: <http://www.euromedbarcelona.org/NR/rdonlyres/3F64E0D6-A00F-45E5-88C2-0CAA7D03D187/0/EUROMEDCodeConductFINAL28NOV.pdf>.

launched with a view to increasing the potential for cooperation with the Mediterranean partners.

The **Eastern Partnership** is taking shape, the Commission presenting a Communication in 2008³⁹³ containing specific proposals, notably the establishments of Mobility and Security Pacts to facilitate the movement of people accompanied by effective reforms in the security sector of these countries. Cooperation has also been stepped up with strategic partners such as **Russia, the United States and Brazil**, and also with **Africa, China, India and Latin America**.

In many of these regions and countries, the Commission is funding programmes and projects under the respective external aid instruments, in areas such as migration or police and justice reform, which also contribute to the achievement of the objectives of the external dimension of the EU policy on freedom, security and justice.

Enlargement agenda

The **enlargement** process and the alignment of candidate countries on EU standards continue. Law enforcement, independence of the judiciary and rule of law are important components of the discussions. Given the rapid expansion of the JLS *acquis*, it has now been divided into two chapters for the purpose of negotiations: chapter 23 on "judiciary and fundamental rights" and chapter 24 on "justice, freedom and security".

The Stabilisation and Association Agreement with **Croatia** entered into force in February 2005³⁹⁴. Annual JLS sub-committee meetings have since been held covering issues such as reform of the judiciary, corruption, money laundering, fundamental rights, protection of personal data, border management, visa and document security, asylum, migration, organised crime, police cooperation and drugs. Expert assessment missions to Croatia on JLS issues, with the participation of Member State experts, have been carried out annually. A revised version of the Accession Partnership was adopted in 2008³⁹⁵ and sets out short-term priorities in the JLS area. The Commission published the latest annual Progress Report on Croatia in November 2008³⁹⁶.

Accession negotiations with Croatia were opened in October 2005. Neither of the two JLS chapters has yet been formally opened for negotiations.

An operational cooperation agreement between Croatia and Europol entered into force in 2006 and Croatia has posted a liaison officer to Europol. Croatia has also signed a working arrangement with Frontex, as well as a cooperation agreement with Eurojust. Preparations are being made for Croatia to participate to the European Monitoring Centre for Drugs and Drug Addiction and in the Fundamental Rights Agency.

³⁹³ COM(2008) 823 final.

³⁹⁴ Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Croatia, of the other part, OJ L 26, 28.5.2005, p. 3.

³⁹⁵ Council Decision 2008/119/EC of 12 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with Croatia and repealing Decision 2006/145/EC, OJ L 042 , 16.2.2008, p. 1.

³⁹⁶ SEC(2008) 2694.

Accession negotiations with **Turkey** were opened in October 2005 and the screening process was launched to assess the level of preparedness to start negotiations on individual chapters. The screening reports on the two JLS-related chapters are under discussion in the Council. No agreement has been reached so far on the opening of either one of the two JLS-related chapters.

A revised Accession Partnership was adopted by the Council in 2008³⁹⁷. Progress on the priorities of the Accession Partnership in the field of justice, freedom and security, is monitored and encouraged at the yearly Association Committee and the sectoral JLS sub-committee meetings. Negotiations for a readmission agreement with Turkey were opened in 2005 and the last round of negotiations took place in December 2006. Since then, however, Turkey has not pursued the negotiations.

The **Former Yugoslav Republic of Macedonia** applied for EU membership in 2004. Subsequently the country has replied to a Commission questionnaire, which contained a substantial chapter on JLS issues. In the opinion it issued in 2005³⁹⁸, the Commission judged that there had been sufficient progress, including on JLS issues, to recommend candidate status. This status was granted by the Council in 2005. The Commission is closely monitoring developments in the country and has organised several expert missions. Three of the eight key priorities of the country's accession partnership are JLS-related: judicial reform, anti-corruption and police reform.

Relations with **Western Balkan countries** have intensified within the different regular meetings of the Stabilisation and Association Process. Short and medium-term priorities are set out in the European Partnerships for Albania, Bosnia and Herzegovina, Montenegro, Serbia and Kosovo (under UNSCR 1244/99)³⁹⁹, and efforts made are evaluated in the Progress Reports adopted annually for each country, the latest of which was published in November 2008⁴⁰⁰. Expert missions were conducted by the Commission to deepen the assessment of progress on the ground and refine technical assistance priorities in Montenegro, Serbia and Kosovo. Stabilisation and Association agreements were signed with Albania, Bosnia and Herzegovina, Montenegro and Serbia. Pending their entry into force, interim agreements are in place with Albania, Bosnia and Herzegovina and Montenegro.

³⁹⁷ Council Decision 2008/157/EC of 18 February 2008 on the principles, priorities and conditions contained in the Accession Partnership with the Republic of Turkey and repealing Decision 2006/35/EC, OJ L 051, 26.2.2008, p. 4.

³⁹⁸ COM(2005) 562 final.

³⁹⁹ Respectively: Council Decision 2008/210/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Albania and repealing Decision 2006/54/EC, OJ L 80, 19.3.2008, p. 1; Council Decision 2008/211/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Bosnia and Herzegovina and repealing Decision 2006/55/EC, OJ L 80, 19.3.2008, p. 18; Council Decision 2007/49/EC of 22 January 2007 on the principles, priorities and conditions contained in the European Partnership with Montenegro, OJ L 020, 27.1.2007, p. 16; Council Decision 2008/213/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, OJ L 80, 19.2.2008, p. 46.

⁴⁰⁰ SEC(2008) 2692, SEC(2008) 2693, SEC(2008) 2696, SEC(2008) 2698 and SEC(2008) 2697.

Some progress can be noted, in particular in the area of visa facilitation and readmission, where agreements are now in force with Western Balkan countries⁴⁰¹. Dialogue on visa liberalisation started in early 2008 with five countries of the region (Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Montenegro and Serbia). The Commission is currently reviewing the extent to which countries have met their benchmarks. Depending on how successful they have been, the Commission could propose the lifting of the visa obligation for certain countries. On the other hand, the overall results in the fight against organised crime and corruption and administrative capacities in the judiciary and the police, remain weak.

European Neighbourhood Policy countries

The European Neighbourhood Policy provides the overall framework for relations with countries on the Eastern and Southern borders of the EU.

Bilateral relations with **Mediterranean countries** largely focus on the implementation of the JLS provisions of the ENP action plans with Morocco, Tunisia, Jordan, Israel and the Palestinian Authority. Action plans with Egypt and Lebanon were agreed in 2007, including a significant JLS section. The network of sub-committees under the **Association Agreements** is used to implement and review progress towards the realisation of the objectives set out in these action plans.

With **Algeria**, two informal JLS working group meetings took place in December 2006 and March 2007, prior to the first meeting of the EU-Algeria Justice and Home Affairs sub-committee in December 2008, and covered a wide range of subjects including migration and terrorism. Algeria refused to conclude an ENP Action Plan but a "Road map accompanying the association agreement" was agreed last year and focused on a number of priority areas (e.g. management of movement of persons and fight against terrorism).

With **Egypt**, the second meeting of the EU-Egypt Justice and Security sub-committee and the working group on migration, social and consular affairs took place in June 2008. It identified a variety of cooperation possibilities, from supporting the efforts of the respective Egyptian bodies in assisting victims of trafficking in human beings to the training of judges and prosecutors.

Cooperation has progressed with **Israel** in the recent years through the ENP. Four meetings have already been held of the EU-Israel Justice and Legal matters sub-committee. A series of seminars have taken place in the areas of combating trafficking in human beings, fight against anti-Semitism, racism and xenophobia, money laundering and terrorism financing. On police cooperation, preparations are ongoing for negotiations on an operational agreement between Europol and Israel. Israel has also expressed interest in concluding a cooperation agreement with Eurojust.

As regards **Jordan**, the third EU-Jordan Justice and Security sub-committee and the Social affairs working party, which covers migration and asylum issues, took place in May 2008. Cooperation has been stepped up in the area of justice and prison reform. Furthermore,

⁴⁰¹ Albania, Bosnia and Herzegovina, FYROM, Montenegro and Serbia.

dialogue on radicalisation/recruitment issues between Jordanian and EU experts may be supported.

For **Lebanon**, the first meeting of the EU-Lebanon Justice, Liberty and Security sub-committee was held in November 2008, where a first exchange of views to identified possible issues for future cooperation.

Cooperation with **Morocco** is substantial. The "advanced status" granted to Morocco in 2008 contains a specific JLS dimension. The EU-Morocco Justice and Security sub-committee and the working party on migration and social affairs meet regularly. While migration issues are crucial, the country is a frontrunner in terms of overall JLS cooperation. Europol and Eurojust have mandates to negotiate cooperation agreements with Morocco although no progress has been made so far. Together with Algeria, Morocco is a privileged partner under the "priority countries initiative" for increasing cooperation in the fight against terrorism. However, negotiations on the readmission agreement, which have been ongoing for several years, have not yet been finalised.

With **Tunisia**, the first meeting of the sub-committee on justice and security and of the working group on migration and social affairs took place in April 2008. A project on the modernisation of the judiciary is ongoing funded under EC bi-lateral cooperation (MEDA national programme).

Justice, freedom and security is an important area for EU-**Ukraine** cooperation. Ukraine and the EU face common challenges in the fight against organised crime, terrorism and other illegal activities of cross-border nature. The JLS Action Plan and the ENP Action Plan represent the primary tools to strengthen partnership and co-operation in the JLS field and provide a means of supporting the consolidation of democracy and the protection of human rights and fundamental freedoms.

Successful implementation of the agreements on visa facilitation and readmission that have been in force since January 2008 led to the opening of visa dialogue between the EU and Ukraine in October 2008. This focuses on four thematic 'blocks': document security including biometrics, illegal immigration including readmission, public order and security, and external relations.

The EU is working with Ukraine to renew efforts to strengthen the rule of law and in particular to implement the reforms needed to guarantee the independence, impartiality and professionalism of the judiciary and the effectiveness of the court system. At the same time, wider efforts are being intensified to combat corruption.

Ukraine has achieved improvements in conditions for detention and accommodation standards for illegal migrants following the opening of new Migrant Custody Centres and five Temporary Holding Facilities for irregular migrants in cooperation with the EU. Concern remains however over the treatment of asylum seekers.

Operational agreements with Europol and Eurojust remain political priorities, but Ukraine needs to adopt and implement the Council of Europe Convention for the Protection of Individuals of 1981 with regard to "automatic processing of personal data", which is a prerequisite for enhancing its relations with Europol and Eurojust.

As for the Southern Caucasus, **Georgia** is the only country for which the ENP Action Plan provides for a Justice, Freedom and Security sub-committee, which met for the first time in 2007. The EU looks forward to enhancing cooperation on all JLS issues identified in this sub-committee. Furthermore, three important seminars have been organised in the last two years on drug trafficking and the fight against terrorism, mobility and visas and on an integrated border management system. The Extraordinary European Council held in Brussels on 1 September 2008 decided "to step up its relations with Georgia, including visa facilitation measures (...)"⁴⁰². Following the authorisation given by the Council to the Commission in November 2008 to negotiate a visa facilitation agreement and readmission agreements with Georgia, formal negotiations should be opened in 2009.

The prospects for cooperation with **Armenia** are good. A seminar on migration and a technical meeting on JLS issues took place in 2008. Also in 2008, Armenia officially requested the creation of a JLS sub-committee. The terms of reference for this sub-committee could be proposed to the Council in 2009. A follow-up meeting on JLS issues is planned in Yerevan in 2009.

Some preliminary contact has been made with **Azerbaijan** with a view to organising a first technical meeting on JLS issues and a seminar on migration and visas, possibly in 2009. The establishment of a JLS sub-committee may follow, subject to the endorsement from the Council.

As regards the **Central Asian countries** (Kazakhstan, Uzbekistan, Kirgizstan, Tajikistan and Turkmenistan), while they are not part of the ENP, a dialogue is regularly taking place with the EU in the JLS areas, notably on migration related issues. Of these countries, Kazakhstan has shown a special interest in stepping up relations in the JLS area.

Strategic Partners and beyond

The Common Space of Freedom, Security and Justice is being created with **Russia**, an EU's strategic partner. The six-monthly JHA Permanent Partnership Council (PPC) sets the priorities for work and monitors progress. The Commission is currently negotiating new comprehensive agreements with Russia and Ukraine, which will provide new legal basis for relations and will pave the way also for more enhanced cooperation in the JLS field. These Agreements will replace the existing Partnership and Cooperation Agreements. Similar negotiations will be commenced also with Moldova once the negotiating directives have been adopted.

Implementation of the agreements on visa facilitation and readmission that entered into force in 2007 is being monitored in regular meetings of joint committees. As provided for by the Common Space, the procedure for an EU-Russia visa dialogue to examine the conditions for visa-free travel as a long-term prospect was agreed at the April 2007 PPC, and in this context the first technical meetings have taken place on document security, illegal migration and public order and security. Frontex signed a working arrangement with Russia in 2006, making for practical and operational cooperation along the common border, and a joint cooperation plan has also been agreed to take cooperation forward with the Russian Border Guard Service.

⁴⁰² Council document 12594/2/08 rev 2.

Significant steps have been taken to bolster cooperation concerning common challenges, both in the fight against organised crime and on terrorism. Working on the strategic agreement of from 2003, Russia and Europol are engaged in active cooperation, including on threat assessments, and negotiations on an operational agreement are awaiting reassurances of Russia's national data protection legislation and its implementation in line with the Council of Europe Convention on Personal Data Protection. Concerns about personal data protection have also delayed talks between Eurojust and Russia on a cooperation agreement.

The six-monthly meetings of the EU-Russia JLS Liaison Officers in Moscow promote operational cooperation. The European Police College and the respective Russian authorities concluded a protocol of intent in 2008 on enhanced training activities for law enforcement agencies. Dialogue on the fight against terrorism continues through informal meetings on critical infrastructure protection and regular meetings of COTER.

On drugs, the Memorandum of Understanding between the European Monitoring Centre for Drugs and Drug Addiction and the Federal Service for Drugs Control was signed in 2007. The EU-Russia Drugs Troika meetings convene regularly to outline fields of further cooperation, including on the control of precursors. The first expert meetings have been held on the fight against cybercrime.

The Commission has held several rounds of informal talks with Russia on judicial cooperation in civil and commercial matters. The meetings have made progress on the framework for a possible bilateral agreement, covering jurisdiction, recognition and enforcement of judicial decisions in civil and commercial matters. While judicial cooperation in criminal matters has been a difficult domain, both sides are committed to discussing problems at expert level.

Cooperation with the **United States of America**, a strategic partner of the EU, has been stepped up in recent years, in areas such as counter-terrorism, visa policy and judicial cooperation.

Relations with the US have increased appreciably since 2001 and have witnessed both remarkable achievements and also difficult moments of tension.

Two agreements on judicial cooperation in criminal matters (on mutual legal assistance and extradition⁴⁰³) were signed in 2003 but have not yet entered into force. They have been ratified in the United States but not yet by all EU Member States.

A new PNR agreement was concluded in 2007 (see chapter 3.II for more details).

Cooperation agreements between the US authorities and Europol were concluded in 2001 and 2003, respectively. Cooperation has increased qualitatively and quantitatively over time and, by 2008, five US law enforcement agencies had a representative at Europol headquarters in the Hague.

⁴⁰³ Council Decision 2003/516/EC of 6 June 2003 concerning the signature of the Agreements between the European Union and the United States of America on extradition and mutual legal assistance in criminal matters, OJ L 181, 19.7.2003, p. 25.

Eurojust has had a cooperation agreement in place with the US Department of Justice since 2006. The number of cases registered in Eurojust with the involvement of the US is moderate (6 in 2006, 31 in 2007), many of which relate to economic crime. However, there have been a number of practitioners seminars which were regarded as useful by both sides, e.g the practitioners seminar organised in November 2008 to prepare for the entry into force of the EU-US Mutual Legal Assistance and Extradition Agreements.

The situation of non-reciprocity with regard to visa-free travel has been a source of tension between the EU and the United States in recent years. While US citizens can travel visa-free to all EU Member States, the United States required visas from citizens of up to 12 EU Member States (since 1.1.2009, only citizens of 5 EU Member States are still under the visa obligation, namely: Bulgaria, Cyprus, Greece, Poland and Romania). The lack of progress on this politically sensitive issue has resulted in a less unified EU approach vis-à-vis the United States than would have been desirable. The EU agreed on a two-track approach in March 2008, defining the dividing line between the EC's authority and Member State's authority to discuss with the US authorities the requirements under US law for participation in the US Visa Waiver Program. Subsequently, the United States signed Memorandums of Understanding and bilateral agreements with individual Member States that enhanced the scope for the exchange of information and personal data relating to terrorism and serious crime.

In addition to Ministerial Troika meetings and senior officials meetings twice a year, there are also dedicated Council working group meetings with US representatives on counter-terrorism and terrorist financing matters, anti-drugs policy, immigration, frontiers and asylum and false documents (the latter two are trilateral meetings with the United States and Canada).

As regards **Africa**, the framework for cooperation is the Joint EU-Africa Strategy, which was adopted at the Second EU-Africa Summit held in Lisbon in December 2007⁴⁰⁴. An Action Plan for the period 2008-2010⁴⁰⁵ was also adopted at the Summit to progress in eight Africa-EU Partnerships. One of the Partnerships covers migration and mobility. Other JLS aspects such as cooperation in the prevention of and fight against terrorism, drugs trafficking and organised crime are also covered in the Action Plan. In this regard, Western Africa is posing major security challenges.

Cooperation with **China**, a strategic partner of the EU, has developed through the entry into force of the Approved Destination Status Memorandum of Understanding in 2004⁴⁰⁶. The EU also holds regular High Level Consultations with China on fighting illegal migration and trafficking in human beings. The Commission has a mandate to negotiate a readmission agreement with China, but negotiations have never been launched due to reluctance on the part of the Chinese. Finally, negotiations with China on a new framework agreement have

⁴⁰⁴ Available at: http://ec.europa.eu/development/icenter/repository/EAS2007_joint_strategy_en.pdf.

⁴⁰⁵ Available at: http://ec.europa.eu/development/icenter/repository/EAS2007_action_plan_2008_2010_en.pdf.

⁴⁰⁶ Council Decision 2004/265/EC of 8 March 2004 concerning the conclusion of the Memorandum of Understanding between the European Community and the National Tourism Administration of the People's Republic of China on visa and related issues concerning tourist groups from the People's Republic of China (ADS), OJ L 83, 20.3.2004, p. 12.

started and the agreement will include a substantial JLS chapter, which would widen the scope for JLS cooperation with China appreciably.

As regards **India**, the vision of an EU-India Strategic Partnership was launched in a Commission Communication in June 2004⁴⁰⁷. This resulted in agreement on an ambitious EU-India Action Plan⁴⁰⁸ to implement this partnership. The Action Plan contains JLS components regarding terrorism, organised crime, migration and consular issues, including initiating a regular high level dialogue on migration with India. This dialogue on migration issues and visa policy was launched in 2006. Issues relating to migration and terrorism are regularly discussed in meetings at different levels with India. EU-India troika consultation on counter-terrorism took place in 2005. The EU-India Joint Working Group on Consular Affairs continued to meet twice per year at local level in Delhi.

As regards **Brazil**, dialogue has been mainly pursued at regional level in the context of the EU-Latin American and Caribbean countries forum, notably on anti-drugs and migration policies. Since Brazil became a strategic partner of the EU in 2007, a Joint Action Plan has been on the agenda, which was finally endorsed at the EU-Brazil Summit in December 2008⁴⁰⁹. The Joint Action Plan includes references to migration, anti-drugs policy, the fight against organised crime, counter-terrorism and consular protection, and it is due to be implemented over the years 2009-2011.

Cooperation with **Latin America** on combating drugs trafficking and migration issues has also been ongoing. On migration, the Lima Declaration adopted in May 2008 agreed to develop a structured and global dialogue.

III. Future challenges

As the Commission noted in its initial Communication regarding the Strategy, promoting the rule of law externally is essential to underpin the EU's domestic security, stability and development. To this end, it will remain essential to ensure that human rights are placed at the heart of law enforcement policies supported by the EU in third countries.

In the area of Freedom, Security and Justice, progress can only be made through the **active contribution** of both Member States and the Commission, and through real partnership with third countries.

Work on the thematic priorities identified in the Strategy has continued and these challenges remain, as was made clear by the 2008 European Union Organised Crime Threat Assessment (OCTA) and the EU Terrorism Situation and Trend report (TE-SAT)⁴¹⁰. This external dimension continues to add value. In recent years, there has been a particular focus on migration, and a Global Approach to Migration has been developed⁴¹¹. A recent Commission

⁴⁰⁷ COM(2004) 430 final.

⁴⁰⁸ Available at: http://ec.europa.eu/external_relations/india/docs/joint_action_plan_060905_en.pdf.

⁴⁰⁹ Available at: http://ec.europa.eu/external_relations/brazil/docs/2008_joint_action_plan_en.pdf.

⁴¹⁰ Available at: <http://www.europol.europa.eu>.

⁴¹¹ See section 2.2.5.

Communication⁴¹² sets out the prospects for substantive and methodological improvements to the Global Approach, focusing on ways of improving coordination, coherence and synergy.

Coordination, coherence and synergy in both JHA and External Relations are essential at all levels (Commission, Council and Member States). A temporary **JAI-RELEX *ad hoc* working group** has been set up in the Council to provide an additional forum for information exchange to feed into the work of the thematic and geographic Council working groups.

As set out in the first Commission progress report, making practical progress in relations with third countries takes time. In the area of capacity and institution building, for example, sustainability and continuity are essential to produce results. In this area, **complementarity between action carried out by Member States and EU assistance** is not always ensured, which leads to overlapping and potential duplication of efforts.

Another area where work is ongoing is in the protection of fundamental rights of EU citizens in relation with third countries. The rapid development of information technologies and widespread use of electronic means for commercial and financial transactions increase the amount of personal data available. This together with the law enforcement authorities' interest in making the best use of the information available to fight terrorism and serious crimes is the background for a number of requests from third countries to use the personal data of EU citizens for law enforcement purposes. In the light of the EU legislation on the protection of personal data, there is a **adequate safeguards for personal data transfers** to third countries need to be ensured. Such requests have been made in the past for the use of passenger name records for law enforcement purposes (e.g. US, Canada, Australia and South Korea) and financial transaction data (US). An overall strategy on the transfer of personal data should enable the EU to play its role in the development of international standards and in the conclusion of appropriate international instruments, whether bilateral or multilateral.

Broadening international consensus (especially in the UN) and enhancing international efforts to combat terrorism remains a key objective for the European Union. The EU has continued to support the key role of the United Nations and worked to ensure universal adherence to and full implementation of all UNSCR and UN Conventions and Protocols relating to terrorism. The Commission has contributed to international co-operation on technical assistance to help countries implement UNSCR 1373 (2001).

As stated in the second progress report, better use should be made of the **Action Oriented Papers (AOPs)** as implementing tools focusing on the delivery of results, with particular emphasis on operational cooperation, in which the Member States' commitment, expertise and added value is critical. Ownership of the AOPs to drive implementation and monitor follow-up by the different stakeholders should be increased, and the scope should be more targeted.

Third countries are also increasingly interested in engaging in cooperation with the EU on **specific agreements**, e.g. regarding mutual legal assistance or in civil law matters. The EU should already start to seek – and even more so in the future – to develop a network of bilateral agreements to promote trade and the movement of people, without losing the flexibility needed for Member States themselves, where appropriate, to conclude bilateral

⁴¹² COM(2008) 611 final.

agreements with third countries where the EU has exclusive competence. This may require prioritising the requests, particularly in the area of judicial cooperation in criminal matters and extradition.

In the area of civil law, the EC should ensure better consistency between its internal rules and the framework it adopts for international private law as it evolves on the various platforms (Hague Conference, Council of Europe, Unidroit, United Nations/ Uncitral). The EC should also consider whether to accede to these international organisations. Certain areas of civil law requires a specific approach which makes it possible to delegate negotiation powers regarding Community competence to Member States.

In close cooperation with the Member States, the EU dimension should be used as a means of resourcing and legitimising an **extended** geographical reach of European law enforcement efforts, to respond to the challenges of organised crime and terrorism where they develop, rather than to wait for them to reach our borders.

A forum for Member States and third-country partners would assist in the exchange of good practice in judicial cooperation in both civil and criminal matters. Direct, operational links with the judicial authorities in third countries should be developed to complement the work of the Member States themselves.

7. OVERALL CONCLUSIONS

Future action for the further strengthening of justice, freedom and security in the EU should pay particular attention to the lessons learnt from the past and should serve the citizen through more efficient and effective policy-making. Looking at the achievements and difficulties encountered during the implementation of the Hague Programme and the related Action Plan analysed in this report, four main lessons applicable across all policy areas have been identified.

7.1. Joined-up thinking and action

The big issues facing Europe, whether short term crises or long term trends, demand joined-up planning and action. Justice, freedom and security are each of relevance to all individual aspects of the Hague Programme. Consistency across the various policy areas is essential, not only within the traditional sphere of justice and home affairs activity, but also across the whole range of Community policies.

In migration and asylum, policies aiming to prevent and tackle irregular immigration and abuses of the asylum system must not hamper access to the protection to which asylum-seekers are entitled. Fundamental rights-proofing of EU policies must continue and be extended to all stages of decision making and implementation by Member States of EU legislative *acquis*. Border management is vital for the security of the EU, as is police cooperation in relation to fighting illegal immigration. Cross-cutting priorities for the EU should be identified in these areas.

The protection of personal data in the framework of police and judicial cooperation in criminal matters has been the result of a case-by-case approach. Data protection requirements have been laid down in a variety of legislative texts, across the pillars, and their scope and nature depend on the objectives of the individual legislative texts. The recently adopted Framework Decision does not completely solve this lack of harmonisation. Achieving consistency in this area therefore deserves particular attention in the years to come.

Other cross-cutting approaches could improve the effectiveness of our policies, such as the rights of the child and combating xenophobia and racism, whose threat sadly often mounts in times of economic crisis.

The Global Approach to Migration consists of various instruments which could be integrated under a comprehensive and balanced framework for dialogue and cooperation. New challenges need to be tackled in a systematic way. Political, economic, environmental and demographic changes over the long term affect the EU's relationships with third countries, with significant impact on migration and mobility. Migration policy must be further integrated into the EU's external relations strategy, assisted potentially by the establishment of an External Action Service.

We need to exploit fully the opportunities presented by new technologies. The information society has also created the need for a high level of network and information security

throughout Europe. The fight against cyber crime and cyber terrorism requires stakeholders to be closely involved in efforts to enhance the level of preparedness, security and resilience of ICT infrastructures and services. These long-term challenges demand careful consideration on a European level.⁴¹³

The security research and innovation agenda must be taken forward in partnership with the private and public sectors and with the full participation of end-user organisations. The work of ESRIFF should be taken into account. The objective of the European Security Research and Innovation Forum (ESRIFF), a public-private partnership established in September 2007, was to develop a Europe's strategic plan for security research and innovation over the mid to long term, known as the European Security Research and Innovation Agenda. The purpose of the Agenda is twofold; firstly, to contribute to the security of citizens, infrastructures and borders as well as enhancing Europe's capacity to deal with crisis. Secondly, the Agenda focuses on competitiveness, innovation with a view to positioning the Europe as a global leader in the security market. Moreover the Agenda brings greater coherence and efficiency to the security research and innovation activities at the European and national level also by addressing technological as well as societal aspects of security research.

7.2. Further attention to implementation and enforcement

It is of concern that the success in adopting measures in the Hague Programme and Action Plan contrasts with the mixed record in national implementation. Now that a substantial legal framework is in place, the focus of future action should be on consolidation and enforcement. The Commission can assist in this by consolidating existing *acquis*, facilitating coordination and exchange of best practises between Member States such as through implementation seminars, and by providing financial support and encouraging training. Greater use of infringement proceedings should also be envisaged. The Commission has promoted the right of the EU citizen to move and reside freely in the territory of the EU, but more work is needed to ensure that EU citizens are aware of their rights and can be confident that they will be respected. Existing agencies and networks need to realise their full potential, cooperate with each other more and exploit potential synergies.

7.3. Improving the use of evaluation

Citizens expect to see results from EU policies. Many instruments have been adopted and many agencies established under the Hague Programme. In many cases it is too soon to assess their effectiveness in terms of concrete results. Measures taken in the fight against organised crime, in police and customs cooperation and in criminal justice remain difficult to evaluate as often there is no formal duty for Member States to report on implementation.

More robust and systematic monitoring and evaluation systems for each policy are needed to provide comparable evidence on the impact of what the EU does. Evaluation results will then inform better policy-making and help explain to EU citizens the added value of EU action.

⁴¹³ COM(2009) 149 final.

Better evaluation depends on the availability of up-to-date, objective, reliable and comparable data. For example, in migration there are now common rules for Community statistics and an established European Migration Network. Similarly, the Commission with Member States has developed parameters for collecting, analysing and comparing data and trends in trafficking in human beings and money laundering. However, in many areas such as justice data has been unavailable. Even where data collection systems are in place or are being created, including for crime and specifically for drugs, consideration should be given to more binding provisions. Funding under the Research and Technological Development Framework Programme and other relevant programmes should continue to help develop knowledge in this policy area.

The credibility of the next multiannual programme will depend on the extent to which the EU can report meaningfully on its effectiveness.

7.4. Complementing internal policies through external action

Member States, the Council and the Commission need to work together to strengthen partnerships with third parties. Continuity and consistency between internal and external European justice, freedom and security policies are essential to produce results and to meet the challenges posed by globalisation.. The EU needs to anticipate challenges rather than wait for them to reach our borders, and it should promote standards, such as those for data protection, which can be regarded internationally as examples worth following. The external dimension of JLS policies needs to be fully integrated and coherent with EU external action and policies such as development cooperation.

Increasingly, third countries approach the EU for cooperation on the basis of specific agreements. These approaches may require prioritisation. Consideration should be given to identifying criteria for deciding how to respond to these approaches and whether to include them within an overall framework of a comprehensive agreement. Cooperation initiatives should respond to the particular circumstances of the countries which are preparing to join the EU. External relations priorities of the Union should also better inform and guide the prioritisation of the work of agencies such as Europol, Eurojust and Frontex. The agencies' operational knowledge, particularly where they have concluded agreements or working arrangements with third countries, in addition to their annual reports, could provide valuable input into decision-making at EU level.

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3.5	Border management	III.1.7.1 III.1.7.2	III.1.5
3.6	Integration of third country nationals	III.1.5	III.1.4
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		Hague Programme: Strengthening Freedom, Security and Justice in the European Union	Justice Freedom and Security in Europe since 2005: an evaluation of the Hague Programme and Action Plan
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LIST OF SOURCES

Anti-Phishing working group (APWG), "Phishing Activity Trends Report Q1 2008", available at: http://www.antiphishing.org/reports/apwg_report_Q1_2008.pdf

B&S Europe, "Best practices in vertical relations between the Financial Intelligence Unit and i) law enforcement services and ii) money laundering and terrorist financing reporting entities, with a view to indicating effective models for feedback on follow-up to and effectiveness of suspicious transaction reports", not yet published

COM (2008) 128 final, Green Paper "Effective enforcement of judgments in the European Union: the transparency of debtors' assets"

COM(2003) 265 final, "First Report on the implementation of the Data Protection Directive (95/46/EC)"

COM(2004) 409 final, "Report from the Commission based on article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism"

COM(2004) 54 final/2, "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"

COM(2005) 10 final, White Paper on exchanges of information on convictions and the effect of such convictions in the European Union

COM(2005) 172 final, "Compliance with the Charter of Fundamental Rights in Commission legislative proposals - Methodology for systematic and rigorous monitoring"

COM(2005) 184 final, "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) 195 final, Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States

COM(2005) 606 final, Green Paper on the future of the European migration network

COM(2005) 620 final, "Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector"

COM(2005) 63 final, "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) 65 final, "European Initiative for Growth - Feasibility report on EU loan guarantee instrument for TEN-Transport projects"

COM(2005) 696 final, Green Paper on Conflicts of Jurisdiction and the Principle of *ne bis in idem* in Criminal Proceedings

COM(2006) 156 final, "Third Report on the application of Directives 93/96, 90/364, 90/365 on the right of residence for students, economically inactive and retired Union citizens"

COM(2006) 203 final, "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"

COM(2006) 3 final, "Report from the Commission to the Council on visa waiver reciprocity with certain third countries in accordance with Article 2 of Council 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"

COM(2006) 316 final, Green Paper on the role of Civil Society in Drugs Policy in the European Union

COM(2006) 331 final, "Implementing The Hague Programme : the way forward"

COM(2006) 332 final, "Evaluation of EU Policies on Freedom, Security and Justice"

COM(2006) 333 final, "Report on the implementation of the Hague programme for 2005"

COM(2006) 568 final, "Report from the Commission to the European Parliament and the Council on cases where visa waiver non-reciprocity is maintained by certain third countries in accordance with Article 1(5) of 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 amended by Regulation (EC) No 851/2005 as regards the reciprocity mechanism"

COM(2006) 618 final, Green Paper on improving the efficiency of the enforcement of judgments in the European Union: the attachment of bank accounts

COM(2006) 744 final, Green Paper on the Review of the Consumer Acquis

COM(2006) 790 final, "Commission Report on the participation of European Union citizens in the Member State of residence (Directive 93/109/EC) and on the electoral arrangements (Decision 76/787/EC as amended by Decision 2002/772/EC, Euratom)"

COM(2006) 8 final, "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)174 final, Green Paper "The Presumption of Innocence"

COM(2007) 299 final, "Report on the evaluation of the Dublin system"

COM(2007) 301 final, Green Paper on the future Common European Asylum System

COM(2007) 328 final, "Report from the Commission to the Council based on Article 9 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector"

COM(2007) 373 final, "Report on the implementation of The Hague programme for 2006"

COM(2007) 407 final, "Report from the Commission on the implementation since 2005 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States"

COM(2007) 512 final, "Third Annual Report on Migration and Integration"

COM(2007) 533 final, "Third Report from the Commission to the European Parliament and the Council on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity in accordance with Article 1(5) of 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 amended by Regulation (EC) No 851/2005 as regards the reciprocity mechanism"

COM(2007) 644 final, "Communication on the role of Eurojust and the European Judicial Network in the fight against organised crime and terrorism in the European Union"

COM(2007) 681 final, "Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism" and SEC(2007) 1463, "Commission staff working document - Annex to the Report from the Commission based on Article 11 of the Council Framework Decision of 13 June 2002 on combating terrorism"

COM(2007) 693 final, Commission working document on the feasibility of EU legislation in the area of protection of witnesses and collaborators with justice

COM(2007) 716 final, "Report from the Commission Based on Article 12 of the Council Framework Decision of 22 December 2003 on combating the sexual exploitation of children and child pornography"

COM(2007) 781 final, "Communication from the Commission on the 2007 Progress Review of the implementation of the EU action plan on drugs (2005-2008)"

COM(2007) 805 final, "Report from the Commission pursuant to Article 6 of the Council Framework Decision of 24 February 2005 on confiscation of crime related proceeds, instrumentalities and property (2005/212/JHA)"

COM(2007) 827 final, "Report from the Commission on the implementation of the Council Decision of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information (2000/642/JHA)"

COM(2007) 87 final, Communication on the follow-up of the Work Programme for better implementation of the Data Protection Directive

COM(2008) 373 final, "Report on implementation of the Hague programme for 2007"

COM(2008) 448 final, "Report from the Commission to the Council based on Article 12 of the Council Framework Decision of 24 February 2005 on attacks against information systems"

COM(2008) 486 final/2, "Fourth Report from the Commission to the Council and the European Parliament on certain third countries' maintenance of visa requirements in breach of the principle of reciprocity in accordance with Article 1(5) of 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 amended by Regulation (EC) No 851/2005 as regards the reciprocity mechanism"

COM(2008) 610 final, "Report on the application of Directive 2003/86/EC on the right to family reunification"

COM(2008) 657 final, "Commission working document - Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings"

COM(2008) 67 final, "Report on the evaluation and future development of the FRONTEX Agency"

COM(2008) 68 final, "Examining the creation of a European border surveillance system"

COM(2008) 69 final, "Preparing the next steps in border management in the European Union"

COM(2008) 710 final, Report on the Development of the Second Generation Schengen Information System (SIS II) - Progress Report January 2008 – June 2008

COM(2008) 840 final, "Report on the application 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"

COM(2008) 85 final, "Fifth Report on citizenship of the Union"

COM(2008) 885 final, "Report from the Commission based on Article 14 of the Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence"

COM(2008) 888 final, "Report from the Commission based on Article 20 of the Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties"

COM(2009) 133 final, Report on the Development of the Second Generation Schengen Information System (SIS II) Progress - Report July 2008 – December 2008

COM(2009) 166 final, "Report from the Commission pursuant to Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)"

COM(2009) 170 final, "Report from the Commission to the Council, the European Parliament and the European Economic and Social Committee on the application of Council Directive 2004/80/EC relating to compensation to crime victims"

COM(2009) 174 final, "Report on the application of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters"

COM(2009) 175 final, Green Paper on the review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

Compagnie Européenne d'Intelligence Stratégique (CEIS), Paris, "Les facteurs de création ou de modification des processus de radicalisation violente, chez les jeunes en particulier"; The Change Institute, London, "Beliefs, ideology and narratives"; King's College, London, "Recruitment and Mobilisation for the Islamist Militant Movement in Europe"; The Change Institute, London, "Study on best practices in cooperation between authorities and civil society with a view to the prevention and response to violent radicalisation". These studies are available at: http://ec.europa.eu/justice_home/fsj/terrorism/prevention/fsj_terrorism_prevention_prevention.htm

Council document 17104/08, "Report on the Implementation of the European Security Strategy, Providing Security in a Changing World"

Council document 5674/07, "Report to the Council on implementation of the Action Plan for the strategy for customs cooperation in the Third Pillar (2004-2006)"

Council document 8102/3/08 rev 3, "State of play of implementation by Member States and EU bodies of EU priorities for the fight against organised crime based on the OCTA 2007"

Council document 9831/08, "Final Report by EU-US High Level Contact Group on information sharing and privacy and personal data protection"

Council of Europe, "Combating violence against women – Stocktaking study on the measures and actions taken in the Council of Europe member states", 2006

EMCDDA Annual Report 2008, available at:
<http://www.emcdda.europa.eu/events/2008/annual-report>

European Commission, "Analysis of the future of mutual recognition in criminal matters in the European Union", available at:
http://ec.europa.eu/justice_home/doc_centre/criminal/recognition/docs/mutual_recognition_en.pdf

European Commission, "Comparative overview of the implementation of the directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States, available at:
http://ec.europa.eu/justice_home/doc_centre/asylum/studies/doc_asylum_studies_en.htm

European Parliament, "Implementation of the European Arrest Warrant and the Joint Investigation Teams at EU and National level", 2009, available at:
<http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=24333>

European Parliament, "Implementation of the European Arrest Warrant and Joint Investigation Teams at EU and National level", 2009, available at:
<http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=24333>

European Parliament, "Progress Made and Existing Gaps in the Field of Judicial co-operation in criminal matters", 2007, available at:
<http://www.europarl.europa.eu/activities/committees/studies/download.do?language=en&file=18151>

Europol Annual Report 2007, available at:
http://www.europol.europa.eu/publications/Annual_Reports/Annual%20Report%202007.pdf

Europol, EU Terrorism Situation and Trend Report TE-SAT 2008, available at:
http://www.europol.europa.eu/publications/EU_Terrorism_Situation_and_Trend_Report_TE-SAT/TESAT2008.pdf

Europol, European Organised Crime Threat Assessment, available at:
<http://www.europol.europa.eu/index.asp?page=publications>

Eurostat, EUROPOP 2008 Convergence Scenario; Eurostat, Migration Statistics.

Flash Eurobarometer 188, "Consular Protection"

Flash Eurobarometer 213, "European Union Citizenship"

Flash Eurobarometer 225, "Data Protection in the European Union. Citizens' Perceptions"

Flash Eurobarometer 235, "The Rights of the Child"

FRA 2008 Annual Report, available at:
http://fra.europa.eu/fraWebsite/attachments/ar08p2_en.pdf

FRA Annual Work Programme 2009, available at:
http://fra.europa.eu/fraWebsite/attachments/wp09_en.pdf

Frontex, "External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union", available at:
http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvZW4vZGVmYXVsdF9vcGlzeS82Mi8xLzE/cowi_report_final.doc

International Centre for Missing and Exploited Children, "Child Pornography: Model legislation and global review", 2007

May-Chahal, C., and Herczog, M., "Child sexual abuse in Europe", 2003

Patrick Belser, Michaelle De Cock, Fahrad Mehran, "Minimum Estimate of Forced Labour in the World", ILO, Geneva, 2005

SEC(2004) 1349, "Annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents"

SEC(2006) 1010, "Second annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external border controls, and the return of illegal residents"

SEC(2006) 1498, "Progress report on the implementation of the Strategy for the External Dimension of JHA: Global Freedom, Security and Justice"

SEC(2006) 1803, "Progress Review on the implementation of the EU Drugs Action Plan (2005-2008)"

SEC(2006) 892, "Second Annual Report on Migration and Integration"

SEC(2007) 691, "Study on the international law instruments in relation to illegal immigration by sea"

SEC(2008) 1971, "Second progress report on the implementation of the "Strategy for the External Dimension of JHA: Global Freedom, Security and Justice"

SEC(2008) 2455, "Commission staff working document accompanying the Communication from the Commission to the Council and the European Parliament on an EU Action Plan on Drugs (2009-2012) - Impact assessment"

SEC(2008) 2456, "Report of the final evaluation of the EU drugs action plan (2005-2008)"

SEC(2008) 2692, "Albania 2008 Progress Report"

SEC(2008) 2693, Bosnia and Herzegovina 2008 Progress Report"

SEC(2008) 2694, "Croatia 2008 Progress Report"

SEC(2008) 2696, "Montenegro 2008 Progress Report"

SEC(2008) 2697, "Kosovo (Under UNSCR 1244/99) 2008 Progress Report"

SEC(2008) 2698, " Serbia 2008 Progress Report"

SEC(2008) 35, Commission staff working document on the development of the second generation Schengen Information System (SIS II) - Progress Report January - June 2007

SEC(2009) 320, "Third annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders, and the return of illegal residents"

Special Eurobarometer 290, "The role of the European Union in Justice, Freedom and Security policy areas"

Special Eurobarometer 291, "The attitudes of Europeans towards corruption"

Special Eurobarometer 296, "Discrimination in the European Union: Perceptions, Experiences and Attitudes"

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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 10.6.2009
SEC(2009) 767 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL, THE
EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

JUSTICE, FREEDOM AND SECURITY IN EUROPE SINCE 2005:

AN EVALUATION OF THE HAGUE PROGRAMME AND ACTION PLAN

**General overview of instruments and deadlines provided in the Hague Programme and
Action Plan in the fields of justice, freedom and security**

Institutional Scoreboard

{COM(2009) 263 final}
{SEC(2009) 765 final}
{SEC(2009) 766 final}

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1. GENERAL ORIENTATIONS⁴				
1.1. EVALUATION				
- Setting up of a system for objective and impartial evaluation of the implementation of EU measures in the field of freedom, security and justice				
1.	Communication on and proposal for the creation of an evaluation mechanism, as envisaged by Article III-260 of the Constitutional Treaty	Commission	2006	√ Achieved The Communication from the Commission to the Council and the European Parliament "Evaluation of EU policies on Freedom, Security and Justice", proposing an evaluation mechanism at EU level for policies in this area, was adopted on 28 June 2006⁵. A proposal for the establishment of the evaluation mechanism has never been adopted.
1.2. RESPECT FOR AND ACTIVE PROMOTION OF FUNDAMENTAL RIGHTS				
- Framework Programme "Fundamental rights and justice" under the new Financial Perspectives (2005)				

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 All legislative proposals are in italics.

³ "Achieved", "delayed", "postponed" or "ongoing" 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.

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

⁵ COM(2006) 332 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.2 (a)	<i>Proposal for a Decision establishing a specific programme on citizenship and fundamental rights</i>	Commission	2005	√ Achieved 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 2005⁶. The Council Decision 2007/252/JHA 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 19 April 2007⁷.

⁶ COM(2005) 122 final.

⁷ OJ L 110, 27.4.2007, p. 33.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.2 (b)	<i>Proposal for a Decision establishing a specific programme on the fight against violence (Daphne) and drugs prevention and information</i>	Commission	2005	√ Achieved The proposal for a Decision of the European Parliament and of the Council establishing for the period 2007-2013 the specific programme "Fight against violence (Daphne) and drugs prevention and information" as part of the General programme "Fundamental Rights and Justice" was adopted on 6 April 2005⁸. 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 information⁹. This split answered requests in that sense by the European Parliament, civil society organisations and most of the Member States. The Decision No 779/2007/EC of the European Parliament and of the Council establishing for the period 2007-2013 a specific programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk (Daphne III programme) as part of the General Programme "Fundamental Rights and Justice" was adopted on 20 June 2007. The Decision No 1150/2007/EC of the European Parliament and of the Council establishing for the period 2007-2013 the Specific Programme "Drug prevention and information" as part of the General Programme "Fundamental Rights and Justice" was adopted on 25 September 2007.
- Accession of the European Union to the European Convention for the protection of human rights and fundamental freedoms (informal discussions to be started in 2005)				

⁸ COM(2005) 122 final.

⁹ COM(2006) 230 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.2.	Accession of the European Union to the European Convention for the protection of human rights and fundamental freedoms	Commission		• Postponed There is no legal basis under the current Treaties related to this action.
1.2. (c)	<i>Proposal extending the mandate of the European Monitoring Centre on Racism and Xenophobia towards a Fundamental Rights Agency</i>	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 2005¹⁰. The Council Regulation (EC) No 168/2007 establishing a European Union Agency for Fundamental Rights was adopted on 15 February 2007¹¹.
- Promotion and protection of women and child rights				
1.2. (d)	Daphne II work programme: 2006	Commission	2005	√ Achieved The work programme was approved at the end of December 2005. A call for proposals was issued, with a deadline of 10 February 2006¹².

¹⁰ COM(2005) 280 final.

¹¹ OJ L 53, 22.2.2007, p. 1.

¹² http://ec.europa.eu/justice_home/funding/2004_2007/daphne/doc/annual_programme_2006_en.pdf.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.2. (e)	Study on prevention measures to combat violence against women	Commission	2006	√ Achieved Several projects have been financed through the programme Daphne II in 2005 on issues related to the prevention of violence against women.
1.2. (f)	Communication on the protection of the rights of the child	Commission	2005	√ Achieved ¹³ On 4 July 2006 the Commission adopted a Communication "Towards an EU Strategy on the Rights of the Child" ¹⁴ , which establishes a comprehensive EU approach to effectively promote and safeguard the rights of the child in the European Union's internal and external policies and to support Member States' efforts in this field.
- 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 ¹⁵	√ Achieved The Communication was adopted on 7 March 2007 ¹⁶ .

¹³ Achieved in 2006.
¹⁴ COM(2006) 367 final.
¹⁵ Achieved in 2007.
¹⁶ COM(2007) 87 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.2. (h)	Communication on PETs (privacy enhancing technologies)	Commission	2005 ¹⁷	√ Achieved The Communication was adopted on 2 May 2007 ¹⁸ .
1.2 (i)	Proposal for legislation on the protection of personal data in the context of police cooperation and judicial cooperation in criminal matters			Refer to point 3.1. (c)
1.3. EUROPEAN COURT OF JUSTICE				
1.3. (a)	<i>Proposal on means to enable the European Court of Justice to handle requests for preliminary rulings concerning the area of freedom, security and justice</i>	Commission	2006 ¹⁹	√ Achieved The Council Decision 2008/79/EC, Euratom and the Amendments to the Rules of Procedure of the Court of Justice enabling the Court to deal more quickly with very urgent questions referred for a preliminary ruling were adopted in December 2007 ²⁰ on the basis of an initiative of the Court itself.

¹⁷ Achieved in 2007.

¹⁸ COM(2007) 228 final.

¹⁹ Achieved in 2007.

²⁰ OJ L 24, 29.1.2008, p. 42 and OJ L 24, 29.1.2008, p. 39.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.4. EUROPEAN STRATEGY ON DRUGS				
- EU Action Plans on drugs 2005 to 2008 and 2009 to 2012				
	EU Action Plan on drugs 2005 to 2008	Commission	2005	√ Achieved Following the endorsement by the Council of the EU Drugs Strategy (2005-2012) of December 2004²¹, the Commission adopted a Communication on an EU Drugs Action Plan (2005-2008) on 14 February 2005²². The EU Drugs Action Plan was adopted by the Council on 28 June 2005²³.
	EU Action Plan on drugs 2009 to 2012	Commission	2009	√ Achieved²⁴ Following the endorsement by the Council of the EU Drugs Strategy (2005-2012) of December 2004, the Commission adopted a Communication on an EU Drugs Action Plan (2009-2012) on 18 September 2008²⁵. The EU Action Plan on drugs was adopted by the Council in December 2008²⁶.

²¹ Council document 15074/04.

²² COM(2005) 45 final.

²³ OJ C 168, 8.7.2005, p. 1.

²⁴ Achieved in 2008.

²⁵ COM(2008) 567 final.

²⁶ OJ C 326, 20.12.2008, p. 7.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.4. (a)	Continuous evaluation of the EU Action Plan on drugs 2005 to 2008	Commission	Annual	√ Achieved Since 2006, the Commission publishes annual reports on the implementation of the EU Drugs Action Plan 2005-2008²⁷.
1.4. (b)	Green Paper on the role of civil society in formulating policies in the drugs field	Commission	2006	√ Achieved On 26 June 2006 the Commission adopted a Green Paper on the Role of Civil Society in Drugs Policy in the European Union²⁸. The objective was to bring those most directly concerned by the drugs problem more closely into the policy process at the EU level by launching a wide ranging consultation on how to organise a structured and continuous dialogue between the Commission and civil society. The Commission received 65 replies to the open consultation that followed the publication of the Green Paper. All these proposals have been carefully studied and the Commission has set up a Civil Society Forum on drugs.

²⁷ For the year 2006, SEC(2006) 1803, Progress Review on the implementation of the EU Drugs Action Plan (2005-2008); for the year 2007, COM(2007) 781 final and SEC(2007) 1739; for 2008, SEC(2008) 2456, Report on the Final Evaluation of the EU Drugs Action Plan (2005-2008).

²⁸ COM(2006) 316 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
1.4. (c)	Report on the implementation and functioning of the Framework Decision on drugs trafficking	Commission	2007	• Delayed The Commission is expected to submit the first report in 2009. Only 11 Member States sent their report on transposition by the deadline of 12 May 2006.
1.4. (d)	Progress report on and impact assessment of the EU Action Plan on drugs 2005 to 2008	Commission	2008	√ Achieved The achievements of the EU Action Plan on drugs 2005 -2008 were presented in the final evaluation of the EU Action Plan on drugs 2005-2008²⁹, adopted on 18 September 2008.
1.4. (e)	Communication on an EU Action Plan on drugs 2009 to 2012	Commission	2009	√ Achieved³⁰ The Commission presented the Communication on 18 September 2008³¹. The Council endorsed the EU Action Plan on drugs in December 2008³².
1.5. EXTERNAL RELATIONS				
- Strategy on all the external aspects of the Union policy on freedom, security and justice, based on the measures developed in the Hague programme				

²⁹ SEC(2008) 2456.
³⁰ Achieved in 2008.
³¹ COM(2008) 567 final.
³² OJ C 326, 20.12.2008, p. 7.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
	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 Council adopted the "Strategy for the External Dimension of JHA: Global Freedom, Security and Justice" on 12 December 2005³³.
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 the Communication “A Strategy on the external dimension of the area of Freedom, Security and Justice”³⁴ on 12 October 2005. Together with the contribution from the Council’s General Secretariat³⁵, it served as a basis for the Strategy for the External Dimension of JHA endorsed by the Council in December 2005.

³³ Council document 15446/05.

³⁴ COM(2005) 491 final.

³⁵ Council document 12850/05.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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	2005-2006	√ Achieved The third report from the Commission to the Council and the European Parliament on the application of Directives 90/364, 90/365 and 93/96 on the right of residence for students, economically inactive and retired Union citizens was adopted on 5 April 2006³⁶.
2.1. (b)	<i>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</i>	Commission	2005-2006	√ Achieved On 12 December 2006 the Commission adopted the Communication "European elections 2004 - Commission report on the participation of European Union citizens in the Member State of residence (Directive 93/109/EC) and on the electoral arrangements (Decision 76/787/EC as amended by Decision 2002/772/EC, EURATOM)"³⁷ and the proposal for a Council Directive amending Directive 93/109/EC of 6 December 1993 as regards certain 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 nationals³⁸.

³⁶ COM(2006) 156 final.

³⁷ COM(2006) 790 final.

³⁸ COM(2006) 791 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.1. (c)	<i>Proposal to facilitate diplomatic and consular protection</i>	Commission	2006	√ Achieved On 28 November 2006 the Commission issued a Green Paper on the Diplomatic and Consular Protection of the Citizen of the Union in third countries³⁹. The strategic initiative "Effective consular protection in third countries: the contribution of the European Union - Action Plan 2007-2009"⁴⁰ was adopted on 5 December 2007.
2.1. (d)	<i>Proposal on provisions and conditions required for a European citizens' initiative</i>	Commission	2007	• Delayed There is no legal basis for putting forward such an initiative under the current Treaties.
2.1 (e)	Examination of possible measures to strengthen and to add to the rights laid down under the citizenship provisions of the Treaties (Article 22 of the EC Treaty)	Commission	2008	√ Achieved The Fifth Commission Report on Citizenship of the Union (1 May 2004 – 30 June 2007) was adopted on 15 February 2008⁴¹.

³⁹ COM(2006) 712 final.

⁴⁰ COM(2007) 767 final.

⁴¹ COM(2008) 85 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- Allowing EU citizens and members of their family to move within the European Union on similar terms to national of a Member State moving around or changing their place of residence in their own country				
2.1. (f)	Control of transposition, compliance and correct application of Directive 2004/38/EC on free movement and residence	Commission	2006	√ Achieved The Commission monitors closely the transposition of Directive 2004/38/EC. Between June 2006 and February 2007 the Commission initiated infringement proceedings under Article 226 of the EC Treaty against 19 Member States for their failure to communicate the text of the provisions of national law adopted to transpose the Directive. Since then, as all Member States have gradually adopted the transposition measures, the infringement proceedings for non-communication have been closed. On 10 December 2008, the Commission adopted its report on the application of the Directive⁴².
2.1. (g)	Report on application of Directives 90/364/EEC, 90/365/EEC and 93/96/EEC on free movement and residence and on the situation of the nationals of the new Member States	Commission	2006	√ Achieved The Third Commission Report on application of the three Directives was published on 5 April 2006⁴³.

⁴² COM(2008) 840 final.

⁴³ COM(2006) 156 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.1. (h)	<i>Report on application of Directive 2004/38/EC on free movement and residence and, if appropriate, proposals for the amendment of the Directive</i>	Commission	2008	√ Achieved The Commission published the first implementation report of Directive 2004/38/EC on 10 December 2008 ⁴⁴ .
2.2. ASYLUM, MIGRATION AND BORDER POLICY				
- Framework Programme "Solidarity and Management of Migration Flows" under the new Financial Perspectives				
	<i>Framework Programme "Solidarity and Management of Migration Flows" under the new Financial Perspectives</i>	Commission	2005	√ Achieved The Commission proposed four funds under this Framework Programme ⁴⁵ (European Refugee Fund, External Borders Fund, European Fund for the Integration of Third-country Nationals and European Return Fund). The funds were adopted in 2007 ⁴⁶ .

⁴⁴ COM(2008) 840 final.

⁴⁵ COM(2005) 123 final/2.

⁴⁶ Decision No 573/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows' and repealing Council Decision 2004/904/EC; Decision No 574/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the External Borders Fund for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows'; Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme 'Solidarity and Management of Migration Flows'; Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme 'Solidarity and Management of Migration Flows'.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- 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	European Migration Network	Ongoing	√ Achieved The annual reports on migration and asylum statistics forms part of the European Migration Network's annual work programme. The annual report 2006 has been finalised in early 2009, the reports for the years 2007 and 2008 are part of the EMN's 2009 work programme. The delays are due to the lack of a proper legal base (and thus funding) in 2007. Establishing of migration profiles for ACP countries as an annex to Country Strategy Papers. Further work on widening the scope of the migration profiles is ongoing.
2.2. (b)	<i>Adoption of an EU framework Regulation on the collection of migration and asylum statistics</i>	Council/Parliament	2005	√ Achieved The Council and the European Parliament adopted the Regulation (EC) No 862/2007 on Community statistics on migration and international protection and (repealing Council Regulation (EEC) No 311/76 on the compilation of statistics on foreign workers) on 11 July 2007⁴⁷.
2.2. (c)	Green Paper on the future of the European migration network, possibly followed by a <i>proposal establishing a European Migration Monitoring Centre</i>	Commission	2005 and 2006 ⁴⁸	√ Achieved The Commission presented the Green Paper on 28 November 2005⁴⁹. Following the Commission proposal presented on 10 August 2007 for a Council Decision establishing a European Migration Network⁵⁰, the Council adopted on 14 May 2008 the Decision 2008/381/EC establishing a European Migration Network⁵¹.

⁴⁷ OJ L 199, 31.7.2007, p. 23.

⁴⁸ Achieved in 2008.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.2. (d)	<i>Proposal for a mutual information system on migration issues</i>	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. The Council Decision 2006/688/EC on the establishment of a mutual information mechanism concerning Member States' measures in the areas of asylum and immigration was adopted on 5 October 2006⁵².
2.3. COMMON EUROPEAN ASYLUM SYSTEM				
2.3. (a)	<i>Adoption of the asylum procedures Directive</i>	Council/ Parliament	2005	√ Achieved The Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status was adopted on 1 December 2005⁵³, following the Commission's proposal dated 20 September 2000⁵⁴.

⁴⁹ COM(2005) 606 final.
⁵⁰ COM(2007) 466 final.
⁵¹ OJ L 131, 21.5.2008, p. 7.
⁵² OJ L 283, 14.10.2006, p. 40.
⁵³ OJ L 326, 13.12.2005, p. 13.
⁵⁴ COM(2000) 578 final, amended by COM(2002) 326 final/2.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.3. (b)	Conclusion of the so-called “parallel agreements” with Denmark on “Dublin II” and “Eurodac”	Council	2005	√ Achieved⁵⁵ Following the Commission’s proposals⁵⁶, both the agreement with Denmark on Dublin II and Eurodac, as well as the protocol to the agreement with Norway and Iceland on Dublin II, extending its application to Denmark, were signed on 10 March and 25 June 2005 respectively. The Council adopted the Decision 2006/188/EC and the Decision 2006/167/EC on 21 February 2006⁵⁷. On 24 October 2008, the Council adopted the Protocol between the European Community, Switzerland and Liechtenstein to the Agreement with Switzerland on Dublin II (Council Decision 2006/257/CNS). This Protocol was needed in order to create rights and obligations between Denmark, Switzerland and Liechtenstein.
- Evaluation of the first phase legal instruments				
2.3. (c)	Monitoring the transposition and implementation of first phase instruments	Commission	2005 ongoing	√ Achieved Full evaluations of the implementation of the Dublin system (Dublin and Eurodac Regulations) and of the Reception Conditions Directive were presented by the Commission in June⁵⁸ and November⁵⁹ 2007 respectively. They provided the basis for the preparation of amendments to those instruments, which were presented in December 2008⁶⁰.

⁵⁵ Achieved in 2006.

⁵⁶ COM(2004) 594 final and COM(2005) 131 final.

⁵⁷ OJ L 66, 8.3.2006, p. 37 and OJ L 57, 28.2.2006, p. 15.

⁵⁸ COM(2007) 299 final..

⁵⁹ Available at: http://ec.europa.eu/justice_home/doc_centre/asylum/studies/doc_asylum_studies_en.htm.

⁶⁰ COM(2008) 815 final, Proposal for a Directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (Recast); COM(2008) 820 final, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- 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				
2.3. (d)	<i>Proposal on long-term resident status for beneficiaries of international protection</i>	Commission	2005	✓ Achieved The proposal for a Council Directive amending Directive 2003/109/EC to extend its scope to beneficiaries of international protection was adopted on 6 June 2007⁶¹.
2.3. (e)	<i>Second-phase instruments and measures to be presented to the Council and the European Parliament</i>	Commission	2010	The amendments to the reception conditions directive, to the Dublin and Eurodac regulations and the proposal for a European Asylum Support Office⁶² have already been adopted by the Commission. The amendment to the procedures and qualifications directives and the proposal for an European resettlement scheme are meant to be adopted by the end of 2009.
- Studies on the implications, appropriateness and feasibility of joint processing of asylum applications				
2.3. (f)	<i>Study on the joint processing of asylum applications within the Union</i>	Commission	2006	• Delayed The study was not conducted as it was considered that the timing was not the most appropriate. However, in view of the completion of the second phase of the CEAS, it is now foreseen to commission this study in 2009-2010.

the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast); COM(2008) 825, Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (Recast).

⁶¹ COM(2007) 298 final.

⁶² COM(2009) 66 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.3. (g)	Study, to be conducted in close consultation with the United Nations High Commissioner for Refugees (UNHCR), on joint processing of asylum applications outside EU territory	Commission	2006	• Postponed The study was not conducted as it was considered that the timing was not the most appropriate. However, in view of the completion of the second phase of the CEAS, it is now foreseen to commission this study in 2009-2010.
- Cooperation between Member States relating to the Common European asylum system, after the establishment of a common asylum procedure				
2.3. (h)	<i>Establishment of structures involving the national asylum services of the Member States for promoting cooperation (Communication)</i>	Commission	2005	√ Achieved⁶³ The Communication 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 2006⁶⁴.
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		√ Achieved The Commission presented in February 2009 the proposal for the establishment of a European Asylum Support Office (see point 2.3 (e)).

⁶³ Achieved in 2006.
⁶⁴ COM(2006) 67 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- 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				
2.3. (j)	Final Report on the European Refugee Fund	Commission	2005	√ Achieved ⁶⁵ The Final evaluation of the ERF for the period 2000-2004 ⁶⁶ was adopted on 8 December 2006.
2.3. (k)	<i>Proposal for amending the European Refugee Fund decision to assist Member States in the reception of certain categories of third-country nationals</i>	Commission	2005	√ Achieved ⁶⁷ The Council Decision 2004/904/EC establishing the European Refugee Fund for the period 2005 to 2010 was adopted on 2 December 2004 ⁶⁸ . The Commission presented an amended proposal for a Decision of the European Parliament and the Council establishing the ERF for the period 2008 – 2013 as part of General the programme ‘Solidarity and Management of Migration Flows’ on 24 May 2006 ⁶⁹ . The Decision No 573/2007/EC of the European Parliament and of the Council establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme ‘Solidarity and Management of Migration Flows’ and repealing Council Decision 2004/904/EC ⁷⁰ was adopted on 23 May 2007.

⁶⁵ Achieved in 2006.

⁶⁶ SEC(2006) 1636.

⁶⁷ Achieved in 2006.

⁶⁸ OJ L 381, 28.12.2004, p. 52.

⁶⁹ COM(2005) 123 final /3.

⁷⁰ OJ L 144, 6.6.2007, p. 1.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.3. (1)	Approvals of European Refugee Fund national multi-annual programming	Commission	2005, 2008, 2011	√ Achieved⁷¹ All national multi-annual programmes were examined by the Commission and adopted in the course of 2005-2006 and 2008-2009.
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	From 2005 onwards	√ 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) and on long-term resident status (2003/109/EC). In addition to regular contact committee, in 2007 the Commission launched a 12 month study on the conformity checking of measures of Member States to transpose Directives in the area of immigration and asylum. The results of this study have been available since October 2008 and have been used by the Commission as background information in its function to ensure, in accordance with Article 226 EC, the proper transposition and application of immigration and asylum Directives in the Member States. Moreover, the results have also been used to elaborate the first application report of the family reunification directive presented in October 2008⁷².

⁷¹ Excluding 2011 actions.

⁷² COM(2008) 610 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 2005⁷³ 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 European Parliament gave its opinion in October 2005; the European Economic and Social Committee and the Committee of the Regions gave their opinions in May 2005.
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 2005⁷⁴. 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. The European Parliament adopted an own-initiative report on the policy plan in September 2007 (Gruber report). In accordance with the Policy Plan, in October 2007 the Commission tabled the first two of the five legislative proposals announced: a directive on the admission of highly skilled migrants ("EU Blue Card")⁷⁵ and a horizontal framework directive on migrant rights and a single application procedure⁷⁶. Two other proposals on seasonal workers and ICTs are expected to be presented in 2009.

⁷³ COM(2004) 811 final.

⁷⁴ COM(2005) 669 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 2005⁷⁷. The conclusions adopted by the JHA Council of 1-2 December 2005⁷⁸ supported the lines of action contained in this Communication.
- Promotion of the structural exchange of experience and information integration⁷⁹				

⁷⁵ COM (2007) 637 final, adopted by the Council on 25.5.2009.

⁷⁶ COM (2007) 638 final.

⁷⁷ COM(2005) 389 final.

⁷⁸ Council document 14390/05, p. 36.

⁷⁹ Complementary activities are undertaken in the framework of the European employment strategy and the social inclusion process.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.5. (b)	Management of INTI preparatory actions	Commission	2005 to 2006	√ Achieved The Commission received 139 grant applications in response to the INTI 2005 call for proposals. The Commission 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. The 2006 call for proposals was launched during the second semester of 2006. The Commission received 150 grant applications in response to the INTI 2006 call for proposals. The Commission agreed to co-finance 12 new projects in connection with the call for proposals under the INTI 2006 programme to the tune of some EUR 3.9 million. The year 2006 was the last year of the INTI programme. An evaluation on the INTI pilot projects/preparatory actions 2003-2006 was finalised in 2008, which underlined the overall good results of the programme.
2.5. (c)	Annual reports on immigration and integration	Commission	2005 ongoing	√ Achieved The first annual report on immigration and integration was adopted on 17 July 2004⁸⁰. The second annual report on immigration and integration was adopted on 30 June 2006⁸¹. The third – and so far last – annual report was adopted on 19 September 2007⁸².

⁸⁰ COM(2004) 508 final.

⁸¹ SEC(2006) 892.

⁸² COM(2007) 512 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.5. (d)	Handbook on integration	Commission	Second edition 2006, ongoing	√ Achieved⁸³ The first edition of the handbook (November 2004) was made available in all official languages on JLS website in the second semester of 2006⁸⁴. The second edition of the handbook was presented in May 2007 at the occasion of the second Ministerial Conference on Integration in Potsdam (Germany) and has been made available in all official languages at the same internet address. A third edition of the handbook is close to finalisation and is expected to be officially presented in the course of 2009.
2.5. (e)	Development of a website on integration	Commission	2006	√ Achieved⁸⁵ The website was launched in April 2009⁸⁶.

⁸³ Achieved in 2007.

⁸⁴ Available at: http://ec.europa.eu/justice_home/doc_centre/immigration/integration/doc_immigration_integration_en.htm.

⁸⁵ Achieved in 2009.

⁸⁶ Available at: <http://ec.europa.eu/ewsi/>.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.6.	FIGHT AGAINST ILLEGAL IMMIGRATION			

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.6. (a)	Contribution to management of immigration liaison networks in relevant third countries	Council/Commission	2005 ongoing	• Delayed In October 2006 the Commission presented a discussion paper on further development of Immigration Liaison Officers (ILO) networks in third-countries presented in the Strategic Committee for Immigration, Frontiers and Asylum (SCIFA). Building upon Member States' replies to a Presidency questionnaire, further discussions took place in 2007 and 2008, focussing on the possibility of greater FRONTEX involvement in the further development of liaison officer networks. It was agreed to follow a two-phased approach. In the first phase, the Commission convened an expert meeting dealing with the use of the ICONet (13 November 2008) and will launch another one on the update of the ILO Manual (2009). Furthermore, in 2009 the Commission will present a proposal amending some articles of the ILO Regulation 377/2004 (including art. 6). In a second phase, the Commission will discuss with Member States the possibilities to establish EU ILOs (looking after the interest of a number of Member States and/or EU bodies such as FRONTEX).
2.6. (b)	Annual report on the common policy on illegal migration	Commission	2005 ongoing	✓ Achieved The first annual report on the development of a common policy on illegal immigration, smuggling and trafficking of human beings, external border controls, and the return of illegal residents was adopted on 25 October 2004⁸⁷. The second annual report was adopted on 19 July 2006⁸⁸. The third annual report was adopted on 9 March 2009⁸⁹.

⁸⁷ SEC(2004) 1349.

⁸⁸ SEC(2006) 1010.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 establishing a secure web-based information network for Member States' migration management services (Iconet) was adopted on 15 December 2005⁹⁰. Moreover, a Memorandum of understanding between the Commission and FRONTEX concerning the development of the ICONet was signed in February 2007, allowing FRONTEX to use the network in order to perform its tasks. A similar Memorandum was signed with Europol in January 2008.

⁸⁹ SEC(2009) 320.

⁹⁰ Commission Decision C(2005) 5159 final of 15 December 2005 laying down detailed rules for the implementation of Council Decision 2005/267/EC establishing a secure web-based Information and Coordination Network for Member States' Migration Management Services.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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	• Postponed The proposal for the conclusion of the Council of Europe Convention has not been put forward due to legal and institutional problems. In particular, the strong monitoring system of the Convention could interfere with the monitoring of EC Directives dealing with the same or related issues, and therefore jeopardise the autonomy of Community law. However, internal consultation is underway with a view to identifying a possible solution.
2.6. (e)	Realisation by Member States of targets for reducing the informal economy as set out in the European employment strategy	Member States		✓ Achieved The Policy Plan on Legal Migration of 21 December 2005 contains several measures to address the issue of illegal employment of third-country nationals. More measures have been presented in the Communication on illegal immigration in July 2006⁹¹. 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		✓ Achieved Building upon the Commission Communication on policy priorities in the fight against illegal immigration of third country nationals and on the European Council conclusions of 15-16 December 2006⁹², a proposal for a Directive on sanctions against employers of illegal immigrants was presented in 2007⁹³ and was adopted in May 2009.

⁹¹ COM(2006) 402 final.

⁹² Council document 16879/06.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- Establishment of an effective removal and repatriation policy based on common standards and closer cooperation and mutual technical assistance				
2.6. (g)	<i>Proposal on return procedures</i>	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 nationals⁹⁴. The Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals was adopted on 16 December 2008⁹⁵.
2.6. (h)	Launching of the preparatory actions for financial support to return management	Commission	2005	√ Achieved The budgetary authority established the relevant budget heading “Preparatory actions for a financial instrument for return management in the area of migration” in 2005. The Return Preparatory Actions commenced in 2005 with a commitment appropriation of € 15.000.000 for grants. For 2006, which was the last year of the Return Preparatory Actions, €15.000.000 were allocated, of which € 14.620.000 was for grants and € 380.000 for tenders. 38 projects were financed under the 2005 and 2006 calls for proposal.

⁹³ COM(2007) 249 final.

⁹⁴ COM(2005) 391 final.

⁹⁵ OJ L 348, 24.12.2008, p. 98.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 policy, and Jean-Louis De Brouwer, Director in DG JLS, as Deputy SR.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.6. (j)	Conclusion of Community readmission agreements and management of existing agreements	Commission	Timely	√ Achieved Since 2004, 11 readmission agreements have been concluded and have entered into force: Hong Kong (1 March 2004), Macao (1 June 2004), Sri Lanka (1 May 2005), Albania (1 May 2006), Russian Federation (1 June 2007), Montenegro, the former Yugoslav Republic of Macedonia, Serbia, Bosnia and Herzegovina, Ukraine and the Republic of Moldova (for all of them, 1 January 2008). The negotiations with Pakistan were successfully completed in September 2008 and the agreement is in the process of ratification by both sides. The negotiations with Morocco and Turkey are still ongoing while the negotiations with China and Algeria have not been initiated yet due to the refusal to engage from those two countries. The following Joint Readmission Committees were convened with the respective countries to monitor implementation of the readmission agreements in force: with Russia 4 meetings; with Hong Kong, Macau, Moldova, 1 meeting with each; with Albania, Montenegro, the former Yugoslav Republic of Macedonia, Serbia, Bosnia and Herzegovina, 2 meetings with each; with Ukraine, 3 meetings. The meeting with Sri Lanka is to be convened in the course of 2009. Following the authorisation to negotiate a readmission agreement with Georgia given by the Council to the Commission in November 2008, formal negotiations were opened in April 2009. The Commission also presented recommendations to the Council for obtaining negotiating guidelines for readmission agreements with Cape Verde.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.7. EXTERNAL DIMENSION OF ASYLUM AND MIGRATION				
- Cooperation with third countries in managing migration and asylum				
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 2005⁹⁶. 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 2005⁹⁷.
2.7. (b)	Revised version for 2006 of the reference document of the AENEAS programme		2005	✓ Achieved⁹⁸ 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 2006⁹⁹. This new Thematic Programme was established through the adoption of the Regulation (EC) N°1905/2006 of the European Parliament and of the Council of 18 December 2006 establishing a financing instrument for development cooperation¹⁰⁰. In June 2007 the Commission adopted the Strategy Paper and the Multi-Annual Indicative Programme 2007-2010 for the implementation of the new Thematic Programme.

⁹⁶ COM(2005) 390 final.

⁹⁷ Council document 14769/05.

⁹⁸ To be considered within the framework of the new financial perspectives.

⁹⁹ COM(2006) 26 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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. All CSP for the period 2008-2013 have a section on migration and a migration profile in the annex for CSP with ACP countries.
2.7. (d)	Conclusions in order to intensify Member States' cooperation in preventing further loss of life resulting from attempts to enter the EU illegally, mainly in the Mediterranean	Council	2005	√ Achieved European Council conclusions were adopted on 15-16 December 2005¹⁰¹.

¹⁰⁰ OJ L 378, 27.12.2006, p. 41

¹⁰¹ Annex I to the Brussels European Council Conclusions of 15-16 December 2005, Council document 15914/1/05 rev 1.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- 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 2005¹⁰². 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.
2.7. (f)	Launching pilot protection programmes	Commission	2005	√ Achieved¹⁰³ Pilot projects were started beginning 2007 in Tanzania and in the Western Newly Independent States.
- Intensified cooperation with countries of transit to enable these countries better to manage migration and to provide adequate protection for refugees				

¹⁰² COM(2005) 388 final.

¹⁰³ Achieved in 2007.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 2005¹⁰⁴. Pilot Mobility Partnership with the Republic of Moldova was signed on 5 June 2008 and is being implemented.

¹⁰⁴

COM(2005) 352 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. BORDER MANAGEMENT, BIOMETRICS, INFORMATION SYSTEMS AND VISA POLICY				
- Abolition of controls on persons at the internal borders				
2.8. (a)	<i>Proposal on SIS II legal instruments</i>	Commission	2005	√ Achieved The three proposals for legal instruments which will govern the establishment, operation and use of the Schengen Information System (SIS II) were adopted by the Commission on 31 May 2005¹⁰⁵. On 20 December 2006, Regulation (EC) No 1986/2006 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 and the Regulation (EC) No 1987/2006 of the European Parliament and of the Council on the establishment, operation and use of the second generation Schengen Information System (SIS II) were adopted¹⁰⁶. On 12 June 2007, the Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System (SIS II) was adopted¹⁰⁷. The legal instruments governing SIS II were completed by the adoption by the Commission of the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II) in March 2008¹⁰⁸.

¹⁰⁵ COM(2005) 230, proposal for a Council Decision on the establishment, operation and use of the second generation Schengen information system (SIS II); COM(2005) 236, 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 II); COM(2005) 237, 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.

¹⁰⁶ OJ L 381, 28.12.2006, p. 1 and p. 4 respectively.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. (b)	Start of evaluation of the implementation of the non-SIS II related <i>acquis</i> in the new Member States	Council	2006	√ Achieved The evaluations have been carried out during 2006-2007.

¹⁰⁷ OJ L 205, 7.8.2007, p. 63.

¹⁰⁸ OJ L 123, 8.5.2008, p. 1 and p. 39 respectively.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. (c)	Evaluation of SIS II related <i>acquis</i> in the new Member States (after SIS II operational)	Commission	2007	√ Achieved Schengen evaluations of the SIS have been carried out in September 2007 in accordance with the relevant Schengen evaluation procedures.
2.8. (d)	<i>Adoption of a Council Decision on the lifting of controls at the borders with and between the new Member States, when all requirements regarding application of the Schengen acquis have been met and once the Schengen Information System (SIS II) has become operational</i>	Council	2007	√ Achieved Council Decision 2007/801/EC on the full application of the provisions of the Schengen <i>acquis</i> in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic was adopted on 6 December 2007¹⁰⁹. The Schengen Member States continue to rely on SIS 1+; SIS II shall become operational after all relevant tests have been completed in accordance with the provisions of Council Decision 2007/533/JHA¹¹⁰ and Regulation (EC) No 1987/2006¹¹¹. The proposals for a regulation¹¹² and a decision¹¹³ on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) were adopted on 16 April 2008. Council Regulation (EC) No 1104/2008 and Council Decision 2008/839/JHA were adopted on 24 October¹¹⁴.

¹⁰⁹ OJ L 323, 8.12.2007, p. 34.

¹¹⁰ OJ L 205, 7.8.2007, p. 63.

¹¹¹ OJ L 381, 28.12.2006, p. 4.

¹¹² COM(2008) 197 final.

¹¹³ COM(2008) 196 final.

¹¹⁴ OJ L 299, 8.11.2008, p. 1 and p. 43.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. (e)	<i>Proposal for supplementing the existing Schengen evaluation mechanism with a supervisory mechanism</i>	Commission	2007	√ Achieved¹¹⁵ The Commission presented a proposal for a regulation (first pillar) and a proposal for a decision (third pillar) on a new Schengen evaluation mechanism on 27 February 2009¹¹⁶.
- Establishment of an integrated management system for external borders				
2.8. (f)	<i>Proposal on the setting up, the powers and the financing of teams of national experts to provide technical and operational assistance to Member States in the control and surveillance of external borders within the framework of the Border Management Agency</i>	Commission	2007	√ Achieved The Commission presented the proposal for a Regulation establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism on 19 July 2006¹¹⁷. The Regulation (EC) No 863/2007 was adopted on 11 July 2007¹¹⁸.

¹¹⁵ Achieved in 2009.

¹¹⁶ Respectively COM(2009) 102 final and COM(2009) 105 final.

¹¹⁷ COM(2006) 401 final.

¹¹⁸ OJ L 199, 31.7.2007, p. 30.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. (g)	'Handbook for border guards' (after adoption of the Community code on the rule governing the movement of persons across borders)	Commission	2005	√ Achieved¹¹⁹ The Commission adopted the recommendation establishing the Practical handbook for border guards (Schengen Handbook) on 6 November 2006¹²⁰.
2.8. (h)	Evaluation report on the External Border Agency, including a review of the tasks of the Agency and an assessment of whether it should concern itself with other aspects of border management (including the evaluation of the functioning of the teams of national experts and the feasibility of a system of Europe an border guards)	Commission	2007	√ Achieved¹²¹ The Commission submitted the report on 13 February 2008¹²² as part of the "border package" (which also includes a communication on entry-exit system and on a European border surveillance system). An external evaluation of FRONTEX¹²³ was concluded in 2009 and confirmed the positive results achieved by the Agency in relation to the main objectives set in the founding regulation.

¹¹⁹ Achieved in 2006.

¹²⁰ C(2006) 5186 final.

¹²¹ Achieved in 2008.

¹²² COM(2008) 67 final.

¹²³ External evaluation of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, available at: http://www.frontex.europa.eu/download/Z2Z4L2Zyb250ZXgvZW4vZGVmYXVsdF9vcGlzeS82Mi8xLzE/cowi_report_final.doc.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- Partial application of the Schengen acquis				
2.8. (i)	<i>Adoption of a Council Decision on the partial implementation of the Schengen acquis by Ireland</i>	Council	2006	• Delayed The adoption of the Decision is dependant on the possibility for Ireland to access SIS.
2.8. (j)	<i>Adoption of a Council Decision on the partial implementation of the Schengen acquis (SIS) by the United Kingdom</i>	Council	2005	• Delayed The adoption of the Decision is dependant on the possibility for the United Kingdom to access SIS.
- Coherent approach and harmonised solutions in the EU on biometric identifiers and data				
2.8. (k)	<i>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</i>	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 ¹²⁴ .

¹²⁴

COM(2006) 269 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. (l)	Preparation for the development of minimum standards for national ID-cards	Council	From 2005 onwards	√ Achieved Several expert meetings were organised to work on the development of minimum 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 2005¹²⁵. A detailed document on minimum security standards for ID was transmitted to the Council in the 1st half of 2006. In the absence of a legal basis, Member States adopted these standards in a "Resolution of the representatives of the governments of the Member States of the European Union" on 4-5 December 2006¹²⁶.
2.8. (m)	Preparation for the development of minimum standards for sector-specific ID-cards, if appropriate	Council	From 2005 onwards	√ Achieved On 14 April 2005, the Council adopted the Decision 2005/367/EC authorising Member States to ratify, in the interests of the European Community, the Seafarers' Identity Documents Convention of the International Labour Organisation (Convention 185)¹²⁷.

¹²⁵ Council document 15000/05.

¹²⁶ Council document 15801/06, p. 40.

¹²⁷ OJ L 136, 30.5.2005, p. 1.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.8. (n)	Widespread use of biometric identifiers concerning travel documents, visas, residence permits, EU citizens' passports and information systems	Commission	From 2006 onwards	√ Achieved On 18 April 2008, the Council Regulation (EC) No 380/2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals was approved, introducing the use of image and two fingerprints in the residence permit for third country nationals¹²⁸. On 18 October 2007 the Commission presented a proposal amending Regulation (EC) No 2252/2004 on security standards and biometrics in travel documents issued by Member States¹²⁹. It aims at introducing exceptions from the requirement of taking fingerprints for children below a certain age and persons not able to give fingerprints, as well as introducing the principle "1 person -1 document". The co-decision procedure finished with a compromise proposal which is expected to be adopted in 2009.
2.8. (o)	Communication on enhanced synergies between SIS II, VIS and Eurodac	Commission	2006	√ Achieved The Commission adopted on 24 November 2006 a Communication on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs¹³⁰.

¹²⁸ OJ L 115, 29.4.2008, p. 1.

¹²⁹ COM(2007) 619 final.

¹³⁰ COM(2005) 597 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 (to be combined with the review of the visa list)	Commission	Ongoing – to be combined with the review of the visa list	Since 2005, the Commission publishes every year a "visa reciprocity report" ¹³¹ . In order to restore reciprocity, the European Commission presented a recommendation to the Council to open negotiations on a visa waiver agreement with Brazil.
2.9. (b)	<i>Proposals relating to the necessary amendments to further enhance visa policies and the establishment of common application centres for visas</i>	Commission	2005	√ Achieved ¹³² A proposal on the introduction of biometrics and on common application centres was presented by the Commission on 31 May 2006 ¹³³ .

¹³¹ COM(2006) 3 final; COM(2006) 568 final; COM(2007) 533 final ; COM(2008) 486 final/2; a fifth report will be published in 2009.

¹³² Achieved in 2006.

¹³³ COM(2006) 269 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.9. (c)	Regular review of the visa list Regulation (EC) No 539/2001	Commission	Ongoing	√ Achieved A Commission proposal for a Council Regulation amending Regulation No 539/2001 was presented on 13 July 2006¹³⁴. Council Regulation (EC) No 1932/2006 amending 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 was adopted on 21 December 2006¹³⁵. This Regulation transferred six third countries from the negative to the positive list, but conditioned the lifting of the visa obligation by the entry into force of visa waiver agreements with each of these countries. These six agreements have been negotiated in the mean time and the Commission has submitted to the Council draft decisions in view of signature and conclusion of these agreements with Antigua and Barbuda¹³⁶, Bahamas¹³⁷, Barbados¹³⁸, Mauritius, Saint Kitts and Nevis¹³⁹ and the Seychelles¹⁴⁰.

¹³⁴ COM(2006) 84 final.
¹³⁵ OJ L 405, 30.12.2006, p. 23.
¹³⁶ SEC(2008) 198.
¹³⁷ SEC(2008) 199.
¹³⁸ SEC(2008) 200.
¹³⁹ SEC(2008) 202.
¹⁴⁰ SEC(2008) 203.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.9. (d)	<i>Proposal on visa facilitation procedures for members of the Olympic Family — Turin 2006</i>	Commission	2005	√ Achieved The Commission presented a proposal for a Regulation relating to measures envisaged to facilitate the procedures for applying for and issuing visas for members of the Olympic family taking part in the 2006 Olympic and /or Paralympic Winter Games in Torino on 7 September 2005 ¹⁴¹ . On 14 December 2005, the Regulation (EC) No 2046/2005 was adopted ¹⁴² .
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 the report 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 on 11 August 2005 ¹⁴³ .
2.9. (f)	<i>Proposal amending the Common Consular Instructions on visa fees</i>	Council	2005	√ Achieved ¹⁴⁴ On 1 June 2006, the Council adopted the Decision 2006/440/EC amending Annex 12 to the Common Consular Instructions and Annex 14a to the Common Manual on the fees to be charged corresponding to the administrative costs of processing visa applications ¹⁴⁵ .

¹⁴¹ COM(2005) 412 final.

¹⁴² OJ L 334, 20.12.2005, p. 1.

¹⁴³ SEC(2005) 1051.

¹⁴⁴ Achieved in 2006.

¹⁴⁵ OJ L 175, 29.6.2006, p. 77.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.9 (g)	<i>Proposals on transit</i>	Commission	2005	√ Achieved On 22 August 2005 the Commission presented the proposal for a decision 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 the proposal for a decision 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 territory¹⁴⁶. The Decisions No 895/2006/EC and No 896/2006/EC were finally adopted 14 June 2006¹⁴⁷. On 11 September 2007, after the accession of Bulgaria and Romania into the EU, the Commission presented a revision of the Decisions No 895/2006/EC and 896/2006/EC¹⁴⁸. The new proposals have been adopted on 17 June 2008 (Decisions 582/2008/EC¹⁴⁹ and 586/2008/EC¹⁵⁰).

¹⁴⁶ COM(2005) 381 final.

¹⁴⁷ OJ L 167, 20.6.2006, p. 1 and p. 8. To take into account the accession of Bulgaria and Romania to the EU, the two decisions were followed-up by Decision No 582/2008/EC (OJ L 161, 20.6.2008, p. 30) and Decision No 586/2008/EC (OJ L 162, 21.6.2008, p. 27).

¹⁴⁸ COM(2007) 508 final.

¹⁴⁹ OJ L 161, 20.6.2008, p. 30.

¹⁵⁰ OJ L 162, 21.6.2008, p. 27.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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 Union for a period between three and six months	Commission	2005 ongoing	• Delayed There is no legal basis under the current Treaties related to this action.
2.9. (i)	<i>Adoption of a proposal establishing a regime on local border traffic</i>	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 Instructions¹⁵¹. The Regulation (EC) No 1931/2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention was adopted on 20 December 2006¹⁵².
2.9. (j)	Report on the operation of the Kaliningrad transit scheme	Commission	2005	✓ Achieved¹⁵³ On 22 December 2006, the Commission adopted the Report on the functioning of the facilitated transit for persons between the Kaliningrad region and the rest of the Russian Federation¹⁵⁴.

¹⁵¹ COM(2005) 56 final.

¹⁵² OJ L 405, 30.12.2006, p. 1.

¹⁵³ Achieved in 2006.

¹⁵⁴ COM(2006) 840 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.9. (k)	Kaliningrad Facility ¹⁵⁵	Commission / Lithuania	Ongoing	√ Achieved Final payment was made in 2008.
2.9. (l)	Schengen facility for seven Member States	Commission / seven beneficiary Member States	2004/2006	√ Achieved ¹⁵⁶ The seven Commission Decisions on the financial contribution of the Schengen facility were adopted in 2004 ¹⁵⁷ ; the seven Schengen Facility Financing Decisions were adopted in 2005 ¹⁵⁸ ; the seven Schengen Facility Financing Decisions were adopted in 2006 ¹⁵⁹ .

¹⁵⁵ 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".

¹⁵⁶ Achieved in 2006.

¹⁵⁷ C(2004) 4439 for Estonia, C(2004) 4872 for Hungary, C(2004) 4867 for Latvia, C(2004) 4471 for Lithuania, C(2004) 4874 for Poland, C(2004) 4873 for Slovakia, C(2004) 4437 for Slovenia.

¹⁵⁸ C(2005) 5686 for Estonia, C(2005) 5693 for Hungary, C(2005) 5826 for Latvia, C(2005) 5699 for Lithuania, C(2005) 5702 for Poland, C(2005) 5824 for Slovakia, C(2005) 5706 for Slovenia.

¹⁵⁹ C(2006) 4941 for Lithuania, C(2006) 5086 for Latvia, C(2006) 5344 for Slovakia, C(2006) 6431 for Slovenia, C(2006) 6471 for Estonia, C(2006) 6596 for Poland and C(2006) 6733 for Hungary.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
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	√ Achieved The Commission has negotiated visa facilitation agreements with eight third countries: Russia, Ukraine, the Republic of Moldova, Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Serbia and Montenegro, back-to-back with readmission agreements (see 2.6(j)). The agreement with Russia entered into force on 1 June 2007 and the other agreements on 1 January 2008. . These agreements provide for simplification of the visa procedures for citizens of these countries wishing to travel to the EU for short stays. Following the authorisation to negotiate a visa facilitation agreement with Georgia given by the Council to the Commission in November 2008, formal negotiations should be opened in 2009. In November 2008, the Commission recommended the opening of negotiations on visa facilitation agreement with Cape Verde in the framework of the EU's pilot Mobility Partnership with Cape Verde.
2.9. (n)	<i>Proposal on the review of the Common Consular Instructions, concerning in particular local consular cooperation</i>	Commission	2006	√ Achieved A proposal for a Regulation establishing a Community code on visas was presented by the Commission on 28 July 2006¹⁶⁰. Adoption by the European Parliament and the Council is foreseen for 2009.

¹⁶⁰

COM(2006) 403 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.9. (o)	Technical implementation of the VIS, starting with the functionalities for processing alphanumeric data and photographs and adding the functionalities for biometric data	Commission	2006	• Delayed The initial Council Decision (2004/512/EC) of 8 June 2004 establishing the Visa Information System (VIS)¹⁶¹ established the VIS as a system for the exchange of visa data between Member States. For the technical implementation of the VISA it was necessary to define the purpose, the functionalities and responsibilities for the VIS, and to establish the conditions and procedures for the exchange of visa data between Member States to facilitate the examination of visa applications and related decisions. In this respect the Commission presented on 28 December 2004 a proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas¹⁶². Regulation (EC) No 767/2008 was adopted on 9 July 2008¹⁶³. As regards the technical implementation, the Visa Information System (VIS) will go-live with biometric functionalities from the very beginning of its implementation. Following the political agreement of the VIS legal package in June 2007, a new project schedule has been drawn up, taking account of biometrics and the finalised legal requirements, and foresees the central VIS as "available for operations" by December 2009. The date for the start of operations will depend upon the readiness of the Member States. The Commission has published 4 VIS progress reports since 2005¹⁶⁴.

¹⁶¹ OJ L 213, 15.6.2004, p. 5.

¹⁶² COM(2004) 835 final.

¹⁶³ OJ L 218, 13.8.2008, p. 60.

¹⁶⁴ In 2005, SEC(2005) 339; in 2006, SEC(2006) 610; in 2007, SEC(2007) 833; in 2008, COM(2008) 714 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
2.9. (p)	<i>Proposal on the creation of common visa offices</i>	Commission	2007	√ Achieved In order to create the legal basis for Member States to organize their consular offices and giving a legal framework for taking the mandatory biometric identifiers (the facial image and fingerprints) from visa applicants for the Visa Information System (VIS), an amendment to the Common Consular Instructions envisaging the possibility of the establishment of common application centres was submitted by the Commission on 31 May 2006¹⁶⁵.
3. STRENGTHENING SECURITY				
- Framework Programme "Security and Safeguarding Liberties" under the new Financial Perspectives (2005)				
3. (a)	<i>Proposal for a decision establishing a specific Programme on "Prevention of and fight against crime"</i>	Commission	2005	√ Achieved The Commission adopted the proposal on 6 April 2005¹⁶⁶. The Council Decision 2007/125/JHA establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme "Prevention of and Fight against Crime" was adopted on 12 February 2007¹⁶⁷.

¹⁶⁵ COM(2006) 269 final.
¹⁶⁶ COM(2005) 124 final.
¹⁶⁷ OJ L 58, 24.2.2007, p. 7.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3. (b)	<i>Proposal for a decision establishing a specific programme on "Prevention, preparedness and consequence management of terrorism"</i>	Commission	2005	√ Achieved The Commission adopted the proposal on 6 April 2005¹⁶⁸. The Council Decision 2007/124/EC, Euratom establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme "Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks" was adopted on 12 February 2007¹⁶⁹.
3.1. SHARING OF INFORMATION AMONG LAW ENFORCEMENT AND JUDICIAL AUTHORITIES WHILE STRIKING THE RIGHT BALANCE BETWEEN PRIVACY AND SECURITY				
3.1. (a)	<i>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</i>	Council/ Parliament	2005	√ Achieved On the basis of the Commission proposal of 21 September 2005¹⁷⁰, the Directive 2006/24/EC 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 15 March 2006¹⁷¹.

¹⁶⁸ COM(2005) 124 final.

¹⁶⁹ OJ L 58, 24.2.2007, p. 1.

¹⁷⁰ COM(2005) 438 final.

¹⁷¹ OJ L 105, 13.4.2006, p. 54.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- Availability principle and protection of personal data				
3.1. (b)	<i>Proposal on the establishment of a principle of availability of law enforcement relevant information</i>	Commission	2005	√ Achieved The proposal for a Framework Decision on the exchange of information under the principle of availability was adopted on 12 October 2005 by the Commission ¹⁷² .
3.1. (c)	<i>Proposal on adequate safe guards and effective legal remedies for the transfer of personal data for the purpose of police and judicial cooperation in criminal matters</i>	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 ¹⁷³ . The Framework Decision 2008/977/JHA was adopted on 27 November 2008 ¹⁷⁴ by the Council.

¹⁷² COM(2005) 490 final.

¹⁷³ COM(2005) 475 final.

¹⁷⁴ OJ L 350, 30.12.2008, p. 60.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3.1 (d)	<i>Adoption of a proposal for a Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the EU</i>	Council	2005	√ Achieved On 4 June 2004, a Swedish initiative for the simplification of the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union was presented. On the basis of this initiative, the Council Framework Decision 960/2006/JHA was adopted on 18 December 2006¹⁷⁵.
3.1. (e)	<i>Proposal on access by law enforcement to the VIS</i>	Commission	2006	√ Achieved On 24 November 2005, the Commission presented a proposal for a Council Decision concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences¹⁷⁶. The Council Decision 2008/633/JHA was adopted on 23 June 2008¹⁷⁷.

¹⁷⁵ OJ L 386, 29.12.2006, p. 89.

¹⁷⁶ COM(2005) 600 final.

¹⁷⁷ OJ L 218, 13.8.2008, p. 129.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3.1. (f)	Development of the Europol Information System	Europol	2006	√ Achieved Europol has developed the Europol Information System (IS), which is available in the Member States since October 2005. The system means that a limited number of relevant data – including personal data – will be passed on by national police authorities. The Information System is available to all Member States' Liaison Bureaux, the Europol National Units and Europol SC Units. Pursuant to the entry into force of the 2003 Protocol ("Danish protocol") amending the Europol Convention, the possibility is given to Member States to allow access to IS to some designated national competent authorities on a hit/no hit basis. Furthermore, to improve their contribution to the IS, a number of Member States have automatic data loaders in place, and 8 more are willing to create IS data loaders. However, after 3 years of operation, the usage of the IS is still low although improvements in the volume of contributions took place in 2008. The IS Strategy 2008-2012 identified concrete obstacles as to why the system is not sufficiently used and set objectives in order to improve the situation. In October 2008, the IS Improvement Project was set up to improve the added value and the usage of the IS by the end of 2009.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3.1. (g)	Development of links between the SIS II and the Europol information system		2007	• Delayed Europol has been connected to the SIS II testing environment. Once SIS II will be operational, Europol will have read-only access rights, in accordance with the SIS II legal framework

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3.1. (h)	<i>Implementation of the principle of availability, concerning the following areas:</i> - DNA - fingerprints - ballistics - telephone numbers - vehicle registrations - civil registers	Commission /Council	2006 (2005 for DNA)	• Ongoing See also 3.1(b). The Commission presented a proposal for a Framework Decision on the implementation of the principle of availability¹⁷⁸ and a proposal for a Framework Decision on the protection of data that are exchanged under this principle in the framework of police and judicial cooperation in criminal matters¹⁷⁹ in October 2005. Only the latter Framework Decision was adopted¹⁸⁰. The Commission supported the initiative of Germany¹⁸¹ and other signatories of the Prüm Treaty to transform this Treaty into a Council Decision. The Council adopted the Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and the correlated Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime on 23 June 2008¹⁸². The Prüm Decision establishes the possibility for law enforcement authorities to gain direct access on a "hit /no-hit" basis to decentralised DNA and fingerprint databases enabling them to find out whether DNA or fingerprint records exist – subsequently followed by a request for additional information on the contents of the records thorough mutual legal assistance arrangements – and full online access to vehicle registration databases. The exchange of DNA, Fingerprints and Vehicle registration data is to be implemented by 26 August 2011. Implementation of principle of availability concerning the other three data categories is not likely to follow before major progress on point 3.1(k) has been made.

¹⁷⁸ COM(2005) 490 final.

¹⁷⁹ COM(2005) 475 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3.1. (i)	Communication on enhanced synergies between SIS II, VIS and Eurodac	Commission	2006	√ Achieved Refer to point 2.8(o).
3.1. (j)	<i>Proposal for a general Community architecture on forensic/police databases</i>	Commission	2008	• Not relevant anymore No relevant anymore because of the adoption of the Prüm Treaty.
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	• Ongoing The Communication on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs was adopted on 24 November 2005 ¹⁸³ . The discussion on the general policy for a development of information management strategy is ongoing.

¹⁸⁰ OJ L 350, 30.12.2008, p. 60.

¹⁸¹ Initiative of the Federal Republic of Germany with a view to the adoption of a Council Decision 2007/.../JHA of ... on the implementation of Decision 2007/.../JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ C 267, 9.11.2007, p. 4.

¹⁸² OJ L 210, 6.8.2008, p. 1 and p. 12.

¹⁸³ COM(2005) 597 final.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
- Exchange of data on PNR				
3.1. (l)	<i>Proposal concerning a common EU approach to the use of passenger data for border and aviation security and other law enforcement purposes</i>	Commission	2005	√ Achieved The Commission adopted the proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes on 6 November 2007¹⁸⁴ as part of its Counter Terrorism Package. Discussions in Council have started in February 2008.
3.1. (m)	Joint review on the Air Passengers Data (PNR) Agreement with the USA	Commission	2005	√ Achieved During 2005 an EU team undertook a review of the 2004 PNR agreement with the US on the transfer of PNR data. The EU team concluded that the US authorities had applied the agreement, and in particular the Undertakings in which they had given to process PNR data from the EU under certain conditions in a satisfactory manner, and that they had made a number of recommendations. Following the ruling of the Court of Justice of 30 May 2006¹⁸⁵ in which the Court annulled the Council and Commission decisions (respectively 2004/496/EC and 2004/535/EC) allowing entering into force of the 2004 agreement, the EU decided to negotiate an interim agreement that became applicable in October 2006 and lasted until July 2007. The EU signed in July 2007 a long term PNR agreement with the United States, thus ensuring that there was no loophole once the 2006 interim PNR agreement expired. It is provisionally applicable and will enter into force as soon as all Member States have finalised domestic consultation procedures. A review of the 2007 US PNR agreement is scheduled for 2009.

¹⁸⁴ COM(2007) 654 final.
¹⁸⁵ C-317/04 and C-318/04.

No ¹	Action under the Action Plan ²	Competent body	Deadline	State of play ³
3.1. (n)	Completion of negotiations of PNR agreements with Canada and Australia (2005), and with other countries if necessary	Commission	2005	√ Achieved Following the Commission's proposal dated 19 May 2005¹⁸⁶, 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. In November 2008 a joint review of the operation of the agreement was carried out. The results of the joint review will be presented in 2009. Negotiations with Australia for an EU – Australia PNR agreement started on 11 March 2008 after Council issued a mandate on 28 February 2008. The agreement providing for transfer from the EU to Australia of PNR data was signed in Brussels on 30 June 2008 and became provisionally applicable from that date. The Agreement will be valid for seven years. Since the agreement became applicable as from 30 June 2008, no joint review to assess its implementation has been held yet.
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)	Commission		√ Achieved A Commission staff working paper was issued on 26 January 2004¹⁸⁷. On 9 June 2005, the ICAO adopted international PNR Guidelines, taking into account the proposals from the Commission. In April 2006, a circular based on the ICAO Management Board has been published¹⁸⁸.

¹⁸⁶ COM(2005) 200 final.

¹⁸⁷ SEC(2004) 99.

¹⁸⁸ Circular 309.

No	Action under the Action Plan	Competent body	Deadline	State of play
3.2. TERRORISM				
- Further development of an overall approach to combat terrorism				
3.2. (a)	Further implementation of the EU Action Plan on Combating Terrorism	Commission /Council/ European Parliament		The Commission adopted: - the Decision on financing a Pilot Project on the “Fight Against Terrorism” on 15 September 2005¹⁸⁹; - the decision on the use of the VIS by authorities responsible for internal security on 23 November 2005¹⁹⁰; - the revised Action Plan on Terrorism on 30 November 2005¹⁹¹. Moreover, the Commission proposed an amendment to the Framework Decision on combating terrorism, adopted by the Council in 2008¹⁹²; as well as an EU Action Plan on Enhancing the Security of Explosives which was adopted by the Council in April 2008¹⁹³, following a 2007 Commission proposal¹⁹⁴.
3.2. (b)	Follow-up to the pilot project in favour of victims of terrorism	Commission	2006	√ Achieved On 7 July 2006, preparatory actions for the victims of terrorist acts were launched with 1.8M € earmarked for grants resulting from the call for proposals. In December 2006

¹⁸⁹ C(2005) 3179.
¹⁹⁰ COM(2005) 600 final.
¹⁹¹ SEC(2005) 1585.
¹⁹² OJ L 330, 9.12.2008, p. 21-23.
¹⁹³ ENFOPOL 69, 8109/08.
¹⁹⁴ COM(2007) 651 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
				proposals were selected for co-financing. Since then, projects supporting victims of terrorism have been financed from the general financial programmes, amongst others concerning the creation of a network of associations for victims of terrorism.
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 Decision 2005/671/JHA on the exchange of information and cooperation concerning terrorist offences, adopted on 20 September 2005¹⁹⁵ on the basis of the Commission proposal of 29 March 2004¹⁹⁶, provides for the establishment of contact points regarding terrorist criminal offences.
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 <i>and if necessary proposal for</i>	Commission /Council	2005 examination 2006 proposal	√ Achieved After looking at the necessity and feasibility of setting up a European Law enforcement network (LEN), it was decided to abandon this initiative since it would not provide sufficient added value to existing networks.

¹⁹⁵ OJ L 253, 29.9.2005, p. 22.

¹⁹⁶ COM(2004) 221 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>its setting up</i>			
3.2. (e)	Communication on greater security of explosives, bomb-making equipment	Commission	2005	√ Achieved The Commission's Communication was adopted on 18 July 2005¹⁹⁷. The first important follow-up was a conference organised by the Commission bringing together all major stakeholders to brainstorm on a long-term plan for making explosives more secure. The Council adopted the Action Plan on Enhancing the Security of Explosives on 18 April 2008¹⁹⁸, following a 2007 Commission proposal¹⁹⁹. As part of its implementation, a Standing Committee on Precursors, composed of experts from both the public and private sector, was set up.
3.2. (f)	Communication of the Commission on violent radicalisation and strategy of the Council on radicalisation and recruitment	Commission	2005	√ Achieved On 21 September 2005, the Commission presented the Communication "Terrorist recruitment: addressing the factors contributing to violent radicalisation"²⁰⁰. The Commission's Communication served as a basis for the EU Strategy on Combating Radicalisation and Recruitment²⁰¹ adopted on 12 December 2005 and updated in 2008²⁰².
3.2. (g)	<i>Proposal for preventing misuse of charitable</i>	Commission	2006	√ Achieved

¹⁹⁷ COM(2005) 329 final.

¹⁹⁸ ENFOPOL 69 8109/08.

¹⁹⁹ COM(2007) 651 final.

²⁰⁰ COM(2005) 313 final.

²⁰¹ Council document 14781/1/05 rev 1.

²⁰² Council document 15175/08.

²⁰³ COM(2005) 620 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>organisations for the financing of terrorism</i>			On 29 November 2005, the Commission adopted a Communication ²⁰³ on the Prevention of and Fight against Terrorist Financing through enhanced national level coordination and greater transparency of the non-profit sector. In December 2005, the Council agreed on five principles that should be taken into account when implementing measures aimed at preventing terrorist abuse of the non-profit sector ²⁰⁴ . These principles, together with the Commission, FATF Interpretative Note to Special Recommendation VIII adopted in 2006, and two studies related to this issue provide a basis for further Commission policy development.
3.2. (h)	Communication on results of the peer evaluation mechanism on terrorism in the 25 Member States	Council Secretariat General	2006/2007	√ Achieved During 2006 in the framework of the first round of peer evaluation on counter-terrorism measures, the Member States responded to the recommendations of the evaluation teams. A report was drafted by the Council General Secretariat on the basis of the answers of the Member States. The report was approved in the Terrorism Working Party in March 2007. The implementation of the recommendations included in the report is being taken forward by the Member States. In the light of the recommendations of the peer evaluation of national anti-terrorism arrangements, actions are envisaged to strengthen national capabilities to combat terrorism.
3.2. (i)	Identification of need and scope for legal instruments to ensure that all Member States can freeze assets of designated persons on a	Council / Commission	2007	√ Achieved The EU regime implementing UN Security Council Resolution 1390 (2002) on the freezing of funds of persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban is based on Council Regulation (EC) No 881/2002²⁰⁵. Following

²⁰⁴ Council document 14694/05.
²⁰⁵ OJ L 139, 29.5.2002, p. 9.

No	Action under the Action Plan	Competent body	Deadline	State of play
	preventive basis in accordance with Special Recommendations of the Financial Action Task Force			new decisions by the UN to list persons and entities, the annex to this Regulation has been amended various times by Commission Regulations. In addition, following the Kadi judgment of the European Court of Justice ²⁰⁶ and to ensure continuation of freezing, the Commission has proposed to amend Council Regulation ²⁰⁷ .
3.2. (j)	Contribution to the ongoing work on thwarting the production and spread of chemical, nuclear and biological arms	Commission	2007	√ Achieved Policy measures on these issues have been in preparation since 2006. A Green Paper on detection technologies in the work of law enforcement, customs and other authorities was adopted on 1 September 2006 ²⁰⁸ , as well as a Green Paper on bio-preparedness ²⁰⁹ was adopted on 11 July 2007. Currently work is on-going to prepare a comprehensive CBRN package by the summer of 2009, following the work of a public-private task force during 2008.
3.2. (k)	<i>Development of the ATLAS cooperation and its legal framework</i>	Commission	2006	√ Achieved The Council Decision 2008/617/JHA on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations ²¹⁰ was adopted by the Council on 23 June 2008.
3.2.	Build capacity in third	Commission		√ Achieved

²⁰⁶ Joined Cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*.

²⁰⁷ COM(2009) 187 final.

²⁰⁸ COM(2006) 474 final.

²⁰⁹ COM(2007) 399 final.

²¹⁰ OJ L 210, 6.8.2008 p. 73.

No	Action under the Action Plan	Competent body	Deadline	State of play
(l)	countries to fight terrorism and appropriate clauses on counter-terrorism in the agreements to be concluded by EU/EC with third countries			The Commission is sustaining institutional/capacity-building measures in third countries in the fields of justice, freedom and security which, at the same time, 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 ²¹¹ .
3.2. (m)	Develop public/private partnerships to improve the prevention and the fight against terrorism	Commission		√ Achieved 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, explosives and CBRN, where public-private Task-Forces were instrumental in the preparation of the respective Action Plans
- 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 (report) 2006	√ Achieved²¹² Adopted as part of the Counter-Terrorism Package on 6 November 2007²¹³, the report evaluated the implementation of EU 25 and noted that, although most Member States had

²¹¹ 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.

²¹² Achieved in 2007.

No	Action under the Action Plan	Competent body	Deadline	State of play
	13.6.2002 on combating terrorism and evaluation		(evaluation)	implemented the main provisions correctly, there were some important deficiencies to correct in certain national legal systems.
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 2005²¹⁴. 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.
- 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	√ Achieved²¹⁵ The Communication "Developing a comprehensive and coherent European Union strategy to measure crime and criminal justice: an EU action plan 2006-2010" was adopted on 7 August 2006²¹⁶ and is being implemented.
3.3. (c)	Commission working paper on criminal intelligence-led law	Commission	2005	• Not relevant anymore Following examination of the matter, the Commission considered that this action should

²¹³ COM(2007) 650 final.

²¹⁴ COM(2005) 232 final.

²¹⁵ Achieved in 2006.

²¹⁶ COM(2006) 437 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	enforcement			no longer be pursued as this is an issue for Member States' action.
3.3. (d)	Recommendation for a standard methodology for vulnerability in crime proofing	Commission	2007	• Not relevant anymore Following examination of the matter, the Commission considered that it is not feasible to identify standards in this area applicable across all sectors.
3.3 (e)	Presentation of a European crime report	Commission	2007	• Delayed The production of a European Crime Report is considered subject to the conclusion of the 2006-2010 Commission Action Plan to develop an EU Strategy to measure crime and criminal justice. In this light, the feasibility of producing a 'credible' EU crime report is a priority consideration when the Action Plan final implementation report will be produced in the middle 2010, additional funding has been requested under the 2010 ISEC programme to pilot this project.
3.3 (f)	Organised Crime Threat Analysis (OCTA) by Europol	Europol	As of 2006	√ Achieved The 2007 OCTA was issued in June 2007. The 2008 OCTA was published in August 2008²¹⁷.
- Strengthen prevention of organised crime				
3.3. (g)	Crime-proofing of legislation and the design of crime preventive measures into products and	Commission	2005	• Not relevant anymore On the basis of the results of a study conducted in 2006, the Commission concluded that

²¹⁷

Available at: [http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_\(OCTA\)/OCTA2008.pdf](http://www.europol.europa.eu/publications/European_Organised_Crime_Threat_Assessment_(OCTA)/OCTA2008.pdf).

No	Action under the Action Plan	Competent body	Deadline	State of play
	services			this action was not worth being pursued.
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	• Not relevant anymore This initiative has been overtaken by Framework Decision 2004/68/JHA, which is being updated on the basis of a Commission proposal²¹⁸, on combating sexual exploitation of children, by the Commission Draft Guidelines on child alert system and by the Communication "Towards an EU Strategy on the rights of the child"²¹⁹.
3.3. (i)	Action Plan on private/public partnerships to protect public organisations and private companies from organised crime	Commission / Council	2006	• Not relevant anymore The Action plan has never been approved and, after the reformulation of the objectives, the European Security Research Innovation Forum²²⁰ has been set up.
3.3. (j)	Improving European coordination and cooperation between high-tech crime units in Member States, and with the private	Commission	2006	• Delayed To follow up on the 2007 Communication "Towards a general policy on the fight against cyber crime"²²¹, actions to strengthen cooperation between law enforcement and private sector were undertaken in 2007-2008, including two Commission expert meetings on

²¹⁸ COM(2009) 135 final.

²¹⁹ COM(2006) 367 final.

²²⁰ The establishment of ESRIF was first announced on 26 March 2007 at the 2nd European Security Research Conference SRC'07 in Berlin. Its inaugural meeting took place on 11 September 2007. In two following meetings in 2007 a working methodology was agreed and eleven work groups were established. An intermediate status report was presented at the 3rd European Security Research Conference SRC'08 that was hosted by the French EU Presidency on 29-30 September 2008 in Paris. ESRIF is expected to deliver its final recommendations in summer/autumn of 2009. With its current mandate, ESRIF is due to expire at the end of 2009.

²²¹ COM(2007) 267 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	sector (cyber crime intelligence network) including the development of a European cyber crime manual			cybercrime and a series of informal consultations with both the public and the private sector. As a result, EU recommendations on public-private cooperation in the fight against cyber crime were adopted at expert level in September 2008 and published as an annex to the JHA Council conclusions in November 2008 ²²² , where an overall strategy including practical measures against cyber crime was adopted.
3.3. (k)	Communication on cyber crime and cyber security policy	Commission	2006	√ Achieved²²³ The Commission Communication developing a general policy on fighting cybercrime, "Towards a general policy on the fight against cyber crime", was adopted on 22 May 2007²²⁴.
- Anti-corruption measures				
3.3. (l)	Examination of the need for codes of conduct on ethics and integrity for public officials	Commission	2007	√ Achieved The Commission published a Communication on "Enhancing the environment for professional ethics" within the Commission on 5 March 2008²²⁵.
3.3 (m)	<i>Proposal introducing certain obligations on certain categories of officials with regard to reporting bribery as well</i>	Commission	2009	• Not relevant anymore

²²² Council conclusions based on the Council document 15569/08.

²²³ Achieved in 2007.

²²⁴ COM(2007) 267 final.

²²⁵ SEC(2008) 301.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>as the disclosure of assets and business interests</i>			
- 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	√ Achieved A Financial Investigation Steering Group was created on the initiative of the Commission and Europol to implement a European training programme dedicated to financial investigations. The fifth Round of mutual Evaluations, conducted in the framework of the MDG Council working group, will deal with EU Member states financial investigation capacity.
3.3. (o)	Common set of training standards in financial investigation skills	Commission	2005	• Delayed Training standards will be developed by external project partners in 2009, with financial support from the Commission. The publication of two handbooks on financial investigation skills is foreseen for 2010.
3.3. (p)	Recommendation for a Memorandum of Understanding regarding feedback from financial intelligence units to reporting bodies on suspicious transaction reports	Commission	2006	• Delayed A preparatory study is being finalised. The final report's conclusions and recommendations will be presented to and discussed with Financial Intelligence Units and experts from the private sector in 2009. The need for a Memorandum of Understanding will be further discussed, possibly within the informal EU Financial Intelligence Units Platform. The European platform for reporting criminal acts committed on Internet will also become additional tool for submitting suspicious transaction reports. It is scheduled to become operational in June 2010.

No	Action under the Action Plan	Competent body	Deadline	State of play
3.3. (q)	<i>Recommendation and/or proposal to enhance transparency of legal entities to reduce vulnerability to infiltration by organised crime</i>	Commission	2006	• Not relevant anymore Following careful analysis, the Commission decided that it was no longer feasible to pursue this action.
3.3. (r)	Promotion of the establishment of criminal asset intelligence units in EU Member States	Commission /Council	Continuous	√ Achieved Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, was adopted on 6 December 2007²²⁶. The Commission continuously promotes the establishment of such offices by regularly co-financing the activities of the CARIN Network²²⁷ (under ISEC). A high level pan-European conference funded under ISEC on establishing Asset Recovery Offices in the EU Member States took place in March 2008²²⁸. The Commission Communication on the proceeds of organised crime, adopted on 20 November 2008²²⁹, develops a general policy on confiscation and asset recovery, including the exchange of information and cooperation between national asset recovery offices.
3.3. (s)	Examination of standards for the return of	Commission	2008	• Not relevant anymore The Commission Communication on the proceeds of organised crime (see 3.3.r) covers

²²⁶ OJ L 332, 18.12.2007, p. 103.

²²⁷ CARIN includes experts from 52 countries, including 26 EU Member States. Its objectives are the exchange of best practices and the improvement of inter-agency cooperation in cross-border matters. Its Secretariat is held by Europol.

²²⁸ Organised by Europol, the Austrian and Belgian governments.

²²⁹ COM(2008) 766 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	confiscated or forfeited assets as compensation or restitution to identifiable victims of crime or charitable organisations			the subject.
- Improve legislation and review existing legal instruments where needed				
3.3. (a)	<i>Adoption of a framework decision on participation in a criminal organisation</i>	Commission	2006	√ Achieved²³⁰ On the basis of the 2005 proposal on the fight against organised crime²³¹, the Council Framework Decision 2008/841/JHA was adopted on 24 October 2008²³².
3.3. (b)	<i>Legislative package on the fight against counterfeiting</i>	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 were presented by the Commission on 12 July 2005²³³. The proposals have not been adopted by the Council and the Framework Decision will be withdrawn by the Commission. The Commission presented an amended proposal on 26 April 2006²³⁴, taking account of the judgment of the Court of 13 September 2005 (Case C-176/03).The proposal received a favourable opinion of the EP in 2007 and is still being discussed in Council. Following a European

²³⁰ Adopted in 2008.
²³¹ COM(2005) 6 final.
²³² OJ L 300, 11.11.2008, p. 42.
²³³ COM(2005) 276 final.
²³⁴ COM(2006) 168 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
				Court judgement in a related case, the present proposal needs to be reformatted.
3.3. (c)	Communication on trafficking in human beings	Commission	2005	√ Achieved The Communication "Fighting against trafficking in human beings – an integrated approach and proposals for an action plan"²³⁵, adopted on 18 October 2005, laid down the basis for the Council EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings, published on 1 December 2005²³⁶. On 17 October 2008, the Commission adopted the Commission Working Document "Evaluation and monitoring of the implementation of the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings"²³⁷.
3.3. (d)	<i>Review and, where appropriate further development of present legislation on trafficking in human beings, for example in order to facilitate public-private cooperation, EU-wide coordination and the involvement of Europol</i>	Commission	2006	√ Achieved²³⁸ On 2 May 2006, the Commission adopted the implementation report concerning the Council Framework Decision 2002/629/JHA on combating trafficking in human beings²³⁹. A proposal for a new Framework Decision on preventing and combating trafficking in human beings, and protecting victims, repealing the Framework Decision 2002/629/JHA, was adopted by the Commission on 24 March 2009²⁴⁰. A Commission decision regarding setting up a new Group of Experts on trafficking human beings was adopted on 17 October 2007²⁴¹ (the Commission Decision 2008/604/EC on the appointment of members of the Group of Experts was adopted on 22 July 2008²⁴²).

²³⁵ COM(2005) 514 final.
²³⁶ OJ C 311, 9.12.2005, p. 1.
²³⁷ COM(2008) 657 final.
²³⁸ Achieved in 2007.
²³⁹ COM(2006) 187 final.
²⁴⁰ COM(2009) 136 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
3.3. (e)	<i>Review and, if necessary, further development of the legal framework preventing and combating trafficking in human organs, tissues and cells</i>	Commission	2006	√ Achieved²⁴³ In the Communication on organ donation²⁴⁴, the Commission took the commitment to monitor the situation of organ trafficking. For this purpose, a study on the assessment of different types of trafficking, including organ trafficking has been launched and the final report will be available mid 2009. The proposal for a revised framework decision on trafficking in human beings contains provisions to address trafficking in organs.
3.3. (f)	<i>Review and, if necessary, strengthening of present legislation on confiscation of criminal assets</i>	Commission	2008	√ Achieved The Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime was adopted on 6 December 2007²⁴⁵. On 17 December 2007, the Commission issued a first report reviewing Member State implementation of Framework Decision 2005/212/JHA on confiscation of crime related proceeds, instrumentalities and property²⁴⁶. The Commission published in December 2008 a study analysing Member States' practices in confiscation, focusing in particular on what has proven to be effective at national level with a view to promote and exchange best practice²⁴⁷.

²⁴¹ OJ L 277, 20.10.2007, p. 29.

²⁴² OJ L 194, 23.7.2008, p. 12.

²⁴³ Achieved in 2007.

²⁴⁴ COM(2007) 275 final.

²⁴⁵ OJ L 332, 18.12.2007, p. 103.

²⁴⁶ COM(2007) 805 final.

²⁴⁷ Matrix, "Assessing the effectiveness of EU Member States' practices in the identification, tracing, freezing and confiscation of criminal assets", not yet published.

No	Action under the Action Plan	Competent body	Deadline	State of play
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 2005²⁴⁸.
3.3. (h)	<i>On the basis of the study, proposal for legislation in criminal matters, in the field of organised crime related to fiscal fraud or on standards and best practices for the purpose of improving law enforcement cooperation</i>	Commission	2007	• Not relevant anymore The Commission decided that it was no longer feasible to pursue this action.
3.3. (i)	<i>Proposal on identity theft and identity management measures</i>	Commission	2007	• Delayed A comparative study to evaluate the need for instruments to combat organised crime activities related to identity theft in the EU Member States²⁴⁹ was commissioned in 2007. Only one tenderer submitted an offer, which was not considered as satisfactory. The Commission hence decided not to award any contract. A new tender procedure may be

²⁴⁸ Tender No JAI/D2004/04.

²⁴⁹ Tender No JLS/D2/2007/05.

No	Action under the Action Plan	Competent body	Deadline	State of play
				launched in 2009.
3.3. (j)	<i>Examination of the initiative on combating fraud in public tenders</i>	Commission	2006	• Not relevant anymore
3.3. (k)	Study and research on the need for further approximation of legislation, e.g. in the fields of illicit arms trafficking, racketeering and extortion	Commission	2008	• Delayed The study on racketeering and extortion was launched in 2008 results expected by the end of 2009.
- 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 proceeds of crime	Commission	2005	✓ Achieved²⁵⁰ The report was adopted on 21 February 2006²⁵¹.

²⁵⁰ Achieved in 2006.
²⁵¹ COM(2006) 72 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
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 ²⁵² The report was adopted on 20 February 2006 ²⁵³ .
3.3. (n)	Implementation report framework Decision "Private sector corruption"	Commission /Council	2005	√ Achieved ²⁵⁴ The report from based on Article 9 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector was adopted on 18 June 2007 ²⁵⁵ .
3.3. (o)	Report on the implementation of the framework Decision of 27 January 2003 on protection of the environment through criminal law ²⁵⁶	Commission	2005	• Delayed The report was not published following the annulment of the Framework Decision by the European Court of Justice on 13 September 2005 (case C-176/03). The Commission presented a new proposal for a Directive on the protection of the environment through criminal law on 9 February 2007 ²⁵⁷ , and the Directive 2008/99/EC was adopted on 19

²⁵² Achieved in 2006.

²⁵³ COM(2006) 65 final.

²⁵⁴ Achieved in 2007.

²⁵⁵ COM(2007) 328 final.

²⁵⁶ 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.

²⁵⁷ COM(2007) 51 final.

²⁵⁸ OJ L 328, 6.12.2008, p. 28.

No	Action under the Action Plan	Competent body	Deadline	State of play
				November 2008 ²⁵⁸ .
3.3. (p)	Report on the implementation of the framework Decision on Confiscation of Crime-Related Proceeds, Instrumentalities and Properties	Commission	2007	√ Achieved The report was published on 17 December 2007 ²⁵⁹ .
3.3. (q)	Evaluation regarding Member States' implementation of customs cooperation (Naples II Convention) including the ratification status	Council	2007	√ Achieved The evaluation report was adopted by the Customs cooperation working party and presented to Art 36 committee and Council ²⁶⁰ . The Commission was active part of the evaluation. The project has been granted ISEC funding.
3.3. (r)	Evaluation regarding Member States' anti-corruption policies	Council	2009	• Ongoing The Commission ordered a study into the links between organised crime and corruption in 2008. Results are expected in 2009.
3.3. (s)	Evaluation regarding measures to combat financial crime	Council	2010	• Ongoing The fifth round of mutual evaluations organised by the Council's Multidisciplinary Group on Organised Crime will cover Member States capacity to combat financial crime and to

²⁵⁹ COM(2007) 805 final.
²⁶⁰ Council document 8282/3/08 rev 3.

No	Action under the Action Plan	Competent body	Deadline	State of play
				run financial investigations. Evaluation missions will take place in the course of 2009 and 2010.
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	√ Achieved The report to the Council on implementation of the Action Plan for the strategy for customs cooperation in the Third Pillar (2004-2006)²⁶¹ was presented in 2007.
3.4 (b)	Communication on the fight against illicit cross-border trafficking in restricted or prohibited goods	Commission	2007	• Not relevant anymore Following careful analysis, the Commission decided that it was no longer feasible to pursue this action.
3.4 (c)	<i>Proposal on the development of Europol and on the role of the</i>	Commission	To enter into force no later than	√ Achieved²⁶² At the end of 2006, the Commission presented a new proposal for a Council Decision to replace the Europol Convention²⁶³. In April 2008 Member States reached a political

²⁶¹ Council document 5674/07.
²⁶² Partially.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>European Parliament and national parliaments in the scrutiny of Europol's activities</i>		1 January 2008	agreement, and adoption followed on 6 th April 2009 ²⁶⁴ . As regards the role of the European Parliament in the scrutiny of Europol's activities, the Community funding of Europol, as established in the future Council Decision on Europol, should reinforce it, the Parliament being one branch of the budgetary authority. Furthermore, according to the Lisbon Treaty, "the European Parliament and the Council, by means of regulations (...) shall lay down the procedures for scrutiny of Europol's activities by the European Parliament, together with National Parliaments".
- Improvement of law enforcement cooperation and development of the Schengen acquis in respect of cross-border operational law enforcement cooperation				
3.4. (d)	<i>Follow-up to the Communication and proposal on improvement of law-enforcement cooperation in particular at the internal borders between Member States</i>	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 Agreement²⁶⁵.
3.4. (e)	<i>Communication and proposal for a Directive on improved transport safety and increased security through the creation of an area of police and judicial</i>	Commission	2005	• Not relevant anymore Please refer to 4.2 (d).

²⁶³ COM(2006) 817 final.

²⁶⁴ Not yet published on the Official Journal.

²⁶⁵ COM(2005) 317 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>cooperation on the trans-European transport networks</i>			
3.4. (f)	Updating of the Sirene manual	Commission	2005	√ Achieved²⁶⁶ The Commission adopted the decision 2006/758/EC on amending the SIRENE Manual on 22 September 2006²⁶⁷.
3.4. (g)	Further work with respect to police standards (police ethics, monitoring programmes)	Commission	2008	• Delayed
3.4. (h)	Definition of quality standards of forensic laboratories	Commission	2008	• Delayed The Commission tendered a study in 2007 to identify obstacles in the field of forensic science. The final study lists 36 recommendations. Recommendations 8, 12, 13 et al. focus on enhancing the quality of forensic testing and results, inter alia by accreditation of laboratories against ISO 17025.
- Systematic exchange programmes for law enforcement officers' authorities				
3.4. (i)	<i>Adoption of a proposal aimed at amending the decision establishing</i>	Commission	2005	√ Achieved Following the Commission's proposal of 1 October 2004²⁶⁸, the Council adopted the

²⁶⁶ Achieved in 2006.
²⁶⁷ OJ L 317, 16.11.2006, p. 41.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>CEPOL (European Police College) as a body of the Union</i>			decision 2005/681/JHA establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA on 20 September 2005 ²⁶⁹ .
3.4. (j)	<i>Evaluation of CEPOL (2006) and, if appropriate, further development</i>	Commission	2006	• Postponed According to the new Council Decision 2005/681/JHA establishing the European Police College (CEPOL) amending the original Council 2000/820/JHA, an independent evaluation of CEPOL must be carried out within 5 years of the taking effect of that decision (1st January 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	• Ongoing Discussions on possible actions in this field have been discussed in 2006 and 2007 within the Council Customs Cooperation Working Party and the Police Cooperation Working Party. A common methodology has not been set up so far even if discussions are ongoing at joint meetings of the two Parties. Joint operations with the involvement of customs and police have taken place (for instance, the operation "Diligence on Firearms" in 2008).
3.4. (l)	Elaboration of minimum standards for the cross-border use of investigation techniques	Commission	2006	• Not relevant anymore An expert meeting to examine this question was organised in November 2005. The Commission has supported a German initiative regarding cross-border investigations. Discussions in Council working groups have taken place with a view to making

²⁶⁸ COM(2004) 623 final.
²⁶⁹ OJ L 256, 1.10.2005, p. 63.

No	Action under the Action Plan	Competent body	Deadline	State of play
				investigation techniques the subject of the 5 th round of mutual evaluations.
3.4. (m)	Best practice guide for the promotion and expansion of the use of special forms of cooperation for customs administrations as provided by the Naples II Convention	Commission	2008	• Delayed A specific action is included in the action plan implementing the Customs strategy third pillar for the period 1.7.2008- 31.12.2009.
3.4. (n)	Improvement of European cooperation between anti-corruption authorities and examination of the setting up of a network between anti-corruption authorities (including police, judicial, prosecutorial and customs)	Council	2007	√ Achieved²⁷⁰ The Council Decision 2008/852/JHA, adopted on 24 October 2008²⁷¹, established a contact-point network against corruption, linking the operational expertise of Member States authorities and agencies to prevent and combat corruption as well as to improve coordination in the field.

²⁷⁰ Achieved in 2008.
²⁷¹ OJ L 301, 12.11.2008, p. 38.

No	Action under the Action Plan	Competent body	Deadline	State of play
3.4. (o)	Definition of a policy on the relationship between Europol and Eurojust	Council	No later than 2008	• Achieved²⁷² A revised Cooperation Agreement between Eurojust and Europol has been approved by the Council in June 2009, replacing the old 2004 agreement. This agreement establishes and reinforces the close cooperation between the two bodies in order to increase their effectiveness in combating serious forms of international crime which fall in the respective competence, and to avoid duplication of work. In particular, this will be achieved through the exchange of operational, strategic, and technical information, as well as the coordination of activities.
3.4. (p)	Definition of the role of the security committee (COSI)	Council	No later than 1 November 2006	• Delayed There is no legal basis under the current Treaties related to this action.
3.4. (q)	Review and, where appropriate, further development of the customs IT systems	Council	Continuous	√ Achieved The Commission launched a pilot phase in 2008 concerning the FIDE (<i>Fichier d'identification des dossiers des enquêtes douanières</i>) system. The FIDE is now operational since 15 September 2008.
3.4. (r)	Implement the conclusions of the Council of 19 November 2004 related to the fight against organised crime in the Western	Council		√ Achieved²⁷³ The work to strengthen law enforcement cooperation in Western Balkans, with SECI as an important tool, is continuing. The new SECI Convention, which will enable to SECI to cooperate closer with Europol, is being finalised. SECI is meant to coordinate a Common

²⁷² Achieved in 2009.
²⁷³ Partially implemented.

No	Action under the Action Plan	Competent body	Deadline	State of play
	Balkans			Threat Assessment on Organised Crime for South-East Europe. Moreover, Albania, Bosnia-Herzegovina, FYROM, Montenegro and Serbia have ratified the UN Convention on Transnational Organised Crime of 2003 (UNTOC), the UNTOC Protocol on Trafficking in human beings ²⁷⁴ , the UNTOC Protocol on Migrants ²⁷⁵ , the UNTOC Protocol on Firearms ²⁷⁶ and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Terrorism of 2005 and the Council of Europe Action against THB (for this last two instruments, as of 10.12.2008, FYROM and Serbia has signed but not ratified them yet).
3.5. MANAGEMENT OF CRISIS WITHIN THE EUROPEAN UNION				
3.5 (a)	Integrated EU crisis management arrangements	Commission	To be implemented by 1 July 2006	√ Achieved The EU emergency and crisis co-ordination arrangements (EU-CCA) were adopted by the Council on 1 June 2006. While the EU emergency and crisis co-ordination arrangements set out how the EU institutions and affected Member States should interact in Brussels in a crisis mode, the integrated EU arrangement for crisis management with cross border effects (EU-ICMA) can be understood as the practical, operational arrangements to implement EU-CCA and to facilitate co-operation between Member States. These crisis co-ordination arrangements would provide a generic arrangement applicable for all types of crises, such as natural disasters, industrial accidents, or a flu pandemic, as well as terrorist attacks.

²⁷⁴ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

²⁷⁵ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime.

²⁷⁶ Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

No	Action under the Action Plan	Competent body	Deadline	State of play
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 Commission adopted on 20 October 2004 a communication²⁷⁷ calling <i>inter alia</i> for a secure general rapid alert system (ARGUS) to be created within the Commission to link all specialised systems for emergencies that require action at European level. ARGUS provides a network which will respect the specific characteristics, competences and expertise of the individual and specialised alert systems which will continue to carry out their current functions. The Communication “Commission provisions on “ARGUS” general rapid alert system” was adopted on 23 December 2005²⁷⁸. Further on, the Commission adopted a decision creating ARGUS, whereby all Commission services are connected via an IT tool – the ARGUS hub – which allows them to communicate and respond in situations of crisis. Clear procedures are set forth as to who has to trigger what and communicate with whom in a situation of crisis. Following the adoption of the Communication on Reinforcing the Union's Disaster Response Capacity²⁷⁹, the Commission is strengthening and creating synergies between existing instruments and capacities in the different Commission services responsible for crisis management. Following the adoption of the Communication on Reinforcing the Union's Disaster Response Capacity²⁸⁰, the Commission is strengthening and creating synergies

²⁷⁷ COM(2004) 698 final.

²⁷⁸ COM(2005) 662 final.

²⁷⁹ COM(2008) 130 final.

²⁸⁰ COM(2008) 130 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
				between existing instruments.
3.5 (c)	<i>Proposal creating a critical infrastructure warning information network (CIWIN)</i>	Commission	2005	√ Achieved ²⁸¹ The Commission proposal on a Critical Infrastructure Warning Information Network (CIWIN) was adopted by the Commission on 27 October 2008 ²⁸² .
3.5 (d)	Plan on the protection of critical infrastructures	Commission	2005	√ Achieved The Green Paper on a European Programme for Critical Infrastructure Protection (EPCIP) was adopted on 17 November 2005 ²⁸³ . The Communication on a European Programme for Critical Infrastructure Protection (EPCIP) was presented on 12 December 2006 ²⁸⁴ . The Council Directive on the identification and designation of European Critical Infrastructures and the assessment of the need to improve their protection was adopted on 8 December 2008 ²⁸⁵ .
3.6. GENERAL CRIME PREVENTION				
3.6 (a)	Strengthening and professionalising of the prevention of crime, including through the	Commission	2005	√ Achieved ²⁸⁶ Throughout 2006 the Commission has worked to:

²⁸¹ Achieved in 2008.
²⁸² COM(2008) 676 final.
²⁸³ COM(2005) 576 final.
²⁸⁴ COM(2006) 786 final.
²⁸⁵ OJ L 345, 23.12.2008, p.75.
²⁸⁶ Achieved in 2006.

No	Action under the Action Plan	Competent body	Deadline	State of play
	European Crime Prevention Network			- establish cooperation and consultation modalities with other networks dealing with crime prevention matters; - help to increase the role of the EUCPN with regards to European general crime trends and statistics; - assist with the creation subgroups also at local level for the elaboration and dissemination of crime prevention best practices; - co-ordinate promotion of a European mechanism for the evaluation of national crime prevention strategies; and - enhance co-operation with EUCPN on different crime prevention issues.
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 statistics and other sources of information as agreed indicators	Commission		√ Achieved²⁸⁷ Since the establishment of the expert group on policy needs of data on crime and criminal justice in 2007, there has been considerable activity namely to develop indicators in the areas of money-laundering, human trafficking, and effectiveness of criminal justice systems. The preliminary collection of data based on identified money-laundering was initiated 2008, with additional work to continue throughout 2009. The Commission has pursued the development of crime and criminal justice survey instruments and methodologies. Projects ongoing in this area include: the development of an EU crime victimisation survey; the development of a commercial crime survey; the development of a survey on the efficiency of criminal justice; the development of a methodology to estimate the cost of crime; the development of indicators on the confidence in justice; the fostering of closer links between Justice and Home Affairs administrations and the research community.

²⁸⁷

Partially achieved as works are still ongoing.

No	Action under the Action Plan	Competent body	Deadline	State of play
4. STRENGTHENING JUSTICE				
<i>- See also Framework Programme "Fundamental Rights and Justice" under the new Financial Perspectives (2005)</i>				
4. (a)	<i>Proposal for a decision establishing a specific programme on judicial cooperation in civil and commercial matters</i>	Commission	2005	√ Achieved The proposal was adopted on 6 April 2005²⁸⁸. The Decision 1149/2007/EC establishing for the period 2007-2013 the Specific Programme 'Civil Justice' as part of the General Programme 'Fundamental Rights and Justice' was adopted on 25 September 2007²⁸⁹.
4. (b)	<i>Proposal for a decision establishing a specific programme on judicial cooperation in criminal matters</i>	Commission	2005	√ Achieved The proposal was adopted on 6 April 2005²⁹⁰. The Council Decision 2007/126/JHA establishing for the period 2007 to 2013, as part of the General Programme on Fundamental Rights and Justice, the Specific Programme 'Criminal Justice' was adopted on 12 February 2007²⁹¹.
4.1. CONFIDENCE-BUILDING AND MUTUAL TRUST				
4.1. (a)	Systematic, objective and impartial evaluation of the implementation of the EU policies in the field of	Commission	2006	• Delayed A systematic evaluation of the implementation of the EU policies in the field of justice is still not in place; however, several sector-based evaluations have already been carried out.

²⁸⁸ COM(2005) 122 final.
²⁸⁹ OJ L 257, 3.10.2007, p. 16.
²⁹⁰ COM(2005) 122 final.
²⁹¹ OJ L 58, 24.2.2007, p. 13.

No	Action under the Action Plan	Competent body	Deadline	State of play
	justice with a view to reinforcing mutual trust while fully respecting the independence of the judiciary			Moreover, a Commission Communication on the creation of a Forum for discussing EU justice policies and practice has been adopted on 4 February 2008 ²⁹² . The Forum will gather together practitioners, academics and representatives of justice administrations to provide the Commission with feedback and input for the evaluation mechanism. On the basis of a Dutch initiative, the Commission organised in February a workshop in order to discuss the future establishment of a rule-of-law assessment system.
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	√ Achieved ²⁹³ The Communication on judicial training was adopted on 29 June 2006 ²⁹⁴ . A Commission Decision on the preparatory action to implement the exchange programme for judicial authorities was adopted on 11 July 2006. Exchanges started in 2007 and involved 400 judges and prosecutors. As of 2008, Eurojust and the Court of Justice also participated in the exchanges.
4.1. (c)	<i>Creation, from the existing structures, of an effective European training network for judicial authorities for both civil and criminal matters</i>	Member States	2007	√ Achieved The European Judicial Training Network (EJTN) was set up in 2002 on the basis of an existing informal agreement and was formally established in 2006 ²⁹⁵ . EJTN is mostly geared towards training of judges and public prosecutors. In 2008, a Resolution of the Council and of the Representatives of the Governments of

²⁹² COM(2008) 38 final.
²⁹³ Achieved in 2006.
²⁹⁴ COM(2006) 356 final.
²⁹⁵ COM(2006) 356 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
				the Member States meeting within the Council on the training of judges, prosecutors and judicial staff in the European Union was adopted in Council²⁹⁶. This resolution which was presented in July 2008 by the French Presidency underlines the importance of training of judges and public prosecutors and asks the Member States to support it actively. The Commission supports training activities at European level through the civil and criminal justice financial programmes. These activities are set up either by European organisations of legal professionals (notaries, lawyers, judges, etc.) or by European organisations dedicated to judicial training such as ERA (Academy of European Law) or EJTN. Some projects regarding training of judges on specific aspects of the European legislation can also be found in other financial programmes.
4.1. (d)	EU workshops to promote cooperation between members of the legal professions with a view to establishing best practices	Commission	2006	√ Achieved The workshops are organised on a regular basis by ERA and the EJTN. Furthermore, thematic meetings of the Justice Forum facilitate the exchange of best practices among representatives of the organisations gathering legal professionals from the EU Member States. Best practices are also promoted by the Crystal Scales of Justice prize awarded on a biannual basis by the Commission and the Council of Europe.
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	Commission	2005	√ Achieved The Communication on the mutual recognition of judicial decisions in criminal matters

²⁹⁶

Council document 14667/08, p. 22.

No	Action under the Action Plan	Competent body	Deadline	State of play
	reinforcement of mutual trust between Member States			and the strengthening of mutual trust between Member States was adopted on 19 May 2005 ²⁹⁷ .
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 ²⁹⁸ . 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)	<i>Proposal on taking into account of convictions in the Member States of the European Union in the course of new criminal proceedings</i>	Commission	2005	√ 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 ²⁹⁹ . The Council Framework Decision 2008/675/JHA was adopted on 24 July 2008 ³⁰⁰ .
4.2. (d)	<i>Proposal on the transmission to, and keeping by, the Member</i>	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

²⁹⁷ COM(2005) 195 final.

²⁹⁸ COM(2005) 10 final.

²⁹⁹ COM(2005) 91 final.

³⁰⁰ OJ L 220, 15.8.2008, p. 32.

³⁰¹ COM(2005) 690 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>State of nationality of information on criminal convictions</i>			between Member States on 22 December 2005 ³⁰¹ . The Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States was adopted on 26 February 2009 ³⁰² .
4.2. (e)	<i>Communication on the creation of an index of non-EU nationals convicted in an EU Member State</i>	Commission	2005	• Delayed On 4 July 2006, the Commission adopted a Working Document on the feasibility of an index of third-country nationals convicted in the European Union³⁰³. Following an orientation debate held in March 2008 at the Council, the Commission will further examine the practical aspects of such an index, including the types of data it should contain and the related cost implications. A study was launched in March 2009 on this subject and the results will inform a legislative proposal.
4.2. (f)	<i>Initiative on the European Enforcement Order and the transfer of sentenced persons between Member States of the EU</i>	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 submitted on 19 January 2005³⁰⁴. The Council

³⁰² OJ L 93, 7.4.2009, p. 23.

³⁰³ COM(2006) 359 final.

³⁰⁴ OJ C 150, 21.6.2005, p.1.

³⁰⁵ OJ L 327, 5.12.2008, p. 27.

No	Action under the Action Plan	Competent body	Deadline	State of play
				Framework Decision 2008/909/JHA was adopted on 27 November 2008 ³⁰⁵ .
4.2. (g)	<i>Proposal on mutual recognition of non-custodial pre-trial supervision measures</i>	Commission	2005	√ Achieved ³⁰⁶ The Commission adopted the proposal on 29 August 2006 ³⁰⁷ . The Council reached a political agreement on 27 November 2008.
4.2. (h)	Communication on disqualification	Commission	2005	√ Achieved ³⁰⁸ The Commission adopted a Communication on "Disqualifications arising from criminal convictions in the European Union" on 21 February 2006 ³⁰⁹ . However, the area of disqualification is not covered by any instrument based on the principle of mutual recognition.
4.2. (i)	Reports on the implementation of the Framework Decision on the European arrest warrant and the surrender procedures between Member States	Commission /Council	2005-2006	√ Achieved ³¹⁰ The first report on implementation by 24 Member States was adopted on 23 February 2005 ³¹¹ . A revised version to include Italy was adopted on 26 January 2006 ³¹² . The second report on the implementation of the Framework Decision was adopted on 11 July 2007 ³¹³ .

³⁰⁶ Achieved in 2006.
³⁰⁷ COM(2006) 468 final.
³⁰⁸ Achieved in 2006.
³⁰⁹ COM(2006) 73 final.
³¹⁰ Second report presented in 2007.
³¹¹ COM(2005) 63 final.
³¹² COM(2006) 8 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
4.2. (j)	<i>Initiative on the recognition and enforcement in the European Union of prohibitions arising from convictions for sexual offences committed against children</i>	Member States	2005	√ Achieved Belgium presented an initiative with a view to adopting Council Framework Decision on the recognition and enforcement of prohibitions arising from convictions for sexual offences committed against children in October 2004³¹⁴. The Belgian initiative was incorporated into the Framework Decision on the organisation and the content of exchange of information extracted from Criminal Records between Member States, proposed by the Commission (see point 4.2 (d)).
4.2. (k)	<i>Proposal on driving disqualifications</i>	Commission	2006	• Postponed The area of driving disqualification is not yet covered by an instrument based on the principle of mutual recognition, as priority has been given to the adoption and implementation of other instruments of mutual recognition.
4.2. (l)	Report on the implementation of the framework decision of 22 July 2003 on the execution in the EU of orders freezing property or	Commission	2006	√ Achieved³¹⁶ The report based on Article 14 of the Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence was adopted on 25 December 2008³¹⁷.

³¹³ COM(2007) 407 final.

³¹⁴ OJ C 295, 7.12.2007, p. 18.

³¹⁵ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45.

No	Action under the Action Plan	Competent body	Deadline	State of play
	evidence ³¹⁵			
4.2. (m)	Report on the implementation of the framework decision on the application of the principle of mutual recognition to financial penalties	Commission	2007	√ Achieved³¹⁸ The report from the Commission based on Article 20 of the Council Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties was adopted on 22 December 2008³¹⁹.
4.2. (n)	<i>Proposal on recognition and execution of alternative sanctions and on suspended sentences</i>	Commission	2007	√ Achieved The joint Franco-German initiative with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences³²⁰ was presented on 12 January 2007. The Framework Decision 2008/947/JHA on the recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions was adopted in November 2008³²¹.
4.2. (o)	<i>Proposal completing the European Evidence Warrant</i>	Commission	2007	• Delayed The need for this measure is under review. The Commission is planning to issue a Green Paper on the matter.

³¹⁶ Achieved in 2008.
³¹⁷ COM(2008) 885 final.
³¹⁸ Achieved in 2008.
³¹⁹ COM(2008) 888 final.
³²⁰ OJ C 147, 30.6.2007, p. 1.
³²¹ OJ L 337, 16.12.2008, p. 102.

No	Action under the Action Plan	Competent body	Deadline	State of play
- Approximation				
4.2. (a)	Green Paper on Conflicts of Jurisdiction and Double Jeopardy (<i>ne bis in idem</i>)	Commission	2005	√ Achieved The Green Paper was adopted on 23 December 2005 ³²² . See also point 4.2(e) below.
4.2. (b)	Green Paper on presumption of innocence	Commission	2005	√ Achieved ³²³ The Commission adopted the Green Paper on 26 April 2006 ³²⁴ .
4.2. (c)	Second and third report on the implementation of the framework decision of 15 March 2001 on the standing of victims in criminal proceedings	Commission	2005	√ Achieved ³²⁵ The joint second and third report was adopted on 20 April 2009 ³²⁶ .
4.2. (d)	Third report on the framework decision of 15 March 2001 on the standing of victims in criminal proceedings	Commission	2006	√ Achieved ³²⁷ Refer to 4.2 (c) above.

³²² COM(2005) 696 final.

³²³ Achieved in 2006.

³²⁴ COM(2006) 174 final.

³²⁵ Achieved in 2009.

³²⁶ COM(2009) 166 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
4.2. (e)	<i>Proposal on conflicts of jurisdiction and the ne bis in idem principle</i>	Commission	2006	• Not relevant anymore This proposal has been superseded by the Czech initiative presented in January 2009 in view of the adoption of a Framework Decision³²⁸.
4.2. (f)	Green Paper on handling of evidence	Commission	2006	• Delayed The adoption of the Green Paper is foreseen in 2009.
4.2. (g)	Green Paper on default (in absentia) judgments	Commission	2006	• Not relevant anymore This measure has been superseded by an initiative presented in 2008 by 7 Member States with a view to adopting a Council Framework Decision on the enforcement of decisions rendered in absentia³²⁹.
4.2. (h)	<i>Proposal on minimum standards relating to the taking of evidence with a view to mutual</i>	Commission	2007	• Delayed The need for this measure is under review. The Commission intends to introduce in 2010 a proposal for a European Evidence Warrant II but it has not yet been decided whether it

³²⁷ Achieved in 2009.

³²⁸ Initiative of the Czech Republic, the Republic of Poland, the Republic of Slovenia, the Slovak Republic and of the Kingdom of Sweden for a Council Framework Decision 2009/.../JHA on prevention and settlement of conflicts of jurisdiction in criminal proceedings, OJ C 39, 18.2.2009, p. 2.

³²⁹ Initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Slovak Republic, the United Kingdom and the Federal Republic of Germany with a view to adopting a Council Framework Decision 2008/.../JHA on the enforcement of decisions rendered in absentia and amending Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between Member States, Framework Decision 2005/214/JHA on the application of the principle of mutual recognition to financial penalties, Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders, and Framework Decision 2008/.../JHA 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 European Union, OJ C 52, 26.2.2008, p. 1.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>admissibility</i>			shall include standards relating to the taking of evidence.
4.2. (i)	<i>Proposal on default (in absentia) judgments</i>	Commission	2007	√ Achieved Refer to 4.2 (g) above.
4.2. (j)	<i>Follow-up to the Green Paper on the approximation of criminal sanctions and, where appropriate, legislative proposal</i>	Commission	2008	√ Achieved On the basis of the joint Austrian-Finnish-Swedish initiative, the Council Framework Decision 2008/909/JHA 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 European Union was adopted on 27 November 2008 ³³⁰ . The joint Franco-German initiative with a view to adopting a Council Framework Decision on the recognition and supervision of suspended sentences, alternative sanctions and conditional sentences ³³¹ was presented on 12 January 2007 and formally adopted on 27 November 2008.
4.2. (k)	Analysis of minimum standards in pre-trial detention procedures and the routines for regular review of the grounds for detention	Commission	2007	• Postponed 2008 A study has been launched on the matter. Results will be ready in 2009.

³³⁰ OJ L 327, 5.12.2008, p. 27.

³³¹ OJ C 147, 30.6.2007, p. 1.

No	Action under the Action Plan	Competent body	Deadline	State of play
- Other instruments in the field of judicial cooperation in criminal matters				
4.2. (a)	Recommendation on minimum standards for capturing and exchanging electronic evidence	Commission	2006	• Delayed The need for this measure is under review.
4.2. (b)	<i>Proposal on the wilful destruction of documentary evidence</i>	Commission	2007	• Delayed The need for this measure is under review.
4.2. (c)	<i>Proposal on the protection of witnesses and collaborators with justice</i>	Commission	2007	• Not relevant anymore On the basis of the results of an impact assessment carried out in 2007³³², the proposal on the protection of witnesses and collaborators with justice was not tabled, since it was considered that at present it is not advisable to proceed with legislation at EU level.
4.2. (d)	<i>Initiative to facilitate the prosecution of road traffic offences</i>	Commission /Council	2005	√ Achieved On 19 March 2008, the Commission adopted a proposal for a Directive facilitating cross-border enforcement in the field of road safety³³³.
4.2. (e)	Evaluation of the efficiency of specialised judicial bodies for dealing	Commission	2009	• Delayed

³³² COM(2007) 693 final.

³³³ COM(2008) 151 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	with the investigation of cases linked to organised crime			
4.2. (f)	Further development of the European Judicial Network in criminal matters	Commission	Ongoing	√ Achieved On the basis of the initiative for a Council Decision on the European Judicial Network presented by 14 Member States in January 2008³³⁴, the Council Decision 2008/976/JHA was adopted on 16 December 2008³³⁵.
- Eurojust				
4.2. (g)	Second report on the legal transposition of the Council Decision of 28 February 2002 setting up Eurojust	Commission	2005	√ Achieved³³⁶ The report was included in the Communication on the future of Eurojust adopted on 23 October 2007³³⁷.
4.2. (h)	<i>Proposal on Eurojust in accordance with Article III — 273</i>	Commission	To enter into force no later than 1 January	• Achieved³³⁸ This proposal has been superseded by a Member States' initiative³³⁹ that led to the adoption of the new Eurojust Decision by the Council on 16 December 2008³⁴⁰.

³³⁴ Initiative of the Republic of Slovenia, the French Republic, the Czech Republic, the Kingdom of Sweden, the Kingdom of Spain, the Kingdom of Belgium, the Republic of Poland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Slovak Republic, the Republic of Estonia, the Republic of Austria and the Portuguese Republic, with a view to adopting a Council Decision of ... on the European Judicial Network, OJ C 54, 27.2.2008, p. 14.

³³⁵ OJ L 348, 24.12.2008, p. 130.

³³⁶ Achieved in 2007.

³³⁷ COM(2007) 644 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
			2008	
- International Legal Order				
4.2. (i)	Active involvement of the activities of the Council of Europe and other international organisations and forums (G8, UN, OECD, OSCE, FATF) in criminal matters	Commission /Council	2005-2009	√ Achieved Commission and Council representatives regularly attend meetings organised by international bodies in this area.
4.2. (j)	Examination of the case for agreements between the EU and third countries on extradition	Commission /Council	2005-2009	• Ongoing An agreement is being discussed with Liechtenstein.
4.2. (k)	Examination of the case for agreements between the EU and third countries on mutual legal assistance	Commission /Council	2005-2009	• Ongoing Discussions are under way with various countries. An agreement is on the verge of being concluded with Norway and Iceland.

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Achieved in 2009.

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Initiative of the Kingdom of Belgium, the Czech Republic, the Republic of Estonia, the Kingdom of Spain, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Kingdom of Sweden with a view to adopting a Council Decision of ... on the strengthening of Eurojust and amending Decision 2002/187/JHA, OJ C 54, 27.2.2008, p. 4.

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Not yet published on the Official Journal.

No	Action under the Action Plan	Competent body	Deadline	State of play
4.2. (l)	Proposal on the conclusion and on the signature of the Council of Europe Convention against money laundering and terrorist financing (Warsaw Convention) on behalf of the EC	Commission /Council	2005/2006	• Achieved³⁴¹ The proposal was adopted by the Council in December 2008.
4.2. (m)	Inclusion of provisions on counter-terrorist assistance in proposed revision of existing instruments governing external assistance	Commission	2006	√ Achieved In March, 2004 the European Council asked the Commission “to mainstream counter-terrorism objectives into external assistance programmes.” The Commission has been working with country and regional desks in order to introduce counter-terrorism objectives into country and regional strategy papers and action plans. The result has so far been mixed: the number of occurrences of Counter-Terrorism related objectives in such texts has increased but its presence is not yet systematic
4.2. (n)	Proposal on conclusion of the United Nations Convention against Corruption on behalf of the EC	Commission	2006	√ Achieved The proposal for a Council Decision on the conclusion, on behalf of the European Community, of the United Nations Convention against Corruption was presented on 2 February 2006³⁴². The Council Decision 2008/801/EC was adopted on 25 September 2008³⁴³.

³⁴¹ Achieved in 2008.
³⁴² COM(2006) 82 final.
³⁴³ OJ L 287, 29.10.2008, p. 1.

No	Action under the Action Plan	Competent body	Deadline	State of play
4.2. (o)	Proposal on conclusion of the United Nations Protocol against the illicit manufacturing of the trafficking in firearms, their parts and components, and ammunition on behalf of the EC	Commission	2007	• Delayed This action needs to await the implementation of relevant EC legislation, notably the Directive 91/477 and the Regulation on an export/import licensing system.
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 on 1 March 2005³⁴⁴. Public consultation was concluded on 30 September 2005 (more than 60 answers were received).
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 2005³⁴⁵, which drew more than 60 answers.
4.3. (c)	<i>Proposal on conflicts of laws regarding contractual</i>	Commission	2005	✓ Achieved The Commission presented a proposal for a regulation on the law applicable to

³⁴⁴ COM(2005) 65 final.

³⁴⁵ COM(2005) 82 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>obligations (Rome I)</i>			contractual obligations (Rome I) on 15 December 2005 ³⁴⁶ . The Regulation (EC) No 593/2008 was adopted on 17 June 2008 ³⁴⁷ .
4.3. (d)	<i>Proposal on small claims</i>	Commission	2005	√ Achieved The Commission presented a proposal for a regulation establishing a European Small Claims Procedure on 15 March 2005 ³⁴⁸ . The Regulation (EC) No 861/2007 was adopted on 11 July 2007 ³⁴⁹ .
4.3. (e)	<i>Proposals on maintenance obligations</i>	Commission	2005	√ Achieved The Commission presented a proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations on 15 December 2005 ³⁵⁰ . The Council Regulation (EC) No 4/2009 was adopted on 18 December 2008 ³⁵¹ .
4.3. (f)	<i>Adoption of the Rome II proposal on conflicts of laws regarding non-contractual obligations</i>	Council/European Parliament	2006	√ Achieved ³⁵² Regulation (EC) N° 864/2007 on the law applicable to non-contractual obligations (Rome II) was adopted on 11 July 2007 ³⁵³ .

³⁴⁶ COM(2005) 650 final.
³⁴⁷ OJ L 177, 4.7.2008, p. 6.
³⁴⁸ COM(2005) 87 final.
³⁴⁹ OJ L 199, 31.7.2007, p. 1.
³⁵⁰ COM(2005) 649 final.
³⁵¹ OJ L 7, 10.1.2009, p. 1.
³⁵² Achieved in 2007.
³⁵³ OJ L 199, 31.7.2007, p. 40.

No	Action under the Action Plan	Competent body	Deadline	State of play
4.3. (g)	<i>Adoption of a regulation establishing a European payment order procedure</i>	Council/European Parliament	2006	√ Achieved Regulation (EC) N° 1896/2006 creating a European order for payment procedure was adopted on 12.12.2006 ³⁵⁴ .
4.3. (h)	<i>Adoption of a directive on certain aspects of mediation in civil and commercial matters</i>	Council/European Parliament	2006	√ Achieved ³⁵⁵ Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters was adopted on 21 May 2008 ³⁵⁶ .
4.3. (i)	Green Paper on the conflict of laws in matters concerning matrimonial property regimes, including the question of jurisdiction & mutual recognition	Commission	2006	√ Achieved The Green Paper was adopted on 17 July 2006 ³⁵⁷ .
4.3. (j)	Green Paper(s) on the effective enforcement of judicial decisions	Commission	2006 to 2007	√ Achieved ³⁵⁸ On 24 October 2006, the Commission adopted a Green Paper on Improving the efficiency of the enforcement of judgements in the European Union: the attachment of bank accounts ³⁵⁹ . The second Green Paper "effective enforcement of judgments in the European Union: the transparency of debtors' assets" was adopted on the 6 March

³⁵⁴ OJ L 399, 30.12.2006, p. 1.

³⁵⁵ Achieved in 2008.

³⁵⁶ OJ L 136, 24.5.2008, p. 3.

³⁵⁷ COM(2006) 400 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
				2008 ³⁶⁰ .
4.3. (k)	Green Paper on minimum standards for certain aspects of procedural law	Commission	2008	• Delayed The need for this measure is under review. The Commission will launch a study to define the needs as regards minimum standards for certain aspects of procedural law in more detail in 2009.
4.3. (l)	<i>Evaluation of the possibility of completing the abolition of exequatur (2006 to 2010), and legislative proposals if appropriate</i>	Commission	2006 to 2010	Ongoing After the publication of the preparatory study on the report on the application of the Brussels I Regulation in September 2007³⁶¹, a report³⁶² and a Green paper³⁶³ on the review of the Regulation were adopted in 2009. A proposal for the revision of the Brussels I regulation is expected to be presented in 2010.
4.3. (m)	<i>Proposal for amending Regulation (EC) No 1348/2000 on the service in the Member States of judicial and extrajudicial</i>	Commission	2005	√ Achieved The Commission presented a proposal for a Regulation amending the Council Regulation (EC) No 1348/2000 on 11 July 2005³⁶⁴. The Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents), and repealing Council Regulation (EC)

³⁵⁸ The second Green Paper on the effective enforcement of judicial decisions was delayed to 2008.

³⁵⁹ COM(2006) 618 final.

³⁶⁰ COM(2008) 128 final.

³⁶¹ http://ec.europa.eu/justice_home/doc_centre/civil/studies/doc/study_application_brussels_1_en.pdf.

³⁶² COM(2009) 174 final.

³⁶³ COM(2009) 175 final.

³⁶⁴ COM(2005) 305 final.

³⁶⁵ OJ L 324, 10.12.2007, p. 79.

No	Action under the Action Plan	Competent body	Deadline	State of play
	<i>documents in civil or commercial matters</i>			No 1348/2000, was adopted on 13 November 2007 ³⁶⁵ .
- Enhancing cooperation				
4.3. (n)	Report on the functioning of the European Judicial Network (EJN) in civil and commercial matters and amendment proposal, if appropriate	Commission	2005/2006	√ Achieved³⁶⁶ The report on the functioning of the EJN was adopted on 16 May 2006³⁶⁷. Based on this report, the Commission presented a proposal for a Decision amending Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters on 23 June 2008³⁶⁸.
4.3. (o)	Continued development of the European Judicial Network in civil matters and of the databases on case-law relating to European instruments	Commission	Continuous	√ Achieved Meetings of the EJN takes place regularly. The Internet site is updated continuously. A database on the Brussels I and Brussels II Regulations has been put on line in February 2008.
4.3. (p)	Constant updating and improvement of the European Judicial Atlas	Commission	Continuous	√ Achieved New contract for maintenance of the Atlas was signed in 2008. The website is updated continuously.

³⁶⁶ Achieved in 2007.
³⁶⁷ COM(2006) 203 final.
³⁶⁸ COM(2008) 380 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
4.3. (q)	EU support for networks of judicial organisations and institutions	Commission	Continuous	• Ongoing Contacts and collaboration are being maintained with different networks (European Training Network, Network of Presidents of the Supreme Courts, International Conference of Civil Status, European Union of Rechtspfleger). Furthermore, contacts with organisations involved in designing justice policies and evaluating them are assured involvement via the thematic meetings of the Justice Forum.
4.3. (r)	EU workshops to promote cooperation between members of the legal professions with a view to identifying best practice	Commission	2006	√ Achieved³⁶⁹ The late adoption of the financial programme Civil Justice and of the relevant Work Programme has prevented the Commission from organizing these workshops. However, thematic meetings of the Justice Forum facilitate the exchange of best practices among representatives of the organisations gathering legal professionals from the EU Member States. Best practices are also promoted by the Crystal Scales of Justice prize awarded on a biannual basis by the Commission and the Council of Europe.
4.3. (s)	Annual European day of civil justice	Commission /Council of Europe	Continuous	√ Achieved In 2003 the European Commission and the Council of Europe launched the “European Civil Justice Day”, held on 25 October each year, to bring civil justice truly within the reach of European citizens. It is an opportunity for citizens to familiarise themselves with civil justice, thereby affording them easier access to it. The Commission participates in different events all over Europe. Furthermore, civil justice is promoted by the Crystal Scales of Justice prize.

³⁶⁹

Partially achieved.

No	Action under the Action Plan	Competent body	Deadline	State of play
- Follow-up of the implementation of acts adopted				
4.3 (t)	Report on the functioning of regulation (EC) No 1206/2001 on the taking of evidence and amendment proposal, if appropriate	Commission	2007	√ Achieved The report was adopted on 5 December 2007 ³⁷⁰ .
4.3. (u)	Report on the functioning of the Brussels I Regulation and amendment proposal, if appropriate	Commission	2009 at the latest	√ Achieved The report was adopted in April 2009 ³⁷¹ .
4.3. (v)	Report on the functioning of Directive 2004/80/EC relating to compensation to crime victims	Commission	By 2009	√ Achieved The report was adopted in April 2009 ³⁷² .
- Ensure consistency				
4.3. (w)	Final research report including a draft common frame of reference in the field of European contract	Commission	2007	√ Achieved The Common Frame of Reference (CFR) work on consumer contract law issues has, together with the results of other preparatory work, served as a starting point for the

³⁷⁰ COM(2007) 769 final.

³⁷¹ COM(2009) 174 final.

³⁷² COM(2009) 170 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
	law			Green Paper on the review of the consumer <i>acquis</i> that the Commission adopted on 7 February 2007³⁷³ and further for the Commission Proposal for Directive on Consumer Rights adopted on 8 October 2008³⁷⁴. In December 2007, the Draft CFR prepared by the Study Group on a European Civil Code and the Research Group on EC Private Law (Acquis Group) was delivered to the Commission. On 21 January 2008, it was presented in the European Parliament. On December 2008, the researchers delivered the final version of the academic CFR to the Commission³⁷⁵.
4.3. (w)	Adoption of a common frame of reference (CFR) in the field of European contract law	Commission	2009	• Delayed The work on the Commission CFR is currently at the stage of assessment of the results delivered by the academic research group. The Commission is committed in informal consultations with the Council and the European Parliament during 2009 before finalising the Commission CFR, envisaged to be adopted in 2010.
- International legal order				
4.3. (a)	Proposal for the conclusion of a new Lugano Convention	Commission	2005	√ Achieved³⁷⁶ The proposal concerning the signing of the Convention between the European Community and the Republic of Iceland, the Kingdom of Norway, the Swiss Confederation, and the Kingdom of Denmark on jurisdiction and the recognition and

³⁷³ OJ C 71, 15.3.2007, p. 1.

³⁷⁴ COM(2008) 614 final.

³⁷⁵ "Draft Common Frame of Reference (DCFR). Principles, Definitions and model Rules of European Private Law", April 2009.

³⁷⁶ Achieved in 2007.

No	Action under the Action Plan	Competent body	Deadline	State of play
				enforcement of judgments in civil and commercial matters was presented by the Commission on 6 July 2007 ³⁷⁷ . The Council Decision 2007/712/EC on the signing, on behalf of the Community, of the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted on 15 October 2007 ³⁷⁸ . Furthermore, on the basis of the Commission proposal of February 2008, the Council decided to ratify the new Lugano Convention on 28 November 2008.
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 2005³⁷⁹ and a proposal for a decision regarding service of documents on 18 April 2005³⁸⁰. The Council Decision 2005/790/EC on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was adopted on 20 September 2005³⁸¹. The Council Decision 2005/794/EC on the signing, on behalf of the Community, of the Agreement between the European Community and the Kingdom of Denmark on the service of judicial and extrajudicial documents in civil or commercial matters was adopted on 20 September 2005³⁸².
4.3.	Conclusion of negotiations	Commission	2005	√ Achieved

³⁷⁷ COM(2007) 387 final.
³⁷⁸ OJ L 339, 21.12.2007, p. 1.
³⁷⁹ COM(2005) 145 final.
³⁸⁰ COM(2005) 146 final.
³⁸¹ OJ L 299, 16.11.2005, p. 61.
³⁸² OJ L 300, 17.11.2005, p. 53.

No	Action under the Action Plan	Competent body	Deadline	State of play
(c)	on the Convention on the choice of forum			Negotiations were concluded in June 2005. On 5 September 2008, the Commission presented a proposal for a Council Decision on the signing by the European Community of the Convention on Choice-of-Court Agreements ³⁸³ . The Council adopted the decision on 27 February 2009.
4.3. (d)	Accession of the Community to the Hague Conference on private international law		2006	√ Achieved On 5 October 2006, the Council adopted the Decision 2006/719/EC on the accession of the Community to the Hague Conference on Private International Law³⁸⁴. Formal accession took place on 3 April 2007.
4.3. (e)	Conclusion of negotiations on the Convention on maintenance obligations	Commission	2007	√ Achieved The XXI Plenary (Diplomatic) Session of the Hague Conference on Private International Law met from the 5-22 November 2007. The main agenda points of the Conference were the finalization of the negotiations of two international instruments, the "Convention on the International Recovery of Child Support" and "Other Forms of Family Maintenance and the Protocol on the Law Applicable to Maintenance Obligations". The compromise worked out in the negotiations on both texts can be assessed as reasonable and consequently the Community can be satisfied with the results. The European Community was participating at this Diplomatic session for the first time in its capacity as a Member of the Conference. - Convention on the international recovery of child support and other forms of family maintenance (concluded 23 November 2007)

³⁸³ COM(2008) 538 final.
³⁸⁴ OJ L 297, 26.10.2006, p. 1.

No	Action under the Action Plan	Competent body	Deadline	State of play
				- Protocol on the law applicable to maintenance obligations (concluded 23 November 2007)
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	Commission		√ Achieved On the basis of the Commission proposal of 2003, the Council adopted Decision 2008/431/EC authorising certain Member States to ratify, or accede to, in the interest of the European Community, the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children and authorising certain Member States to make a declaration on the application of the relevant internal rules of Community law on 5 June 2008³⁸⁵. This enables all the Member States to ratify the 1996 Convention.
4.3. (g)	Continuation of negotiations and conclusion of international agreements relating to judicial cooperation in civil matters.	Commission		Besides the above-mentioned conventions and agreements, various actions have been accomplished: 1) On 11 August 2008, the Commission presented an amended proposal for a Council Decision on the conclusion by the European Community of the Convention on International Interests in Mobile Equipment and its Protocol on matters specific to aircraft equipment, adopted jointly in Cape Town on 16 November 2001³⁸⁶. 2) This was followed by the Commission proposal of 2 March 2009 for a Council Decision on the signing by the European Community of the Protocol to the Convention

³⁸⁵ OJ L 151, 11.6.2008, p. 36.

³⁸⁶ COM(2008) 508 final.

No	Action under the Action Plan	Competent body	Deadline	State of play
				on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock, adopted in Luxembourg on 23 February 2007³⁸⁷. 3) On 19 December 2008, the Commission proposed two Regulations establishing a procedure to authorize the Member States to conclude bilateral agreements with third States in certain areas of civil justice where exclusive external competence of the Community exists³⁸⁸.

³⁸⁷

COM(2009) 94 final.

³⁸⁸

COM(2008) 893 final and COM(2008) 894 final.