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Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations

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FOREWORD

The establishment of an area of freedom, security and justice has been among the objectives of the European Union since the adoption of the Treaty of Amsterdam. It is one of the most outstanding expressions of the transition, from an economic Europe to a political Europe at the service of its citizens.

Under the Treaty of Amsterdam, the first phase of establishing the area of freedom, security and justice came to an end on 1 May 2004. The Tampere European Council had determined the programme of work to be done by then.

1 May 2004 was the date of the enlargement of the Union with ten new Member States. It also fell within a period of intense debate on the institutional architecture of the Union and some of its policies, with **the preparation of the Constitutional Treaty**. This is the backdrop against which the **launching of a second ambitious phase** towards the full and complete establishment of the area of freedom, security and justice is to be considered.

The future five-year programme **will have to be defined in the second half of 2004**. A consensus between the Institutions of the Union is one of the essential conditions for its success. The Commission is seeking to launch a public debate and outline priorities for the future as regards justice and home affairs, on the basis of the last five years' experience, the new objectives defined in the draft Constitutional Treaty and the challenges which developments in the international context will continue to raise the Union. The definition of new priorities as regards justice and home affairs is also related to the debate on the **new financial perspective**, which should help the Union to obtain the financial resources it needs to carry out its ambitions.

The implementation of the Tampere programme is assessed in positive terms. There has been tangible progress in terms of the 'acquis communautaire' and its impact on the daily life of persons who reside in the Union. Despite difficulties and delays, it would have been difficult to imagine a mere five years ago that a policy that was still emerging at the time would reach such a degree of maturity. But expectations in this field remain high, as is clear from the recent Eurobarometer opinion surveys.

Justice and home affairs is now a fully-fledged Union policy at the core of the European debate, involving policies on immigration and asylum, checks at external borders, the fight against organised crime and terrorism and the improvement of access to justice in Europe and of the protection of fundamental rights. The European Council has regularly looked at justice and home affairs, which highlights the importance of these matters for the future of Europe.

The public expects the European institutions to be effective. Much has been done but much also remains to be done, and without institutional reforms that make decision-making procedures more efficient and allow Parliament to play its role of co-legislator to the full, the enlarged Europe will not live up to expectations. That is particularly true of police and judicial cooperation in criminal matters, which must as a matter of urgency be brought fully into the traditional Union decision-making mechanisms so as to improve the effectiveness of decision-making, and obtain the means of monitoring and evaluating the implementation of Union instruments in the Member States. The need for these institutional developments is heightened by the need for **stronger democratic control** involving an enhanced role for the European Parliament, associating the national parliaments with it.

The importance of coming up with rapid responses to human crises and tragedies has been highlighted by the everyday news. Priority must obviously be given to **full use of existing instruments**, the existing cooperation bodies and cooperation and information exchanges between the national authorities rather than creating new structures, as the European Commission stated at the European Council on 25 and 26 March 2004.

As regards protection of fundamental rights, the adoption of the **Charter of Fundamental Rights** and the entry into force of the Treaty of Nice with its tougher **penalty mechanism** are essential steps. The incorporation of the Charter in the new Constitutional Treaty will complete the process. The European institutions will have to remain vigilant to ensure strict respect for these rights, in particular by adopting permanent monitoring. Union citizenship will continue to be promoted by measures securing participation in democratic life and full freedom of movement within a European area without frontiers.

As regards asylum, the first stage of a common European policy is in place. This must now be built on **to generate a uniform asylum and subsidiary protection status** and a **common procedure** for granting and withdrawing it. The fight against abuses of the asylum procedure, of which the refugees are the true victims, will also remain an essential strand of political activity. Within this framework, the Commission will work closely with the **UNHCR** to develop modern responses matching the issues at stake in the new international context.

As regards immigration, the economic and demographic evolution of our continent will require the adoption of a strategy based in a balanced way on **legal admission** for employment purposes and the promotion of **integration** and the fight against **illegal immigration** and **trafficking in human beings**. The need here is for a realistic approach that respects the subsidiarity principle but also a fair approach guaranteeing the **fair treatment** of legal migrants.

The integration of the Schengen acquis into the European Union framework by the Treaty of Amsterdam provides an opportunity of stimulating **visa policy** and strengthening checks at external borders with a view to **integrated management**. There needs to be a specific effort both on legislation and on administrative cooperation to develop **information exchanges**, with more substantial financial resources.

In the field of judicial cooperation in civil and commercial matters, much has been done to **improve access to justice for individuals and firms**. The implementation of the mutual recognition principle in sensitive areas such as parental responsibility and the simplification of the rules on cross-border litigation have allowed undeniable progress to be made. The process needs to go further and deeper, in particular as regards family law and the enforcement of judgments, in order to guarantee rapid and effective procedures so that individuals and firms can genuinely exercise their rights.

Similarly, as regards judicial cooperation in criminal matters, the mutual recognition principle allowed serious progress to be made, as can be seen from the adoption and implementation of the Framework Decision on the **European arrest warrant**. The process will have to be continued as regards both mutual assistance and the enforcement of the judgments in criminal matters, and the creation of a European register of convictions and disqualifications will certainly constitute a new important cooperation tool.

In criminal matters as in civil matters, the development of mutual recognition must be accompanied by closer **mutual trust,** with measures to assure the citizen of equal access to

justice on the basis of common principles, in particular in matters of procedure and personal rights, though always subject to respect for the Member States' differing legal traditions.

As regards approximation of criminal legislation, certain matters still remain to be studied in greater depth to combat organised crime more effectively, but above all effective use must be made of instruments already adopted, whose impact must be evaluated.

The **improvement of operational cooperation** will have to be a major theme of action in future. To strengthen this, the draft Constitutional Treaty envisages a Standing Committee in the Council. All the actors in this field will also have to be associated.

Eurojust and **Europol** must acquire full status among European mechanisms for combating crime and constitute supporting central points and information exchange facilities for the national authorities. For that, there will have to be an awareness-raising campaign targeting national authorities. And the potential of Eurojust and Europol must be enhanced. Following the entry into force of the new Constitutional Treaty, there will have to be more effective institutional mechanisms allowing better democratic control and judicial review of Europol. A European Prosecution Service, with powers in particular as regards protection of the Union's financial interests, should be established on the basis of Eurojust.

The **fight against terrorism** will remain among the Union's priorities. Financial crime must also be targeted, as this will help to combat terrorism and other forms of crime such as trafficking in human beings and drugs.

As regards the fight against drugs, the Action Plan of the European Union 2000-2004 is expiring, and following a detailed evaluation, a new long-term strategy accompanied by two Action Plans will be launched for the years ahead in order to establish priorities for action.

Lastly, in recent years the Union has made a great effort to ensure that external policies adequately reflected the justice and home affairs dimension. Recent experience and events have highlighted the importance of pursuing these efforts, not only in the Community as such but also in the Member States so that the consistency of external action overall can be reinforced in this respect.

Legislative activity to develop the area of freedom, security and justice has been intense. But it will remain fruitless if the instruments adopted are not implemented by the national authorities and if there is no real will by the experts to use them for effective European cooperation. Among the various challenges facing the Union in making a reality of its area of freedom, security and justice, its ability **to mobilise all the actors for genuine operational cooperation and to improve existing control mechanisms** will be essential.

1. INTRODUCTION: FIVE YEARS TO ESTABLISH THE AREA OF FREEDOM, SECURITY AND JUSTICE

The progressive establishment of the area of freedom, security and justice was a new objective set for the European Union by the Treaty of Amsterdam. Based on respect for fundamental rights, the point of this area was to allow free movement of persons to become a practical reality for all. It was to ensure their security throughout the Union, to facilitate access to justice in Europe and, by developing the mutual recognition principle of court judgments, to allow them to have effect everywhere in the Union. A number of key measures were to be adopted within five years following its entry into force.

The Tampere European Council in October 1999 placed this objective at the head of the Union's political agenda and set a very ambitious programme in a field which had hitherto been dominated by intergovernmental cooperation. The programme set out policy guidelines and practical objectives, with a timetable for their attainment. The Commission, at the request of the European Council, drew up a scoreboard to review progress every six months[1].

This final six-monthly report will therefore mark the end of this five-year period by presenting an overall balance sheet and outlining future priorities. To this end the Commission has presented the Communication "Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations"[2].

This Commission Staff Working Document provides more details, in particular an assessment of each sector, in order to accompany the review.

This review is taking place in an environment which has developed substantially since October 1999 and in which major changes can still come about. Important achievements have been made in this difficult environment.

The enlargement of Europe and the prospect of adoption of the Constitutional Treaty place the European Union in a new context.

1.1. Important achievements in a difficult environment

- Substantial progress has been made in most areas of justice and home affairs

Compared to the level of the acquis communautaire as it was in 1999, progress to date has been undeniable and tangible. The Commission has presented the main proposals called for at Tampere. Its exercise of the right of initiative and its

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1 A Commission Communication to the Council and Parliament "Scoreboard to review progress on the creation of an area of freedom, security and justice in the European Union" has been presented every six-month since the Tampere European Council. The references are as follows: COM(2000)167 final, 24.3.2000; COM(2000)782 final, 30.11.2000; COM(2001)278 final, 23.05.2001; COM(2001)628 final, 30.10.2001; COM(2002)261 final, 30.5.2002; COM(2002)738 final, 16.12.2002; COM(2003)291 final, 22.5.2003; COM(2003)812 final, 30.12.2003.

2 COM(2004)401 of 2 June 2004.

contribution to discussions in the Council and the European Parliament are now decisive.

- European public opinion supports the development of European action in the field of justice and home affairs

In recent years, under the impact of events and current affairs, public opinion has focused increasingly on justice and home affairs topics such as asylum and immigration policy or the fight against organised crime and terrorism. Public opinion surveys (Eurobarometers) show that a high proportion of citizens fully support cooperation and joint action at European level[3]. Support from specialised circles is stronger still, as is the support of nationals of the new Member States, who have high expectations of the European Union regarding security[4].

- The justice and home affairs dimension is now firmly identified as one of the Union's priority policies

These matters are regularly on the European Council's agenda, and the volume of justice and home affairs business being done in the European institutions is evidence of their vital importance. The growing interest of our partners in third countries in working with the European Union here is yet a further illustration.

The Commission Communication on the **new financial perspective** also reflects the growing importance of these matters, as the establishment of the area of freedom, security and justice is the central element of the new heading "European Citizenship"[5].

- Within the general framework of Tampere, specific priorities were identified by the European Council in response to serious unforeseen events

The Union has proved it can act efficiently and rapidly when the situation demands.

This sensitivity to crises, such as the tragic events of 11 September 2001 and 11 March 2004, have sometimes given rise to criticism that progress is made in an unbalanced way overemphasising security aspects.. While this is the impression that may be given by certain media reports, **European integration in this area is based on a rigorous concept of the protection of fundamental rights, and the Commission has always been at pains to ensure balance between the freedom,**

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3 A recent Eurobarometer conducted in December 2003 confirms the results of previous Eurobarometers. The citizens of European are clearly in favour of a common policy on asylum and immigration. 56% recognise the economic needs of immigrants and 66% want them to enjoy equal rights. At the same time, 80% are in favour of strengthening checks on persons from third countries at external borders. Nine citizens out of 10 advocate judicial cooperation in civil matters, in particular family matters, and the equal rights of defence in all Member States. Concerning cross-border crime, citizens are aware that no Member State alone is in a position to tackle the problem. The results of the survey show that 71% consider that joint decisions and joint actions are the best way of preventing and of fighting crime throughout the European Union.

4 According to the results of the Eurobarometer, the citizens of the new Member States are more inclined fear corruption, drugs, organised crime and money laundering.

5 COM(2004)101, 10.2.2004.

security and justice aspects. In addition, the Union must guarantee a high level of security so that the freedoms can be exercised to the full.

- ***The constraints of the decision-making process and of the current institutional context preclude the effective, rapid and transparent attainment of certain political commitments***

Despite the resolute line taken by the Tampere conclusions and the recognition that the Union institutions have quickly adapted their approach to promote the area of freedom, security and justice in their respective areas of responsibility, it was not always possible to reach agreement at European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty.

The legal and institutional constraints of the current Treaties, where unanimity in the Council generally remains the rule, partly explain these difficulties. The Member States are sometimes reluctant to cooperate within this new European framework, and when their interests are at stake they do not hesitate to threaten to use the veto that they enjoy on account of the unanimity rule in order to lower the level of ambition of the Commission's proposals and reject Parliament's opinions.

Moreover, the right of initiative shared with the Member States sometimes had the effect that national concerns were given priority over Tampere priorities. In addition, the current restrictions on Parliament's role as co-legislator have been criticised in terms of the transparency of the decision-making system.

Once the instruments are adopted, the institutional limits regarding the real possibilities for verifying the implementation of policies by national authorities, given the limited role of the Court of Justice and the restricted powers of the Commission as regards police and judicial cooperation in criminal matters, are a real obstacle to ensuring that the instruments and decisions adopted are actually effective. It should be borne in mind that Framework Decisions, the legal instruments used to approximate the Member States' legislation on police and judicial cooperation in criminal matters, do not have direct effect and that the Commission cannot bring actions in the Court of Justice for failure to transpose them properly or indeed at all.

In addition, Union action cannot be effective if it is not backed up, in the Member States, by a declared political determination to ensure that European decisions have effect in reality. Quite apart from the aspect of political will, it is up to the experts in the Member States to make full use of the opportunities for cooperation that European integration offers them. **Ensuring that practitioners genuinely put the instruments that are adopted to work will be one of the main tasks for the years ahead.**

The successes that have been achieved are considerable. Numerous measures have been adopted to make the area of freedom, security and justice a reality which fits fully into the construction of a political Europe at the service of its citizens.

But the original ambition – in terms both of the substance of European decisions and of their implementation – was limited by institutional constraints but sometimes also by a lack of political consensus.

In five years, Member States have learned to work together within a new institutional framework, but mutual confidence has still to be strengthened, in particular in certain fields regarded as highly sensitive. In the long term, it is also the extent of the mutual confidence between those working in this area which will enable Union decisions to be fully effective.

In this first phase of establishing the area of freedom, security and justice, the step-by-step approach, consequently, was often the only possible way of pressing ahead with the Tampere programme.

For the Commission, the establishment of the area of freedom, security and justice has been a strategic priority to be attained with major contributions from several of the Union's policies.

1.2. A new context

The completion of the Tampere programme and the elaboration of new orientations have to be seen in the new context of the European Union.

It is clear that the institutional progress envisaged in the field of justice and home affairs at the Intergovernmental Conference, and in particular the transition to qualified majority voting in the enlarged Union, will make it possible to increase the rate of completion of work in progress.

But the possibilities offered by the Treaties of Amsterdam and Nice will have to be fully exploited.

Since 1 May 2004 the Commission, under Article 67(2) of the EC Treaty, has had the exclusive right of legislative initiative with regard to measures under Title IV of the EC Treaty (immigration, asylum, visas and borders), where the right of legislative initiative was previously shared with the Member States.

As regards decision-making procedures, since the Nice Treaty entered into force on 1 February 2003, measures on judicial cooperation in civil matters, apart from family law, have been adopted by the co-decision procedure. For measures concerning the free movement of persons, where co-decision was already the rule, the Council now votes by qualified majority instead of unanimously.[6]

Likewise since 1 May 2004, the qualified majority voting rule has applied to visa policy measures relating to the list of third countries subject to the visa requirement and the model visa,[7] and the co-decision procedure applies for other measures on the

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6 Article 18(2) on free movement of persons reads: "If action by the Community should prove necessary to attain this objective and this Treaty has not provided the necessary powers, the Council may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1". That means that the Article 18(2) is a subsidiary legal basis, i.e. applicable as a legal basis if the Treaty does not envisage powers of action for this purpose. Article 18(3) excludes the possibility of applying paragraph 2 to passports, identity cards, residence permits or any other such document or to provisions on social security or social protection. This paragraph does not exclude the use of other Treaty Articles as a legal basis to adopt provisions in this field.

7 Article 62(2)(b)(i) and (iii).

issuing of visas and the uniform format.[8] Measures pertaining to administrative cooperation between Member States (Article 66 EC) are also to be adopted by qualified majority.[9] As regards asylum, the Commission is pleased that the adoption of the Directive on the qualification of status as refugees the recent political agreement on the Directive on asylum procedures, the last key instruments to supplement the first phase of the asylum policy, offer the prospect of a change-over to co-decision.[10]

Article 67(2) of the EC Treaty provides that the Council, after 1 May 2004, is to take a decision with a view to providing for all or parts of the areas covered by Title IV to be governed by the co-decision procedure[11]. It would be legitimate to make use of this facility immediately after 1 May. This would make it possible to anticipate the effects of the Constitutional Treaty, by already transferring all the remaining areas covered by Title IV to the co-decision procedure.

Enlargement will also considerably increase the number of citizens wishing to enjoy the benefits of living and moving in the area of freedom, security and justice. In an international environment which can be a cause for concern, there will therefore be expectations and demands for **"more Europe",** this being seen, in particular in the new Member States, as the only way of assuring European citizens of the **level of security** to which they legitimately aspire. The **adoption of high common standards as regards security and justice is bound to help strengthen the general level of security** throughout the territory in an area as broad as the enlarged European Union. **Purely isolated efforts on their own will not make it possible to ensure the right level of security in such a closely interdependent area.** Only joint action, closely coordinated and organised within control procedures making it possible to monitor compliance with rules adopted jointly will enable everybody to face up to the threats from organised crime and terrorism.

Enlargement also raises specific challenges for certain policies, such as the **strengthening of external borders**, the establishment of the **second-generation Schengen Information System** and more generally the **preparation of the new Member States for full accession to the *Schengen 'acquis'*** with a view to removing all internal border checks. In this respect, the EU is in the process of providing the necessary means, such as the Schengen Facility, to strengthen the external borders of the new Member States in order to allow for their full participation in Schengen and the removal of internal borders, as swiftly as possible, on the basis of the evaluation foreseen by the 'acquis'.

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8 article 62(2)(b)(ii) and (iv).

9 Protocol No 35 annexed to the Treaty of Nice provides for the changeover to qualified majority voting for measures concerning Article 66 of the EC Treaty from 1 May 2004.

10 Article 67(5) of the Treaty as amended at Nice specifies that the co-decision procedure will apply to the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted Community legislation defining the common rules and basic principles governing these issues.

11 Declaration No 5 concerning Article 67 of the EC Treaty annexed to the Treaty at Nice provides assistance for the interpretation of this Article and contains a precise political commitment to change over to the co-decision procedure immediately after 1 May 2004 for the measures provided for by Article 62(3) and 63(3)(b) concerning the free movement of third-country nationals for a maximum three-month period and illegal immigration and residence, including repatriation.

Similarly, in judicial matters, the enlarged Union further enhances the need to adopt measures to **boost mutual confidence** in order to consolidate the mutual recognition principle.

In the light of expected developments as regards management of external borders, solutions will also have to be found guaranteeing that the current variable geometry in Schengen does not have a negative effect on the smooth operation of cooperation between the Member States implementing the 'acquis'.

This Commission Staff Working Document will make a detailed analysis of the extent to which the area of freedom, security and justice has actually been achieved and then offer a few initial thoughts on future priorities for developing and strengthening it.

2. ACHIEVEMENTS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

The Treaty, the Tampere Programme, successive European Councils, the Vienna Action Plan, the Millennium Strategy, the Mutual Recognition Programme and the Action Plan against Drugs all set priorities that now constitute the framework for **evaluating what has been done**[12]. Going beyond an assessment of projects already carried out to gain an overall picture, **reference will also be made to work in progress or scheduled**.

2.1. Policies on asylum and immigration

One of the key objectives of the Tampere Programme was to develop common policies on asylum and immigration, reflecting the need for coherent checks at external borders. These common policies proceed from four principles:

- the management of migratory flows;

- fair treatment for third-country nationals;

- a common European asylum system;

- partnership with countries of origin and transit.

2.1.1. Management of migratory flows

The Tampere European Council emphasised the **need to combat illegal immigration at source**, in particular by attacking those engaged in people trafficking, aiding illegal immigration and exploiting migrants. The Commission played a central role, and on the basis of its Communications, the Council adopted in particular **three plans of action** now being put into operation, concerning the **fight against illegal immigration**, the **management of external borders** and **returns policy**.

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[12] The Commission Staff Working Document SEC(2004)680 lists the main legislative proposals adopted in response to Tampere.

Legislative instruments were also adopted, such as the Directive defining a common procedure allowing legal residence in the Union for the victims of trafficking who cooperate with the national authorities. But there have been delays in transposition into national law, as in the case of the mutual recognition of decisions expelling third-country nationals.

In this context, while results to date are modest, the returns policy has acquired growing importance. The Commission has already announced that it intends to give a **new impetus to this policy**, in particular through financial support for preparatory projects. Generally, it was considered necessary **to strengthen administrative cooperation**. The **ARGO programme** offers possibilities, but it is under-utilised.

On the other hand, significant progress was made in policies **to control access to the territory**.

2.1.1.1. Integrated management of external borders

The integrated management of external borders is a recent concept. Following the events of 11 September 2001, which highlighted the importance of security at external borders, the Laeken European Council called for **cooperation mechanisms to be established** and stated that the **creation of common control services** should be considered.

This priority was further strengthened by a succession of tragic events, in particular at maritime borders. On the basis of the Commission Communication of May 2002, an action plan was approved at the Seville European Council. The Thessaloniki European Council consolidated this policy, **stressing operational cooperation** through an initial evaluation of the projects carried out by the Member States and asking for **the creation of a permanent Community structure**. The **principle of a Community budgetary contribution** for the management of external borders was approved.

Community action has accordingly focused on two major elements: operations and legislation.

The European Agency for the management of operational cooperation at the external borders of the Member States of the Union, which should be operational from 2005, will deal with coordinating cooperation operations between Member States, training, risk analysis, monitoring research and technologies applicable at borders, and assisting and supporting the Member States when organising joint return operations.

In addition, in view of the needs of the enlarged Europe and the need to handle new functions, the Commission is developing a new-generation Schengen Information System (SIS II), which in the long term will allow internal border checks to be abolished in the new Member States.

The European Council highlighted the need for Community action to ensure fair burden-sharing, including financial burden-sharing. The concept was taken over in

the Commission Communication of February 2004 on the new financial perspective[13], according to which this aspect, and in particular the external borders component, will be one of the major priorities for the establishment of the area of freedom, security and justice. And the solidarity principle is also written into the draft Constitutional Treaty.

On the legislative side, the Commission has started a complex exercise of **recasting the 'acquis' as regards external frontiers**, which will constitute a genuine code on the matter.

2.1.1.2. Visa policy

In the context of visa policies, the first proposals for making travel and residence documents secure were submitted just after 11 September 2001. However, the most important element here is the **introduction of biometric components** called for by the Thessaloniki European Council and proposed by the Commission with regard to visas, residence permits and the passports of Union citizens.

Moreover, the Union is to develop an **Visa Information System** (VIS). Introducing this system meets security concerns and the desire for an effective instrument to manage the common visa policy and in particular to help combat illegal immigration.

For the immediate future, action must be taken to implement the 'acquis' as regards visas, in particular by **strengthening consular cooperation**. The idea of a **common visa office** might emerge.

2.1.2. Fair treatment for third-country nationals

In its Communication of November 2000, the Commission already stressed that **legal immigration constitutes a resource**, in particular for a continent with a rapidly ageing population[14].

The Council laid the **foundations for a common policy** by adopting the **Directives on family reunification and the status of long-term residents** and reaching an **agreement on the admission of third-country nationals for the purpose of study**. This is a first important step towards a general system making it possible to ensure fair treatment for third-country nationals. These instruments have been supplemented by the proposal to control admission for the purpose of research[15].

But progress has fallen short of initial ambitions and the assessment must be qualified. Following on from its 2003 Communication on immigration, integration and employment, the Commission considered that efforts must be continued. The fact that immigration is now seen in the broader context of the Union's demographic, economic and social evaluation is encouraging. A consultation document on the admission of third-country nationals for employment purposes should soon be launched.

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13 COM(2004)101, 10.2.2004.

14 It is enough to note that in 2050 the average age in Europe will be 52.7 years.

15 COM(2004)178, 16.3.2004.

Moreover, the study on the links between legal and illegal immigration will allow avenues for future action to be explored.

The Commission is also to submit its first annual report on immigration and integration. The Thessaloniki European Council recognised that the question of the **harmonious integration of legal immigrants in the societies** of the EU should be studied in more depth. The Commission launched pilot projects (INTI) in 2003 and a national network of contact points is developing good practices.

Action here must be accompanied by a **tougher fight against racism and xenophobia**. Two Directives were adopted in 2000, whilst work on the draft Framework Decision to combat racism and xenophobia is stalled. Under its strategy for combating all forms of racism and racial discrimination, the Commission focused on the situation of Roma and other ethnic minorities in the enlarged Europe and on combating islamophobia and anti-semitism. The Vienna Monitoring Centre for Racism and Xenophobia gathers and analyses cases of racism and xenophobia in Europe.

2.1.3. Asylum policy

The Tampere European Council identified two phases for the development of a common asylum policy.

The first phase consisted of **adopting common minimum standards**. The first phase of the common asylum policy has been achieved: **the Union has adopted four instruments called for at Tampere**[16] and the asylum policy is now fully brought within the scope of Community law. The UNHCR has been a valuable partner here, and this good cooperation should continue.

In particular, on 30 April 2004 the Council formally adopted the Directive on a common definition of the status of refugee or person requiring subsidiary protection, setting out the rights pertaining to each of these statuses. On the same day it reached political agreement on the directive on asylum procedures, which are to be subject to the same minimum standards throughout the Union. These directives, and the other instruments on asylum already adopted by the Council, ensure a minimum level of protection and procedural guarantees in all the Member States for all who really need international protection while averting the risk of unjustified asylum requests that would jeopardise the credibility of the system.

Having adopted these measures, the Union can now move on to **the second phase of the common asylum policy**, which is to lead in the long run to a **common asylum procedure and a uniform status**.

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16 They lay down minimum standards for the reception of asylum-seekers; introduce a clearer system for determining the state responsible for examining an asylum application and implement EURODAC, a system to compare fingerprints of asylum seekers, operational since January 2003; the Directive on the common definition of refugee status and a common approach to subsidiary protection; and the Directive on asylum procedures.

Financially, the **European Refugee Fund** gives concrete expression to the financial solidarity of the Member States in implementing the common asylum policy[17]. In addition, as requested at Tampere, an instrument has been established to **cope with a massive influx of displaced persons** and set up **a system of temporary protection and solidarity plans**.

The Commission, in line with the agenda for protection promoted by the UNHCR, has begun considering the external dimension of this policy. The point here is to **modernise the international protection system** and **improve the management of asylum systems**, in order to ensure the more orderly entry of persons needing international protection, and to improve protection capacity in the regions of origin.

To conclude, in the absence of a clear economic immigration policy, many immigrants try to use the asylum procedure. That generates confusion between economic migration and political persecution and prevent real progress in the asylum legislation[18], even though asylum is a right recognised by international Conventions.

2.1.4. Partnership with countries of origin

The Tampere European Council called for the development of an overall approach to migration incorporating political aspects, human rights questions and aspects relating to the development of countries and regions of origin and transit.

The Commission gave a first major impetus in its Communication on migration and development in December 2002, where it undertook to ensure that immigration questions were routinely integrated into the Community's political dialogue with third countries and to boost cooperation on this.

Priorities were also defined by the Seville European Council. The Council's conclusions of May 2003 on the basis of the Commission Communication of December 2002 established an important agenda for the treatment of the delicate question of the relationship between migration and development. In addition the Council in December 2003, on the basis of the Thessaloniki mandate, asked for a **mechanism for the evaluation of relations with third countries in the fight against illegal immigration** to be set up as a steering instrument for this aspect of immigration policy.

Within this framework, close attention must be paid to the **common readmission policy**[19], the importance of which had already been stated at Tampere. Some initial successes have been chalked up, but, at the request of the European Council, the Commission should gradually offer the Council ideas on ways of pursuing the goals of such a policy more effectively, in particular in terms of incentive measures and of geographical consistency.

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17 About €146 million were used in the last four years to support these efforts to receive asylum seekers, their voluntary return and the integration of refugees. The Commission has proposed extending this programme to the period 2005-2010 and increasing the resources.

18 An average of 80% of asylum requests are rejected in Europe.

19 The Commission has been authorised to negotiate eleven readmission agreements with Morocco, Sri Lanka, Russia, Pakistan, Hong Kong, Macao, Ukraine, Algeria, Albania, China and Turkey. Negotiations have been concluded with Hong Kong, Macao, Sri Lanka and Albania. Progress with the other countries has been slow and negotiations are still in hand.

As a first tangible sign of solidarity, attention should be dawn to the recent adoption of an instrument creating the **AENEAS programme** (2004-08), which sets aside €250 million for assistance to the third countries in the field of immigration and asylum.

The bases for a **common immigration and asylum policy** are now in place, thus giving concrete expression to the overall and balanced approach sought at Tampere. Even if ambitions may seem rather modest, the common minimum standards needed to constitute the **first phase of a common asylum system** have been adopted, thus opening the way for a second phase, which should be facilitated by the adoption of appropriate legal bases in the Constitutional Treaty.

Significant elements of the common framework needed for a positive approach to legal immigration were approved, and the Thessaloniki European Council clearly signalled the importance that that should be attached to the question of **integration**. On the other hand, the Union has so far failed to produce a common concept of admission for economic purposes. By unequivocally confirming the Member States' responsibility for determining the numbers of third-country nationals admitted to their territory for the purposes of working in an employed or self-employed capacity, the future Treaty should help to generate a context facilitating essential progress.

Through the adoption of three ambitious action plans, the European Union has put in place a coherent strategy for the control of illegal immigration, thanks in particular to improvement of checks at external borders. It now remains to give concrete expression to these guidelines by adopting the necessary legislative instruments and, especially, by strengthening administrative cooperation. The rapid development of the **agency for external border controls** will be essential here. In addition, very close attention will have to be paid to the adoption of genuine cooperation on returns.

Lastly, a joint approach to the **management of migratory flows** with third countries has been clearly identified as a priority consideration in the European Union's external relations. Here again, first steps have been taken, but this firm orientation will now have to be specially confirmed by a substantial offer of financial and technical cooperation.

2.2. European area of justice in civil and criminal matters

2.2.1. The development of the area of civil justice

Progress has been achieved in judicial cooperation in civil matters since the entry into force of the Treaty of Amsterdam, which brought it within the scope of Community law, in particular with regard to the implementation of the mutual recognition principle, the cornerstone of the construction of the European law-enforcement area. The Tampere recommendations have taken practical shape in no less than eight Regulations, two Directives and a Council Decision, all adopted since the Treaty of Amsterdam came into force[20]. Two legislative proposals are currently

[20] A Commission Staff Working Document lists the main legislative proposals adopted in response to Tampere.

under discussion in the Community institutions, and the Commission will present two more before the end of 2004[21].

European integration makes it possible to provide practical solutions to the problems encountered by citizens and companies in exercising their rights in a Union without internal borders and in an increasingly globalised world.

2.2.1.1. Better access to justice in Europe

There was a series of projects to improve access to justice for individuals and companies, as recommended at Tampere. One of the key instruments is the **Directive on legal aid**, even though the text adopted is more modest in its ambitions than wished, in particular because the Council restricted its scope to cross-border cases. The **Directive on compensation for victims of crime**, which meets citizens' expectations as regards compensation in all Member States was also adopted.

As a result of the in-depth work done on **alternative dispute resolution**, it should be possible in 2004 to develop a code of conduct on mediation with interested parties and to present a Commission proposal for a Directive to facilitate and promote mediation.

As planned at Tampere, a considerable number of **harmonised forms** was developed under legislative instruments adopted or in the process of adoption (for example, for transmitting documents, obtaining evidence and transmitting legal aid requests between Member States). These forms are accessible to users and professionals on the Internet (European Judicial Atlas in Civil Matters).

With the recent Commission proposal aiming to create a **European payment order** and its future proposal on the **treatment of small claims in the courts** (to be submitted this year), legislative work for the adoption of simplified judicial procedures is now beginning following detailed preparatory work.

With regard to **maintenance obligations**, a green paper was recently published by the Commission to launch work aiming to improve recovery of claims.

Lastly, the Commission set up the "easily accessible information system" called for at Tampere, in close cooperation with the Member States, under the **European Judicial Network in Civil Matters**.

2.2.1.2. Mutual recognition of judgments in civil matters

In 2000, in the civil and commercial field in general, the Community adopted a **Regulation (the "Brussels I" Regulation) laying down common rules for the international jurisdiction of courts** and establishing a much simplified system for recognition and enforcement of judgments. The Community has also adopted a specific instrument as regards **insolvency**. These instruments make a valuable

[21] Discussions have begun on the proposal for a Regulation on the law applicable to non-contractual obligations (Rome II) and the proposal for a Regulation establishing a European payment order procedure. In 2004 the Commission is planning to present a proposal for a directive on alternative dispute resolution methods and a proposal for a directive on the treatment by the courts of small claims.

contribution to clarifying business life. Similarly, a regulation on the **recognition of divorce orders** (including, under certain very limited conditions, judgments concerning parental responsibility), known as the "**Brussels II**" Regulation, was adopted.

But the long-term aim of applying the mutual recognition principle in judicial cooperation in civil matters is to remove all intermediate measures for the enforcement of judgments given in other Member States (e.g. the exequatur). This principle is expected to play the same key role as in the context of the internal market: the point in judicial matters is to secure "free movement" of judgments given in any Member State in all the other Member States, enforcement being on the same basis as judgments given by the national courts. This objective is to be achieved gradually, as provided by the Mutual Recognition Programme.

Two recent Regulations already achieve this objective in specific fields: undisputed claims and certain decisions concerning parental responsibility. The future proposal concerning small claims will aim to do likewise.

Family law is one of the areas in which particularly significant progress was made. In 2003, the Community adopted a Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, including those relating to the children of unmarried couples and those given independently of divorce or separation proceedings.

The new Regulation establishes a **genuine European law-enforcement area as regards parental responsibility**, hitherto non-existent. The abolition of the exequatur for judgments on rights of access will facilitate the cross-border exercise of these rights and, consequently, the maintenance of family ties. In addition, this new legislative instrument provides a fair and effective solution to parental removals and will have a major impact on the prevention of these often dramatic events.

In cases of parental removal of children from one Member State to another, the new Regulation establishes the principle of the immediate return of the child. This principle can be disapplied by the courts of the country to which the child was moved only in truly exceptional situations, and the dispute will then have to be submitted within a very short time to the courts of the country where the child had his usual residence before removal. They retain jurisdiction to decide on the substance of the question and will therefore have the last word on the return of the child. The exequatur having been abolished for these disputes, the decisions taken by these courts will be automatically enforced in the state where the child is.

Lastly, both Tampere and the Mutual Recognition Programme recognised the importance of adopting **flanking measures to facilitate mutual recognition**. One of these measures is the adoption of common rules for determining the applicable law. Here progress has already been made on contractual obligations (a Green Paper has already been issued with a view to converting the Rome Convention of 1980 into a Regulation) and non-contractual obligations (the Commission has presented a legislative proposal).

2.2.1.3. More integrated judicial cooperation

Two new Community Regulations have provided for **direct contacts** between courts and judicial authorities in the Member States with regard to the service of judicial and extra-judicial documents and to obtaining evidence. These instruments have also introduced innovations such as the direct service of documents by post from one Member State to another and obtaining evidence direct by a court in a Member State other than its own.

The establishment of the **European Judicial Network in Civil Matters** by Council Decision also made it possible to provide local judicial authorities with contact points to give them practical and effective assistance when they are faced with proceedings involving cross-border factors.

2.2.1.4. Greater convergence in civil law

With regard to the substantive law, the Commission endeavoured to take action as requested by the Community institutions to study the needs for alignment of substantive civil law in general. For instance, with the **European Law of Contracts project**, it launched a long-term consultation process to study the best ways and means of dealing at European level with problems arising from differences between the various contract laws and of coming up with solutions that would enhance the consistency of existing instruments of Community law on the matter.

2.2.1.5. The external dimension of the European judicial area in civil and commercial matters

The legal consequence of the development of the 'acquis' in the field of cooperation in civil matters was that **the Community acquired external powers**. Since the Treaty of Amsterdam, the Community has ceased to be a mere observer of the international process in the field of cooperation in civil matters and become an active participant in negotiations on these matters in a variety of international bodies, in particular the Council of Europe and the Hague Conference, and in other organisations such as Unidroit, IMO, the OECD, etc. This is all the more important as cooperation in civil matters is an area expending rapidly both internationally and in the Union.

Various international negotiations are currently ongoing. Examples are the negotiations for a new Lugano Convention, negotiations in The Hague for a Convention on choice-of-forum clauses and for a Convention on maintenance obligations and the negotiations for Community accession to the Hague Conference. In addition, several proposals for the signing or ratification of international agreements are before the Council.

Progress with judicial cooperation in civil matters is remarkable, which is essential in a field which affects the daily life of Europe's citizens and firms so closely.

The implementation of the **mutual recognition** principle took practical form in the adoption of major instruments concerning **business life** (bankruptcy, undisputed claims, simplification and determination of the international jurisdiction of the courts) and **family matters** (divorce, parental responsibility). The Union also endeavoured to facilitate access to justice for individuals and companies, to

encourage cooperation between courts and to develop a policy of information on civil law for both the public and the professionals.

2.2.2. The development of the judicial area in criminal matters

In the field of judicial cooperation in criminal matters, much of the Tampere programme has been carried out. Since the Tampere European Council, no less than 23 Framework Decisions and Decisions have been adopted or are in the process of being adopted, and one Convention, one Protocol and three international agreements have been signed with third countries[22].

This policy developed along four main lines: the approximation of definitions of certain offences and penalties, and when necessary of certain elements of procedure, implementation of the mutual recognition principle, strengthening cooperation mechanisms, and the implementation of external powers.

2.2.2.1. The approximation of legislation in criminal matters

The objective of approximating legislation is to ensure that criminals cannot take advantage of differences between national legislations and to give citizens a common sense of justice.

Legislation has been approximated in all the main fields identified at Tampere in which international crime could thrive as a result of the removal of internal border checks in the Union on the basis of Title VI of the Union Treaty. This involves instruments establishing common definitions, offences and penalties as regards trafficking in human beings, assisting illegal immigration, the sexual abuse of children, terrorism, financial crime, computer crime and drug trafficking. Likewise, the Commission made proposals regarding criminal phenomena which can spread when there are no borders to constitute an obstacle, such as environmental offences, on the basis of the relevant provisions of the Union Treaty or the EC Treaty (first pillar).

Even so, **further work remains to be done**. The effect of the unanimity requirement has been either that proposals have been in total deadlock (e.g. the instrument to combat racism and xenophobia) or that harmonisation has been confined to the lowest common denominator. For definitions of offences, most of the instruments adopted provide for exceptions or derogations as the price to be paid for their adoption. Concerning approximation of penalties, the scope of instruments is often still limited, in particular by the "ranges of levels" mechanisms used. The first evaluations carried out by the Commission on the implementation of Framework Decisions reveal great differences between the level of penalties in the Member States that the approximation process has only moderately reduced. Lastly, the Union will have to concentrate both on the question of penalties and on the scope of alternative penalties.

[22] A Commission Staff Working Document lists the main legislative proposals adopted in response to Tampere.

Likewise, the Union is about to adopt a harmonised confiscation scheme so that in some cases it will be possible to order confiscation of assets beyond the direct fruits of the offence.

Some progress has been made on criminal procedure, in that victims of crime now enjoy equivalent minimum rights wherever proceedings take place.

An important aspect that the Commission is promoting concerns the **approximation of criminal procedure, in particular as regards minimum procedural guarantees** for suspects and accused persons[23]. These measures are necessary to establish true mutual trust.

Lastly, the **Union must tackle in a coherent way the question of the criminal law aspects of Community policies**. Criminal policy has to become a fully-fledged Union policy. Recent tragic events such as the wreck of the Erika and the Prestige have shown that there must be a criminal law element in Community action wherever necessary. The approximation of criminal legislation is also an important factor in facilitating the mutual recognition of judgments.

2.2.2.2. The mutual recognition of judgments in criminal matters

The implementation of the mutual recognition programme is one of the most promising areas as regards criminal justice at the European level. As in civil matters, the effect of the mutual recognition principle is that judgments given in a Member State can move freely in the other Member States and be enforced in the same way as national judgments. **About half the measures envisaged in the mutual recognition programme have been or are about to be adopted**. The adoption of the **Framework Decision on the European arrest warrant** is one of the most significant events here. Admittedly there were delays in transposition. But the **first cases handled show** that the mechanism **works well** and that there is real progress for justice in the Union. Abolishing the power of the political authorities to take extradition decisions, the **European arrest warrant strengthens the authority and independence of the judicial authorities**, which are the traditional guarantors of freedom.

The Member States' implementation of other instruments, relating to **the freezing of assets and evidence**, the **recovery of fines** and the **enforcement of confiscation decisions in the Union** should boost the effectiveness of criminal justice. Lastly, the plan to establish a **European evidence warrant** is a first step towards a future overall system facilitating the mutual recognition of evidence in the Union.

2.2.2.3. More integrated judicial cooperation

The **European Judicial Network** established in 1998 was the first tool giving legal practitioners access to contact points for judicial cooperation in criminal matters in the Union.

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[23] In particular the Commission recently adopted a proposal for a Council Framework Decision on certain procedural rights in criminal proceedings in the European Union: COM(2004)328, 28.4.2004.

The establishment of **Eurojust** gave the Union a body to coordinate criminal investigations. In particular, Eurojust aims to develop coordination and cooperation between investigators and judicial authorities dealing with organised crime and terrorism.

Given the issues at stake in the fight against fraud against the Community's financial interests, the Commission also proposed the **establishment of a European Public Prosecutor's Office** specialising in these matters[24].

The adoption of the **Framework Decision on joint investigation teams** is another expression of the will to develop integrated judicial cooperation. It allowed some of the provisions of the **European Convention on mutual judicial assistance of 29 May 2000**, which, like the **Protocol of 16 October 2001**, has still not been ratified by a majority of Member States, to come into force ahead of schedule.

The improvement of judicial cooperation supposes reciprocal knowledge. At Parliament's request, the Commission is to set up a **programme of exchanges** for judicial authorities which, both in the civil and criminal field, will make it possible to strengthen the emergence of a common judicial culture.

2.2.2.4. The external dimension of the European judicial area in criminal matters

Following the attacks of 11 September 2001, the Union signed **two judicial cooperation agreements, as regards extradition and mutual assistance, with the United States**.

Similarly, an **agreement was concluded with Iceland and Norway as regards mutual assistance**, and negotiations are in hand to extend certain mechanisms of the European arrest warrant to these two Schengen member states.

The Union, which has negotiated for a population of more than 450 million since 1 May 2004, is strongly placed to put forward its values, in particular as regards protection of fundamental rights. It should be noted that, in the agreement with the United States, the Union obtained better guarantees than the provisions of most bilateral instruments, in particular with regard to the death penalty.

The European Union's achievements as regards judicial cooperation in criminal matters are significant. The entry into force of the **European arrest warrant** and the **establishment of Eurojust** particularly highlight the Union's determination to work for more effective and more integrated judicial cooperation.

Important work was completed as regards **approximation of legislation**. Results are nevertheless sometimes disappointing, with regard both to the ambition of the texts adopted and to their **implementation**. The evaluation of implementation will be a vital task in the future. **Mutual recognition** is the field where the most significant progress was made. It will remain essential for the development of the European law-enforcement area, but its scope will depend very much on the degree of **mutual trust** between the Member States in the enlarged Europe.

[24] The draft constitution adopts this idea in Article III-175.

2.3. The fight against crime in the Union

In addition to the approximation of legislation to fight organised and transnational crime and terrorism, other instruments were adopted to fight crime and develop police and customs cooperation in recent years, in particular on the basis of the Tampere priorities, the Vienna Action Plan and the Millennium Strategy.

Within this framework, it is regrettable that the Council too often tends to adopt non-mandatory instruments, and it would be better if attention focused more sharply on established priorities. The transposition of the measures adopted should be accelerated, and a general system of evaluation both of the national implementation of measures and of their effectiveness should be developed.

The fight against cross-border crime clearly does not only demand **balanced and coherent legislative action** but also and above all **effective operational resources**.

2.3.1. The prevention of crime in the Union

As requested by the Tampere European Council, the Commission, with its first Communication of November 2000[25], launched the debate on priority fields (juvenile delinquency, urban crime and drug-related crime) and a European strategy including the adoption of the **European crime prevention network** and the Hippocrates financial programme (subsequently replaced by the broader AGIS programme).

The Commission's conclusion from the good results obtained, in particular in terms of the exchange of good practices, mutual information, improvement of comparability and exchanges of statistics, is that **prevention** should constitute a field of specific Union action, as specified in its recent Communication of 16 April 2004[26]. Union cooperation can do much to facilitate and support action, though it does not replace the national policies of the Member States, which have the primary responsibility for crime prevention policies.

In the evaluation of the Network scheduled for 2004, thought should be given to the improvement of its structure and operation[27].

In addition, as regards prevention of organised crime, measures such as the creation of a **European Forum** were taken.

2.3.2. Intensify cooperation in the fight against crime

The establishment of **joint investigation teams** as called for at in Tampere should make it possible to improve the operational effectiveness of cross-border investigations[28].

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25 Communication from the Commission to the Council and the European Parliament - The prevention of crime in the European Union - Reflection on common guidelines and proposals for Community financial support : COM(2000)786.

26 Communication from the Commission to the Council and the European Parliament - Crime prevention in the European Union : COM(2004)165 final, 12.3.2004.

27 The five fields which need to be studied are: better definition of priority areas; inventory of good practices; common methodology; monitoring and evaluation of national operations; better comparability of statistics.

Similarly **Europol**, fully operational since 1999, has supported many operations, through its analysis, information exchange and coordination role and helps to facilitate operational cooperation between national authorities. It has been involved in the fight against serious forms of organised crime such as drug trafficking, the exploitation of illegal immigration and trafficking in human beings, child pornography on the Internet and Euro counterfeiting.

The action of Europol should become more effective thanks to the adoption of instruments extending its scope for action[29]. In a frontier-free area, Europol's role is crucial for assuring the citizens of Europe of a high level of security. It would be desirable for the Member States carry out to ratify the protocols amending the **Europol Convention** as quickly as possible.

Given the slow pace of ratifications and the still inadequate flow of information to Europol, the **development of Europol's operational capacities** will depend on **improvement in the trust** shown in it by the Member States.

One point to be stressed here is that the Member States' police forces tend to be unaware of the activities and powers of Europol. Further efforts will have to be made to make it possible for Europol to slot better into national strategies for fighting crime and to take the necessary measures to boost information exchanges. Bringing the **Europol Information System (EIS)** on line is also an essential condition for improving its effectiveness.

As agreed at Tampere, the Council in 2000 established **CEPOL**, the European Police College as a network of police training schools in the Member States aiming to contribute to the training of the senior police officers. In December 2003, the European Council established CEPOL's head office in the United Kingdom. A series of initiatives were then launched to improve operation[30].

Similarly, the **Police Chiefs' Task Force**, an operational liaison structure in which police chiefs can exchange experience, better practices and information, was set up.

The improvement of the **capacities of action of police forces (pursuit, surveillance and arrest powers) on the territory of another Member State** is another important field of action on which the Union should still concentrate.

Precise objectives for **customs cooperation** were set by the Vienna Action Plan. They concerned ratification of the Convention relating to mutual assistance and cooperation between customs administrations (Naples II) and the Convention on the use of information technology for customs purposes (CIS). These Conventions can be implemented provisionally by the Member States that have ratified them. Progress

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28 See "More integrated judicial cooperation" above.

29 By protocols amending the Europol Convention, the Council gave Europol specific powers to act in the fight against money laundering and then for all areas of large-scale transnational crime. In addition, Europol was authorised to take part in the joint investigation teams or to commission police investigations in a Member State. Lastly, a fourth protocol in November 2003 covers several fields in order to remove obstacles the development of its operational capacities identified in the last four years.

30 Initiatives have been put forward to locate CEPOL at Bramshill and give it legal personality. In additional, on the basis of a Commission proposal, the discussion on its structure and future tasks and the financial aspects is in progress in the Council.

has been made, but Member States have not yet completed their ratification procedures[31]. The establishment of the customs investigation database (FIDE) should supplement the system.

The development of police and customs cooperation centres (CCPD) at internal borders is noteworthy. These structures, which establish permanent information exchange and cooperation mechanisms between authorities of different Member States, should be encouraged and extended.

In addition, the Community took part in the negotiation of several international agreements on the fight against crime. The legislative procedures to sign them and ratify them on behalf of the Community were started[32].

The bases have been laid for the adoption of a genuine policy of prevention as regards both organised crime and ordinary crime, in particular juvenile delinquency.

Cooperation in the field of security progressed. The strengthening of Europol, the establishment of CEPOL and the prospect for the introduction of joint investigation teams represent major progress.

But it is regrettable that all the tools available for more effective cooperation on a European scale have not been used fully. There is no escaping the fact that the effective implementation of existing instruments is very slow and there is a great need for better coordination of action by the national authorities.

2.3.3. The fight against specific forms of crime

Union action focused on serious forms of cross-border crime, such as **terrorism, trafficking in human beings and financial crime**.

Prevention and the fight against trafficking in human beings

Concerning **the fight against trafficking in human beings**, the Union worked to approximate national legislation and developed an overall strategy including prevention and protection and assistance for the victims, and cooperation between police forces and the judicial authorities in accordance with the **Brussels Declaration**.

Prevention and the fight against terrorism

In the Vienna Action Plan, the fight against terrorism was envisaged only in the general framework of the fight against organised crime. At the urging of the

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31 At the time of writing, 13 Member States had ratified the CIS Convention and 10 the Naples II Convention.

32 The United Nations Convention against transnational organised crime and its three complementary protocols against trafficking in persons, in particular women and children, smuggling of migrants by land, air and sea, and against manufacture and the illicit trafficking in firearms have been signed by the Community. The Commission made a proposal for the conclusion of the Convention and of the first two protocols, in the name of the Community, 22 August 2003. The United Nations Convention against corruption has been open for signature since December 2003 and the Commission has made a proposal for a Council Decision to sign it.

European Council of 20 and 21 September 2001 following the New York and Washington attacks, **a multidisciplinary and specific action plan to fight terrorism was adopted**. This involves measures requiring a multidisciplinary approach and covering several domains: judicial cooperation, cooperation between police forces and intelligence services, the financing of terrorism, measures to secure borders, more thorough cooperation with the United States.

With regard specifically to the police and judicial cooperation aspects, an **Antiterrorism Task Force** is now in place for risk-analysis **in Europol**, and the instruments for the implementation of multinational information research teams at the pre-trial phase have been set up. The **Framework Decision on the fight against terrorism adopted** in June 2002 aims to approximate the definitions of terrorist offences and the penalties for them. The implementation of tools such as the European arrest warrant and joint investigation teams will also contribute to the fight against terrorism.

Following the Madrid attacks of 11 March 2004, the European Council of 25 and 26 March made a Solemn Declaration of solidarity and reaffirmed the need for action on several fronts:

- strengthening of existing cooperation: implementation of the existing legislation and the adoption of new measures where required; strengthening of operational cooperation by making full use of the facilities offered by Europol and Eurojust; optimising the effectiveness of information systems;

- tougher border checks and more secure documents;

- closer cooperation as regards information in order to improve risk analysis;

- prevention and tougher fight against the financing of terrorism;

- strengthening of external action, focusing the dialogue with third countries more closely on terrorism and giving technical assistance in cooperation with the United Nations Antiterrorist Committee and other international organisations;

- other measures, in particular for the victims of terrorism.

Action to fight against financial crime

The Tampere European Council devoted a whole chapter of its conclusions to specific projects against **money-laundering**. Money-laundering is at the heart of organised crime; criminals have to conceal the illicit origin of their assets and also need to find financial resources to operate. The extraordinary European Council of September 2001 stressed the importance of fighting the financing of terrorism.

Since 1999, the Union has taken a significant number of measures to fight money laundering. The Directive against money laundering, amended in December 2001, enlarged the scope of the Directive to notaries and to other self-employed legal practitioners. In addition, initiatives were taken to strengthen cooperation between competent national authorities and the action of Europol. An instrument to implement the Decisions freezing assets and evidence was adopted, and a

Framework Decision on confiscation orders is in the process of being adopted. Agreement was also reached on a Framework Decision concerning the confiscation of the instrumentalities and proceeds of crime[33]. In 2001, a Protocol to the mutual judicial assistance Convention of 29 May 2000, relating specifically to financial crime, was adopted. But none of the Member States has yet ratified it[34]. A Council Decision was adopted to ensure and facilitate cooperation between financial information units, essential to detect financial crime.

The Commission will continue its overall approach in the fight against money-laundering, which will include proposals for both enforcement and prevention instruments, particularly with regard to the customer's identification and large-scale cash payments.

In addition, measures will be taken to fight **tax fraud**. The Union has repeatedly stated that it is determined to reduce **corruption** at all levels: in the Union institutions, the Member States and outside the Union. Several legislative instruments have been adopted[35], but the monitoring of national anti-corruption policies and the development of common integrity standards, applicable to public services throughout the Union, are projects to be continued.

2.4. Combating and preventing drugs in the Union

The Tampere European Council stressed the importance of an overall approach in the fight against drugs and identified drug trafficking as one of the priority fields for the approximation of criminal law.

The Union adopted an integrated approach to the definition of a detailed multidisciplinary programme of measures under the **Drugs Strategy and Action Plan (2000-2004)** ratified by the European Council at Helsinki in December 1999 and at Santa Maria da Feira in June 2000.

By the end of this year the Commission will produce an exhaustive review of progress by the Union in attaining the objectives of the Action Plan. This final evaluation will constitute the basis both for the future Strategy and for the future Action Plan which should run from 2005.

In the mid-term review of the Action Plan, the Commission highlighted the implementation of the 'acquis communautaire' in the new countries and synthetic drugs. Projects to reduce demand and supply of drugs and projects related to synthetic drugs were approved by the Council at the beginning of 2003.

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33 See 3.2.2.1 supra on the approximation of criminal legislation.

34 This protocol aims to ensure that banking secrecy is not used to prohibit the exchange of financial information in the context of specific financial investigations.

35 In particular the Convention on the protection of the financial interests of the European Communities (PIF Convention) and the first protocol to it, which entered into force on 17 October 2002; the second protocol to the financial interests Convention and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union are still in the process of ratification. The Commission has proposed a Parliament and Council Directive on the criminal-law protection of the Community's financial interests (COM(2001) 272, 23.5.2001, amended by COM(2002)577, 16.12.2002). In addition, the Framework Decision on combating corruption in the private sector was adopted in July 2003 (OJ L 192, 31.7.2003).

Regarding the approximation of legislation, after two and a half years' negotiations, agreement was reached in the Council on the **Framework Decision laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking**.

While the difficulty of reaching agreement on this instrument, which is a decisive step in establishing a coordinated European policy, can be explained by the various national traditions and sensitivities, it is also clear that there is a lack coordination and vision in the Union. In particular, it was difficult to agree on a common approach to objectives, as certain Member States wished to determine the level of penalties whatever the scale of the trafficking whereas others preferred to concentrate on large-scale trafficking.

For the evaluation of this Framework Decision, it will be necessary to analyse not only the progress made with its transposition but also its operation and the effects on judicial cooperation.

Synthetic drugs remain a priority, and several new substances have been brought under the monitoring scheme thanks to an early warning and surveillance scheme established in 1997 which is now being reviewed to clarify its procedures, make them more effective and faster and extend this possibility to new drugs.

The intensification of general economic interdependence has accentuated the need to pool efforts between the Union's internal and external policies, with close attention to the main export channels for drugs to the Union European and including effects on public health such as contagious diseases. The Union adopted a number of project plans with certain countries and regions of the world, among them Latin America and the Caribbean, Central Asia, Balkans. These plans are an important stage, but all too often are not accompanied by a clear will or by the practical means of attaining the announced objectives. The Commission's departments are currently undertaking anti-drugs projects relating to the main drug routes worth a total of more than €200 million, but closer coordination with the Member States is urgent if European Union action is to be more visible and effective.

The political agreement on the Framework Decision on the fight against drug trafficking is a major step forwards in reaching Europe's objectives in this field. The continuation of the fight against synthetic drugs is also an essential objective.

By the end of this year, the Commission will produce an exhaustive review of progress by the Union in attaining the objectives of the Action Plan. This final evaluation will constitute the basis both for the future Strategy and for the future Action Plan which should run from 2005.

2.5. Stronger external action

The Tampere European Council stressed that all the powers available to the Union, in particular as regards external relations, should be used in a coherent and integrated way to establish the area of freedom, security and justice. To clearly define priorities, political objectives and measures to be taken for the external action of the Union in the field of justice and home affairs, the Council and the Commission presented a report to the Feira European Council in 2000.

Five guidelines were set out in the report: the existence of internal policies as the major parameter justifying external action; the need for value added in relation to projects carried out by the Member States; the contribution to the general political objectives of the foreign policies of the Union; the possibility of achieving the goals during a period of reasonable time; the possibility of long-term action.

No really operational conclusion emerged at Feira. But an initial multiannual programme of the Presidencies was approved for 2001-2002. It referred to the five guidelines and identified a targeted number of priority areas. Since then, multiannual programmes have turned out to be a useful instrument for planning and orienting priority projects. The order of the priorities was adjusted over the years, of course.

Moreover, in recent years, the Commission has paid greater and greater attention to the justice and home affairs dimension in the Community's external relations, in particular with its new neighbours in the enlarged Europe. In the context of the new **neighbourhood policy** the Commission is establishing a series of action plans for neighbouring third countries in the enlarged Europe involving a substantial justice and home affairs aspect.

A few examples of external relations and partnerships with third countries in justice and home affairs are set out in the box below.

Partnerships with third countries and participation in international forums

In the enlargement context, developments in the JHA field will play a crucial role in enabling **Bulgaria** and **Romania** to achieve the goal of the accession in 2007. For **Turkey**, cooperation will have to be strengthened, in particular with regard to the fight against drug trafficking and illegal immigration.

In addition, the Union has established a neighbourhood policy to enhance cooperation with countries neighbouring its external borders in matters including justice and home affairs following enlargement.

In the **Western Balkans**, given their prospects for membership of European organisations, cooperative efforts take place mainly in the context of the stabilisation and association process. The first objective is to ensure that progress continues to contribute to stability in the region. Cooperation in the fight against organised crime is especially important here.

The conclusion of partnership and cooperation agreements also played a significant role. EU cooperation with Russia and Ukraine was given practical form with a EU-Russia plan of action against organised crime and the plan of action on justice and home affairs, incorporating a Scoreboard. A dialogue with these countries on matters of justice and home affairs has developed at ministerial meetings with the Troika. For the future, the objectives of the EU-Ukraine JHA plan of action and the EU-Russia plan of action against organised crime should be implemented vigorously.

To reinforce their relations, the Union and Russia are to develop four common areas, one of them an area of freedom, security and justice. A plan of action will be devised to give practical form to objectives and projects.

Regarding the Mediterranean, the Union has concluded association agreements involving a justice and home affairs component and these are gradually being implemented. In the MEDA context, financing is to be made available for the development of Euro-Mediterranean networks of trainers and practitioners in the areas of migration and police and judicial cooperation.

Fresh attention was paid to relations with the Union's traditional partners. Relations with the **United States** are very close, particularly in the fight against terrorism. Dialogue proceeds through the New Transatlantic Agenda.

Privileged relations with **Norway** and **Iceland**, associated in Schengen, are continuing. The association with Switzerland is imminent.

The Union is becoming an important actor in relations with a number of **international organisations and forums dealing with justice and home affairs matters**, in particular the United Nations, the Council of Europe, the OSCE, the G7/G8, of the Hague Conference on Private International law and UNIDROIT.

2.6. Union citizenship and fundamental rights

In 1999, Union citizenship and fundamental rights were not as such among the priorities for the establishment of the area of freedom, security and justice. But these are two horizontal elements that are closely connected with these fields.

Enshrined in the Community Treaty, **Union citizenship**, which supplements national citizenship, is accompanied by a series of rights and obligations, connected with policies as regards justice and home affairs, such as the right to move and remain freely on the territory of the Union.

Respect for fundamental rights, enshrined in **Article 6 of the Union Treaty**, is the basis for Union action in these fields.

2.6.1. Union citizenship

With the **Directive on the right of the citizens of the Union and their families to move and reside freely** in the territory of the Member States, the Union adopted an important legislative instrument giving practical expression to the concept of Union citizenship. This is an essential instrument codifying in a single instrument a complex corpus of legislation and case-law on free movement of Union citizens including workers. It makes it easier for Union citizens of and national administrations to ascertain their rights.

The conditions and formalities connected with the exercise of this right will be simplified by the Directive abolishing residence permits for Union citizens. In addition, the Directive establishes a **permanent right of abode** which, after five years of continuous residence in the host Member State, is no longer dependent on any conditions. The rights of citizens and their family members of whatever nationality are also strengthened, since the Member States' right to refuse or terminate the right of abode on order public grounds is restricted.

Member States will have two years, expiring in 2006, to implement this instrument, and the Commission will evaluate its impact in the report that it is to submit thereafter.

To ensure that the rights conferred on citizens were given the proper substance, it is important to continue monitoring the implementation of Community law relating to freedom of movement and residence. **Infringement proceedings** were accordingly launched on a series of questions here, and the case-law of the Court of Justice some time ago determined a number of major principles for the implementation of the three Directives, particularly in connection with the Community Treaties' ban on all nationality discrimination.

The Tampere conclusions stressed that the area of freedom, security and justice must be based on transparency and democratic control. **The right to vote is a fundamental right of the citizen expressing his or her participation in society**. The evaluation of the directive on the right to vote at elections to the European Parliament as regards the elections held in 1999 demonstrated the importance for the Member States of informing citizens more fully. For the preparation of the **elections in June 2004**, the Commission drew the Member States' attention to the need to take national measures to ensure that all citizens residing in a Member State other than that the State of their nationality could actually vote, given the short period between the date of enlargement and the elections. For **local elections**, the evaluation of the Directive pointed out that the proportion of non-national Union citizens entered in the electoral rolls in their country of residence tends to be rather low, which again requires stronger information measures by the Member States.

2.6.2. Fundamental rights

Since the Tampere conclusions, there has been a major development in the respect and protection of fundamental rights in the Union.

The **Charter of Fundamental Rights was proclaimed** in 2000 in accordance with the Decisions of the Heads of State or Government at Cologne and Tampere. For the sake of visibility of the rights with regard to the persons who enjoy them, the Charter lists all the rights that institutions and Member States must respect and protect when implementing Union law.

The draft Constitutional Treaty is expected to make the Charter legally mandatory. It also provides for the Union to accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The entry into force of the Treaty of Nice on 1 February 2003 was a major turning point in that the Union acquired the capacity to intervene on suspicion in the event of **clear risk of serious violation of common values** and by making the means provided for by the Treaty of Amsterdam, which already allowed a posteriori intervention when the serious and persistent violation has already occurred, more operational.

In its Communication of 2003, the Commission presented a framework for analysing the conditions for application of this provision, stressing prevention, which depends among other things on rigorous monitoring of respect for fundamental rights in the

Union, the development of independent expertise, cooperation between institutions and the Member States, dialogue with the civil society and information and education for the public.

Following a recommendation by Parliament, the institution which played a crucial role in this field, the Commission set up a **network of fundamental rights experts** in 2002, responsible in particular for drawing up an annual report on the implementation by the Member States of the rights declared by the Charter.

In December 2003, the representatives of the Member States meeting within the European Council decided **to create a European Agency of Fundamental Rights**, because of the importance of gathering and analysing data on human rights with a view to defining Union policy.

Considerable progress was made on the free movement of Union citizens and their families with the Directive simplifying and improving the legal framework.

The protection of fundamental rights is a rapidly developing field of Union activity, in which the European institutions must exercise permanent vigilance. The proclamation of the Charter of Fundamental Rights and the mechanism provided for by Article 7 of the Nice Treaty are major innovations. The European Agency for Fundamental Rights could perhaps be a useful adjunct to the existing machinery here.

3. WHAT PRIORITIES FOR THE FUTURE OF THE AREA OF FREEDOM, SECURITY AND JUSTICE

Major practical progress has been made in the first phase of the area of freedom, security and justice. This is a new and highly dynamic policy area which meets a substantial demand from the Union's citizens. The accelerated pace of work in recent years, sometimes, it has to be said, under the pressure of external events, is remarkable, and this policy now ranks legitimately among the other Union policies.

But the objectives set at Tampere have not yet all been achieved, and fresh efforts will be needed to complete the programme. Pending the results of the Intergovernmental Conference, the **current institutional framework** will cause difficulties. In this respect, and for the intermediate period, the possibilities offered by the Treaty of Nice, in particular in certain fields such as visa and asylum policy, could have an energizing effect, albeit on a limited scale[36]. And the use of Article 67(2) of the EC Treaty should be envisaged.

It is true that most of the projects in hand, such as those provided for in the programmes for mutual recognition of judgments in civil and criminal matters or in the Millennium Strategy, extend beyond the May 2004 deadline. Certain measures under development were called for by recent European Councils, and this has upset the order of priorities. Most of these priorities flow logically from the Tampere programme, and there is consequently some overlap between them and the future

[36] See the description at 1.2 "A new context".

priorities. A striking example is the action plan for integrated management of external borders, a medium-term objective on which rapid progress has been made but much has to be done even after 1 May 2004.

Now is the right time to set out **the starting point for studying the development of a future programme of measures** identifying priorities in the field of justice and home affairs for the period 2004-2009.

It will have to be strengthened in the years ahead in view the importance and sensitivity of the issues.

Several elements have to be taken into account **at Union level** for the development of the future programme.

First, this means measures following on from the Tampere programme. In particular:

- *Work still in hand,* which flows from priorities identified by successive European Councils, following on direct from Tampere, and *long-term measures that have already been defined* such as the mutual recognition programme;

- *The degree of effective implementation of the instruments adopted and their evaluation*. The Commission's staff have embarked on an exercise to evaluate a first generation of instruments adopted following the Tampere European Council. It is important that the future programme is accompanied by a process that evaluates the establishment and implementation of the acquis adopted following Tampere, in order to ensure that new proposals complement efficiently the existing instruments.

Secondly, for the future, proper institutional and financial resources will have to be made available to attain the new objectives. As regards the draft Constitutional Treaty, that one of its most important aspects will be the abolition of the multi-pillar structure of the Union and the extension of the Community method to the full range of justice and home affairs matters[37].

As concerns the financial aspect, the Commission has proposed a substantial increase in the resources available for the area of freedom, security and justice under the "European Citizenship" heading. The ideas put forward in this working document clearly do not prejudge the proposals that will be made in connection with the new financial perspective or the inter-institutional debates ahead.

In addition, future action must concentrate on projects having a genuine **European value added,** in full **respect for the subsidiarity and proportionality principles**.

It will also be important to **adhere to established priorities** in order to avoid an excessive dispersal of common action.

These priorities will have to take into account the **overall context** facing the Union. In particular:

[37] COM(2003)548 final, 17.9.2003.

Economic divergence between the regions of the world, and political instability in certain regions or countries: despite the efforts that the Union makes to assist economic development, pressure on its external borders is likely to continue increasing, making an **integrated approach to immigration** more necessary than ever. Likewise, political instability in certain regions of the world will have to prompt a **genuine common European asylum policy**. Europe will have to come up with the **rapid means of responding appropriately** to the pressure of events.

Demographic decline in Europe: this raises a challenge in terms of prospects for economic growth.

A partial answer can be given by **new approaches to the management of migratory flows**, in particular the development of controlled immigration and promoting **the integration of legal immigrants** into the economic, social, cultural, civic and political life of the Union[38].

The expectations of the citizens in relation to their rights: the **concept of Union citizenship** must continue to guide our action. **Freedom of movement** is fundamental here, but the Union will also have to show permanent vigilance as regards **protection of fundamental rights** and continue working to improve **access to justice**.

C*itizens' expectations as regards security:* the removal of internal border checks should not necessarily be a threat to personal safety. Terrorist and organised crime networks will continue to exploit all the means at their disposal and to adapt quickly to technological progress. Action to prevent and combat organised crime and terrorism in the Union must therefore continue. Crime policy must be given its proper full status among Union policies, incorporating the preventive dimension, including in the field of general crime.

Lastly, it is clear that these general challenges will require a **multi-disciplinary approach** and **more thorough coordination between the internal and external dimensions** of policies in the field of justice and home affairs.

The orientations for the 2004-2009 priorities are repeated below.

3.1. Improve the protection of persons in the exercise of their fundamental rights

European integration rests on common values in the form of fundamental rights, respect for the rule of law and democratic institutions. These must be the basis for any action of the Union.

Incorporating the Charter into the Constitutional Treaty and accession to the European Convention for the protection of human rights and fundamental freedoms will place the Union under a legal obligation to ensure that in all its areas of activity, fundamental rights are not only respected but also actively promoted.

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[38] See 3.4 "Promote a genuine common policy of management of migratory flows".

The institutions will accordingly have a greater responsibility for monitoring respect for fundamental rights in areas governed by Community law.

The Commission intends to present a Communication, in 2004, on the creation of the **European Agency for Fundamental Rights.** Its precise mandate will be defined on the basis of the results of the debate that will follow.

The measures taken to protect democracy and the rule of law in Europe against all forms of crime and against terrorism must respect fundamental human rights, the right to freedom of movement, respect for privacy and the rules on data protection.

In its Declaration of 25 March 2004 on the fight against terrorism, the European Council encourages initiatives to facilitate the exchange of information between the relevant authorities. In this context, thought must be given to the need for a **single overall framework**, which would take account of the specific features and requirements as regards protection of public order and public security and the fight against crime, and at the same time the need to provide for a high level of protection of private life. It will also have to reflect the prospect for establishing a single supervisory authority in the European Union, while remaining attentive to the relationship between Union action and the action undertaken by the national authorities, and to develop a partnership with the private sector and non-governmental organisations in devising and adopting rules.

3.2. Encourage initiatives as regards Union citizenship

Since the Treaty of Amsterdam, "Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship". The draft Constitutional Treaty restates this.

The strengthening of Union citizenship must remain a major principle of our action. The draft Constitutional Treaty provides the possibility for a certain number of citizens (at least one million, drawn from different Member States) to present a proposal calling on the Commission to give effect to a provision of the Constitution. This would be a major step forward in the democratic life of the Union, which will be implemented by a European law.

Democratic participation in elections to the European Parliament has to be encouraged[39].

Many Union citizens complain about the loss of their **right to take part in certain national elections**[40] in their country of origin, which is not offset by the acquisition of a similar right in their host Member State. Consideration will have to be given to this point both in the Union and in the Member States.

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[39] In the run-up to the elections for the European Parliament, the question arises whether it is appropriate to maintain the information exchange mechanism between the Member States which aims to prevent the possibility of double voting or whether there are more proportionate ways of achieving this objective.

[40] Under the EC Treaty, Union citizens can in theory take part only in the municipal and European elections in the Member State in which they reside.

The right to freedom of movement, which Union citizens and their family members of whatever nationality already enjoy, must be fully guaranteed by careful monitoring of the Member States' implementation of the recent Directive governing this issue. This will also make it possible to check whether further measures are needed so that citizens can move in the Union in the same way as citizens who change residence within their own country.

The European institutions must remain vigilant in order to ensure strict respect for fundamental rights, in particular through regular monitoring.

Union citizenship will continue to be promoted by measures on participation in democratic life and measures to secure full respect for freedom of movement within a frontier-free area in Europe.

3.3. Develop an integrated border management system and visa policy

The development of an integrated external border management system is one of the major factors in the management of migratory flows. As the essential preliminary requirement for free movement of persons in a frontier free area, such a system contributes to maintaining a high level of security by facilitating the fight against illegal immigration, organised crime and terrorism.

In the short and medium term, close attention will have to be paid to establishing the conditions in which internal border checks can be abolished with the new Member States.

The establishment of an integrated external border management system is provided for by the draft Constitutional Treaty. Serious action has already been taken on it following the Seville and Thessaloniki European Councils. Action will have to continue both with new legislation and on the operational and financial fronts.

In this context, the smooth operation of the External Borders Agency must be ensured. The development of coordination mechanisms must be strengthened and supplemented with the long-term objective of establishing a European Corps of border guards to complement the national border guards[41]. To perform its tasks, the Agency should cooperate with other services engaged in border checks, in particular customs, which have the primary responsibility for checking goods at borders. The possibilities for synergies between the Agency and the customs and other services operating at borders should be kept under permanent review.

This Union policy and its implementation must be governed by the **principle of solidarity** and burden-sharing between the Member States, including financial burdens. The practical application of this principle – which must also apply to immigration and asylum policies, in accordance with the new Constitutional Treaty – will entail mobilisation of substantial funds under the new financial perspective.

Visa policy will have to address serious concerns regarding document security and allow for improved consular cooperation. The work started on biometric data in

[41] Cooperation and coordination entail among other things the provision of common equipment, specific training and a risk analysis capacity.

travel and identity documents, in particular passports, must also continue rapidly and efficiently.

The Visa Information System (VIS) and the new Schengen Information System (SIS II) must actually come into operation and their full potential should be used.

Finally, there is a need for greater cooperation with neighbouring countries, and in particular countries with whom we share borders, consistent with the new Union neighbourhood policy.

3.4. Promote a genuine common policy of management of migratory flows

As regards immigration, the economic and demographic development of our continent will require a strategy based in a balanced way on legal admission for economic purposes and the promotion of integration and on the fight against illegal immigration and trafficking in human beings.

There must be a realistic approach taking account of economic and demographic needs, to facilitate the **legal admission of immigrants** to the Union, in accordance with a coherent policy respecting the principle of **fair treatment** of third-country nationals. It is clear that the right of Member States to set the actual numbers of third-country nationals admitted to work in an employed or self-employed capacity will have to be maintained, within an overall framework.

Integration policy will have to be promoted and continued. In this perspective, the Union must put in place adequate measures in order to support the action of Member States, in particular to promote the integration of nationals of third countries resident in the Member States.

The credibility of a positive and open common approach to immigration will also very much depend on the ability of the European Union to control **illegal immigration** while acting on all the stages of the relevant migratory flows. Such a strategic approach will have to combine a partnership with the third countries of origin and transit. A stronger fight against **trafficking in human beings**, and the development of an **effective policy on returns and readmission**, will be facilitated by the new legal basis offered by the future Constitutional Treaty. Here as elsewhere, the effectiveness of the action will depend largely on strong **solidarity**, especially with regard to the new Member States, based on real mutual trust and being reflected in practical terms in new forms of financial and administrative cooperation.

3.5. Develop a common European asylum policy on a fair basis

A better balance between the efforts made by the Member States in the reception of refugees and displaced persons will be achieved by means of the **principle of solidarity**. A new approach based on partnership and cooperation with third countries of origin and of transit, countries of first asylum request and of destination, will have to be established.

The main objective of the common European asylum system, as defined by the draft Constitutional Treaty, will be to determine **a uniform asylum and subsidiary**

protection status, a common procedure for granting and withdrawing this status, and a common system of temporary protection.

At the same time there is a need for an integrated approach involving efficient administrative decision-making procedures on returns, reintegration schemes and entry procedures that deter unfounded requests and combat networks of people traffickers. This approach is all the more important as **the victims of abuses of the system are often genuine refugees**.

As regards asylum, a **uniform status of asylum and subsidiary protection**, and a **common procedure** for granting and withdrawing it, must be determined. The fight against abuses of the asylum procedure will also remain an essential political principle.

3.6. Establish a European judicial area respecting the legal traditions and systems of the Member States, and closely associating those working in relevant areas

The development of the European judicial area has neither the object nor the effect of challenging **the legal and judicial traditions of the Member States**, and total harmonisation would be neither proportionate nor appropriate. This approach, based on the proportionality and subsidiarity principles, is stated by the draft Constitutional Treaty. For this reason the principle of mutual recognition has been placed at the heart of European integration in this field. It makes it possible indeed to respect the differences between the Member States' legal systems while extending the validity of judgments to the entire territory of the Union.

However, mutual recognition requires a common basis of shared principles and minimum standards, in particular in order to strengthen mutual confidence. It also requires a strong involvement of those working in the relevant areas, which presupposes mutual knowledge. Here again, it will remain necessary to maintain **a high degree of involvement of those working in this field**.

3.7. Establish a judicial area in civil and commercial matters to facilitate cooperation and access to justice

The development of judicial cooperation in civil matters must continue to make tangible improvements in the daily life of individuals and businesses by enabling them to assert their rights at Union level.

Community action here should focus on a number of lines.

One of the first priorities will have to be **to continue work provided for by the mutual recognition programme**. The Commission's various proposals should be adopted quickly and new legislative initiatives could be launched. On the latter point, efforts should concentrate on improving the recovery of maintenance debts and on fields where there are as yet no Community rules on mutual recognition (for example, the consequences of separation of married and unmarried couples in property terms, or successions and wills). Six million Europeans live in a Member State other than the State of their nationality, and this type of concern corresponds to very real problems.

Another very important field concerns **the enforcement of judgments**. Facilitating access to justice, creating simplified procedures for obtaining judgments and achieving the mutual recognition of judgments all assure individuals and firms that they can assert their rights only if there are efficient and rapid enforcement procedures actually exist in all the Member States.

Further progress with mutual recognition requires **strengthening mutual trust** between Member States. The adoption of certain minimum procedural standards which should actually be implemented in all the Union Member States is thus necessary for progress towards full implementation of the principle of free movement of judgments.

The actual implementation of Community legislation that has been adopted will also have to be promoted. The appropriate resources will have to be committed to attaining this objective, in particular by **developing the activities of the European Judicial Network in Civil Matters**, with a view among other things to facilitating the application of foreign law by the courts.

In addition, new mutual recognition instruments not appearing in the initial programme might be necessary in order to establish a genuine judicial area in civil and commercial matters. For example, the general question of facilitating the recognition of various types of documents will become increasingly important. In certain fields already identified, such as successions, the individual litigant's practical problems more often concern this type of question than the traditional problem of the recognition of judgments. In addition, it might prove useful to facilitate mutual recognition in new fields such as the civil status of individuals, family or civil relations between individuals (partnerships) or paternity.

Turning to substantive law, the Commission is already engaged in drafting a Common Reference Framework to ensure greater consistency in the *acquis communautaire* and improve its quality in the field of contract law[42]. The work is going on in cooperation with the Member States, interested parties and the Community institutions and should be completed in 2008.

To meet these ambitious challenges for judicial cooperation in civil and commercial matters, it will be advisable to have adequate legal means. The Constitutional Treaty will provide them. But it will be necessary to avoid a situation where in each Member State there are two separate legal regimes, one relating to the disputes with a cross-border implication and the other to purely internal disputes[43].

3.8. Promote a coherent criminal justice policy

In the field of criminal justice, the Union should concentrate on four priorities:

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42 This Common Reference Framework might serve in the longer term as the basis for an optional instrument on the law of contracts that the parties could freely choose to use as the law applicable to their contract, thus enhancing certainty as to the law in cross-border transactions.

43 In the long term such a dual system duality could be inconsistent with the aim of a single area of justice for all and could raise questions of discrimination; it could in addition complicate legislation at the expense of the transparency which individuals, practitioners and companies need.

(a) *Continue mutual recognition*

As in the civil field, the **principle of mutual recognition** must remain the *cornerstone* of judicial cooperation. One of the challenges will be to continue implementing and updating the mutual recognition programme.

As regards mutual assistance, a **single instrument** based in particular on mutual recognition should gradually replace the entire current system of mutual legal assistance, in particular for all questions concerning **obtaining evidence**. Both in their nature and in their contents, the legal instruments provided for in the draft Constitutional Treaty will be more effective, especially as compared to Conventions. This progress will have to be accompanied by measures to clarify the **allocation of jurisdiction** in order to prevent and solve conflicts of jurisdiction.

In the field of the **enforcement of judgments in criminal matters**, major work remains to be done. The system for the enforcement in one Member State of a sentence passed in another Member State will have to be defined, along with the conditions of mutual information on convictions given through a European register of convictions and disqualifications ("**European criminal record"**), and how account should be taken of convictions in other Member States, either to avoid new proceedings (the **ne bis in idem** rule) or to adjust the sentence passed (question of **recidivism**).

(b) *Strengthen mutual trust by assuring all European citizens of a high-quality system of justice based on common values*

A series of measures could be necessary to **ensure mutual trust between national judicial authorities**. They should cover: the definition of fundamental guarantees, the conditions for the admissibility of evidence and measures to strengthen the protection of victims. Improvements in the training of those working in the criminal justice systems and work on the evaluation of those systems will also help to strengthen mutual trust.

(c) *Give the Union a coherent crime policy to fight effectively against serious crime in all its forms*

The actions undertaken to define and fix the minimum thresholds for penalties for certain offences will have to be deepened to make it possible for the enlarged Europe to meet the challenges of terrorism and organised crime while scrupulously respecting the values connected with the protection of fundamental rights.

As regards approximation of legislation, much of the work has been done, though it will be necessary to go further in certain areas to avoid distortions in the legislation. It will be vital to adopt the institutional mechanisms making it possible to monitor and ensure that Union instruments are properly implemented. The draft Constitutional Treaty, by incorporating judicial cooperation in criminal matters in the Community framework, abolishes the specific instruments that are specific to the current "third pillar" and replaces them by European laws and framework laws, restores complete judicial review and reinstates the Commission's full role as guardian of the Treaties.

The new Treaty should guarantee the possibility **of building a coherent criminal policy,** whether it be in response to specific criminal phenomena or the extension of an existing Community policy. The draft Treaty provides for a single legal basis to govern the approximation of the definitions of offences and penalties regardless of the policy involved.

*(d) Put **Eurojust** at the centre of European criminal policy*

As the draft Constitutional Treaty states, the mission of **Eurojust** must be to support and strengthen coordination and cooperation between the national authorities responsible for prosecutions relating to serious crime affecting several Member States. Eurojust should therefore be the natural means for national authorities to extend their activities in the cross-border cases. Subject to review by the Court of Justice, Eurojust should be able to guide the criminal response to offences that threaten the Union's activities and policies.

A **European Public Prosecutor's Office** with specific responsibility for offences to the detriment of the Union's financial interests, **should be able to be created from Eurojust**.

These ambitious objectives can be achieved only if Europe, while respecting national legal cultures, has an institutional and legal framework in the criminal field that matches the issues at stake in the enlarged Europe. The **reintroduction of the unanimity rule** for provisions as regards criminal cooperation that the draft Constitutional Treaty envisaged to be subject to qualified majority voting **would be a retrograde step** which could only reduce the Union's capacity to meet the challenges of the fight against organised crime and terrorism.

3.9. Strengthen the efficacy of police and customs action

In order to strengthen police and customs cooperation in the Union, the Commission has identified the need to take measures simultaneously at three levels: operational, decisional and legislative[44].

Experience has shown the need to increase the **operational capacities** of cooperation between the Member States' enforcement authorities, through better use of the cooperation instruments and mechanisms already in place. This cooperation must improve, within the Member States, between the Member States and between the Member States and the Union.

At Union level, thought must be given in particular to **supplying information to and strengthening the role of Europol**, which could become significantly more useful to the Member States' enforcement services in the fight against terrorism and cross-border crime, as the European Council noted following the terrorist attacks in Madrid on 11 March 2004.

To show that there is a real commitment to the fight against organised crime and terrorism, bilateral cooperation between Member States must be continued but

[44] Communication "Stronger police and customs cooperation in the European Union".

multilateral exchanges must also be built up. To act effectively, this true intra-European information exchange network must include internal and external, military and civilian intelligence services.

At Union level a whole series of instruments and mechanisms would help to improve cooperation. Sometimes, these instruments are under-utilised or are even not used at all. Member States can also make use of existing Union cooperation possibilities in the bilateral context, such as those laid down in the Schengen Implementing Convention. Our fellow citizens would not forgive their political leaders if, in the name of secrecy, they refused to share information that would help them avoid serious attacks against their security.

It is also necessary to **simplify decision-making mechanisms** by encouraging qualified majority voting. The draft Constitutional Treaty makes provision for this, subject only to measures concerning operational cooperation. But the Union must adopt decision-making machinery commensurate with the needs of operational cooperation and allowing it to reach optimum effectiveness.

In this respect, one of main innovations in the draft Constitutional Treaty is precisely the establishment of a Standing Committee within the Council to promote and strengthen operational cooperation on internal security. Accordingly, the role of the Police Chiefs' Task Force might be reviewed, revitalized and developed in view of its privileged position in operational coordination. All the other actors here, particularly Europol, will also have to be associated.

Similarly, care must be taken to encourage consistency between the operational and legislative aspects of Union action. Given the needs that have been highlighted several times over, in particular after 11 March 2004, it seems indispensable:

- to **establish a legal framework to improve information exchanges** between the Member States' enforcement services and to control their access to the various sources of information;

- on the basis of the new Constitutional Treaty, to give thought to the **legal framework of Europol**, to make it truly operational and convert it into a Union agency, financed from the Community budget. There will have to be greater democratic and judicial control of its activities to correspond to this greater effectiveness;

- to pay great attention to the **training of police officers**. **CEPOL** must guarantee the European dimension of the programmes at national training institutes and promote cooperation between them.

To ensure the effectiveness of the measures adopted, the draft Constitutional Treaty makes it possible to establish, on a Commission proposal, the procedures needed for an objective and impartial evaluation of the implementation of this policy. In this context thought should be given to setting up "performance agreements" between the main authorities concerned.

Attention must also be paid to upgrading international cooperation with all actors involved, such as for example Interpol.

With regard more specifically to **customs cooperation**, the ratification and implementation of the Naples II Convention and the Convention on the Customs Information System (CIS) by all the Member States remain priorities.. Here again, it will be necessary to set up a mechanism to evaluate the implementation of these instruments and of possible improvements. Generally, it is important to implement the **work programme concerning the customs cooperation strategy** currently based on Title VI of the Union Treaty, adopted by the JHA Council on 30 March 2004[45].

3.10. Strengthen action to prevent and combat terrorism and specific forms of crime

Prevention and the fight against **terrorism** will unfortunately have to retain their priority status. The main lines of action identified by the European Council on 25 and 26 March 2004 will have to be implemented.

It is crucial to create a European framework to control the threat that serious crime and terrorism pose for society. Coordination and close cooperation between the police, the judicial authorities and the intelligence services are essential for the efficient exchange strategic and operational information. The Union should set up a new information exchange mechanism – **an information exchange centre –** as proposed by the Commission at the European Council of 25 and 26 March 2004, with which Europol and Eurojust should be fully associated.

Exchanges between national criminal intelligence systems should also be promoted to facilitate the detection of threats to public security and combat organised crime throughout the Union. **A policy on information for preventive and enforcement purposes should be devised for the Union**. This action must be accompanied by a legislative initiative on the treatment and protection of personal data used by police services.

Under the European Security Strategy, it will be necessary to implement the action called for by the European Council on 25 and 26 March 2004 and to develop a multidisciplinary approach, providing a coherent interface between the internal and external dimensions of the various Union policies.

Moreover, it will be essential to monitor and support the proper implementation of existing legislative instruments, in particular the Framework-Decision to fight terrorism, the European arrest warrant and the Framework-Decision on the freezing of assets and evidence. In addition, new initiatives could be drawn up in the light of the implementation of European legislation. With full respect for fundamental rights and data protection, the potential of the **new large-scale computer systems**, such as the Visa Information System, should be explored to contribute in particular to fighting terrorism.

The existing legal possibilities, such as joint investigation teams, and the work of Europol, in particular as regards information analysis, must be fully used. Further cooperation between services combating terrorism is just as crucial.

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[45] The strategy and the work programme follow on from the Council Resolution of 2.10.2003 on a strategy for customs cooperation (OJ C 247, 15.10.203).

If it is to be completely effective, the fight against terrorism must be handled in conjunction with other forms of crime, and in particular organised crime. Overlaps between large-scale crime and terrorism exist in terms of methods, financing, and sometimes even the groups themselves. A broad-based approach is necessary to improve the fight against these phenomena, in particular by combating any form of **financing of terrorism** at the highest possible level upstream. There is a particular need for greater transparency and traceability of financial transactions. And investigation work based on collecting and analysing information must be rationalised, in particular by means of systematic financial investigations to be conducted in parallel with investigations into terrorist acts or serious offences by organised criminal groups.

The **fight against financial crime** must remain a priority. The implementation of the Protocol to the Convention of 29 May 2000 will make it possible to make mutual legal assistance more effective and should lead the Member States to set up national systems for recording bank accounts so that account holders can be identified and investigations into bank accounts and transactions can be facilitated. In addition, European action must aim to increase the transparency of legal entities, and in particular of companies, to prevent criminal groups from infiltrating lawful activities.

The fight against serious crime also involves two tracks which require the Union's involvement:

- First, the development of **public-private partnership** should aim to combine the expertise, resources and information available to the private sector and to police services in order to fight more effectively against, for example, counterfeiting, piracy, cyber-crime and corruption.

- Secondly, **statistical work** and the collection of information on the development of crime and public perceptions of the level of security, should be improved, in particular through a harmonised information collection system which is structured and regular.

With regard to **trafficking in human beings**, particularly women and children, preventive and enforcement action must continue to be combined.

3.11. Stronger action for crime prevention

As regards **crime prevention**, efforts must be made to make goods and services less vulnerable to crime. The *crime-proofing* of legislation must be an integral part of this effort.

As regards the **prevention of general crime,** five fields of action will have to be prioritised: a more precise definition of the priority forms of crime, the establishment of an inventory of good practice, the development of a common methodology to implement and evaluate practical actions and allow standardised comparison between the States, stronger monitoring and evaluation, and better comparability of statistics. Crime prevention should continue and be supported by a **financial instrument**.

The improvement of **operational cooperation** must be a major line of action to fight organised crime and terrorism effectively in the future. To strengthen it, all those

involved will have to be associated and the full use of the existing mechanisms and tools will have to be promoted.

In addition, **the instruments adopted should be actually used** and their impact should be evaluated.

3.12. Develop multidisciplinary mobilisation to combat drugs

Demand reduction must be favoured and there must be a tighter link between the external dimension of the fight against drug trafficking and justice and home affairs policies.

The time has come to make changes in this field on the basis of experience gained with the 2000-2004 Action Plan. The policy to combat drugs must seek to provide the public with a practical response.

The general principles and the overall action framework of the Union will be defined by the **new strategies on drugs**, which could run until 2013 and would be accompanied by shorter-term actions targeting medium-term specific priorities, in particular synthetic drugs.

3.13. Resolute external action

Assessment of achievements since Tampere and the initial thinking on future priorities reveal that the Union's external action must take into account the justice and home affaires dimension and that general Union activity must be better coordinated. To ensure that the Union can speak with one voice without undermining our common priorities, it will be necessary that Member States support Union activity and observe more solidarity and discipline in their bilateral relations.

Generally, as has already been stressed, **the external dimension of all the fields examined will be boosted** – combating the major causes of immigration, protecting external borders, cooperating in the management of flows of third-country nationals, establishing partnerships, concluding readmission agreements, defining the policy on visas and the security of travel documents, strengthening prevention and combating terrorism, organised crime and drug trafficking, and improving judicial cooperation with third countries in civil, commercial and criminal matters.

4. CONCLUSIONS

Considerable work has been done since the Tampere European Council, even if much still remains to be done to complete the area of freedom, security and justice. In a rapidly-changing world, the aspirations of citizens for full freedom of movement and action and their legitimate calls for strict respect of fundamental rights combine with substantial demands to live in an environment that ensures their security. In an enlarged European Union, the final adoption of the Constitutional Treaty and its rapid entry into force are becoming essential, as this will offer the legal and institutional means of meeting these expectations.

Similarly, the new Treaty will fulfil the essential requirements for transparency and democratic control both because the role of the European Parliament as co-legislator is to be expanded and because of the increased role of national parliaments. The latter will be particularly attentive to the subsidiarity principle and will be able to play an effective role in the evaluation of the activities of Europol and Eurojust. Moreover, being informed systematically of work at European level, they will be able to take account of it in their national parliamentary activity.

Union action must continue and take practical form in a **second European programme for the area of freedom, security and justice, with detailed priorities** and a precise timetable. Even if all the aims set at Tampere have not been achieved, the working method is good and should be preserved. It would be useful to continue in the future with the follow-up work through the regular Scoreboard, which will also include aspects relating to national implementation of instruments to ensure maximum transparency.

In addition, within the context of the **new financial perspective**, an additional Communication will be presented. The future financial instruments will be of a significant total amount- and will complement the existing and future legal instruments. These proposals will help to strengthen **the operational aspect** of the policies developed in the field of freedom, security and justice, which is without doubt one of the most essential aspects of the Union action for the years ahead.

The European Council must preserve its essential guiding role in the definition of strategic guidelines and the planning of future action on justice and home affairs. This role will have to take shape in particular when the new programme comes up for adoption and then for **mid-term review**. The future programme must make it possible to guarantee that all those who reside in the European Union can enjoy all the benefits that go with the new area that the enlarged Union constitutes. It will be important to achieve a consensus on this programme with Parliament and the Council, during the second half of 2004.

There must be a public debate on subjects which cover fundamental questions for our societies and closely affect citizens' daily life. The establishment of the area of freedom, security and justice is a major political objective for the Union. It must continue to show the same degree of ambition and determination as it did for the completion of the internal market. The establishment of the area of freedom, security and justice, the bases for which have now been laid, constitutes without doubt one of the most important challenges that we have to take up together.