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WORKING DOCUMENT

on the quality of criminal justice and the harmonisation of criminal legislation in the Member States

Committee on Civil Liberties, Justice and Home Affairs

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1. STRENGTHENING OF FREEDOM, SECURITY AND JUSTICE

There is a growing need to guarantee an independent and efficient criminal-justice system with high standards of quality.

In The Hague programme the European Council laid down the strategic guidelines for the next five years and called on the Commission to submit an Action Plan in 2005 to set out the necessary measures for the implementation of the programme.

The mutual recognition of judicial decisions in the Member States is the cornerstone of strengthening the area of freedom, security and justice, but it does not rule out the possible approximation of rules governing criminal justice and criminal proceedings.

The Hague programme assigns priority to the enhancement of mutual trust, essential for mutual recognition, together with the adoption of minimum substantive and procedural rules.

In this recommendation the European Parliament calls on the Commission to submit an Action Plan taking into account the following priorities and implementing methods.

2. ENHANCING MUTUAL TRUST

The establishment of a true area of freedom, security and justice is founded on a judicial culture based on the diversity of legal systems, with high quality standards, and pre-supposes the establishment of a common reference framework and the adoption of a mechanism for mutual evaluation.

2.1. QUALITY CHARTER FOR CRIMINAL JUSTICE

The uniform application of Union law and the guarantee that all citizens may benefit fully from the area of freedom, security and justice (in whichever Member State they find themselves) depends on proper access to a judicial system with high standards of quality (cf. paragraph 3.2. of The Hague programme).

Furthermore, it should be stressed that the various Member States are already under an international obligation to guarantee a quality criminal-justice system, since they are bound by Article 6 of the European Convention on Human Rights.

The European Parliament advocates the adoption of a statement of principles - 'a quality charter for criminal justice in Europe' - in the form of a decision (Article 34(2)(c) of the TEU) specifying a set of criteria for evaluating the functioning of national judicial systems.

In this recommendation the European Parliament wants to urge the Commission to promote a plan for hearing the interested parties (representatives of civil society, the legal profession and academics) to facilitate the consolidation of a set of criteria for comparing the quality of criminal justice in the various Member States, taking into account the international criteria approved, in particular, in the UN Convention on the Prevention of Torture and by the Council of Europe.

The quality charter should include elements relating to the various judicial systems, in particular the level of respect for the principle of judicial independence, compliance with 'fair trial standards' and the conduct of criminal proceedings, including the execution of sentences.

It should also help to guarantee that equivalent effects are produced in the various Member States, by introducing obligations such as the setting of reasonable deadlines.

Suggests that the quality charter for criminal justice in Europe should be drawn up and forwarded to the Council by ____.

2.2. THE MECHANISM FOR MUTUAL EVALUATION

2.2.1. Background

Over the last few years various mechanisms for mutual evaluation have been adopted in the following fields:

i. Agreements on the abolition of frontiers (Schengen);

ii. The fight against organised crime (Joint Action of 5 December 1997)[1];

iii. The fight against terrorism (Decision of 28 November 2002)[2];

iv. Legal assistance in criminal matters[3];

It should also be noted that the Council itself, by means of the Joint Action adopted on 29 June 1998[4] introduced a mechanism for evaluating compliance with the '*acquis communautaire*' in the field of Justice and Home Affairs by the (then) candidate countries.

2.2.2. The Treaty establishing a Constitution for Europe

This recommendation, aimed at creating a mechanism for evaluating the quality of justice anticipates, to a certain extent, an identical mechanism envisaged in Article III-260 of the European Constitution.

Under the terms of Article III-260, the Council may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States conduct objective and impartial evaluation of the implementation by the Member States of policies relating to the area of freedom, security and justice, '*in particular in order to facilitate full application of the principle of mutual recognition'*.

As soon as the European Parliament is informed of the results of the evaluation the national parliaments may participate in the evaluation mechanism (cf. Article I-42, paragraph 2 of the European Constitution).

[1] OJ L 344, 15.12.1997, p. 7
[2] OJ L 349, 24.12.2002, p., 1.
[3] OJ C 216, 1.8.2001, p. 14.
[4] OJ L 191, 7.7.1998, p. 8.

However, the evaluation procedure is somewhat more far-reaching than the mechanism proposed, since the latter is exclusively intended for the evaluation of the quality of justice in each of the Member States.

2.2.3. The Hague programme

The Hague programme, approved at the European Council meeting of 4 and 5 November 2004, reiterates the need to enhance mutual trust between the Member States and the need to ensure that all citizens have access to judicial systems characterised by high standards of quality.

Furthermore, the Hague programme (cf. point 3.2.) explicitly states that the implementation of the principle of mutual recognition depends to a great extent on the establishment of a system for mutual evaluation of the implementation of EU policies of the area of freedom, security and justice.

2.3.4. The functioning of the mechanism

The proposed mechanism for mutual evaluation is supposed to ensure fully the independence of judicial power, the exclusive aim being to promote good judicial practices throughout the territory of the European Union.

This culture of reciprocal evaluation will contribute to solidarity between the Member States and help in detecting discrepancies between national judicial systems, so as to ensure that all citizens benefit from identical standards of quality.

The European Parliament calls on the Commission to submit a proposal for a decision to the Council defining the rules according to which the Member States, in collaboration with the Commission, may carry out an objective and impartial evaluation of the level of fulfilment of the criteria laid down in the quality charter for criminal justice in Europe by the various Member States.

The mechanism should include various components, namely:

i. A comparative statistical basis;

ii. A '*benchmarking*' exercise;

iii. The dissemination of best practices;

iv. An evaluation report on compliance with the quality charter.

The reports should be drawn up annually.

The national parliaments may be involved in the evaluation procedures and the European Parliament will be informed annually of the content of the reports drawn up.

Consideration is being given to assigning to the Fundamental Rights Agency[1] the

[1] COM(2004) 693 final.

competences needed to coordinate and disseminate the annual reports on compliance with the charter.

It is also suggested that the proposal for a decision establishing a system of mutual evaluation of the criminal justice system should be forwarded to the Council by ...

3. APPROXIMATION OF CRIMINAL LEGISLATION

3.1. Substantive provisions

The creation of an area of freedom, security and justice based on mutual trust between the Member States must include an approximation of national legislation, as laid down in explicitly in Article 31(1)(e) of the Treaty on European Union.

Thus, the way is already open for establishing '*minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking*'.

Furthermore, under the terms of Article III-271 of the Treaty establishing a Constitution for Europe, the adoption of the minimum rules will affect any kind of particularly serious crime with a cross-border dimension, including trafficking in human beings, arms trafficking, sexual exploitation of women and children, money laundering, corruption, counterfeiting of means of payment and computer crime.

The Hague programme establishes that priority must be given to the approximation of criminal legislation covering the types of crime explicitly mentioned in the Treaties.

Hence the European Council decided: *'The Treaty establishing a Constitution of Europe (hereinafter "The Constitutional Treaty") served as a guideline for the level of ambition, but the existing Treaties provide the legal basis for Council action until such time as the Constitutional Treaty takes effect. Accordingly, the various policy areas have been examined to determine whether preparatory work or studies could already commence, so that measures provided for in the Constitutional Treaty can be taken as soon as it enters into force.'*

In actual fact the sphere of crime with a cross-border dimension has changed radically since the last revision of the Treaties. Thus the present wording of Article 31(1)(e) of the Treaty on European Union is no longer adequate to protect European citizens properly and guarantee an area of freedom, security and justice.

Now, therefore, the European Parliament is backing the European Council in recommending to the Commission that the Action Plan to be submitted in 2005 should adopt as its reference framework the provisions laid down in the Treaty establishing a Constitution for Europe.

Thus it is suggested that the Commission should start preparatory work on the approximation of criminal legislation in relation to the crimes mentioned in Article III-271 of the Constitutional Treaty, in order to ensure that the relevant legislative acts can be adopted when the Treaty comes into force.

The European Parliament reserves the right to carry out a mid-term evaluation of the Hague

programme in order to evaluate the action taken and to define any new priorities with reference to Article III-271 point 1, paragraph 3.

3.2. Procedural rules

Despite the adoption of the Convention on Mutual Assistance in Criminal Matters[1] the European Parliament considers that the approximation of criminal legislation systems is still clearly inadequate in some areas.

In particular, it considers that progress is needed in the following areas:

i. the gathering and assessment of evidence;

ii. the transfer of prisoners to enable them to serve their sentences in the Member State of residence;

iii. the serving of non-custodial sentences in the Member State of residence;

iv. the execution of enforcement measures in the Member State of residence;

v. minimum rights of detainees in any Member State.

Therefore it recommends to the Commission that it submit to the Council a legislative proposal on the above-mentioned matters in the field of police and judicial cooperation in criminal matters, by _____.

[1] OJ C 326, 21.11.2001, p.1.