

JOINT PARLIAMENTARY MEETING
at the initiative of the European Parliament and the Parliament of Finland

FROM TAMPERE TO THE HAGUE: MOVING FORWARD?
PROGRESS AND SHORTCOMINGS IN THE AREA OF FREEDOM,
SECURITY AND JUSTICE

European Parliament, Brussels

The Presidency Conclusions of the Tampere European Summit in October 1999, the first ever to be dedicated only to justice and home affairs, formed what was called the 'Tampere Programme'. When it came to an end, in 2004, the Commission published an evaluation which highlighted the major obstacles to further progress, such as the predominant requirement for unanimity in the Council and the problems with ensuring that the adopted measures were effectively implemented by the Member States. The successor to the Tampere Programme was adopted in November 2004 in The Hague under the Dutch presidency.

In its Communication¹ assessing the state of implementation of the Hague Programme published in June 2006, the European Commission affirms that many shortcomings of the Tampere Programme are still in place. It underlines that there are some deficiencies in the transposition of EU legislation in the Member States, which undermines its effectiveness. The Commission also highlights that the implementation of the Hague Programme is confronted to many difficulties, mainly due to the particularity of the decision-making process, such as the separation between 'first' and 'third' pillars², or the unanimity which is required in some areas ("third pillar" or legal migration for example).

The Commission considers that the bridging clauses (provided for in Article 42 TEU and Article 67 TEC) constitutes a solution to overcome these difficulties in applying the 'Community method' to the policies in the area of freedom, justice and security. The European Parliament has repeatedly called for the implementation of these clauses³. The European Council of 15 and 16 June 2006 also called upon the Finnish Presidency "*to explore (...) the possibilities of improving decision-making and action in the area of Freedom, Security and Justice on the basis of existing Treaties*". The Finnish Presidency organises an informal meeting on Justice and Home Affairs on 20-22 September 2006 where EU Ministers will discuss the Hague Programme.

Following the Commission's Communication and this informal JHA Council, it seems important to evaluate what has been done until now to implement the Tampere and

¹ COM(2006)331, "*Implementing the Hague Programme: the way forward*"

² The first pillar refers to the policies that are included in the Treaty establishing the European Community (TEC) such as for example visas, asylum, immigration and other policies related to movements of persons (Title IV). The third pillar relates to police and judicial cooperation in criminal matters and these provisions are integrated in the Treaty on European Union (Title VI).

³ see for example the European Parliament resolution on the next steps for the period of reflection and analysis on the Future of Europe, 14.06.2006, P6_TA-PROV(2006)0263

Hague Programmes and to assess what can still be achieved in the near future to foster European cooperation and to increase efficiency and democratic accountability of measures already adopted in the area of freedom, security and justice.

In each session, the discussion could focus on assessing:

- the **effectiveness** of the policies in the area of freedom, security and justice
- the balance between fundamental **rights and security needs** in these policies

Practical guidelines for the debate

- *Presentations opening each session should be limited to 10 minutes.*
- *During the discussion, so as to make it possible for the highest possible number of parliamentarians to intervene, speaking time will be limited to three minutes per contribution or question.*
- *Speakers wishing to supplement their speeches may do so in writing by submitting a document (preferably in English or French) in advance to the secretariat (email: amalia.nicolaidou@europarl.europa.eu). This document will be circulated during the meeting.*
- *Members requesting the floor are kindly asked to inform the chair indicating their name and Parliament on a special sheet. The floor will be given to Members in the order in which requests are received, and in turn to two Members of national Parliaments, followed by one Member of the European Parliament, and so forth.*
- *At the end of each session a short amount of time will be reserved to allow some Members to react to what has been said in an intervention limited to one minute (by means of a blue card).*

Monday 2 October 2006

15.00 - 15.30 OPENING SESSION

Welcome by **Mr Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs, **Ms Tuija BRAX**, Chairwoman of the Committee on Legal Affairs of the Parliament of Finland, and **Mr Matti VÄISTÖ**, Chairman of the Committee on Internal Affairs of the Parliament of Finland

Opening speeches by **Mr Josep BORRELL FONTELLES**, President of the European Parliament and **Ms Sirkka-Liisa ANTTILA**, Deputy Speaker of the Parliament of Finland

15.30 - 17.00 SESSION 1

DATA EXCHANGE AND DATA PROTECTION: WHAT ARE THE OBSTACLES TO THE IMPLEMENTATION OF THE PRINCIPLE OF AVAILABILITY?

Chair: **Mr. Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs

Many initiatives are being developed at the European level to facilitate the exchange of data between Member States' authorities, especially for police and judicial cooperation. However, the recent ruling of the European Court of Justice on PNR (Passenger Name Records)⁴ also showed how crucial the issues of data exchange and data protection are when those data are collected by private companies and can be used for security purposes (see also Swift providing information on bank transfers to the CIA).

The main proposal of the Hague Programme in this regard is to create a legal basis and an implementation mechanism for the principle of availability: the Commission issued a proposal on the exchange of information under this principle in October 2005 but negotiations in the Council on this issue seem in a deadlock. Member States and the European Commission are thus trying to develop alternative approaches, either by restricting the number of countries involved (the Prüm Treaty⁵, outside the EU framework) or by 'segmenting' the availability obligation by type of data (see the two new proposals of the European Commission on consultation of DNA and fingerprints databases).

But the multiplication of legal basis in this area may increase the already existing confusion and the difficulties in implementing different legislations. What are the practical difficulties in this regard? What are the provisions on data protection in these different instruments? Are they sufficient?

15.30-16.00: Presentations

Mr. Peter SCHAAR, German Federal Data Protection Commissioner and Chairman of the Article 29 Working Party (to be confirmed)

⁴ Judgment of the Court of Justice in Joined Cases C-317/04 and C-318/04, European Parliament v Council of the European Union and European Parliament v Commission of the European Communities, 30 May 2006

⁵ The Convention on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration (also called the Prüm Treaty) was negotiated upon German initiative and signed by Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain on 27 May 2005.

EP and national Rapporteurs on these issues

16.00-17.00 Discussion

17.00-18.30 SESSION 2

WHAT FUTURE FOR EUROPOL?

Chair: **Mr. Matti VÄISTÖ**, Chairman of the Committee on Internal Affairs of the Parliament of Finland

Europol, the European Police Office which became operational in 1999, aims to help the EU Member States cooperate more closely in preventing and combating organised international crime. As it is not part of the EU framework, Europol's activities are subject neither to the supervision of the European Parliament nor to judicial review by the European Court of Justice. Moreover, three protocols⁶ amending the original Europol convention and intending to improve Europol's operational capacity have not been ratified by all Member States yet and consequently could not enter into force.

The European Parliament and several national parliaments have repeatedly asked for more accountability of Europol. In its communication on the assessment of the Hague Programme, the European Commission declares that it is considering presenting a proposal to replace the existing Europol Convention and that it will be necessary to improve parliamentary oversight and control over Europol's activities. How will this be organised? What can be the role of the national Parliaments? Why not set up a joint parliamentary committee with representatives of the European Parliament and of national parliaments?

17.00-17.30 Presentations

Mr. Max-Peter RATZEL, Director of Europol (to be confirmed)
Representative of the European Parliament

Mr. Hubert HAENEL, Chairman of the European Union Delegation, Senate, France

17.30-18.30 Discussion

19.30 Dinner

Tuesday 3 October 2006

09.00-10.30 SESSION 3

AN INTEGRATED MANAGEMENT OF BORDERS FOR A SAFER ENLARGED UNION?

Chair: **Mr. Jean-Marie CAVADA**: Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs

In recent years considerable progress was achieved in setting up a common policy on management of external borders: the common corpus of legislation was consolidated and

⁶ According to the Europol Convention (Art. 43 of the Europol Convention) have to be ratified by Member States in accordance with their respective constitutional requirements.

further developed (notably by the adoption of the Schengen Borders Code); the new European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) was given the coordinating role and the idea of burden sharing between Member States is now firmly embedded with the creation of the Borders Fund. What should be the next steps? Are there shortcomings in this field?

FRONTEX has been inaugurated slightly more than a year ago. What conclusions can be drawn from its activities so far and what are the challenges ahead?

The enlargement of the Schengen area to the new Member States is currently under consideration and an evaluation of the implementation of the Schengen acquis in these countries is taking place. It is expected that the Council will decide in 2007 on the lifting of controls at the borders with and between the new Member States. What are the challenges and the difficulties in this regard?

09.00-09.30: Presentations

Mr. Kari RAJAMÄKI, Minister of Home Affairs, Finland

Mr. Ilkka LAITINEN, Director of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) (to be confirmed)

Representatives of the European Parliament and a national parliament

09.30-10.30 Discussion

10.30-12.00 SESSION 4

A BALANCE BETWEEN THE INTEGRATION OF LEGAL MIGRANTS AND THE FIGHT AGAINST ILLEGAL MIGRATION?

Chair: **Mr. Matti VÄISTÖ**, Chairman of the Committee on Internal Affairs of the Parliament of Finland

The recent mass influxes of immigrants in Ceuta, Melilla, the Canary Islands and Lampedusa for example, highlight the importance of the issue of migration and of the reception of migrants in the European Union. The Ministerial Euro-African Conference on Migration and Development held on 10-11 July 2006 also discussed these issues.

Over the recent years, migration policies that have been developed at European level have focused on illegal immigration and on the development of repressive measures. However, the Hague Programme does not provide only for measures to counter illegal immigration, but also for measures to implement a common immigration policy and promote the integration of legal migrants. In this framework, the European Commission intends to publish an Action Plan for legal migration following last year's Green Paper on economic migration.

Has the implementation of the Hague Programme achieved until now an actual balanced approach between these two sides? What needs to be done to achieve such an objective?

10.30-11.00 Presentations

Representatives of the European Parliament and a national parliament

11.00-12.00 Discussion

12.00-14.00 Buffet lunch

14.00-15.30 SESSION 5

10 YEARS AFTER THE 'APPEL DE GENÈVE': WHAT IS THE STATE OF JUDICIAL COOPERATION IN EUROPE?

Chair: **Ms. Tuija BRAX**, Chairwoman of the Committee for Legal Affairs of the Parliament of Finland

On 1 October 1996, seven anti-corruption European magistrates from Belgium (Benoit Dejemeppe), France (Renaud Van Ruymbeke), Italy (Edmondo Bruti Liberati and Gherardo Colombo), Spain (Baltasar Garzón Real and Carlos Jiménez Villarejo) and Switzerland (Bernard Bertossa) commonly launched an appeal for the creation of a "European judicial area" in order to tackle the transnational nature of crime.

Ten years later, what has been achieved?

Some progress has been made in this direction (for example the harmonisation of several crimes at the European level, the improvement of the principle of mutual recognition, the creation of the European Judicial Network and of Eurojust), but there are still obstacles to face (cf the European Arrest Warrant) or some issues are still being discussed (European Evidence Warrant).

The Tampere European Council concluded that the principle of mutual recognition should become the cornerstone of judicial cooperation within the Union. This presupposes that Member States have mutual trust in each other's criminal justice systems and a common approach to fundamental rights. However, this seems problematic for some Member States: several proposals are blocked in the Council (such as for example the Council Framework Decision on combating racism and xenophobia⁷ or the Framework Decision on procedural rights⁸) and in some cases, only agreements *a minima* were reached (e.g. European Evidence Warrant).

14.00-14.30 Presentations

Ms. Leena LUHTANEN, Minister of Justice, Finland

Representatives of the seven European magistrates who initiated the 'Appel de Genève' (to be confirmed)

Mr. Michael KENNEDY, President of the College of Eurojust

14.30-15.30 Discussion

15.30-17.00 SESSION 6

FIGHT AGAINST TERRORISM: HOW TO IMPROVE EFFECTIVENESS AND CONSIDERATION OF FUNDAMENTAL RIGHTS?

Chair: **Ms Tuija BRAX**, Chairwoman of the Committee on Legal Affairs of the Parliament of Finland

⁷ COM(2001)0270, 2001/0270/CNS

⁸ COM(2004)328, 2004/0113/CNS, Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union

Over the past few years, the fight against terrorism has been the basis for the adoption of many legal acts to reinforce European cooperation and set common standards in this field following the terrorist attacks in the US, Madrid and London. The Action Plan on Terrorism (updated in June 2005) detailed the actions to be taken in this area.

However, in the Report on the implementation of the Hague Programme, the European Commission highlighted that *"the EU determination to fight against terrorism does not appear to be correctly translated/relayed at national level where important delays in transposing essential Framework Decision on Terrorism remain in a number of Member States"*.

Moreover, the issues of PNR and Swift have shown that the fight against terrorism cannot be pursued without taking fundamental rights into consideration.

Is the legislation adopted at the European level effective and implemented in the Member States? Are new actions needed to improve and make more efficient the fight against terrorism? What can be done to improve the balance between fundamental freedoms and security needs?

15.30-16.00 Presentations

Representatives of a national parliament and of the European Parliament

16.00-17.00 Discussion

17.00-17.30 CLOSING SESSION

In this crucial phase for the area of freedom, security and justice, a regular and efficient dialogue between the European Parliament and national parliaments is needed.

Such a dialogue should aim at an improved transparency in a domain which covers one fifth of the documents submitted to the European Parliament and the Council and should also focus on acts for which there is no clear parliamentary scrutiny such as the EU 'common positions' adopted in the second pillar but dealing with Freedom, Security and Justice issues (e.g. terrorism, fundamental rights..) or the EU international agreements based on articles 24 and 38 TEU (such the agreements with Norway and Iceland on the European Arrest Warrant or with the USA on PNR).

- **Ms. Tuija BRAX**, Chairwoman of the Committee on Legal Affairs of the Parliament of Finland,
- **Mr. Matti VÄISTÖ**, Chairman of the Committee on Internal Affairs of the Parliament of Finland
- **Mr. Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs