

Communication from the Commission, Towards an area of freedom, security and justice

Caption: On 14 July 1998, resolved to work towards the establishment of a European area of justice and internal affairs, the European Commission publishes the communication Towards an area of freedom, security and justice, which, in application of the Treaty of Amsterdam, seeks inter alia to bring the European Union closer to the people.

Source: European Commission. Towards an area of freedom, security and justice, COM (1998) 459. Brussels: [s.d.].

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URL:

http://www.cvce.eu/obj/communication_from_the_commission_towards_an_area_of_freedom_security_and_justice-en-c53d5584-ea6d-42bc-9082-a75e252499f5.html

Publication date: 05/09/2012

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The general framework

The objective

The Cardiff European Council called on the Council and the Commission to present an action plan on “how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice”. In doing so its intention was not to launch a simple exercise in drafting or procedural reform. It demonstrated its willingness to tackle a major public concern with concrete action. That request is part of a clear and ambitious move: to set the Union on the path towards reforms that will bring it closer to the people.

However, it is best to begin by thinking about just what is meant by an “area of freedom, security and justice” before listing the various avenues to be explored to make it operational.

The concept enshrines at European Union level the essence of what we derive from our democratic traditions and what we understand by the rule of law. The common values underlining the objective of an area of freedom, security and justice are indeed longstanding principles of the modern democracies of the European Union. The challenge set out by the Amsterdam Treaty is not to reinvent democracy and the rule of law but to allow citizens to enjoy their long-standing democracies in common. A further essential aspect is the economic and social integration of lawfully established non-Union nationals, together with the principle of non-discrimination set in the Amsterdam Treaty.

The three notions of freedom, security and justice are closely interlinked. Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. These three inseparable concepts have one common denominator - people - and one cannot be achieved in full without the other two. Maintaining the right balance between them must be the guiding thread for Union action.

The foundations

We would be deceiving ourselves if we thought that this area was to be built out of nothing. In many areas the Community and the Union have already established activities which, in their own fields, help to attain this objective.

For instance, the main feature of the single market is the creation of an area where goods, persons, services and capital must be able to move freely. The Community also has a number of social policy instruments which enhance the public’s sense of belonging, an essential adjunct to the frontier-free area.

And since the entry into force of the Maastricht Treaty, the foundation has been laid for more specific cooperation in the area of justice and home affairs.

In parallel, but outside the Treaty of the Union, Schengen has given substance to the desire of certain Member States to advance further in matters relating to the free movement of persons.

On the wider international scene, and in particular within the Council of Europe, the Member States have entered into commitments on various aspects of such an area.

Going further

This miscellany of achievements, whatever their importance and their significance, is not regarded by the general public as an adequate response to the need to make this dimension of the European Union a reality. Despite the enormous efforts made, the feeling is still that not enough has been achieved. Apart from the absence of transparency and the lack of judicial guarantees, there are two main reasons for this:

- these actions are not organised around a single concept giving them sense and coherence as stages in the process of attaining a specific objective;
- the instruments used were either not designed for this purpose in the case of Community policies (e.g. social integration measures are not specifically intended for crime prevention, even though they can make a major contribution in this respect), or they have proved inadequate (as attested, in JHA cooperation, by the excessive use of non-binding instruments or the failure to ratify the main conventions adopted).

The Amsterdam Treaty: an important step in the right direction

This contrasting picture verdict does not match up to the constant concern expressed by the public and echoed on a number of occasions by the European Council.

Hence the importance of the new provisions adopted in Amsterdam in that they open up the possibility of significant progress. First of all the objective of maintaining and developing the Union as an area of freedom, security and justice is asserted and the various aspects involved are reviewed. And secondly, the Union has been given the necessary framework in which to accommodate it and the instruments required have been strengthened and at the same time made subject to tighter judicial and democratic review.

The Community method is confirmed: several of the areas of the current “third pillar” are brought under Community arrangements and the Community institutions are given a role in police and criminal justice cooperation. Finally, the integration of Schengen rewards the efforts of the Member States which embarked on this cooperation and gives the Union a base on which it will now have to build further.

In this context fully implementing the Amsterdam Treaty offers a unique opportunity. Having said this, it must also be recalled that this cooperation will, at least for the next five years, continue to be the subject of the unanimity rule.

The way forward

A new spirit of interinstitutional cooperation

Translating the ambitious objectives of the Amsterdam Treaty into concrete action is a major responsibility shared by all the institutions. Going no further than declarations of intent or simply making cosmetic changes would expose the Union to the risk of disappointing the public in proportion to its high expectations.

One of the keys to success lies in a new spirit of interinstitutional cooperation. It is true that one of the features of the new Amsterdam set-up is an adjustment of responsibilities giving the Commission a bigger role. But what is important is not so much the fact of having a right of initiative, be it shared or exclusive, as the way in which this right is exercised. In any case the Treaty provides that for five years the right of initiative will be shared between the Commission and the Member States for matters transferred to the Community framework. In these areas more than in others it will therefore be necessary to continue a constructive dialogue between the Member States and the Commission.

It is the Commission’s intention to be guided by the following two lines of action.

- It will, of course, make use of its right of initiative, but in doing so it will set priorities which take account of the timetable fixed by the Treaty itself as regards full attainment of the free movement of persons. It will base its action on a sound understanding of the subsidiarity principle and an analysis of the possibilities offered by the new Treaty to consolidate Community and Union action in areas where it was hampered by the imperfections of the existing Community framework. An initial outline of these priorities is given in the section “Priorities” below.
- It will ensure that the opportunity offered by the new Treaty is not wasted. It would warn against an

attitude that is contrary to the spirit of the new Treaty. In concrete terms this means ensuring that the spirit is respected as regards the transition period for the work in progress and the integration of the Schengen *acquis*. This is dealt with in the following section.

The transition to the new Treaty

Four transitional issues must be addressed.

- The Schengen *acquis*, whose distribution between the future “first” and “third” pillars will have significant consequences for work in this area. It is possible that, if no agreement is reached in that exercise by the time the Treaty enters into force, the fall-back position, foreseen in the Amsterdam Treaty’s Schengen Protocol, of situating the whole of the Schengen *acquis* in the future Title VI will apply. The Commission considers that such an outcome would not be acceptable, and would need to be corrected over time by the adoption of appropriate Community instruments to take over those parts of the Schengen *acquis* which fall under the future “first pillar”.
- “Unfinished business”. Currently under discussion in the Council are a number of draft instruments tabled before the signature of Amsterdam but with the possibility that agreement may be reached in the Council before the Treaty comes into force. The Commission will continue to encourage the efforts already being made to introduce appropriate Amsterdam language. Should these efforts fail, however, there would be a clear need for replacement Amsterdam-based texts to be tabled immediately after the entry into force of the Treaty.
- Commission initiatives currently on the Council table. These initiatives, of which the draft Convention on admission and the draft joint action on temporary protection are the most significant, are based on Maastricht. They are unlikely to be adopted before the entry into force of Amsterdam. As already stated in the Commission’s proposals, new texts will be prepared to be ready for immediate tabling when the Treaty enters into force. The same consideration applies for any new Commission initiatives taken between now and the entry into force of the Treaty.
- The existing third pillar *acquis* as transmitted to the applicant countries, some of which even pre-dates Maastricht e.g. the Dublin Convention. In the case of these instruments, it will be necessary to examine whether and, if so, on what timescale there is a need for Amsterdam versions. In addition to any identified need for improvements of substance to these instruments, such reformulations will at the very least adapt the existing instruments in terms of the involvement of the institutions of the Union.

Priorities

The Commission intends to combine its efforts with those of the other institutions and the Member States to make this area of freedom, security and justice more tangible in the everyday life of the people. Its action will be guided by the priorities set out in the following sections.

It must be borne in mind that one of the features of cooperation in the area of justice and home affairs is that it is based on operational arrangements as much as on legislative instruments. In this respect the Member States and their competent authorities bear a great deal of responsibility. In these areas too, the Commission will follow the general guidelines it has set for its legislative policy, in particular by conducting the consultations which precede the Commission initiative.

One must also bear in mind that there is an important link with the enlargement process, in particular with the pre-accession strategy. The countries applying for membership of the European Union are well aware that justice and home affairs will have a special significance for their applications. However, the JHA *acquis* is different in nature from other parts of the Union’s *acquis*. Much still needs to be done and the *acquis* will therefore be developing constantly over the pre-accession years. The Union owes it both to itself and to the applicant countries to build up this *acquis* as quickly and concretely as possible in order to put in place a clear and comprehensive framework. The Commission must also ensure the optimal use of the assistance the

Union can make available to the applicant countries.

An area of freedom

A wider concept of freedom

The wider concept of freedom embodied in the Treaty of Amsterdam aims to give “freedom” a meaning beyond free movement of people across internal borders. It is also freedom to live in a law-abiding environment in the knowledge that public authorities are using everything in their individual and collective power (nationally, at the level of the Union and beyond) to combat and contain those who seek to deny or abuse that freedom. Freedom must also be complemented by the full range of fundamental human rights, including protection from any form of discrimination.

Another fundamental freedom deserving special attention in today’s fast-developing information society is that of respect for privacy and in particular the protection of personal data. This is especially true when, in support of the development of police and judicial cooperation in criminal matters, data exchange networks are set up. The Commission will take the measures required to ensure appropriate protection of personal data exchanged in the area of freedom, security and justice.

The Schengen *acquis*

The objective for justice and home affairs cooperation has so far been closely linked to free movement of people. It has had the effect of focusing efforts on measures to compensate for the loss of internal frontier controls and a number of useful and relevant instruments have been adopted.

With the integration of the Schengen *acquis* the Union will receive a foundation on which to build a genuine area of freedom, security and justice within the Union framework, thereby marking a real step forward.

What is required now is fully open management and monitoring of the smooth operation of this frontier-free area and its future development. The Commission will play its part, taking account of the know-how available to the Commission itself and the Member States concerned: for certain aspects such as visa policy, the Commission already has the necessary know-how; for others, such as the technical aspects of SIS, it intends to draw on the know-how of the Member States to develop its own.

Immigration and asylum policies

When looking at the priorities ahead, different considerations must apply to immigration policy on the one hand and asylum policy on the other. Future work in these areas will essentially be determined by the fact that the new Treaty itself contains an obligation to take action within five years in a wide range of immigration and asylum-related areas involving both substance and procedure. An impressive amount of work has already been carried out. However, the instruments adopted so far often suffer from two weaknesses: they are frequently based on “soft law” such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements. The commitment in the Amsterdam Treaty to use European Community instruments in the future provides the opportunity to correct these weaknesses.

As far as immigration is concerned, Member States are all subject to migration pressures from many - and often new - sources to which they have to respond by finding the balance between economic and humanitarian considerations and in line with Community legislation and key international agreements. This is particularly true for family reunification, which is the largest single group of immigrants still admitted into the Union. The abolition of internal border controls and the notion of a common external border reinforces the desirability for the Union to develop more similar approaches and closer cooperation in the immigration policy area. In this context a major priority will be the fight against the trafficking in human beings.

In the case of asylum, the 1951 Geneva Convention provides the common basis around which a European refugee regime is built. The Council has already agreed on common guidelines for the interpretation of the refugee definition as laid out in that Convention; but further steps have to be taken. There is an urgent need to complement the Geneva Convention with instruments capable of handling today's asylum challenges, particularly in situations of mass-influx of people seeking international protection. When a conflict in a crisis region escalates the number of people fleeing that region and arriving in the Union seeking protection can be so great that applying normal asylum procedures rapidly becomes impossible.

In addition, some of those people may need international protection without being eligible under the Geneva Convention. This is why the Commission attaches great importance to the adoption of a mechanism for giving temporary protection, thus allowing the Union to respond adequately and rapidly to situations of mass influx. This has to be accompanied by a mechanism of solidarity to assist the Member States which are most affected in a particular situation. Aside from mass-influx situations, the Union needs to develop minimum standards for asylum procedures as well as subsidiary forms of protection for people whose individual cases demonstrate a need for protection, despite the fact that they are not refugees under the Geneva Convention.

Integration of non-Union nationals

A wider concept of freedom cannot be exclusively reserved for EU citizens. It must also include the more than 10 million third country nationals who live lawfully and permanently in our Member States.

So far, efforts in this area have not been tackled in a generalised and systematic way, but rather limited to specific measures (i.e. in the coordination of social security systems). The European Union needs to develop a common understanding of the extent to which third country nationals and EU citizens should be treated equally. Also, the reflection must be continued concerning the difference to be made between third country nationals recently arrived and those who have long been living in Member States on a permanent basis.

An area of security

The full benefits of any area of freedom will never be enjoyed unless they are exercised in an area where people can feel safe and secure.

Looking at the new Treaty it is clear that the agreed aim is not to create a European security area in the sense of a common territory where uniform detection and investigation procedures would be applicable to all law enforcement agencies in Europe in the handling of security matters. Nor do the new provisions affect the exercise of the responsibilities incumbent upon Member States to maintain law and order and safeguard internal security.

Amsterdam rather provides an institutional framework to develop common action among the Member States in the indissociable fields of police cooperation and judicial cooperation in criminal matters. The declared objective is to prevent and combat crime at the appropriate level, "organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud".

The Commission intends, for its part, to make a realistic use of its new right of co-initiative foreseen by the Treaty of Amsterdam in the field of law enforcement cooperation, recognising the leading role of the Member States. As a first step, and building on the experience of the cross-pillar approach adopted in the action plan on organised crime, it will consider extending future first pillar initiatives, where appropriate, to include related law enforcement proposals. By doing so, the defence of the Union's interests will be reinforced, whichever "pillar" they come under (for instance concerning the protection of EC financial interests or in the area of environmental protection).

Europol

As far as Europol is concerned, the new Treaty recognises the essential and central role it will play, by

requiring that a number of specific measures be adopted within five years of its entry into force. The new Treaty provides in particular further coordination and more operational tasks to Europol. It is therefore important to start to work on the implementation of these measures as soon as possible, now that the Europol Convention has at last been ratified by all Member States, so as to allow Europol to play fully its new role as an indispensable European cooperation tool. These developments should build upon the *acquis* of the Europol Drugs Unit which, as a precursor for the future Europol, has gained experience in areas like information exchange, technical and operational support, threat analyses and situation reports.

Organised crime

Organised crime poses a major and growing threat. It is a phenomenon which has developed internationally both in composition and scope at an alarming speed. Not only are a number of foreign organised crime groups building up structures in countries of the EU, but cross border cooperation between these groups and domestic criminal groups is also increasing.

The Union's response to this challenge is contained in the action plan to combat organised crime, endorsed by the Amsterdam European Council, that foresees an integrated approach at each step on the continuum from prevention to repression and prosecution.

Important progress has already been made, as the Cardiff European Council recognised. Along with progress achieved in the judicial field, EU cooperation has led to the building up of European networks between national operational law enforcement authorities, enabling them to conduct joint surveillance operations, to enhance expertise and specialised training in a series of fields such as drugs, money laundering, terrorism, stolen vehicles, football hooliganism, high-tech crime and urban violence.

Drugs

Drugs deserve a particular mention. They constitute a threat to collective and individual security in numerous ways, often but not always linked to organised crime. It is an area to which Europe has brought a distinctive and influential approach through its insistence on a comprehensive policy based on shared responsibility between consumer and producer countries. Within that comprehensive framework, however, it is clear that a major component will be the mobilisation of the full weight which various law enforcement agencies can collectively bring to bear against the traffickers and the criminal organisations which lie behind them.

The Treaty of Amsterdam will further enhance the Commission's ability to make its contribution to the Union's fight against drugs, also in areas where it previously had no formal right of initiative. The elaboration of the Union's action plan against drugs for the period 2000-2005 will be priority for the coming year.

An area of justice

Judicial systems within the European Union have developed gradually and over a very long period of time. An independent and well-functioning judiciary is one of the backbones of our shared tradition of rule of law.

As historic experiences vary among Member States, it is hardly surprising that judicial systems differ substantially both in terms of material content and procedural rules. But we cannot escape the fact that the obstacles and difficulties this creates are hard for Union residents to understand, especially when they are supposed to enjoy a frontier-free area, now also an area of freedom, security and justice, in which to move freely and live their lives. This also applies to firms operating in a single market.

The new impetus and instruments introduced by Amsterdam provide the opportunity to examine what the area of "justice" should seek to achieve. The ambition is to give citizens a common sense of justice throughout the Union. Justice must be seen as facilitating the day-to-day life of people and bringing to justice those who threaten the freedom and security of individuals and society. This includes both access to

justice and full judicial cooperation among Member States. What Amsterdam provides is a conceptual and institutional framework to make sure that those values are defended throughout the Union; in other words, the context in which a Union global policy in the administration of justice can be developed.

It is in the framework of the consolidation of an area of freedom, security and justice that the concept of public order appears as a common denominator in a society based on democracy and the rule of law. With the entry into force of the Amsterdam Treaty, this concept which has hitherto been determined principally by each individual Member State will also have to be assessed in terms of the new European area. Independently of the responsibilities of Member States for maintaining public order, we will gradually have to shape a “European public order” based on an assessment of shared fundamental interests.

Judicial cooperation in civil matters

Reinforcement of judicial cooperation in civil matters, which many believe has developed too slowly, represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen. Law-abiding citizens have a right to look to the Union to simplify and facilitate the judicial environment in which they live in the European Union context. Here principles such as legal certainty and equal access to justice should be a main objective, implying easy identification of the competent jurisdiction, clear designation of the applicable law, availability of speedy and fair proceedings and effective enforcement procedures.

Judicial cooperation in criminal matters

Judicial cooperation in criminal matters must be raised to the level reached in police cooperation. However effective it may be, judicial cooperation in criminal matters is hard pressed today to deal with phenomena such as organised crime, unless there is approximation of legislation and facilitation of procedures.

In concrete terms this means first of all that criminal behaviours should be approached in the same way throughout the Union: terrorism, corruption, traffic in human beings, organised crime, should be the subject of minimum common rules relating to the constituent elements of criminal acts, and should be pursued with the same vigour wherever they take place. If serious criminal conduct receives an equivalent response and procedural guarantees are comparable throughout the Union, the possibilities of improving coordination of prosecution, whenever greater efficiency can be reconciled with respect for individual rights, must be examined. This goes in particular for policy areas where the Union has already developed common policies, and for policy areas with strong cross-border implications such as environmental crime, high-tech crime, corruption and fraud, money laundering, etc. At all events the enhancement of the powers of Europol will have to be matched by the development of a judicial function at Union level.

Procedures

Procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case. The rules may be different provided that they are equivalent. This would in particular cover matters relevant to the rights of defence, where common principles and codes of good practice should be developed (i.e. interpretation, taking of evidence, etc.), but could also extend to persons involved in procedures in any other capacity (witness, victim, expert, etc.). Moreover, in criminal areas, it should not be limited to the proceedings leading to a possible conviction, but should also be applicable to the enforcement of a decision, including, for instance, confiscation of assets, early or conditional releases and reintegration.

Cross-border litigation

Difficulties with which citizens are intrinsically confronted in cross-border litigation, be it in civil or in criminal matters, should be neutralised as much as possible. This means, for example, streamlined communication of documents and information, use of multilingual forms, creation of mechanisms or networks to assist and advise in transnational cases, and even financial compensation for the extra costs

involved in such cases.

Conclusion

With its call to the Council and the Commission, the Cardiff European Council demonstrated the importance it attaches to grasping all the opportunities offered by the Amsterdam Treaty in what is a crucial matter for the Union, its Member States and their citizens. The Heads of State or Government expressed their desire to see a number of issues addressed which are complex and, in some cases, sensitive, but which are vital for the future of the Union.

The Commission regards the design and implementation of this plan of action as a joint effort with the Council. It feels that the European Parliament should also be involved, with the enhanced role it will enjoy in the new institutional arrangements. A dialogue with the civil society concerned is likewise considered essential. This communication, by which the Commission wished to present its approach, is an initial contribution to a dialogue which will have to get under way in the months ahead. It will be stepped up at a later stage, in particular when it comes to identifying in detail the priority actions which will put flesh on this initial outline.

In presenting its ideas, the Commission is particularly conscious of the need, especially so long as the right of initiative is to be shared between it and the Member States, for coordination with the Council with regard to the preparation of the action plan called for in Cardiff. As far as the exercise of its own right of initiative is concerned, it proposes applying the following list of criteria.

1. Bring into line with the new Treaty the proposals already on the table but not adopted before Amsterdam.
2. Ensure consistency with instruments already in force, by proposing initiatives to develop and/or extend the *acquis* (e.g. in the area of visas).
3. Make optimum use of the Commission's existing know-how, before developing specific know-how in areas in which hitherto the Commission had no formal powers.
4. Check to what extent a law-enforcement aspect needs to be prepared for the existing Community policies.
5. Strike a balance in all areas of action between freedom on the one hand and security and justice on the other.