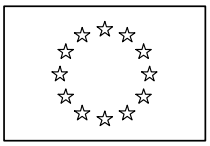

COMMISSION OF THE EUROPEAN COMMUNITIES

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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 Programme[1] and the related Action Plan[2] 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 indentified ten main and equally-important priorities on which efforts should be concentrated[3].

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

- the EU Action Plans on Drugs of 2005[4] and 2008[5], following the European Strategy on Drugs 2005-2012[6];

- the Communication on perspectives for the development of mutual recognition of decisions in criminal matters and of mutual trust[7];

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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.

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.

- the Communication "developing a strategic concept on tackling organised crime"[8],
- the Communication on the common immigration policy[9]; and
- the policy plan on asylum[10].

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 Programme[12], which gave fresh impetus to implementation of the programme, proposing adjustments on specific issues and highlighting the principal shortcomings that needed to be overcome[13].

Evaluations and implementation reports of specific and individual instruments, scoreboards published annually by the Commission since 2006[14], 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.

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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 Agency[15]. 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), whiose 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 activities[16] and an agreement between the Community and the Council of Europe[17].

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 2008[18].

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.

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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 directive[20] 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 programme[21] 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 Members States, the European Institutions, the Council of Europe, UNICEF, the Ombudsman and NGOs and is chaired by the Commission.

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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 States[24], describing possible ways of cooperation among Member States when such situations occur. The Council's conclusions of 28 November 2008 supported this initiative[25].

Other measures, such as the hotline for reporting missing children, were not followed up by Member States[26].

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 adoption 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 asses how well is 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**,

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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 2007[29]. 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 Parliament[30], 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 reunification[31]. 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%

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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 opinion[32].

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: $\pm$ 218; between 2000-2004: $\pm$ 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.

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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 Report[34], 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 EU[35] 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 xenophobia[36] 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 Eurobarometer[37], 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.

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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 child[38] 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-partners[39].

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 an issue of paramount importance. In particular, one of the priority areas for EU action on

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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.

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 implemented the adopted measures in good time). This kind of implementation reports have been published every year since 2006[43].

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41 COM(2006) 332 final.
42 COM(2006) 333 final.
43 COM(2007) 373 final and COM(2008) 373 final respectively .

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 theirs 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.

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 Union[44] 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 2008[45] 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 Members 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

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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 right[48].

As regards the **right to vote** for the European Parliament, the Commission used the report on the 2004 European elections[49] 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 elections[50]. 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 elections[52]. 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.

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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 directive[54], 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 2006[55] put forward ideas on how to facilitate such cooperation. Since then, the Commission has financed a number of projects on practical cooperation issues, e.g. on

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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.

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 (Dublin[57] and Eurodac[58] regulations) and of the Reception Conditions Directive[59] were presented by the Commission in June[60] and November[61] 2007 respectively. They provided the basis for the preparation of amendments to those instruments, which were adopted by the Commission in December 2008[62]. 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 2007[63] to align it with the three new funds on integration, border control and

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

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 possibile 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 2007[64] 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 2008[65]. 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 then 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 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

64 COM(2007) 301 final.
65 COM(2008) 360 final.

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 migration[66] 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 adopted[67] 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.

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

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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.

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 2006[70] 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 2007[71] 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 2005[72] and was formally adopted by the Council and the European Parliament in 2008[73], 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 protection[74] of 2007 and second, following a broad consultation process triggered by a Green Paper in 2005[75], the Council decision establishing the European Migration Network (EMN) of 2008[76]. The EMN is a crucial element to meeting the information needs of Community institutions and of Member States authorities and

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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.

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

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 States[77]. 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 2005[78].

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 figures[79]). 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.

The Communication on "A Common Immigration Policy for Europe: Principles, actions and tools"[80] and the European Pact on Immigration and Asylum[81] laid down the basic principles for the further development of the EU's common policy in the area of immigration and

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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.

80 COM(2008) 359 final.

81 Council document 13440/08.

integration. In the years ahead, therefore, priority must be given to implementing existing measures, including monitoring application of the main legislative framework[82] and revising it where necessary, in particular as regards family reunification[83], 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 Document[84] and the exchange of best practices at EU level with regard to the illegal employment of third-country nationals.

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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 citizens[85] 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 Code[86] is the first of the three fundamental components. In addition, as indicated by the Hague Programme, the local border traffic regulation was adopted in 2006[87]. 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 2007[88]. 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

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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 Convention[89]. The second-generation Schengen Information System (SIS II) was established in 2006[90] and the following year a Council decision on the establishment, operation and use of the SIS II was adopted[91]. 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 2006[92].

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 Decisions[93] 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 II[94]. A Council regulation[95] and a Council decision on the migration from the SIS 1+ to the SIS II[96] 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 2008[97].

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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 VIS[99] 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 instruments[100], 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 2009[101], and will mark the full integration of the Schengen *acquis* into the Community framework.

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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 States[102]. 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 showed[103]. The 2009 external evaluation of FRONTEX[104] 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 2007[105]. 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 countries[106], 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

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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 sea[107]. 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 Fund[108], 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 worldwide. No systematic collection of data is carried out by Member States, but an estimated

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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.

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 Frontex[109], 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 programme[111]. The Council welcomed the package in its conclusions of 5-6 June 2008[112]. 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.

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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 2004[113] 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 2005[115], 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 2007[116]. € 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 accessible[117]. In 2006[118] and 2007[119] two annual reports on integration were adopted and two Ministerial Conferences on Integration took place (Potsdam in 2007 and Vichy in 2008). Finally, two

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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 2007[120] 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 conclusions[121]) 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 population[122]. 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.

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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 2008[123]. 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 nationals[124] and in Member States' passports and other travel documents (except identity cards) with a validity of more than 12 months[125]. 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 2009[127].

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 VIS[128]. 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.

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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 visas[129], 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 Commission[130] 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 2006[131]. 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-issuing procedure, consular organisation and cooperation and the Visa Code. A common

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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.

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 2005[132] 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 2005[133]. 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 Syria[134]. 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.

In the period 2005-2008, the Global Approach was the subject of four specific Commission Communications[135] and it was also covered by several specific and thematic communications.

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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.

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

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 immigration[136]. As called for by the Council, a Commission Special Representative for a common readmission policy was appointed in 2005. 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

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

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 if 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 Germany[138] and other signatories of the Prüm Treaty to transform the Treaty into a Council decision, which was adopted in 2008[139] 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 decision[140]. 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 intelligence[141]. This so-called "Swedish initiative" was adopted by the Council in 2006[142] 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.

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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 VIS[143] was in response to the Council conclusions on this issue of March 2005[144]. 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 data[145]

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 2008[146] 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.

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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 Directive[147] was adopted in 2006 following a Commission proposal[148], 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.

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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 2007[149], 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 2006[150], 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 2007[151]. 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 expired[152]. 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 that during the first 7). In exchange, the United States accepted a joint review of the operation of the agreement by the Commissioner responsible of 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 Canada[153]. 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 2008[154]. 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 protection issues relating to the US-EU exchange of information. Since its was established,

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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.

discussions have focused on identifying common data protection principles. The results of these discussions were set out in a final report of May 2008[155] 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 Washington[156]. 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 a more fundamental review of the current EU approach to data protection should also be undertaken.

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155 Council document 9831/08.

156 Council document 16477/08.

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 requirements[157]. 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.

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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 Plan[158] 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. Many[159] 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 2005[160], 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 Communication on terrorist recruitment[161], the Commission undertook a series of initiatives

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.

161 COM(2005) 313 final.

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 studies[162] 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 Strategy[163] 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 research[165] reveal that 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

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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.

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 terrorism[166] 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 2008[167], and thus it is too early to assess its impact.

That said, Member States' implementation of the original Framework Decision on combating terrorism[168] 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 Kingdom[169]; and the second report was adopted in 2007 and covered all Member States except Romania and Bulgaria[170]. 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 report[171] 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.

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

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.

laundering and terrorist financing[172] 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 chain[173]. 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 2005[174]. 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 issue[175], 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 sector[176]. 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 2008[177]. 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.
- Promoting the use of financial investigation as a law enforcement technique in the EU-27 through common minimum training standards.

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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.

- 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 Explosives[178], following a 2007 Communication[179]. 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 Directive[180], security of the transport of explosives has been enhanced by a 2008 Directive[181], 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 public[182].

Other measures

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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.

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 EU[183]. 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 and 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.

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

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[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.

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 2007[185]. 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 2007[186] 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.

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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 decision[187] 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 crime[188]. 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 2009[189], 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 activities[190]. The new Council Decision provides for the Europol management board to request an independent external 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.

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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.

9 operational cooperation agreements[191] and 19 strategic agreements[192] are in force between Europol and third parties. 10 operational cooperation agreements[193] and 1 strategic agreement[194] are under negotiations.

Police – customs cooperation

The Council approved three Actions Plans for the strategy for customs cooperation in the third pillar[195]. 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 2007[196]. 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.

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.

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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.

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 the 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 2009[197], 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.

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

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[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.

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 tobe 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 Infrastructure[199], which was adopted by the Council in 2008[200]. 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 2008[201].

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

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.

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 Mechanism[202] 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 Instrument[203] adopted in 2007.

As called for by the European Council[204] and the European Parliament in 2005[205], 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 States[206]. 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.

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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 ARGUS[208], 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 Capacity[209], the Commission is trying to generate synergy between existing instruments.

The procedures and the adequacy of the CCA have been regularly tested and refined though lessons leaned 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.

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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 possibile 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 crime[210]. 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 crime[211]. Finally, the Council conclusions of November 2008[212] 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.

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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 response[213].

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 2005[215]. Following the 2008 report on the implementation of the Framework Decision on combating trafficking in human beings[216], 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 proposal[217] amending the 2002 Framework Decision on combating trafficking of human beings[218].

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 beings[219] 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

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213 Patrick Belser, Michaelle De Cock, Fahrad 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 pornography[220] 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 2007[221], 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 childhood[222]. 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 violent[223].

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 children[224], 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.

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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 year[225] 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 higher[226]. 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 survey[227], 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 sector[228], 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 2008[229], 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 corruption[230] 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

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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 sector[231] 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 Financing[233] provides that Member States should give priority to financial investigations and to financial criminal analysis in the fight against terrorism. Finally, in a 2008 Communication[234] 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 analysis[235] 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 thir 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 FIUs[236]. 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".

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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 FIUs[237]. 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 AROs[239]. 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 confiscation[240]. 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 crime[241], 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 confiscation[242], 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 resources and training, limited cross-agency contacts and a lack of statistical data. It will be used as a basis for further initiatives.

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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.

Extensive use of Community funding programmes has been made in this area. The activities of the CARIN Network[243] 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 2008[244]. 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 groups[245].

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.

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

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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.

246 COM(2005) 276 final.

Directive on criminal measures aimed at ensuring the enforcement of intellectual property rights[247]. 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 civil[248] and the customs[249] 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 resolution[250] 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.

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

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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.

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 statistics[251] and established an Expert group to that effect[252]. A Working group of producers of crime statistics was also subsequently established by Eurostat[253].

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 actiities, 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 justice; and closer links between Justice and Home Affairs administrations and the research community.

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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.

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 day[254].
- The number of images of sexually abused children available on line quadrupled in the period 2003-2007[255].
- The numbers of criminal URLs infecting PCs with password-stealing codes rose by 93% in the first quarter of 2008[256].

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 report[257] 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.

Combating trafficking in human beings, child exploitation and child pornography

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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.

According to estimates provided by the International Labour Organisation[258], 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 2006[259]. 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.

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258 Patrick Belser, Michaelle De Cock, Fahrad 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 agains 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 study[260] 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 effectiveness of Europol's Analysis Working File SUSTRANS and to enhance its value as a basic tool for financial intelligence-led policing

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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.

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 2007[261]. 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 2007[262].

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 operational and strategic recommendations to boost and professionalise the impact of the EUCPN on crime prevention.

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261 Available at: http://ec.europa.eu/taxation_customs/customs/customs_controls/counterfeit_piracy/statistics/index_en.htm

262 Ibidem.

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 2005-2012[263], 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 2005[264]. 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 2006[265] and 2007[266].

In September 2008, the Commission adopted a Communication on an EU Drugs Action Plan for the period 2009-2012[267], which was accompanied by a final evaluation of the EU Drugs Action Plan 2005-2008[268]. 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 adopted[269]. The EU Drugs Action Plan 2009-2012 was endorsed by the Council in December 2008[270].

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 that 600 thousand people are known to be receiving substitution treatment for drugs like heroin[271].

- 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 policy[272], 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 Initiative[273] and reflects the importance of this kind of structured dialogue.

The Council Framework Decision on drugs trafficking[274] 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.

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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 to 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 procedure[275]. 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.

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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 2008[277]. Also in 2008, the Council adopted the European e-Justice Action Plan[278], 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-Justice[279] 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.

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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 was adopted in 2008[280]. 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 judges[281].

In 2006, the Commission has published a Communication on judicial training in the EU[282], 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 system[283], 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 Council[284].

Practitioners say that they have insufficient knowledge of EU instruments, to what extent they are transposed into national legislation and how to use them. Studies[285] 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

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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 substancial 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 Matters[287]. 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.

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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 portal[288] 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 system[291] 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

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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 2000[292] and consolidated in 2005 by the Communication on mutual recognition of decisions in criminal matters and reinforcement of mutual trust between Member States[293]. It has been partially achieved, as some of its measures have been more successfully implemented and have had greater impacts then 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 issue[294].

Implementation of the Framework Decision on the European Arrest Warrant and the surrender procedures between Member States[295] is generally considered to be the biggest success in this field: the first report on implementation by 24 Member States was adopted in 2005[296]. A revised version to include Italy (implementation in May 2005) was adopted in 2006[297]. The second report on the implementation of the Framework Decision was adopted in 2007[298]. 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

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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* judgments[302]. This amendment to the EAW and other framework decisions has been adopted in 2009[303].

A study conducted by the European Parliament[304] 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 report[305] on the Framework Decision on the execution in the EU of

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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 evidence[306] showed that, by the end of October 2008, only nineteen[307] 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 penalties[308] 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 sentences[309] and confiscation orders[310] 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 then 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.

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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 records[311], which was adopted by the Council in 2005[312]. 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 Union[313], 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 States[314], which has been adopted in 2009[315]. 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 2009[317]. 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 Union[318]. 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 2006[319]. 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.

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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 2009[321] 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 rights[322] 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 2006[323] 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 subject[324].

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 proceedings[325]. In the first report published in 2004[326], 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 2007[327]. 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 2008[328] with a view of adopting a new decision on Eurojust. In

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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 Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of

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 crime[329]. 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 Eurojust[330].

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 measures[331] 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 2007[332], 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 2007[333], 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 counter-terrorism objectives into external assistance programmes"[334] and the Commission has

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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.

329 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.

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.

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 Corruption[335]. 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 2008[336] that demonstrates that mutual recognition of judgments is easier to apply than pre-trial decisions. In addition, the study identifies four 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

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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.

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 matters[337].

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 cases[338], 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

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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 victims[339] 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 victims[340] 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 directive[341], 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 covered[343] (the Brussels II (a) regulation replacing the Brussels II regulation[344]).

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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 Payment[347] and the European Small Claims Procedure[348], and developing minimum standards for aspects of procedural law, such as the service of judicial and extra-judicial documents[349].

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 EU[350]. The Commission was also invited to submit green papers on successions[351] (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 regimes[352], and divorce (Rome III)[353]. Rules on uniform substantive law should only be introduced as an accompanying measure, whenever necessary.

The European Enforcement Order[354], 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 2006[355] and the European Small Claims Procedure (under € 2,000) adopted in 2007[356] were also along these lines. These new procedures aim to simplify and speed up litigations concerning uncontested claims and small claims in cross-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.

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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.

Further preparatory work has started on how to improve the enforcement of judgments in the EU[357].

Regulations relating to the service of documents in cross-border cases[358] and concerning the taking of evidence in civil and commercial matters[359] 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 2007[360]. 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 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

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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.

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 EJNCCM[361], the Commission presented a proposal amending the founding decision in 2008[362]. 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 law[363].

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

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.

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361 COM(2006) 203 final.
362 COM(2008) 380 final.
363 COM(2006) 744 final.

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 Agreements[365]. 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 proposal[367], the Council decided in November 2008 to conclude the Convention[368].

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 Denmark[370].

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 November 2001[371]; moreover, the Commission has proposed that the Community would sign the Rail Protocol[372].

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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.

371 COM(2008) 508 final.

372 COM(2009) 94 final.

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 Regulation[373] accompanied by a Green Paper on the possible review of the regulation[374].

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 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

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373 COM(2009) 174 final.

374 COM(2009) 175 final.

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 convention[375], 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 Commission[376], a "Strategy for the external dimension of Freedom, Security and Justice" (hereinafter "the Strategy") was endorsed by the Council in December 2005[377].

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 mechanisms[378]. These thematic priorities were also identified as the key threats in the European Security Strategy (ESS) of December 2003[379], 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 2006[381] and May 2008[382].

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, illegal immigration and counter-terrorism between the EU and the Western Balkans[383]; the

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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".

383 Council document 9306/06 JAI 248.

AOP on increasing EU support for combating drugs production in and trafficking from Afghanistan[384]; and the AOP on implementing with Russia the common space of freedom, security and justice[385].

The Council General Secretariat produced two progress reports on the state of implementation of the Western Balkans AOP[386] and one on the Russia AOP[387]. 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 countries[389]. 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 plan[391], including JLS matters, as well as a Code of conduct on terrorism[392]. 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 launched with a view to increasing the potential for cooperation with the Mediterranean partners.

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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.

The **Eastern Partnership** is taking shape, the Commission presenting a Communication in 2008[393] 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 2005[394]. 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 2008[395] and sets out short-term priorities in the JLS area. The Commission published the latest annual Progress Report on Croatia in November 2008[396].

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.

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

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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.

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 2008[397]. 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 2005[398], 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 2008[400]. 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.

Some progress can be noted, in particular in the area of visa facilitation and readmission, where agreements are now in force with Western Balkan countries[401]. 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

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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.

401 Albania, Bosnia and Herzegovina, FYROM, Montenegro and Serbia.

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, 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 are 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 wiith **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.

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.

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402 Council document 12594/2/08 rev 2.

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 extradition[403]) 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.

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

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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.

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 2007[404]. An Action Plan for the period 2008-2010[405] 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 2004[406]. 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 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 2004[407]. This resulted in agreement on an ambitious EU-India Action Plan[408] 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 ands terrorism are regularly discussed in meetings at different levels with India. EU-India troika consultation on counter-

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.

407 COM(2004) 430 final.

408 Available at: http://ec.europa.eu/external_relations/india/docs/joint_action_plan_060905_en.pdf.

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 2008[409]. 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 developed[411]. A recent Commission Communication[412] 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.

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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.

412 COM(2008) 611 final.

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 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 bee 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 ESRIF should be taken into account. The objective of the European Security Research and Innovation Forum (ESRIF), 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.

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

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413 COM(2009) 149 final.

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 though 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.

TABLE OF CONTENTS

Section	Corresponding section	
	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
Visa policy	**III.1.7.3**	**III.1.6**
External dimension of asylum and migration	**III.1.6**	**III.1.7**
Strengthening Security	**III.2**	**III.2**
Improving the exchange of information	**III.2.1**	
Terrorism	**III.2.2**	**IIII.2.1**
Police cooperation	**III.2.3**	**III.2.2**
	III.2.5	
Management of crises within the EU with cross-border effects	**III.2.4**	**III.2.1**
Organised crime and corruption and crime prevention	**III.2.6**	**III.2.3**
	III.2.7	
European strategy on drugs	**III.2.8**	**III.2.4**
Strengthening justice	**III.3**	**III.3**
European Court of Justice	**III.3.1**	**IV**

Section	Corresponding section	
	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
Confidence-building and mutual trust	**III.3.2**	**III.3.3**
Judicial cooperation in criminal matters	**III.3.3**	**III.3.1**
Judicial cooperation in civil matters	**III.3.4**	**III.3.2**
External dimension	**4**	**III.4**
Overall conclusions		**V**

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