

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.2.2008
COM(2008) 38 final

COMMUNICATION FROM THE COMMISSION

on the creation of a Forum for discussing EU justice policies and practice

COMMUNICATION FROM THE COMMISSION

on the creation of a Forum for discussing EU justice policies and practice

1. INTRODUCTION

1. In 2004, the European Council adopted the Hague Programme on strengthening freedom, security and justice in the European Union¹ and called for the establishment of "a system providing for objective and impartial evaluation of the implementation of the EU policies in the field of justice while fully respecting the independence of the judiciary". This was endorsed by a European Parliament recommendation in February 2005². The Action Plan implementing the Hague Programme³ noted that this would reinforce mutual trust.
2. A dialogue with interested parties is needed at all stages of justice policy design and implementation in order to review how to improve judicial co-operation and promote the European area of justice, to decide what measures should be adopted, to assess whether instruments adopted are correctly transposed and implemented and whether they are used appropriately and achieving their objective. More generally, we need to know whether the European area of justice is operating efficiently and if those using and working in it are satisfied.
3. The Commission intends to establish a Justice Forum ("the Forum") providing a permanent mechanism for consulting stakeholders, receiving feedback and reviewing EU justice policies and practice transparently and objectively. The Forum will take account of treaty-based differences in policies in civil and criminal matters. It will have two main spheres of activity, (1) to provide the Commission with specialist views on EU justice policy and legislation, and (2) to promote mutual trust between EU justice systems by improving mutual understanding of them.
4. An open dialogue between all actors in the justice systems throughout the EU will foster mutual trust in various ways. It will have an impact on the citizen who will be better able to accept and respect the EU justice system if he understands how and why it operates at the domestic level. There must be trust at the political level as EU instruments are to be implemented through national legislation. Finally, not only citizens, but also practitioners, in particular judges, need to understand and accept them and therefore must be personally convinced of the need for them and of their effectiveness. Lack of confidence at any of these levels means the system will not function properly.
5. All EU citizens are entitled to expect high quality justice everywhere within its borders. This is all the more important since the 1999 Tampere European Council proclaimed that the principle of mutual recognition would be the "cornerstone of the area of freedom, security and justice". Thus judicial decisions are to circulate freely within the EU rapidly without traditional checks and safeguards. However, mutual recognition can only operate if there is trust between Member States. The Hague Programme stated that quality of justice is a key factor in strengthening mutual trust:

¹ OJ 3.3.2005 C 53 p.1, para 3.2

² Recommendation of the European Parliament to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States: A6-0036/2005.

³ OJ 12.08.2005 C198 p.1, para 4.1

"In an enlarged European Union, mutual confidence shall be based on the certainty that all European citizens have access to a judicial system meeting high standards of quality".

6. A regular dialogue about policies and practice in the area of justice is of the utmost importance, not only to strengthen mutual trust, improve mutual recognition and access to justice, but also more generally for the proper operation of society in the wider context. One aspect to be considered is the economic impact of a healthy justice system. The Lisbon Strategy⁴ aims for a vibrant European economy. There is a link between good justice systems and dynamic economies. A reliable judicial climate is an asset in today's global competitive environment and the EU must match the efforts of the Member States in this regard.
7. In June 2006, the Commission adopted a Communication on Evaluation of EU policies on Freedom, Security and Justice⁵ ("the June 2006 Communication"). The Forum's activities will dovetail with the mechanism established by the June 2006 Communication by complementing the gathering of information/stakeholder consultation, reporting and in-depth evaluation phases.
8. In September 2006, the Commission hosted an experts' meeting to assess strength of support for the Forum. Feedback suggested that stakeholders welcome the initiative and agree with the Commission that a Justice Forum will serve to promote mutual trust on several levels. Practitioners and other experts considered it appropriate that their views, experience and expertise be taken into account in the course of designing, adopting and implementing EU legislation.

2. THE AIMS OF THE FORUM

2.1. What is needed?

9. Currently, there is no regular dialogue or established channel of communication between EU authorities and practitioners to discuss either the rationale behind a proposal for legislation or the impact of adopted instruments on the way judicial cooperation functions on a day-to-day basis. Instruments adopted need to be assessed from the point of view of their effect on national systems.
10. Practitioners who will come into contact and work with EU measures should have an input at an early stage. Once the measure is adopted, the extent to which it is used, whether it meets the objectives for which it was designed and the cost engendered in order to achieve the goal, including any unforeseen and unintended consequences, should be examined.
11. The Forum's main aims will be to improve policy-making in the areas of civil and criminal justice by providing a permanent platform for dialogue with stakeholders and reviewing implementation of instruments in force and contributing to greater mutual trust at the European level.

⁴ During the European Council in Lisbon (23/24 March 2000), Heads of State/Government launched the Lisbon Strategy aiming to make the EU the most competitive economy in the world and to achieve full employment by 2010.

⁵ COM (2006) 332 final of 28.6.2006

2.1.1. *Contribution to the ex ante evaluation phase*

12. To date, the EU's policy orientations and legislative programme have been drawn up largely without input from practitioners in the initial phase. Where there has been time to present a Green Paper before drafting a proposal, the input from practitioners at that stage has been useful. The Forum will provide an opportunity for a dialogue at the policy design stage. Additionally, the Commission is committed to a system of Extended Impact Assessment (including an examination of any impact on fundamental rights) prior to adopting a proposal. The Forum's practical expertise will be used to assist in the preparation of Extended Impact Assessments.

2.1.2. *Reviewing the legal and practical implementation of instruments*

13. Most instruments adopted in the area of criminal and civil justice require the Commission to prepare an evaluation report on their application in domestic legislation. The Commission would be able to consult the Forum at this stage⁶.

14. Consulting the Forum will be particularly apposite as far as practical implementation is concerned. In the civil field, implementation of instruments adopted under Title IV is subject to the jurisdiction of the European Court of Justice (ECJ) pursuant to Article 68 TEC. In addition to this, the monitoring mechanism under Article 226 of the EC Treaty enables the Commission to seize the ECJ if a Member State does not fulfil its obligations. For criminal justice, a mechanism established by a Joint Action in 1997⁷ for the fight against organised crime has been used for 3 evaluation rounds: one on the practical operation of mutual legal assistance, one on anti-drug policy and one on exchanges of law enforcement information within the Member States and with Europol. A 4th round, on the implementation of the European Arrest Warrant, began in 2006. The assessment is carried out by way of a questionnaire then a study visit by teams of experts appointed by Member States, assisted by the General Secretariat of the Council, with the Commission's involvement. The same method is used in the peer assessment of national anti-terrorist measures set up further to the Conclusions of the extraordinary meeting of the 20 September 2001 JHA Council⁸. These evaluations lead to reports including recommendations to Member States but, with the exception of the first report on mutual legal assistance⁹, they remain confidential. Additionally, courts in the Member States that have accepted the jurisdiction of the ECJ in criminal matters have the option of referring a case to the ECJ for a preliminary ruling under Article 234 but this route remains limited.

15. The Joint Action system is a lengthy, cumbersome process which is not justified for all instruments so some instruments are not assessed after implementation. The Forum will offer a framework to exchange practical information on the concrete application of instruments and thus enable a better assessment to be made of their impact on judicial cooperation.

⁶ E.g. the Council Conclusions on the European Arrest Warrant in June 2005 called on the Commission to consult Member States before issuing the report in order to avoid any misunderstanding of national legislation.

⁷ By Joint Action 97/827/JHA, adopted by the Council on 5 December 1997.

⁸ Council Decision 2002/996/JHA of 28 November 2002 Establishing a Mechanism for Evaluating the Legal Systems and Their Implementation at National Level in the Fight against Terrorism (JO L 349, 12/24/2002)

⁹ Final Report, Mutual legal assistance in criminal matters (2001/C 216/02)

2.1.3. *Contribution to the assessment of global impact on national judicial systems and on the functioning of judicial cooperation of EU measures*

16. Evaluation of the implementation of adopted instruments from both the legislative and practical perspective is not sufficient if there is no examination of the impact of these instruments on general policy objectives, i.e. on the functioning of the European judicial area as a whole.
17. There is a need for more global examination of the impact of EU policies which should enable criteria to be drawn up so as to judge whether the measure has:
 - achieved its specific objective (for example, the European Arrest Warrant's objective was to simplify and expedite extradition within the EU),
 - contributed to a global EU objective (e.g. facilitating and accelerating cooperation between judicial authorities, increasing the efficiency of implementation of judicial decisions within the EU, improving access to justice for EU citizens, fighting organised crime and promoting mutual trust),
 - had any unforeseen consequences (positive or negative),
18. Where appropriate, a cost-benefit analysis, taking into account financial and non-financial criteria, could be carried out.

2.1.4. *Contribution to a dialogue on quality of justice with a view to strengthening mutual confidence*

19. The Forum will provide an opportunity for discussion and dialogue about each other's justice systems and thus promote mutual trust by improving knowledge of the judicial systems in the EU. Representatives of national justice systems should meet each other regularly in order to discuss these issues and to exchange and, where appropriate, devise best practice.
20. In its 2005 Communication on Mutual Recognition and the strengthening of mutual trust within the EU¹⁰, the Commission described how it intended to promote mutual trust by way of a series of flanking measures (reinforcing evaluation mechanisms, promoting networking among justice practitioners and developing judicial training). The Forum will play a part in the first two of these activities, and may have some impact on the third. Bringing practitioners into contact with each other has been shown to promote mutual trust. These flanking measures lead to a better understanding not only of EU measures, but also of national systems. For example, in the context of the Exchange Programme for Judicial Authorities¹¹, contacts developed between practitioners which facilitate judicial cooperation in concrete cases and enable practitioners to identify good court practices (e.g. in relation to court management, deadlines or victim support) and to improve their own practice as a result. Such activities should be used in a more systematic way so as to amplify their effect. In the civil field Council Regulation (EC) N° 1206/2001 on co-operation between the courts of Member States in the taking of evidence is another important step forward in strengthening mutual trust between judicial authorities. The European Judicial Network in civil and commercial matters plays an important role in promoting exchange of good practice.

¹⁰ COM(2005)195 of 19.5.2005

¹¹ In the 2007 Annual Work Programme

2.2. Working effectively with the Council of Europe

21. There are several sectorial assessment and evaluation mechanisms under the Council of Europe¹² which work in a similar way. Most relevant for building mutual trust within the EU is the European Commission for the Efficiency of Justice (CEPEJ) which aims to improve the quality of judicial systems of Council of Europe Member States. The CEPEJ's key task is to ensure proper implementation of the principles and rules on efficiency of justice in Member States. The 2006 Report for the Evaluation of European judicial systems contains detailed data on the state of justice.
22. It is essential for the EU to be consistent with the Council of Europe's activities and yet to avoid duplication of the CEPEJ's work. Cooperation between the Commission and the CEPEJ should continue and could include common initiatives to improve the quality of justice and reinforce mutual confidence.
23. The Forum will contribute to such cooperation, e.g. by making use of CEPEJ's findings and working in a constructive manner with the CEPEJ. A CEPEJ representative should be included in the Forum.
24. It is important to take into account the specificities of implementing the mutual recognition principle and the goal of better access to justice, as a reflection of the high degree of integration that EU Member States want to achieve. Specific studies could usefully be carried out using the CEPEJ's work. Issues such as quality of interpretation in court or court services from the point of view of users, adopting a "client approach", would lend themselves to such examination.

3. THE FORUM'S ROLE

3.1. Reviewing EU justice

3.1.1. The ex ante phase

25. The Forum will be invited to comment, to advise and to provide expertise at the earliest possible stage of designing legislative programmes. Once a decision has been taken that action at EU level is desirable in a specific area, the Forum will be consulted about the practical implications of each policy option, and may be asked to contribute specifically to drawing up the EIA for that measure.

3.1.2. Reviewing legal and practical implementation

26. For criminal justice, the Commission's evaluation work focuses essentially on the legal implementation of instruments. In practice, the impact of Commission reports is reduced by the Council's failure to examine them fully and follow them up. This is exacerbated by a lack of remedy before the ECJ in the event of non-compliance.
27. For civil justice, studies prepared before the report evaluating the application of a legislative instrument is presented could give a useful overview of the current situation, but reports are not requested for all instruments in force and their periodicity does not enable the difficulties and problems related to the application of the instruments concerned to be taken into account.

¹² E.g. GRECO (Group of States against Corruption), MONEYVAL (Select Committee of experts on the evaluation of anti-money laundering measures) which were modelled on the FATF, European Committee for the Prevention of Torture and Inhuman Treatment or Punishment (CPT) and GRETA (established within the framework of the Convention on the fight against trafficking in human beings).

28. The Commission does not consider that it is necessary at this stage to present specific legislation in this area. Nevertheless, once the Forum is established, this need will be reconsidered and in particular, as far as criminal matters are concerned, the necessity to review the 1997 Joint Action will be examined.

3.1.3. Looking at how judicial cooperation operates as a whole

29. As the Forum will largely be made up of practitioners, representatives of national justice administrations and academics, it will provide a different perspective and be able to offer a global approach to judicial cooperation seen as a whole, where necessary, as well as more targeted examination of EU measures.

30. The Forum will be used also at this stage of evaluation mechanism of the Directorate General Justice, Freedom and Security. The June 2006 Communication sets out the Directorate General's threefold evaluation mechanism covering all its policy areas. The first step involves setting up a system of information gathering and sharing (using specially designed fact-sheets). Policy objectives and main instruments are to be covered. The second step is to review and analyse this information. The third step involves targeted evaluation¹³ of specific policy areas or instruments. The mechanism is intended to be comprehensive and to encompass all policies handled by Directorate General Justice, Freedom and Security, building on current practice and using existing data. Views of Member States and civil society are to be canvassed and taken into account. The Commission seeks to avoid duplication of efforts at EU and national levels and is currently in discussions with the Council as to the precise mechanism to be established and how best to use the Contact Points Network set up under the Communication. The Forum's work will feed into the general evaluation mechanism. It will provide the concrete expertise needed for the stakeholder consultation¹⁴ and for the in-depth evaluation phase¹⁵. One of the Forum's roles will be to suggest areas where an in-depth study should be carried out and to supervise and manage such studies.

3.1.4. Strengthening mutual trust

31. By bringing professionals together regularly and promoting an exchange of views on the implementation of EU instruments, on EU justice policies and on their interaction with national justice systems, the Forum will play a key role in improving mutual understanding, in gradually building up a common judicial culture and in promoting mutual trust.

4. COMPOSITION AND WORKING METHODS OF THE FORUM

4.1. Composition

32. Information must be gathered from several sources: Member States, judicial bodies, practitioners, specialist non-governmental organisations, academics and, ideally, users of justice systems. Member States may send delegates to the Forum's plenary sessions and specific working groups if they wish. Certain Member States' delegates to the September 2006 experts' meeting made it clear that they did not want to be involved in a demanding process. Participation in the Forum's activities shall

¹³ Section 4.1 of the June 2006 Communication

¹⁴ Section 4.1.1. of the June 2006 Communication

¹⁵ Ibid. para. 32

therefore be at Member States' discretion, apart from the plenary to which it is desirable that they send delegates.

33. The Commission will invite a representative of the Council of Europe, preferably from the CEPEJ, to participate in the Forum so as to follow each other's work and collaborate to avoid duplication and promote complementarity.
34. Eurojust and the European Judicial Networks (in criminal¹⁶ and in civil and commercial matters¹⁷) are to be represented as well as relevant professional European networks active in the justice field at EU level. The Commission values the input of networks such as the European Network of the Councils for the Judiciary (ENCJ)¹⁸, the European Network of Presidents of Supreme Courts¹⁹, the Association of the Councils of State²⁰, the European Association of Administrative Judges, the Council of Bars and Law Societies of Europe (CCBE)²¹, the European Judges and Prosecutors Association²², the European Criminal Bar Association (ECBA)²³, Eurojustice²⁴ the European Notarial Network²⁵, PEOPIIL (the Pan-European organisation of personal injury lawyers)²⁶ and the European Judicial Training Network. The Commission will invite specialist non-governmental organisations that represent users of the system (e.g. MEDEL, JUSTICE, Amnesty International, Victim Support Europe²⁷) to attend the Forum. Judicial experts from candidate countries will be included.
35. The Commission intends to involve academic networks (European Criminal Law Academic Network ECLAN, International Association of Penal Law AIDP, Eurodefensor) in order to promote a scientific, objective approach and to enable a robust exchange of views by including experts whose views differ. The Commission also intends to include the ECJ and the Fundamental Rights Agency of the European Union in the most appropriate way.
36. Depending on the subject under discussion, *ad hoc* members may be invited if they have expertise in the area in question. Certain national, professional organisations (e.g. national Bar Associations) have shown interest in specific measures. Their perspective is different from their European level counterparts and their input will be used on an *ad hoc* basis if they so wish.

4.2. Working methods of the Forum

37. The Forum will meet regularly, several times a year. It will meet in plenary session once a year and as sub-groups which will meet as often as necessary²⁸. The subgroups are to be constituted on the basis of specific fields of interest or issues

¹⁶ <http://www.ejn-crimjust.eu.int/>

¹⁷ <http://ec.europa.eu/civiljustice/>

¹⁸ <http://195.55.151.16/encj/>

¹⁹ <http://www.uepcsj.org/uk/rpcsje.php?nopage=187>

²⁰ <http://www.juradmin.eu>

²¹ <http://www.ccbe.org/>

²² <http://www.amue-ejpa.org>

²³ <http://www.ecba.org/>

²⁴ <http://www.eurojustice.org/>

²⁵ <http://www.cnue.eu>

²⁶ <http://www.peopil.com>

²⁷ <http://www.euvictimservices.org/>

²⁸ The cost of the actions referred to in this Communication will be borne by the relevant financial instruments (in particular the Criminal Justice programme - Council Decision No 2007/126/JHA) under the existing envelopes.

identified as warranting attention, with some covering civil justice and others criminal justice matters and examining particular subjects, such as access to legal aid, user satisfaction with the Court system (e.g. speed and fairness), treatment of victims, translation and interpretation services, hearing of the parties, respect of fair trial rights, rapid enforcement of claims and better access to justice for consumers.

38. The Forum may be called upon to assist in providing an external assessment in drafting the Commission's Report on implementing legislation on an *ad hoc* basis. The Forum will take part in exercises designed to assess successful transposition (at the end of the transposition deadline) and the success of measures at a later date (such as 5 years after entry into force).
39. Each organisation that is a member of the Forum should appoint a fixed contact person who should endeavour to attend each session in order to allow continuity in the debate. If the contact persons meet regularly and get to know each other, this will facilitate continuity, freer exchanges and franker discussion.
40. An important aspect of the Forum's work will be to identify best practice. Exchange of best practice could be promoted by way of projects under the EU financial programmes.
41. The Forum will be involved in selecting the winner of the "Crystal Scales of Justice" prize. In 2005 the Commission and the Council of Europe created the biennial European "Crystal Scales of Justice" prize for innovative practice in civil justice organisation and procedure in the courts of Europe, so as to promote better operation of the public system of civil justice. The Commission is planning to institute a complementary biennial prize for a transnational project designed to improve mutual knowledge and exchange of best practice in the area of criminal justice. The prize would be awarded in the years in which the civil justice prize is not awarded. Eligible projects will include comparative studies and/or concrete cooperation projects based on twinning of courts, prosecution offices, Bars or prison/probation administrations.
42. The Forum's work will include examining the issue of statistics. Currently, there is lack of compatible statistics²⁹ which makes it difficult to compare justice systems in a meaningful way, but improvements can be expected. In the criminal justice field, statistics are to be collected more systematically now that an EU experts group has been set up for that purpose³⁰. The Expert group on the policy needs of data on crime and criminal justice was established and met twice (April & December) during 2007. Two subject specific sub-groups were established following discussions at the April meeting. The subjects covered were Human Trafficking & Money-laundering. It has been decided to establish an Expert Sub-group focusing on criminal justice statistics. As regards the civil justice side, statistics are available from targeted studies and impact assessments. The Forum will assist the Commission in giving its opinion on these statistics, improving statistical methods and making better use of available data.
43. In order to disseminate the findings of the Forum and to promote dialogue and consultation, a Website will be set up. It will be a permanent place for discussion

²⁹ See CEPEJ report and SPACE statistics

³⁰ 2006/581/EC: Commission Decision of 7 August 2006 setting up a group of experts on the policy needs for data on crime and criminal justice OJ L 234 , 29.08.2006 p 29

between Forum members and will facilitate exchanges with interested parties and other citizens. Most of the Forum's work and studies will be posted on the Website.

44. The Commission will publish a Report of the Forum's activities, to be submitted to the Council and the European Parliament on a regular basis.

5. CONCLUSION

The Forum will provide the Commission with a unique tool for understanding better the impact of existing EU instruments, the need for new instruments and more generally, for promoting mutual trust. By providing a place where different experiences and contrasting points of view can be compared on a regular basis, it will lead to greater mutual knowledge and understanding of other systems. The regularity of the meetings, the range of expertise and the input from all sectors of the justice system will assist in establishing the systematic, objective and impartial evaluation announced in the Hague Programme.