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Annex to the

FRAMEWORK PROGRAMME ON FUNDAMENTAL RIGHTS AND JUSTICE

Extended impact assessment

{COM(2005)122 final}

1. What are the main problems identified?

European integration has moved forward primarily in the economic sphere, with the setting-up of a Single Market and a single currency. The establishment of an integrated, frontier-free economic area, now need to be complemented by the creation of an area of freedom, security and justice – indeed:

"Freedom, Security and Justice are core values which constitute key components of the European model of society. (...) In this context, developing this dimension of the European Union is the new frontier for integration: a true area of Freedom, Security and Justice is an indispensable building block of the European Union, at the heart of the political project for an enlarged Union."[1]

The three aspects – freedom, security and justice – are therefore to be developed in parallel and to the same degree of intensity, based on the principles of democracy, respect for fundamental rights and freedoms, and the rule of law. The various aspects of the area of freedom, security and justice comprise a balance between guaranteeing the core rights of the individual (freedom, justice) as well as delivering the core responsibilities (security, justice) expected of the Union[2].

In terms of core rights, the area of freedom, security and justice aims to underpin:

- The right to EU citizenship per se
- The right to move freely within the EU, both as regards the removal of internal frontiers and the right to reside in other Member States
- The protection of fundamental rights, the rule of law, and civil liberties
- The right to vote and stand for election in European Parliament and municipal elections for those citizens residing in other Member States
- The right to access to justice
- The right to liberty and security, as set out in the Charter of Fundamental Rights
- The right to asylum and to protection in the event of removal, expulsion or extradition, as set out in the Charter of Fundamental Rights
- The right of legally-resident third country nationals to fair treatment

In particular, the promotion of European Union citizenship should develop the feeling of belonging to a union that shares the **fundamental rights and values** while preserving and respecting the diversity of the cultures and traditions of the peoples of Europe. The TEC establishes European citizenship and the rights and duties of EU citizens; and the Treaty on European Union, together with the Charter of Fundamental Rights, is the basis for the EU's policy in the field of fundamental rights.

The main **challenges** facing the Union in relation to this policy area over the period of the next financial perspectives can be defined as follows:

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1 "Building our common Future: Policy challenges and Budgetary means of the Enlarged Union 2007-2013" COM (2004) 101 final/2 of 26 February 2004

2 "*Freedom is the unifying principle, the linchpin of the European project. But without security, without a system of law and justice recognised by the people, the exercise of freedom and respect for democratic values could not be guaranteed. The European area of freedom, security and justice thus provides a guarantee for the principles of democracy and respect for human rights. As an essential element of European citizenship, the common recognition of these principles, which are now embodied in the Charter of Fundamental Rights, is the cornerstone of integration for everyone living in the Union.",* "A project for the European Union" COM (2002) 247 final.

1. The incorporation of the Charter of Fundamental Rights of the European Union into the Constitutional Treaty, the opening of the way for the Union to accede to the European Convention on Human Rights, and the Article 7 TEU monitoring mechanisms already put in place under the Nice Treaty together imply a significant reinforcement and operationalisation of the fundamental values which are at the heart of the European project.

2. Following the incorporation of the Charter into the Constitutional Treaty, the Union will be legally obliged not only to respect these rights, but also to ensure that they are effectively promoted in all policy areas (both internal and external) for which the Union is competent.

3. Monitoring activities to ensure that the Member States adopt the same approach in their areas of competence will increase dramatically, particularly in the context of a growing and ever more diverse Union and the new challenges that will bring.

In that light, this policy area is one which is set to expand rapidly, implying in particular:

– ensuring an effective mechanism to monitor respect for fundamental rights within the Union;

– a significant effort to disseminate information on fundamental rights, both through general information campaigns and in response to individual requests;

– negotiations with the Council of Europe on the mechanics of Union accession to the European Convention of Human Rights and implementation of the obligations of the Union under the Convention;

– development and maintenance of a structured relationship between the Strasbourg European Court of Human Rights and the European Court of Justice;

– enhanced action, including legislative action, to promote the application and respect of certain rights, eg the right to personal physical integrity and the rights associated with Union citizenship, and provision of support and incentive measures to help Member States to deliver the obligations in their areas of competence;

- Lack of knowledge among citizens of the fundamental rights that are enshrined in the Charter of Fundamental Rights, including those rights stemming from the European Union citizenship. This lack of information prevents the development of the Union citizenship idea: only the exercise of rights, in particular those deriving from the Union citizenship, may foster the feeling of belonging to a common union, sharing the same values and objectives. According to the Eurobarometer "10 years of EU Citizenship" (September – October 2002) only 22% of the respondents felt informed about their rights as citizens of the Union. This may explain the high level of abstentions at the 2004 EP elections, where less that one voter out of two went to the polls (Eurobarometer "Post European elections 2004 survey", June 2004).

- Recrudescence of racism, xenophobia and anti-semitism. Fundamental rights cannot be protected and promoted without tackling racism, xenophobia and anti-semistism. A special Eurobarometer survey in 2000 showed that while 14% of European citizens can be classified as intolerant, only 21% are tolerant[3]. It is difficult to make a generic statement about the situation as regards racism, xenophobia and anti-semitism across the European Union, given data collection difficulties in Member States. The annual report 2003/2004 from the EU Monitoring Centre on Racism and Xenophobia concludes that : the education system in European Union's Member States is still failing migrant and minority pupils and racism against the Roma community continues[4]; racist violence and crime remain a problem in all Member States[5]; marginalised minority groups experience discrimination in employment and higher levels of unemployment when compared with majority populations; as regards housing, Roma, Sinti, Gypsies and Travellers seem to be the minority groups facing the most difficulties.

But freedom, which includes the right to move freely within the Union (one of the four principles underlying the Single Market), cannot be enjoyed to the full except in conditions of security and justice accessible to all. Indeed, whilst free movement requires that individuals and businesses can easily pursue their civil and commercial interests in other Member States, it also requires measures in the criminal law field to ensure that there are no safe havens for crime and criminals. Indeed, individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States.

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3 Around 15% of people interviewed find the presence of people of another nationality, race or religion disturbing in their daily life. Over half of them are afraid of job losses due to the presence of minority groups, 58% support that migrants' involvement in crime is above average. Only one third of the respondents agree that discrimination against minority groups should be outlawed while 21% agree that minority groups should be encourage to participate in the political life of the country. 45% of the citizens of the Union think a country's diversity in terms of race, religion and culture adds to its strengths.

4 Notably, migrant and minority groups are disproportionately represented in educational establishments, with lower academic demands, early dropout rates, and lower school completion rates. In general, migrant and ethnic minority pupils tend to do less well regarding educational attainment than their peers from the majority population.

5 In some Member States, data collected shows numerous incidents of racist violence and crime; in others, due to ineffectual legislation and monitoring mechanisms, it is impossible to deliver 'results' with respect to either convictions or accurate and consistent data collection.

The main **challenges** facing the Union in relation to an area of **justice** over the period of the next financial perspectives can be defined as follows:

1. The internal market is a reality, and it has resulted in increased exchanges between the Member States of the Union. It has given rise to an increase in the frequency at which European citizens establish themselves, perform economic activities or buy goods and services in Member States other than that of their origin, sometimes through the use of modern technologies. Furthermore, personal and family situations presenting cross-border aspects (eg marriages of two people of different nationality, persons owning houses in a different State to that in which they are habitually resident) are also more frequent. Action is needed to ensure that litigants can have easy access to effective justice in such cases. Problems that are likely to increasingly appear in the future, such as issues related to the status of unmarried couples, questions concerning the patrimonial regimes of married and unmarried couples (and not only of its break up), issues concerning personal status (names), and adoption, will also need to be covered.

2. Common EU interests must be protected against criminal behaviours, either because of their cross-border characteristics, or because they are offensive to EU common values, such as respect of individuals, democracy and good governance (which explains why action against sexual exploitation of children, racism, fraud and corruption is required). A common approach in this sense reflects the emergence of a European public order. Yet it must also take account of the need to provide a high standard of protection of individual rights, which means, for example, building on earlier achievements in the fields of victims' rights, improving the rights of the arrested person, and setting the framework and standards regarding the way sentences are served and reintegration of offenders is envisaged.

The challenge for the Union will be to respond to citizens' expectations for effective solutions to their practical problems. This will imply in particular:

– as the acquis grows, increased efforts of monitoring of its application by the Member States, including through modern means such as databases of case law;

– further legislative action to address the new issues mentioned above, and to improve the ease of access to and efficiency of justice;

– a need to address mutual recognition in a wider sense, including recognition of decisions and documents other than those issued by judicial authorities;

– strengthening of mechanisms for providing information to the public and promote training of and exchanges between practitioners on the implications of the instruments for cooperation in this area;

– legislative measures, in certain limited areas defined by the Constitutional Treaty, of common definitions of offences and sanctions, to ensure that there are no safe havens for serious criminals and terrorists;

– legislative measures to put in place and develop common tools for cooperation, and equivalent standards for certain procedures such as rules on evidence collection and rules on the protection of individuals involved in criminal proceedings, whether they are the accused, witnesses or victims;

– legislative measures to reinforce the powers of Eurojust, making its requests binding, and giving it judicial control over Europol;

– further measures to promote understanding and use of common tools and procedures amongst practitioners.

> ➢ A genuine area of justice: Member States have different legal systems creating complex situations when dealing with cross border cases which are not compatible with an open and free territory. EU citizens have come to realise this as demonstrated by the Eurobarometer carried out in December 2003[6], whereby the vast majority (89%) of citizens of the Union believes that judicial decisions in civil and family matters should be recognised throughout the European Union; nine in ten European citizens believe that an accused should have the same rights of defence in all Member States[7]. Existing complexity prevents individuals and businesses to assert their rights throughout the European Union and makes access to justice difficult[8].

The **fight against violence** clearly forms part of the protection of fundamental rights as set out in the Charter, in particular the right to physical integrity. The links between violence and several other fundamental rights (liberty, security, health, employment, etc.) are so strong that the implementation of these rights in general as they concern the physical integrity of the person should be supported. Specific forms of violence – such as racially-motivated violence and violence related to gender or sexual preference – require specific responses which would benefit from European-level exchange of information and development of best practice. The need for a more global and pertinent solutions to problems of violence has to be taken into account when designing a response under the new financial perspectives, taking into account existing interventions.

> ➢ Violence against children, young people and women as well as violence against minorities groups: Sexual, psychological and physical violence seriously affect the victims' health in the broadest sense of physical, mental and social well-being and diminishes the ability of society to function effectively and achieve its potential now and in the future. Moreover, this culture of violence spreads to other parts of society; for instance, it is prevalent in schools and in both urban and rural surroundings; it tends often to be inflicted on members of minority and disadvantaged groups. According to a report prepared in 2000 by the Committee on Equal Opportunities for Women and Men from the Council of Europe, the most common form of violence against women is domestic violence[9]. In what concerns trafficking in women and prostitution, data provided by Interpol shows that most of the women affected by such

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6 Published in March 2004 (Flash Eurobarometer 155 "Justice and Home Affairs", 2004).

7 Also, 60% supported the definition of common minimum standards for the protection of victims of crime at EU level. Around the same percentage was in favour of common minimum standards for guarantees in favour of individuals indicted in criminal proceedings (e.g. legal assistance, access to qualified interpreters, right to communicate with one's family, etc.).

8 This can be demonstrated by existing demand in this regard: an information action that was launched by the Commission through a temporary website addressed to the legal practitioners registered 400 000 hits in ten months in 15 Member States; the website of the European Judicial Network in civil and commercial matters, addressed to the public at large, registers an average of 250 000 monthly hits.

9 The various statistics show that a woman is more likely to be attacked and beaten, even killed, by her partner or former partner than by any other person. Depending on the European country concerned, from 20% to more than 50% of women are victims of domestic violence.

activities come from Europe: central Europe (39%), Eastern Europe (22%) and the Balkans (17%)[10].

Finally, the establishment of an area of freedom, security and justice should also tackle drug use and trafficking, one of the main issues facing European societies. A comprehensive, multidisciplinary and integrated strategy has been put forward since 1990 at European level, but without a clearly identified financial support. This strategy is based on five main elements: (i) reducing demand, (ii) reducing supply and combating illicit trafficking, (iii) international co-operation (iv) co-ordination at national and EU level and (v) information, research and evaluation.

The main challenges facing the Union in relation to **tackling drugs** over the period of the next financial perspectives can be defined as follows:

– information and research, including the continuation of the work of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA);

– drug demand reduction since demand feeds the growth of the drugs phenomenon: education, prevention and harm-reduction programmes;

– drug supply reduction, to stop trafficking and drug-related criminality, in particular as concerns new synthetic drugs and their chemical precursors, as well as combating money-laundering;

– enhanced cooperation with third countries concerning drug supply and drug demand reduction.

– further legislative activity will be needed in line with new and developing forms of drugs, for example to bring new forms of drugs under established control mechanisms.

[10] With regard to their destinations, it has been detected that the trafficking in women from the Czech and Slovak republics, Poland, Hungary and Romania is channelled mainly towards the pavements of Germany, Belgium, France, Italy and Finland. Young Bulgarian, Albanian and Serb women are to be found in Belgium, the Netherlands and Italy. Young girls from Russia, Ukraine and Moldova are in Germany, France, Belgium and Finland. 80% of the prostitutes in Amsterdam are foreigners and 70% have no papers.

- High levels of drug misuse and trafficking causing health problems and social exclusion : The drugs phenomenon is one of the major concerns of citizens of Europe: 2.1 million problematic drug users in the EU 25 and a high HIV/AIDS incidence among drug users in some of the new Member States. Even if the situation seems stabilised in what concerns drug-related deaths, heroin use and the HIV epidemic among injecting drug users, many countries are reporting rising cocaine use and more people are using cannabis and ecstasy in parts of Europe[11]. The continued high levels of drug misuse and trafficking, and the damage caused to our societies through drug related health problems and social exclusion calls for intervention at EU level. Dealing with the complex issues posed by drugs calls for a multidisciplinary and integrated approach as well as for a transnational one: in fact, drug trafficking respects no borders and trends in drug use spread rapidly within an area of free movement.

2. WHAT ARE THE MAIN POLICY OBJECTIVES?

In order to face the challenges detailed above, and in the context of the development of an area of freedom, security and justice, the following general objectives can be formulated:

(1) To promote the development of a European society based on the European Union citizenship and respectful of the fundamental rights as enshrined in the Charter of Fundamental Rights.

(2) To fight against anti-semitism, racism and xenophobia and to strengthen civil society in the field of fundamental rights.

(3) To promote judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil and criminal matters.

(4) To contribute to the setting up of an area of freedom, security and justice by combating of violence and by informing on and preventing drug use.

The table below illustrates how these general objectives will be translated into several specific objectives and in turn into operational objectives:

[11] The number of drug-related deaths has shown a modest decline in recent years across the European Union. Drug-related deaths fell from 8,838 in 2000 to 8,306 in 2001 representing a small but significant 6% decrease. But numbers of overdose deaths are still historically high, and this downward trend may not be sustained. There are signs that drug-related deaths may soon rise in the new EU Member States. Deep concern surrounds the continuing HIV epidemic in some of the new European Union's Member States and their bordering countries. Estonia, Latvia, Russia and the Ukraine are the countries with the fastest growing HIV epidemic in the world. The prevalence of antibodies to the hepatitis B virus (HBV) (up to 85%) and the hepatitis C virus (HCV) (up to 95%) among injecting drug users is still extremely high, underlining the need for treatment and prevention. Cannabis prevalence rates are generally highest for young people (15 – 34 years), ranging from less than 15% in some countries to 35% and more in others. Surveys show that 5 – 10% of young Europeans have used the drug in the last 12 months. As regards ecstasy, overall available data show that European trends in its recent use are upwards: between 0.5 – 7% of young people have tried ecstasy in their life.

General objectives	Specific objectives	Operational objectives
To promote the development of a European society based on the European Union citizenship and respectful of fundamental rights as enshrined in the Charter of Fundamental Rights	To promote the Charter of Fundamental Rights and to inform citizens of their rights as Union citizens and to encourage them to participate actively in the democratic life of the Union.	To support awareness-raising actions.
	To monitor regularly the situation of fundamental rights in the European Union and its Member States using the Charter of Fundamental Rights as the guiding document and to obtain opinions on specific questions related to fundamental rights when necessary.	To prepare regular reports or opinions on the situation of fundamental rights in the EU.
	To explain the consequences of the insertion of the Charter of Fundamental Rights into the Constitution and of the European Union's accession to the European Convention of Human Rights.	To support information campaigns in these fields.
	To assist the Commission in monitoring and assessing the application and implementation of Community legislation relating to citizen rights.	To undertake studies and analyses in these fields.
To fight against anti-semitism, racism and xenophobia and to strengthen civil society in the field of fundamental rights	To support NGO and other bodies from civil society to enhance their capability to participate actively in the promotion of fundamental rights. To fight against anti-semitism, racism and xenophobia by promoting a better understanding and improved tolerance throughout the European Union.	To have open, transparent and regular dialogue with civil society in the area of fundamental rights. To support awareness-raising actions. To provide financial support

	To lead an interfaith/multicultural dialogue in order to foster understanding and mutual knowledge and to promote peace and fundamental rights.	for the activities of non-governmental organisations or other entities pursuing an aim of general European interest. To undertake studies and analyses in these fields.
To promote judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil and criminal matters based on mutual recognition and mutual confidence.	To promote the adaptation of the existing judicial system in Member States to the European Union being a territory without border controls, with a single currency, with free movement of persons, services, goods and capital.	To improve mutual knowledge of Member States' legal and judicial systems in civil and criminal matters and to promote and strengthen networking, mutual cooperation, exchange and dissemination of information, experience and best practices. To ensure the sound implementation, the correct and concrete application and the evaluation of Community instruments in the areas of judicial cooperation in civil and commercial matters and in criminal matters.
	To improve the daily life of individuals and businesses by enabling them to assert their rights throughout the European Union, notably by fostering access to justice.	To improve information on the legal systems in the Member States and access to justice.

	To improve the contacts between legal systems, judicial and administrative authorities and the legal professions, and to foster the training of the members of the judiciary.	To promote the training of the judiciary and judicial staff in Union matters. To evaluate the general conditions necessary to develop mutual confidence, including the quality of justice. To support the operational work of the European judicial network in civil and commercial matters created by Council Decision of 28 May 2001 (2001/470/CE). To develop a European computerised system of exchange of information on criminal records and to support studies to develop other types of exchange of information.
To contribute to the setting up of an area of freedom, security and justice by combating of violence and by informing on and preventing drug use.	To protect citizens against violence and to attain a high level of health protection, well being and social cohesion.	To prevent and combat all forms of violence occurring in the public or the private domain, against children, young people and women To provide support for victims and groups at risk. To assist and encourage NGO and other organisations active in this field. To disseminate the results obtained under the two Daphne programmes including their adaptation, transfer and use by other beneficiaries or in other geographical areas. To identify and enhance actions contributing to positive treatment of people at risk of violence.

	To prevent and reduce drug use, dependence and drug related harms.	To involve civil society in the implementation and development of the European Union's Drugs Strategy and Action plans. To monitor, implement and evaluate the implementation of specific actions under the Drugs Action Plans 2005 – 2008 and 2009 – 2012.
	To promote transnational and awareness-raising actions in the areas identified above.	To set up multidisciplinary networks; to ensure the expansion of the knowledge base, the exchange of information and the identification and dissemination of good practice, including through training, study visits and staff exchange. To develop and implement awareness-raising actions targeted at specific audiences to promote the adoption of zero tolerance towards violence and to encourage support for victims and the reporting of violence. To raise awareness of the health and social problems caused by drug use and to encourage an open dialogue with a view to promoting a better understanding of the drug phenomenon.

3. What are the policy options?

No EU intervention

A "do nothing" scenario" would have very negative consequences, and it would not allow to attain the set policy objectives.

Without a community action, some problems would simply not be dealt with, either because they do not assume enough national importance in some Member States, or because they are too complex to be tackled at national level.

In the field of fundamental rights as in the fight against racism, xenophobia and anti-semitism a no policy action would worsen the problems identified. In fact, to achieve the goal of promoting and protecting fundamental rights within the European Union, including fighting discrimination, it is important to guarantee a common action all over European Union territory. National actions will be limited and potentially incomplete because they are normally addressed only to the residents in one Member State and they do not take into account the need to complement and be coherent with other national actions.

It can be concluded that Member States would be in a more difficult position to give a European dimension to the actions developed within the subject matters of the programme. The existing national programmes, without this European dimension, would be less effective in reaching its goals. In fact, national approaches may differ widely thus compromising an equivalent solution throughout the European Union.

In the area of judicial cooperation, a no policy action would prevent a coherent cooperation that can only be achieved at European level. Considering the importance of mobility, recognised by all stakeholders, it is evident that this scenario would have negative consequences to people and businesses wanting to assert their rights across Europe.

The importance of coordination at European level is also decisive in what concerns information and prevention campaigns on drugs to ensure a high level of human health. An action at European level is the only way to determine common priorities and to give a coherent European dimension to the actions developed by national authorities; it is also the way to look for synergies between all the actors involved at national and international level.

Finally, the problem of violence also requires intervention at European level. A European Union's action in this field encourages the exchange of ideas and best practices throughout the 25 Member States and supports the formation of networks and partnerships ensuring a European dimension to national action plans on this field.

No-policy change

An overview of the current situation as regards the fields covered by the policy objectives described above is given in Annex 1. Financial support to the areas covered by the policy objectives formulated above is scattered among several different instruments, with no clear structure, and sometimes little visibility. The continuation of this situation, i.e. a "no policy change scenario" cannot be seen as a real alternative as this means maintaining a multitude of programmes, thus posing problems in terms of transparency and access to the programmes, and not achieving the stated aims of simplification and rationalisation.

Also, this piecemeal approach is not adequate to the new challenges posed by the enlargement of Europe and the new Constitution, and indeed does not translate properly the needs to strengthening Justice as requested by The Hague Programme. In a nutshell, continuing the present situation would not correspond to the current stage of development of justice and home affairs as one of the key policies of the Union.

Pursue a legislative approach only

Legislation in the fields described above has been put forward and adopted whenever possible, i.e. where the EU has a recognised competence, and the respect of the principles of subsidiarity and proportionality is ensured. However, in this context, legislation only does not meet the policy objectives set above. For example, as regards fundamental rights, the

challenges posed by the need of adequate monitoring of their respect, or by the lack of information on EU citizenship, cannot be met by legislative action. Even when legislation can be put forward (e.g. in the area of civil law), other types of measures are needed to ensure incentives to cooperate and thus achieve a higher degree of trust between Member States judicial authorities. The right policy-mix in this area must therefore continue to include legislative action, whenever possible, but has to be accompanied by other types of instrument.

Cooperation without financial incentives

Although cooperation mechanisms already exist in the area under consideration (e.g. Eurojust, European Judicial Network in civil and commercial matters), and are operating successfully, EU policy response to the challenges identified above cannot rely solely on this type of instrument. Indeed, to be effective this cooperation needs to be steered and supported at EU level, in order for it to adequately reflect policy developments. Given the stage of development of these policies, the provision of incentives at European level will also stimulate a wider participation from stakeholders in all Member States, even when issues which are not a leading priority at national level are at stake.

It can therefore be concluded that given the current stage of development of the policies under consideration, cooperation between Member States is necessary, but should be accompanied by incentives at European level.

Funding programme

In addition to the reasons set-out above, this policy option seems more relevant as it allows meeting a certain number of requirements in these policy fields:

– It ensures rationalisation and simplification, thus increasing transparency and the effectiveness of community funds;

– It provides for ongoing support to policy development at EU level, in coherence other existing instruments and actions;

– It allows for greater responsiveness to new realities and challenges, as well as to demands emerging from civil society;

– It ensures active participation from relevant stakeholders on an equal footing.

The relevant policy option is then a funding programme covering the four objectives listed under point 2 above:

(1) To promote the development of a European society based on the European Union citizenship and respectful of the fundamental rights.

(2) To fight against anti-semitism, racism and xenophobia and to strengthen civil society in the field of fundamental rights.

The Programme will develop the two existing preparatory actions: one on promotion of Fundamental Rights where new objectives will be introduced such as the fight against racism, xenophobia and anti-semitism and the promotion of an inter-faith dialogue; and one to support civil society in the new Member States that will be enlarged to cover all 25; finally, a special focus will be put on the fundamental rights stemming from the citizenship of the Union to encourage democratic participation. A significant increase in the financial envelope is planned to reflect the increasing importance of these issues and to respond positively to civil society actors.

(3) To promote judicial cooperation with the aim of contributing to the creation of a genuine European area of justice in civil and criminal matters.

Under this objective, the programme will group measures supporting cooperation in civil and criminal law to ensure a better and greater coordination between the two areas in the perspective of the entry into force of the Constitutional Treaty that will abolish the pillar structure, and to allow the judicial cooperation to better respond to the political expectations of strengthening Justice as requested by The Hague Programme. Amounts are also planned to

be increased to respond to these new challenges and to greater demands from judicial authorities, legal practitioners and civil society in general. In particular,

- Judicial cooperation in civil matters (civil justice):

As regards this strand, the Programme will not propose in depth changes; instead, it is decided to reinforce some actions such as the training of the judiciary, and to increase the global financial envelope. Following The Hague Programme, new objectives will be added to allow for an evaluation of the general conditions necessary to develop mutual confidence, including the quality of justice.

- Judicial cooperation in criminal matters (criminal justice):

As regards this strand, the Programme will propose the following modifications as regards the present situation: the AGIS programme will be divided into its two main components; the judicial cooperation in criminal matters will be included in the present Programme while the police cooperation will become part of the Security Programme. The judicial cooperation section will then be adapt according to the structure of the judicial cooperation in civil matters thus anticipating the essential changes that will result from the entry into force of the Constitutional Treaty with a view of facilitating the transition to the new legal framework resulting from the abolition of the pillars structure.

The training of the judiciary will be reinforced as it corresponds to a real need and is a key instrument to create an effective area of justice within the European Union.

The Programme will also have the necessary flexibility to allow for the implementation of new measures, such as the computerised system of exchange of information on criminal records, and others to develop new forms of cooperation.

(4) To contribute to the setting up of an area of freedom, security and justice by combating violence and by informing on and preventing drug use.

Fight against violence: the last revision in 2004 of the Daphne programme corrected the problems that were detected in the final report regarding the implementation of Daphne I programme. For this reason, no major modifications will be introduced and the existing Daphne II programme will remain essentially unchanged. Nevertheless, proposed amounts will be slightly increased to better respond to the demands from civil society and, with the same objective, the possibility of implementing new forms of action is planned.

Drugs prevention and information: this action is new but aims at consolidating on going actions under different programmes thus increasing transparency among citizens and all the actors involved in information and prevention actions in drugs. The coordination role that the Commission plays in the field of drugs prevention and information, between the different actors involved (Member States, the EMCDDA) will then be reinforced. It will support as well monitoring and evaluating actions on the implementation of specific actions under the European Union Action Plans. The action seeks also a greater involvement of civil society in the implementation and development of the European Union Drugs Strategy and Action Plans.

Across all strands, different types of actions are envisaged such as:

- Specific actions taken by the Commission, namely, inter alia, studies and research, opinion polls and surveys, formulation of indicators and common methodologies, collection, development and dissemination of data and statistics, seminars, conferences and experts meetings, organisation of public campaigns and events; development and maintenance of websites, preparation and dissemination of information materials, support to and animation

of networks of national experts, institutions and public bodies, analytical, monitoring and evaluation activities;

- Actions providing financial support for specific projects of Community interest under the conditions set out in the annual work programmes;
- Actions providing financial support for the activities of non-governmental organisations or other entities under the conditions set our in the annual work programmes;
- Operative grants to entities identified in a legal basis.

4. WHAT ARE THE IMPACTS LIKELY TO RESULT FROM THE RELEVANT POLICY OPTION AND WHO IS AFFECTED?

No EU intervention

If this option were to be selection, negative impacts would clearly outweigh potential savings for the EU budget. Indeed, letting go of existing interventions could be seen as a step backwards in terms of European integration, and would hence damage EU's visibility and perceptions among its citizens. This option would also fail to meet the expectations of citizens and civil society, and would hamper further integration in the relevant policy fields. Indeed, national interventions would not be supported in a common direction, creating divergence between Member States. Problems with a clear transborder dimension would remain unaddressed.

No-policy change

If the piecemeal approach described in annex 1 were to continue, some form of EU intervention would exist in this area. However, the following negative impacts can be identified: no adaptation to the evolving context and evolving demand; no simplification and rationalisation, hence less visibility and transparency for the citizens; financial support would be incoherent with recent policy developments (including the recent The Hague Action Plan) which would decrease its effectiveness; moreover, the stakeholders will be affected by these policy changes, with no appropriate mechanism to support them; the divergence between the political objectives and the financial means would also create problems when implementing the policies; finally, available instruments do not allow for enough flexibility to adapt to new legal and political situations (such as the entering into force of the new Constitutional Treaty).

Funding programme

The relevant option would create additional cost for the EU budget, when compared to the current situation. It does however respond to the objectives of simplification and rationalisation, as well as allowing for sufficient flexibility to adapt to an ever evolving political context.

The funding programme as described above would foster the development of a European dimension in fundamental rights, which is lacking in the existing instruments. Also, the fact that the different strands are included under a single policy heading, and better coordination mechanisms set-up, will increase transparency and the effectiveness in achieving the same overall objective.

Increased demands from civil society will be met not only in terms of the sheer volume of actions and funding, but also through a higher involvement of relevant stakeholders and direct support to European organisations.

Finally, a greater scale of intervention is aimed at greater multiplier effects which should also be maximised through better coordination of interventions and reduced overlaps. It is therefore hoped that the programme will have a direct impact on citizens, businesses and authorities, inter alia through enhanced knowledge and awareness on the issues covered by the programme.

Particular groups on whom the impacts are likely to be felt:

Fundamental rights

Citizens of the Union, third countries nationals in the territory of the European Union and civil society associations will benefit from the positive impacts of this programme.

Fight against violence

The positive impacts will benefit all groups that directly or indirectly deal with violence.

The main target group is the victims of violence and the groups at risk of violence. Other groups will be, inter alia, teachers and educational staff, police and social workers, local and national authorities, medical and paramedical staff, judicial staff, NGO, trade unions and religious communities. The perpetrators may also benefit from this programme.

Drugs prevention and information

The positive impacts will benefit all groups that directly or indirectly deal with drugs phenomena, this is, youth, vulnerable groups and groups at risk Other groups that will benefit from the programme will be, inter alia, teachers and educational staff, social workers, local and national authorities, medical and paramedical staff, judicial staff, NGO, trade unions and religious communities.

Judicial cooperation

Institutions and public or private organisations, including professional organisations, universities, research institutes and legal and judicial training/further training institutes for legal practitioners, non-governmental organisations.

5. Further analysis and consultation of interested parties and relevant experts

On cooperation on criminal justice, extensive consultation has been held with NGOs in this area and a number of studies have been undertaken on key issues, exploring the possible drawbacks and risks as well as the benefits, especially as regards, mutual recognition, the exchange of information on criminal records, protection of witnesses, harmonisation of the age of criminal responsibility and the possibility of establishing common standards for those under 18. Consultations with NGOs have generally highlighted the need for more networking, exchanges and integrated curricula for the judiciary.

A conference was organised under the Dutch presidency in November 2004 at The Hague on the practical obstacles to cross-border litigation. Extensive consultation is underway on establishing a common set of Community rules on maintenance obligations – a Green Paper was published in April 2004, a public hearing was held in June 2004 and an expert meeting and a conference jointly organised by the Commission and The Hague Conference are already scheduled for 2005. A joint 3-day Council-Commission conference was held on mutual recognition, attended by practitioners and representatives of the institutions and associations concerned, at which the urgency of action in this area at EU-level was stressed. The second European Day on civil justice took place in October 2004 with numerous awareness raising events organised in a number of Member States, including a joint conference organised by Germany, Poland and the Czech Republic in Bautzen attended by both the Commission and the Council.

On fundamental rights, a European conference of Electoral Management Bodies was held in March 2002 to discuss information campaigns to raise awareness of the European Parliament elections, followed by meetings of experts on electoral matters in November 2002 and 2003 and a Conference of Central and Eastern European Electoral Organisations in September 2004. In addition, there has been public consultation on the Fundamental Rights Agency which has highlighted the need for much more to be done in raising awareness among the general public about fundamental rights and the Charter.

On drug use, consultation with civil society on the EU Action Plan on Drugs was launched on the JLS and other relevant Commission websites in October 2004 and information was distributed through the REITOX network of the EMCDDA as well as through the Council Presidency and European Parliament. A compendium of the replies received from NGOs was published on the JLS website. A Green Paper on civil society cooperation on combating drug abuse is in preparation.

The opinion of relevant stakeholders was searched in view of the design of the Daphne II programme. These stakeholders represented a fair balance in their knowledge and expertise concerning the various areas of violence. The consultation included subjects such as the adequacy of the program and its resources; expected outputs, impacts and their sustainability; the efficiency of the programme; its implementation and delivery mechanisms; and the synergies with other programmes or policy initiatives. The results of this consultation process were taken into account when drafting the proposal for the Daphne II programme.

6. Helping to achieve cost-effectiveness in the Community financial instrument

A key objective of the "Fundamental Rights and Justice Action Programme" is to simplify and rationalise instruments both in legal and management terms, to streamline the budget structure, to increase coherence and consistency between programmes and avoid duplication

of instruments. Regarding the situation presented above, the present programme represents an important step towards this simplification.

The proposed simplification and rationalisation will benefit the end users as it increases the visibility, clarity and coherence of the instruments. Potential beneficiaries will find it easier to apply for funding under the different fields thanks to a more standardised approach and implementing provisions.

Delivery through alternative delivery mechanisms (externalisation, or shared management) has been examined in detail but was considered not appropriate given the relatively small amounts involved (externalisation would not be cost efficient) and the need for the Commission to be directly involved in the actions undertaken. In any case, the establishment of the Fundamental Rights Agency may shift some of the actions in the fundamental rights area to it. This will free some resources of the programme.

The results envisaged could not be expected to be achieved at lower cost for several reasons:

– The level of intervention could not be lowered without running the risk of reducing the programme's impact to such a low level that the European added value would be entirely lost. The targeted ambitions are measured so as to make it possible to meet the expectations of the beneficiaries. The present proposal has carefully estimated the cost of reaching its objectives.

– Considering the importance of the strands and in order to achieve the objectives envisaged, the level of the grants needs to be raised to be more attractive to more civil society actors and other authorities than it is at present.

– The level of human resources required for the management of the programme is necessarily relatively high. The harmonisation and the simplification of the procedures obtained by the integration of the strands into a single structure will also allow for a rationalisation from the human resources point of view.

– The harmonisation and the simplification of the procedures will also contribute to avoid duplications and will allow for more focussed actions that will generate more effectiveness regarding European Union value added.

– The rationalisation of the monitoring and evaluation procedures will allow for better outcomes and will facilitate multiplier effects

Cost-effectiveness analysis will be further refined in the context of the preparatory work leading to the implementation of the programme. Indeed, a series of studies on the ex-ante aspects of delivery mechanisms and cost-effectiveness is foreseen in the second half of 2005.

7. Added value of the Community financial instrument

The European Union added value will be achieved by:

- preparing the ground for the emergence of common strategies and legislation in this field;
- implementing EU policy objectives and their application in national policies;
- supporting the transposition of European Union legislation's and its application in a uniform way through Europe;
- promoting the co-operation and co-ordination mechanisms between Member States;
- cooperating with civil society organisations at European level.

Criteria for evaluation

A set of common evaluation criteria will be used through all strands to evaluate the success of the interventions regarding the European Union added value in relation with the type of effect described above. Example of criteria could be:

- To support only activities needed at European Union level to sustain European Union objectives, European Union laws and European Union implementation mechanism;
- To support activities which will be complementary with those financed at national level;
- To reinforce national exchanges at European Union level, generating synergy effects and economies of scale;
- To involve actively Member States representatives and other relevant stakeholders in the implementation of the programme in order to maximise complementarities with existing activities.

Subsidiarity and proportionality

As far as subsidiarity is concerned the present programme focuses on areas where European added value can be demonstrated and therefore is designed to respect the principles of subsidiarity and proportionality set out in Article 5 of the EC Treaty and its accompanying Protocol.

As far as proportionality is concerned, the new programme proposal has been designed to incorporate the maximum feasible extent of simplification in terms not only of the form of the action but also in terms of the administrative and financial requirements that will apply to their implementation. The programme has been designed to strike to find the right balance between flexibility and ease of use on the one hand, and clarity of purpose and appropriate financial and procedural safeguards on the other.

Complementarity with other Community interventions

The present programme aims at contributing to the establishment of an area of freedom, security and justice. A complementarity with other programmes may thus be possible.

A non exhaustive list of areas of convergence can be mentioned:

- The draft of the present programme took into account the Programme on Active Citizenship and the Youth programme to ensure that no overlap situations existed. In any case, particular attention will be paid to the implementation of those programmes to avoid such situations and to coordinate the results.
- The draft of the present programme took into account the Programme for Employment and Social Security - PROGRESS to ensure that no overlap situations existed. Particular

attention will be paid to the implementation of the programme to avoid such situations and to coordinate the results.

- The current proposal is complementary to some actions under the 7th framework programme. Synergies will be actively promoted whenever possible, namely as regards the application of research results.
- Special attention will be paid to the programmes implemented by in the field of Information Society, related with safe use of Internet and fighting its abuse, in particular as regards sensitive groups (e.g. children).
- The current proposal will also seek to complement the work of EU Agencies active in these policy fields (EMCDDA, Eurojust), as well as with the action of other international organisations acting in the field of fundamental rights, drugs action, fight against violence and judicial cooperation. Cooperation with the forthcoming Fundamental Rights Agency (to be built upon the EUMC) will also be sought once the Agency is established.

Regular exchanges of information and active collaboration around projects under other Community programmes will take place, in order to improve and capitalise upon internal coherence, and between the Commission and other national and international authorities/organisations, to improve external coherence.

Complementarities with interventions on Freedom, Security and Justice

These interventions have a common goal of establishing an area of freedom, security and justice where basic human rights are respected. Each of the programmes is designed to address particular aspects which are a critical part of the creation of such an area in the EU, given the integration of national economies and the goal of ensuring free movement of people as well as goods, services and capital between countries. As such, they tackle issues affecting freedom, security and justice which arise from the creation of economic and monetary union and the abolition of internal borders and which can only be effectively addressed at EU level. These issues are to do with cooperation, harmonisation, coordination of activities, the exchange and sharing of critical information and best practices and techniques, and establishing solidarity mechanisms for sharing the costs involved in pursuing common and agreed objectives in an equitable way.

They are reflected in the objectives set out in The Hague Programme adopted by the European Council in November 2004, which include: guarantying fundamental human rights throughout the EU, establishing minimum procedural safeguards and common access to justice, extending the mutual recognition of judicial decisions, fighting organised cross-border crime and the threat of terrorism, ensuring protection in accordance with international treaties to those in need, and regulating migration flows and controlling the external borders of the EU. Each of the programmes is aimed at pursuing these objectives in a complementary way without duplicating activities.

The activities under the Fundamental Rights and Justice programme, therefore, are designed to further fundamental rights and ensure a common level of access to justice across the EU, and are accordingly complementary to activities under the other two programmes which reinforce this objective. In particular, they are directly complementary to the measures, under the Solidarity programme to improve the integration of migrants into EU society as well as to establish uniform procedures for dealing with asylum-seekers and, under the Security programme, to enhance protection of witnesses and victims of crime as well as to combat the trafficking of people.

They are also complementary, if less directly, with activities under the Security programme to strengthen cooperation between police forces and law enforcement authorities as well as

between bodies involved in combating the threat of terrorism. The freedom of EU citizens to enjoy their fundamental rights, therefore, is contingent on them feeling secure and being adequately protected against criminal activity or terrorist attack.

8. Monitoring and evaluation

A comprehensive monitoring system will be set-up in order to regularly follow up the implementation of the activities carried out under each strand. This system should allow for the collection of information relating to the financial implementation and to the physical outputs of the programme, across the types of action and the target groups included in the programme. The information will be collected at project level - indeed, for any action financed by the programme, the beneficiary shall submit technical and financial reports on the progress of the work, as well as a final report after the completion of the action. Work on the design of the monitoring and evaluation systems will continue throughout 2005 and 2006, in the context of preparations for the implementation of the programme.

According to legal requirements and Commission's evaluation policy, the programme will be evaluated at mid-term to assess its continuing relevance and draw useful lessons for the remainder of its implementation. A review of the programme may take place then, if considered necessary. A final evaluation will take place at the end of the programming period to assess the results of the programme and advise on its follow-up. These reports will be prepared under the responsibility of the Commission, and shall be submitted to the European Parliament and the Council.

ANNEX 1

CURRENT SITUATION

In relation to the different strands of the Fundamental Rights and Justice Programme, the situation is as follow:

Judicial cooperation in civil matters:

A general Community framework of activities was established by Council Regulation (EC) N° 743/2002 of 25 April 2002[12]. This programme that started in 1 January 2002 will run till 31 December 2006. An interim report, currently under adoption, allows for a first set of conclusions as regards the implementation of this programme, which will be used in the present EIA.

To improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters, it was set up at Community level a European Judicial Network in civil and commercial matters, established by Council Decision of 28 May 2001 (2001/470/CE)[13].

This decision is of indefinite application but a report should be presented no later than 1 December 2005 with proposals for adaptation if needed.

Judicial cooperation in criminal matters:

A framework programme on police and judicial cooperation in criminal matters was established by Council Decision 2002/630/JHA of 22 July 2002 (AGIS)[14]. A first report of implementation will be adopted during 2005.

The European Parliament, considering that a particular effort should be made to enhance training of the judiciary, adopted, in 2004, a pilot programme called "Exchange programme for the judiciary" that will last for two years.

Fight against violence

To tackle this problem, the European Parliament set up, in 1997, the Daphne Initiative to fund measures to combat violence against children, young people and women. In 2000, the Daphne Programme was approved to pursue the action. In 2004, The Daphne II Programme was established. The actions that will be supported under the present programme will be the continuation of this Programme.

The Daphne Programme aims to address a widespread and growing concern at both public and political levels about the issue of violence. It followed the 1996 World Congress against Commercial Sexual Exploitation of Children in Stockholm and the events that unfolded in Belgium that summer, which focused attention on one particular form of violence: sexual violence against children and young people in the form of abduction, sexual abuse and exploitation and trafficking for sexual purposes. These forms of sexual violence are also all too frequently perpetrated against women and were condemned in the Declaration and Platform for Action adopted by the Fourth World Conference on Women held in Beijing in 1995. In its Communication on Trafficking in Women for the Purpose of Sexual

12 JO L 115, 1.5.2002, p. 1.
13 JO L 174, 27.6.2001, p. 25.
14 JO L 203, 1.8.2002, p. 5.

Exploitation[15] (1996) the Commission highlighted the important role played by NGOs in combating trafficking and in helping the victims.

The Daphne II programme to prevent and combat violence against children, young people and women and to protect victims and groups at risk was established by Decision n° 803/2004/EC of the EP and the Council of 21 April 2004[16] for the period 1 January 2004 till 31 December 2008. This Decision already mentions the possibility to adapt this programme to the new financial perspectives (article 8, 2).

In March 2004 the final report on the Daphne programme (2000-2003) was presented by the Commission to the European Parliament and the Council. It stated inter alia that the Daphne programme has succeeded in encouraging the exchange of ideas and best practice through the formation of networks and partnerships and the implementation of specific projects. This adds value at Community level to the work of Member States. Up till the end of the Daphne programme (2003), 1 493 organisations were involved in selected projects out of 1644 eligible proposals received. This shows the interest that the Daphne programme rises among civil society and the need to reinforce its budget to adapt to the demand. Other findings of this report have been used in drafting this EIA.

Drugs prevention and information

In 1999, the Commission presented a Communication on a European Union Action Plan to Combat Drugs (2000 – 2004)[17]. Based on this action plan, the Helsinki European Council endorsed the European Union Strategy on Drugs for 2000 – 2004[18]. In June 2000, The Feira European Council adopted the European Union Action Plan on Drugs 2000 – 2004[19] which translated the EU Drugs Strategy into concrete actions, some of them to be taken by the Commission.

The Commission presented a mid term evaluation[20] and a final evaluation[21] of this Action Plan.

The New European Union Strategy on Drugs for 2005 – 2012 was adopted by the European Council of December 2004. In February 2005 the Commission adopted its Action Plan on Drugs (2005 – 2008)[22] as a crucial instrument for transposing that strategy. The ultimate aim of the Action Plan is to significantly reduce the prevalence of drug use among the population and to reduce the social harm and health damage caused by the use of and trade in illicit drugs.

Both the Commission evaluations and the New European Union Strategy on Drugs will be use in the present EIA.

Fundamental rights and Citizenship

The promotion of fundamental rights and the support to civil society are two preparatory actions based on Article 49 (2) of the Financial Regulation.

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15 COM(96) 567 final on 20.11.1996.
16 JO L 143, 30.4.2004, p. 1.
17 COM (1999) 239 final of 26.5.1999.
18 Cordrogue 64 Rev 3, 12555/3/99, 1.12.1999.
19 Cordrogue 32, 9283/00, 7.6.2000.
20 COM (2002) 599 final, 4.11.2002.
21 COM (2004) 707 final, 22.10.2004.
22 COM(2005) 45 final, 14.2.2005.

The first preparatory action on fundamental rights supports at the moment two different projects: an annual report on the situation of fundamental rights in the European Union and its Member States prepared by a network of independent experts, and funding of projects aiming at informing all persons residing in the European Union about the Charter of Fundamental Rights and at raising awareness about fundamental rights in the context of Union Law.

The second preparatory action aims at supporting civil society in the Member States which acceded to the European Union on 1st May 2004.

The Agencies

The programme complements the work of the following existing agencies.

The European Monitoring Centre for Drugs and Drug Addiction was established by Council Regulation (EEC) No 302/93 of 8 February 1993[23] amended by Council Regulation (EC) No 3294/94 of 22 December 1994[24].

The mission of the Centre is to collect and disseminate objective, reliable and comparable information on the phenomenon of drugs and drug addiction in Europe. In order to do so, the Centre works in partnership with non-EU countries as well as with international organisations concerned with this issue, notably: the United Nations International Drug Control Programme (UNDCP), the World Health Organisation (WHO), the Council of Europe's Pompidou Group, the World Customs Organisation (WCO), the International Criminal Police Organisation (Interpol) and the European Police Office (Europol).

The Vienna-based European Monitoring Centre on Racism and Xenophobia was established by Council Regulation (EC) No 1035/97 of 2 June 1997[25].

The primary task of the EUMC is to provide the Community and its Member States with objective, reliable and comparable information and data on racism, xenophobia and anti-Semitic phenomena at the European level in order to establish measures or actions against racism and xenophobia. On the basis of the data collected, the EUMC studies the extent and development of the phenomena, and analyses their causes, consequences and effects. It is also the task of the EUMC to work out strategies to combat racism and xenophobia and to highlight and disseminate examples of good practice regarding the integration of migrants and ethnic and religious minority groups.

In December 2003, the European Council decided to enlarge the mandate of the Vienna centre in order to become a Fundamental Rights Agency. The Commission proposal for a Regulation on this Agency is expected to be adopted in May 2005.

Finally, mention should be made to Eurojust set up by Council Decision of 28 February 2002 (2002/187/JHA)[26].

Eurojust is a new European Union body established to enhance the effectiveness of the competent authorities within Member States when they are dealing with the investigation and prosecution of serious cross-border and organised crime by stimulating and improving cooperation between those authorities.

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23 OJ L 36, 12.2.1993, p. 1.
24 OJ L 341, 30.12.1994, p. 7
25 OJ L 151, 10.6.1997, p. 1
26 JO L 63, 6.3.2002, p. 1