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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**Report on the implementation of The Hague programme for 2006**

{SEC(2007)896}

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# COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

## Report on the implementation of The Hague programme for 2006

1. This Communication addresses the Council's wish for the Commission to submit an annual report on the implementation of The Hague Programme and its Action Plan<sup>1</sup>. The methodology follows the one used in the first (2005) annual report<sup>2</sup>.
2. The scope of this exercise is to **monitor the adoption of the measures envisaged in the Hague Programme**. This includes the drugs action plan, the strategy on the external aspects of the area of freedom, security and justice, and the action plan on the fight against terrorism, which supplement the Hague Action Plan, in accordance with the set timetable. All the measures planned for 2006, as well as those that were not achieved in 2005, are therefore explored in this Communication (**Part I and Annex 1**). The Communication also mentions, where relevant, some linked measures that were not included, as such, in the Action Plan. Future annual reports will examine 2007 onwards.
3. As in the 2005 exercise, this communication monitors both EU level adoption and **the national implementation of these policies (Part II and Annex 2)**.

### 1. MONITORING OF THE ADOPTION OF MEASURES SCHEDULED FOR 2006 UNDER THE HAGUE PROGRAMME

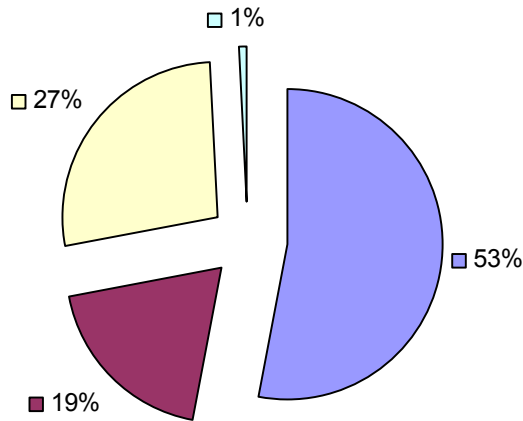
4. **The general overall assessment is mixed<sup>3</sup>**. 53% of the actions assessed have been achieved; however **progress was not consistent in all policy areas**. The 2006 Report presents a **lower rate of achievement** compared to that of 2005, with an increase in actions that had to be delayed of 27%. Table 1 presents this information on the state of play for measures planned for 2006 (or for actions not previously achieved in 2005) or ongoing actions in the Hague Action Plan.
5. A **satisfactory level of achievement** occurred mainly in the following areas: respect and protection of fundamental rights, European Citizenship, judicial cooperation in civil matters, European strategy on drugs, asylum and migration, visa and border policies and fight against terrorism.
6. An **insufficient level of achievement** happened primarily in the following areas: police and customs cooperation, prevention of and fight against organised crime and judicial cooperation in criminal matters.

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<sup>1</sup> The Hague programme: strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1) and Council and Commission action plan implementing the Hague programme on strengthening freedom, security and justice in the European Union (OJ C 198, 12.8.2005, p. 1).  
<sup>2</sup> COM(2006)333 final.

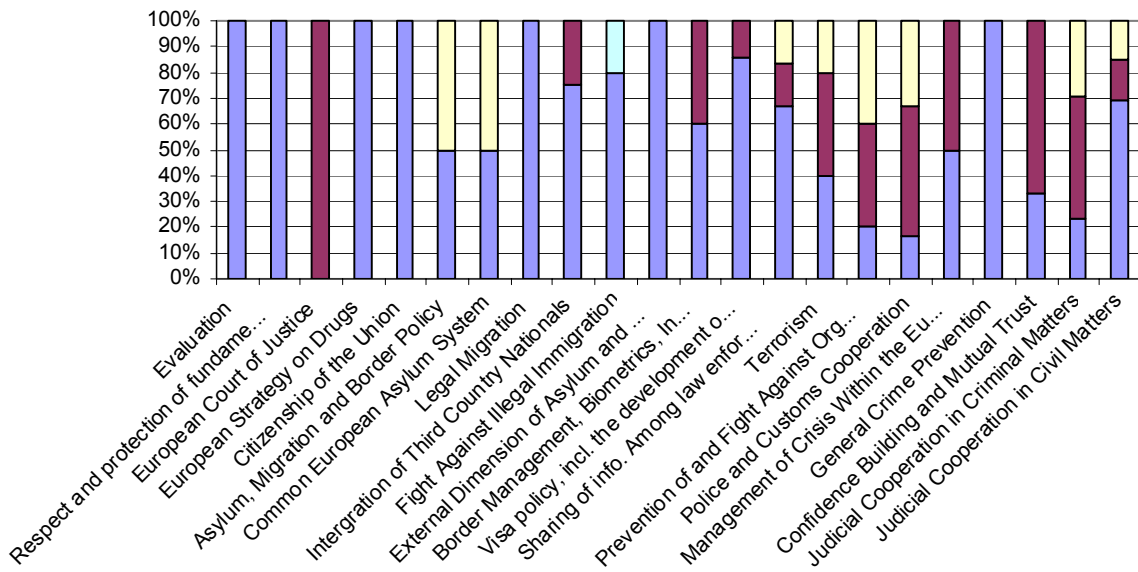
<sup>3</sup> The assessment of level of achievement refers both to presentation of Commission proposals and initiatives, and adoption by Council and the European Parliament.

### General State of Play



■ Achieved 
 ■ Postponed to 2007 
 ■ Delayed 
 ■ Not Relevant Anymore

### State of play by policy



■ Achieved 
 ■ Delayed 
 ■ Postponed to 2007 
 ■ Not Relevant Anymore 
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## 1.1. General Orientations

### 1.1.1. Evaluation

7. Evaluation of policies is important. The JHA Council<sup>4</sup> of 4<sup>th</sup> December 2006 recognised the need for improving existing evaluation mechanisms, while avoiding any duplication of efforts at EU and national levels. Council Presidency and Commission were invited to further discuss the scope and modalities of the evaluation mechanism. An ad hoc meeting within the Council took place in May. A meeting of the "Experts' Group on Evaluation" may take place in 2007 and the first evaluation report could be issued in June 2008.

### 1.1.2. Respect and protection of fundamental rights

8. Performance is **generally satisfactory**. Most of the actions planned for 2006 have been carried out, or are underway.
9. The legal basis<sup>5</sup> of the Fundamental Rights Agency was adopted by the Council on 15th February 2007. The Agency was created on 1st March 2007. On 4 July 2006 the Commission adopted a Communication "**Towards an EU Strategy on the Rights of the Child**", originally scheduled for 2005. This action was postponed to 2006 due to the need for intensive preparatory work and to take account of various interests. Several projects on prevention measures to combat violence against women were financed during 2005 and implemented in 2006.
10. On data protection, the Communication on the follow-up of the Work Programme for a better implementation of the data protection Directive, originally planned for 2005, was adopted on 7<sup>th</sup> March 2007<sup>6</sup>, and the Communication on promoting **Privacy Enhancing Technologies (PETs)** has been adopted in May 2007.

### 1.1.3. European Court of Justice

11. Discussion on enabling the **European Court of Justice** to handle requests for preliminary rulings in the freedom, security and justice area is ongoing. This is based on options submitted by the European Court of Justice in autumn 2006, and the Commission's Communication of 28<sup>th</sup> June 2006<sup>7</sup>.

### 1.1.4. European Strategy on Drugs

12. **All actions** foreseen for 2006 in this domain have been **achieved**.
13. The Hague Action Plan underlines the importance of addressing the drugs problem in a comprehensive, balanced and multidisciplinary approach. The Union adopted a drugs strategy 2005-2012 in December 2004 and an EU action plan on drugs (2005-2008) in June 2005. Given the short period of time since the new Action Plan, the Commission presented the first review on 21<sup>st</sup> December 2006.

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<sup>4</sup> Refer to Conclusions of the JHA Council of 4<sup>th</sup> December 2006.

<sup>5</sup> Regulation EC (2007)168.

<sup>6</sup> COM (2007) 87 final.

<sup>7</sup> COM(2006)333 final.

14. Moreover, on 26<sup>th</sup> June 2006, the Commission adopted a **Green paper on the Role of Civil Society in Drugs Policy in the EU**. This consulted on how best to organise a **structured** and **continuous** dialogue between the Commission and civil society in order to better involve those most directly concerned by the drugs problem in the policy process at EU level. Following the positive response to the consultation, the Commission will set up a Civil Society Forum on drugs.

## 1.2. Strengthening Freedom

### 1.2.1. *Citizenship of the Union*

15. **Most** actions in this category, which has a high practical significance for EU citizens, have been **achieved**.
16. On 5<sup>th</sup> April 2006, the Commission published a report on the application of Directives 90/364/EEC, 90/365/EEC and 93/96/EEC on free movement and residence and on the situation of the nationals of the new Member States. The Commission monitors closely the transposition of Directives and when necessary launches infringement procedures against those Member States that fail to comply with their transposition obligations (see part 2.2).
17. On 12<sup>th</sup> December 2006, the Commission adopted a **Communication on European elections 2004** which consisted of a report on the participation of EU citizens in the Member States of residence and on electoral arrangements and a proposal for a Council Directive amending Directive 93/109/EC of 6<sup>th</sup> December 1993, an action originally planned for 2005.
18. On 28<sup>th</sup> November 2006, the Commission issued a **Green Paper on diplomatic and consular protection**. This can be considered as a preparatory action to the adoption of a strategic initiative scheduled for the fourth quarter of 2007, which will include information campaigns and other concrete measures to make EU citizens fully aware of their rights to consular and diplomatic protection.

### 1.2.2. *Asylum, Migration and Border Policy – Common Analysis of migratory phenomena in all their aspects*

19. **Progress** in this area has been **constant**.
20. The EU framework Regulation on the **collection of migration and asylum statistics** (originally scheduled for 2005) has been adopted in June 2007 following a political compromise in December 2006 between the Council and the European Parliament on the Commission's proposal.
21. On 28 November 2005, the Commission also adopted a Green Paper on the European Migration Network, which will be followed by a legislative proposal on the setting up of the network in 2007.

### 1.2.3. *Common European Asylum System*

22. In this area, results are mixed.

23. The proposal on long-term resident status for beneficiaries of international protection, originally foreseen for 2005 has been postponed to 2007; adoption intervened eventually on 6 June 2007<sup>8</sup>. Studies on the implication, appropriateness and feasibility of joint processing of asylum applications will be carried out by the end of 2007.
24. On 24<sup>th</sup> May 2006 the Commission adopted an amended proposal for a decision of the European Parliament and the Council establishing the European Refugee Fund for the period 2008-2013 as part of the general programme of Solidarity and Management of Migration Flows. The Council and the European Parliament reached a political agreement on the proposal in December 2006.
25. Two actions related to the **European Refugee Fund** carried over from 2005 were achieved in 2006. Firstly, the final report on the European Refugee Fund has been adopted on 8<sup>th</sup> December 2006. Secondly, the proposal to amend the European Refugee Fund in order to assist Member States in the reception of certain categories of third-country nationals has been agreed upon in first reading in December 2006.

#### 1.2.4. *Legal Migration*

26. In December 2006, the Commission adopted a **Communication on a Global approach to migration**<sup>9</sup>. This was not included in the Hague Action Plan, but was the basis for the conclusions of the European Council of 14<sup>th</sup> and 15<sup>th</sup> December 2006. These called for well-managed migration policies, fully respecting national competencies, to assist Member States to meet existing and future needs while contributing to the sustainable development of all countries.
27. The only action in legal migration included in the Action Plan for 2006 was the assessment and monitoring of the transposition and implementation of the first phase directives on legal migration. The Commission has financed a study – covering also instruments on asylum - which will be completed by the end of 2007.

#### 1.2.5. *Integration of Third Country Nationals*

28. The actions projected for 2006 in this area have been **mostly achieved**.
29. The main focus was to share information and experience on integration. The implementation of the selected INTI projects (Integration of third country nationals) from the 2005 proposals is underway. The selection of projects from 2006 has taken place and the selected projects are currently being implemented.
30. On 30<sup>th</sup> June 2006 the Commission presented the **Second Annual Report on Migration and Integration**<sup>10</sup> which provides an overview of migration trends in the European Union, analysing the changes and describing actions taken regarding the admission and integration of immigrants at national and EU level in the calendar year 2004.

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<sup>8</sup> COM(2007)298.

<sup>9</sup> COM(2006)735 final. This was followed by a second Communication extending the global approach to Eastern and Southern European countries (COM(2007)247).

<sup>10</sup> SEC(2006) 892.

31. The Commission also developed the first edition of the "**Handbook on integration**" in 2006 (the second edition was issued in May 2007) and is currently developing the website on integration.

*1.2.6. Fight Against Illegal Immigration*

32. Some **significant achievements** took place in this area during 2006.
33. The 2<sup>nd</sup> annual report on the common policy on illegal migration was presented on the 19<sup>th</sup> July 2006 and annexed to the Commission Communication on policy priorities in the fight against illegal immigration of third-country nationals.
34. The European Council conclusions of 14<sup>th</sup> December 2006, built on this Communication with a proposal for a Directive on sanctions against employers of illegal immigrants. This was adopted on 16 May 2007.
35. **Good progress** was made in relation to **readmission policy**. EC readmission agreements are in force with Hong Kong, Macao, Sri Lanka and Albania. The Community readmission agreement with Russia was signed on the 25<sup>th</sup> May 2006 and following the achievement of the necessary procedures, entered into force on 1<sup>st</sup> June 2007. The agreement with Ukraine was initialled on 27<sup>th</sup> October 2006 and formal signature is expected in June 2007. Negotiations of readmission agreements have been completed in spring 2007 with Serbia, the former Yugoslav Republic of Macedonia, Bosnia and Herzegovina, Montenegro and Moldova.

*1.2.7. External Dimension of Asylum and Migration*

36. The Commission proposed a **framework development of EU regional protection** programmes which was supported by the Member States. Pilot projects were started beginning 2007 in Tanzania and in the Western Newly Independent States.

*1.2.8. Border Management, Biometrics, Information Systems and Visa Policy*

37. **Substantial developments** occurred in this area.
38. On 6<sup>th</sup> November 2006, the Commission adopted the recommendation establishing the **practical handbook for border guards**, an important element in the establishment of an integrated management system for external borders.
39. On 20 December 2006 the European Parliament and the Council adopted **Regulation No 1987/2006** on the establishment, operation and use of the second generation **Schengen information system (SIS II)**<sup>11</sup> and **Regulation No 1986/2006** regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates<sup>12</sup>. The third-pillar Decision<sup>13</sup> forming part of this legislative package is due to be adopted in the course of 2007 due to parliamentary reservations of some Member States.

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<sup>11</sup> OJ L381/4 of 28/12/2006.

<sup>12</sup> OJ L381/1 of 28/12/2006.

<sup>13</sup> COM(2005)230 final.

40. On 10<sup>th</sup> March 2006, the Commission presented a modified proposal for a Council regulation concerning the **use of biometrics in residence permits**. On 28<sup>th</sup> June 2006, the Commission adopted a decision laying down the technical specifications on the standards for security features and biometrics in passports and travel documents issued by Member States.
41. On 24<sup>th</sup> November 2005, the Commission adopted a Communication on improved effectiveness, enhanced interoperability and synergies among European databases in the area of Justice and Home Affairs. This was done in relation to the Hague Programme's invitation to the Commission to publish a Communication on the interoperability between the SIS II, VIS, and EURODAC.
- 1.2.9. Visa Policy, including the Development of the Visa Information System (VIS)*
42. There was **considerable progress** in this area as well. A number of actions originally foreseen for 2005 were achieved during 2006.
43. These actions include proposals on the necessary amendments to further enhance visa policy and the establishment of common application centres for visas, amending the Common Consular Instructions on visa fees, and the review of the Common Consular Instructions, concerning in particular local consular cooperation.
44. On 19<sup>th</sup> December 2006, the Council adopted the Commission proposal for a Council Regulation amending Regulation No 539/2001 regarding the regular review of the visa list.
45. The report on the operation of the Kaliningrad transit scheme was presented by the Commission on 22<sup>nd</sup> December 2006.
46. The date of full implementation of the Visa Information System (VIS) cannot yet be confirmed mainly because on the legal basis for the system, the VIS Regulation, a political agreement between the Council and European Parliament was reached in June 2007. A finalised schedule will be agreed once the legal basis has been adopted (see also paragraph 49 in relation to the VIS Decision on access to VIS by police authorities).
47. Visa facilitation agreements have been signed with Russia and Ukraine. Negotiations of visa facilitation agreements have been completed in spring 2007 with Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Moldova. These agreements are expected to be concluded before end 2007.

### **1.3. Strengthening Security**

- 1.3.1. Sharing of information among law enforcement and judicial authorities while striking the right balance between privacy and security*
48. There are **mixed results** in this area.
49. The Draft Proposal for a Council Decision concerning "access for consultation of the Visa Information System (VIS) by the authorities of Member States responsible for internal security and by Europol for the purposes of the prevention, detection and



investigation of terrorist offences and of other serious criminal offences" was presented by the Commission on 24<sup>th</sup> November 2005. Its adoption is linked to the adoption of the VIS Regulation. Political agreement on this Decision between the European Parliament and the Council was reached in June 2007.

50. The Framework Decision on **simplifying the exchange of information and intelligence** was adopted by Council on 18 December 2006 (2006/9060/JHA). The 2007 German initiative for a Decision to transpose most of the non-Schengen related third pillar part of the **Treaty of Prüm** into the institutional mechanism of the European Union, including fingerprints, DNA, and vehicle registration data, could be considered as partial implementation of the **principle of availability**. Also the access by police to the VIS would be a step towards the implementation of the principle of availability.
51. The Proposal concerning a common EU approach to the use of passenger data for border and aviation security and other law enforcement purposes is progressing. Consultations with Member States and national and international associations are underway.

### 1.3.2. *Terrorism*

52. **Progress** in this area has been **constant**.
53. Member States must work together. The Hague Programme underscores that effective prevention and combating of terrorism in full compliance with fundamental rights requires Member States to focus not only on their own security but rather on the security on the Union as a whole.
54. Ahead of schedule, on 29<sup>th</sup> November 2005, the Commission adopted a **Communication on the prevention of and Fight against Terrorist Financing** through enhanced national level coordination and greater transparency of the non-profit sector.
55. The general approach to the creation of the **European Law enforcement network (LEN)** had to be discontinued due to lack of support by Member States.
56. The discussion about the legislative initiative presented by Austria for a Council Decision pertaining to the **ATLAS cooperation** (a network for counter terrorism cooperation) has been suspended because Council considers that some elements are already present in the initiative transposing the non-Schengen related third pillar elements of the Treaty of Prüm. Austria is currently revising its initiative.
57. In line with the Hague Programme, the Commission is investing in institution/capacity building measures in third countries to fight terrorism. The Commission is working to mainstream counter-terrorism related activities into all its external actions. A standard counter terrorism clause is systematically part of all agreements under negotiation or to be concluded and of the **European Neighbourhood Policy Action Plans**. The Commission is sustaining institutional/capacity-building measures in third countries in the fields of justice, freedom and security which, at the same time, contribute to fighting against terrorism (e.g. justice, police, money-laundering, etc.).

58. Following the European Council's call, the Commission took the endeavour to integrate or mainstream **counter-terrorism objectives** into country and regional strategy papers and action plans, as to the extent possible under the relevant external aid instruments.
59. The Council General Secretariat drafted a report on the basis of the answers of the Member States given to the recommendations of the evaluation teams in the framework of the first round of peer evaluation on counter-terrorism measures. The report, approved in the Terrorism Working Party in March 2007, consisted of two parts: an overall assessment of the implementation of recommendations and an overview of the state-of-play in each Member State.
60. Due to disagreements between Member States, the proposal on the conclusion and on the signature of the Council of Europe Convention against money laundering and terrorist financing does not progress in Council.
61. On 13<sup>th</sup> December 2006, the Commission adopted a Draft Decision on Financing a set of actions with a view to strengthen the European Commission's capacity to contribute to the EU's management of crises, notably those related to terrorist attacks, campaigns or threats.<sup>14</sup> This entails the implementation of the crisis management capacity, back-to-back with the development of the EU integrated crisis management arrangements.
62. The Communication on a **European Programme for Critical Infrastructure Protection**<sup>15</sup> was adopted on the 12<sup>th</sup> December 2006. The general objective of this programme is to improve the protection of critical infrastructures in the EU through the creation of an EU framework concerning the protection of critical infrastructures.
63. The legislative proposal comprising the creation of a **critical infrastructures early warning information network (CIWIN)**, taking into account the reactions to the Green Paper on the protection of infrastructures, originally planned for 2006 had to be delayed to 2008.
64. Political agreement on the Civil Protection Financial Instrument was reached at the end of 2006, leading to the formal adoption of the Council Decision<sup>16</sup> on 5<sup>th</sup> March 2007.

### 1.3.3. *Prevention of and Fight Against Organised Crime*

65. The **rate of achievement** in this area during 2006 has been **lower** than that of last year.
66. On 2<sup>nd</sup> May 2006, the Commission adopted **the Implementation Report concerning the Council Framework Decision on combating trafficking in human beings**. A Commission decision regarding the setting up of the experts group on trafficking human beings in expected shortly.

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<sup>14</sup> C(2006)6507

<sup>15</sup> COM (2006) 786

<sup>16</sup> Council Decision 2007/162/EC, Euratom.

67. The Communication '**A comprehensive and coherent European Union strategy to measure crime and criminal justice: an EU Action plan 2006-2010**', originally intended for 2005, was adopted on 7<sup>th</sup> August 2006 and is now under the process of implementation. The Commission working paper on **criminal intelligence-led law enforcement** originally planned for 2005 had to be delayed further.
68. **EUROPOL** produced the first **Organised Crime Threat Assessment** in 2006 and the Council adopted the conclusions setting out strategic priorities in June 2006.
69. A lack of consensus meant that most of the Commission's proposed actions related to the prevention of organised crime, the strengthening of the tools to address financial aspects of organised crime, and the improvement of legislation and review of existing legal instruments were not achieved in 2006 and were delayed. One parliamentary reservation remains in the adoption of a framework decision on participation in a criminal organisation.
70. The Commission Communication planned for 2006 on developing a general policy on **fighting cyber-crime** was adopted on 22 May 2007. The proposal on conclusion of the United Nations Convention against Corruption on behalf of the EC has been adopted on the 22<sup>nd</sup> February 2006.

#### 1.3.4. *Police and Customs Cooperation*

71. **Progress** has been **slow** in this area.
72. In December 2006, the Commission submitted a proposal aimed at establishing EUROPOL on the basis of a Council Decision, including all the amendments already incorporated in the three Protocols, as well as further improvements to address the new challenges faced by EUROPOL and to increase the effectiveness of its support for the law enforcement authorities of the Member States.
73. Implementation has been particularly slow on measures related to the improvement of law enforcement cooperation and development of the **Schengen acquis** in respect of cross-border operational law enforcement. A similar situation is found in the measures related to the systematic exchange programmes for law enforcement officers' authorities.
74. There has been progress in operational cooperation. A set of recommendations on the **Custom IT system** was adopted in May 2006 and the work to strengthen law enforcement cooperation in the Western Balkans, with SECI (South East Cooperative Initiative) as an important tool, is continuing. The Council adopted the Conclusions on the further development of the SECI on 4-5<sup>th</sup> December 2006. Efforts to give EUROPOL the means to play a central role in the fight against organised crime are ongoing.
75. The definition of the role of the security committee (COSI) is linked to the entry into force of the Constitutional Treaty.

#### 1.3.5. *Management of Crisis Within the European Union*

76. Refer to points 61-63.

#### 1.3.6. *General Crime Prevention*

77. During 2006, the Commission worked towards the strengthening and professionalising of the prevention of crime, and helping to increase the role of the **European Crime Prevention Network (EUCPN)**. An expert group on the policy needs of data on crime and criminal justice was established through a Decision of 7<sup>th</sup> August 2006.

#### 1.3.7. *Confidence Building and Mutual Trust*

78. As envisaged in The Hague Action plan, the Commission adopted a Communication on judicial training on the 29<sup>th</sup> June 2006. Furthermore, a Commission Decision on the preparatory action to implement the exchange programme for judicial authorities was adopted on 11<sup>th</sup> July 2006. Exchanges will start in May 2007 and will involve 400 judges and prosecutors. An evaluation of the Pilot project is scheduled for 2007.

#### 1.3.8. *Judicial Cooperation in Criminal Matters*

79. In general, **progress** in this area has been **slow** and several actions have been delayed.
80. The main focus during 2006 in this area has been on pursuing the implementation of the **mutual recognition principle**. On the 4<sup>th</sup> July 2006, the Commission adopted a **Working Document on the feasibility of an index of third-country nationals convicted in the European Union**. Moreover, on the 29<sup>th</sup> August 2006, the Commission adopted a proposal on **mutual recognition of non-custodial pre-trial supervision measures**.
81. The second report on the implementation of the **Framework Decision on the European Arrest Warrant and the surrender procedures** between Member States is expected in the fourth quarter of 2007. Similarly, the report on the implementation of the Framework Decision of 22<sup>nd</sup> July 2003 on freezing property or evidence and the proposal on driving disqualifications had to be postponed to 2008. The initiative to facilitate the prosecution of road traffic offences is foreseen during the second quarter of 2007.
82. The **Green Paper on default (in absentia) judgements** had to be delayed. Likewise, the recommendation on minimum standards for capturing and exchanging electronic evidence and the further development of the **European Judicial Network in criminal matters** had to be delayed.
83. With regards to harmonisation, on 26<sup>th</sup> April 2006, the Commission adopted the **Green Paper on presumption of innocence** which was planned for 2005. However, the second report on the implementation of the Framework decision on the status of victims in criminal proceedings originally planned for 2005 has again been postponed to 2008 given that Member States have failed to supply sufficient information.

#### 1.3.9. *Judicial Cooperation in Civil Matters*

84. **Achievements** in the area of judicial cooperation in civil matters during 2006 were **remarkable**.

85. The Hague Programme attached great importance to the continued development of judicial cooperation in civil matters and the full completion of the programme of mutual recognition adopted in 2000.
86. Two Green Papers were presented, one on the conflict of laws in matters concerning matrimonial property regimes including the question of jurisdiction and mutual recognition on 17<sup>th</sup> July 2006 and the other on the effective enforcement of judicial decisions on 24<sup>th</sup> October 2006.
87. The Regulation establishing a **European Payment order procedure** was adopted by the Council and the European Parliament on 12<sup>th</sup> December 2006. However, the adoption of the Directive on certain aspects of mediation in civil and commercial matters has been delayed due to ongoing discussions within the European Parliament.
88. With regards to enhanced cooperation, the report on the functioning of the **European Judicial Network (EJN) in civil and commercial matters (2005)** was adopted on 16<sup>th</sup> May 2006. Moreover, based on this report, an amended proposal is planned for the 4<sup>th</sup> quarter 2007. Progress was also made in the EJN's work in civil matters and the databases on case-law relating to European instruments.
89. With respect to international legal order, the Hague Programme calls for coherence between the EU and the international legal order and continuous engagement in closer relations and cooperation with international organisations.
90. The Council adopted a Decision on the 5<sup>th</sup> October 2006 on the accession of the Community to the Hague Conference on Private Law. Accession took place on 3<sup>rd</sup> April 2007.
91. Ratification of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children is currently blocked because of the Gibraltar issue between the UK and Spain. Negotiations are ongoing.

## 2. MONITORING NATIONAL TRANSPOSITION

### 2.1. Methodology

92. This exercise concerns first of all the legislative instruments that require transposition by the Member States – **Directives** and **Framework Decisions**. For the purposes of this report, the cut-off date is **31 March 2007**.
93. The table at Annex 2 covers all the instruments with a transposition deadline that had expired at the cut-off date.
94. The **methodology** adopted for the purposes of this Report is the same as that explained in the Report on the implementation of the Hague Programme for 2005<sup>17</sup>.

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<sup>17</sup> COM (2006) 333 final.

## 2.2. Monitoring policy by policy

### 2.2.1. General guidelines

95. As regards **fundamental rights**, only the implementation of the Directive 95/46/EC on personal data protection is relevant under the current legal framework. The Directive has met its objective of ensuring a high level of protection of the citizen's right to privacy and removing the barriers to the free movement of personal data in the Union. According to the Communication on the follow-up of the Work Programme for a better implementation of the Data Protection Directive, adopted on 7 March 2007<sup>18</sup>, all Member States have notified national transposition measures. However, some Member States implementation is poor. Some Member States have failed to incorporate a number of important provisions of the Directive. In other cases, transposition or practice has not been conducted in line with the Directive or has fallen outside the margin of manoeuvre left to Member States. A number of non-compliance or incorrect application infringement proceedings are open, among which one Member State having reached the stage of a reasoned opinion.
96. 10 Member States have still not yet fulfilled their communication obligation regarding the Framework Decision on constituent elements of criminal acts and penalties in the field of **illicit drug trafficking**.

### 2.2.2. Union citizenship

97. From 30 April 2006, the key Directive 2004/38/EC that consolidates and updates the **free movement rights of the EU citizens** and their family members repealed and replaced a number of legal instruments concerning free movement of EU citizens and third country nationals. This legal instrument marks an **important step forward in the rights of free movement** for the EU citizens and their family members. After an initial delay in transposition (at least thirteen Member States were sent a reasoned opinion for non-communication on 15 December 2006), efforts in transposition have been stepped up, now four Member States have not yet fulfilled their communication obligation, and a number of Member States whose communications are being examined by the Commission.
98. Concerning previous Community legislation on free movement rights of persons, by now expired, a number of infringement proceedings for non-compliance or incorrect application is still pending for some five Member States, ranging up to an advanced stage of letter of formal notice under Article 228 EC Treaty.

### 2.2.3. Asylum, migration, borders

99. In the field of **asylum**, the 2006 report has again shown **very satisfactory results** on the activities of EURODAC. However, the notification of transposition measures for instruments such as the Directive laying down minimum standards for the reception of asylum seekers is **disappointing**. Shortcomings continue to persist in the case of five Member States, and the progress made during the last year is rather limited. A number of non-communication infringements are at the stage of litigation. As for the

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<sup>18</sup> COM(2007) 87 final.

more recent Directive on minimum standards for the qualification and status of refugees or persons who need international protection, sixteen Member States have not yet fulfilled their communication obligation, resulting in infringement proceedings.

100. Concerning **legal migration**, respectively eight and eleven Member States have not yet completed the notification of measures transposing Directives on family reunification and the status of long-term resident third-country nationals, which is over one year after the transposition deadline. For recent Directives on the conditions of admission of third-country nationals for studies and similar activities as well as on third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, implementation was due during the time period examined under the current exercise. However respectively seventeen and eleven Member States lag behind the transposition deadline.
101. As for **illegal immigration**, progress has been achieved in transposing the three least recent instruments, with one Member State, however, appearing to have particular difficulties. Concerning more recent instruments, the transposition progress is disappointing: seven Member States have not yet fulfilled their transposition obligation concerning the Directive on assistance in cases on transit for the purposes of removal by air, a number of which were referred to the Court. As regards the Directive on the obligation of carriers to communicate passenger data, nine Member States lag behind the transposition deadline.

#### 2.2.4. *Security*

102. The implementation of the instruments for the **fight against organised crime** and for **police and customs cooperation**, and in particular the conventions and protocols adopted on the basis of Title VI of the EU Treaty are difficult to evaluate because of the nature of the instruments concerned, which make no provision either for a formal duty for the Member States to notify or for reports monitoring national implementation. Their **speedy ratification** remains the first priority.
103. Thus, compliance and/or application at national level of legal instruments concerning terrorism and prevention of an fight against organised crime is very difficult to assess, as often there are neither any reports provided for by these instruments, nor any obligation for the Member States to communicate appropriate national measures. Concerning Framework Decision on cooperation between financial intelligence units, five Member States have still not communicated national transposition measures, which is nearly seven years after the transposition deadline.
104. Concerning **police and customs cooperation**, progress has been achieved in ratifying Naples II Convention. Further efforts are required by a number of Member States in the level of transposition of the Common Position on exchanging data with Interpol.

### 2.2.5. Justice

#### 2.2.5.1. Criminal justice

105. In the **mutual recognition** field, all Member States have communicated national transposition measures concerning the European Arrest Warrant. However, at least four Member States are still invited to make efforts in order to comply fully with this Framework Decision. In mid-2007 the Council is to publish a report on its practical implementation summarizing the key findings in some ten Member States evaluated by that time.
106. The implementation of Framework Decision on execution of orders freezing property or evidence is disappointing. More than eighteen months after the implementation deadline, thirteen Member States have not yet fulfilled, or only partially fulfilled, their communication obligation.
107. No information has been available so far on the Framework Decision on financial penalties.
108. Concerning harmonisation instruments in the field of **judicial cooperation** in criminal matters, a limited number of Commission reports were released during the period examined by this Communication. Thus, reports adopted concerning instruments related to non-cash means of payment, money laundering, instrumentalities and proceeds from crime, as well as those related to trafficking in human beings, unauthorised entry, transit and residence, generally report overall unsatisfactory transposition in the Member States assessed. Also, the number of Member States that have not yet fulfilled their communication obligation varies, but remains high.
109. As for the Framework Decision on combating terrorism, all EU-25 Member States have communicated their transposition measures, although the level of transposition is not always complete. More information will be provided in the second report covering all EU Member States, expected in mid-2007.
110. Progress has been achieved by four EU-10 Member States in ratifying the Convention on the protection of the European Communities' financial interests and its protocols.

#### 2.2.5.2. Civil justice

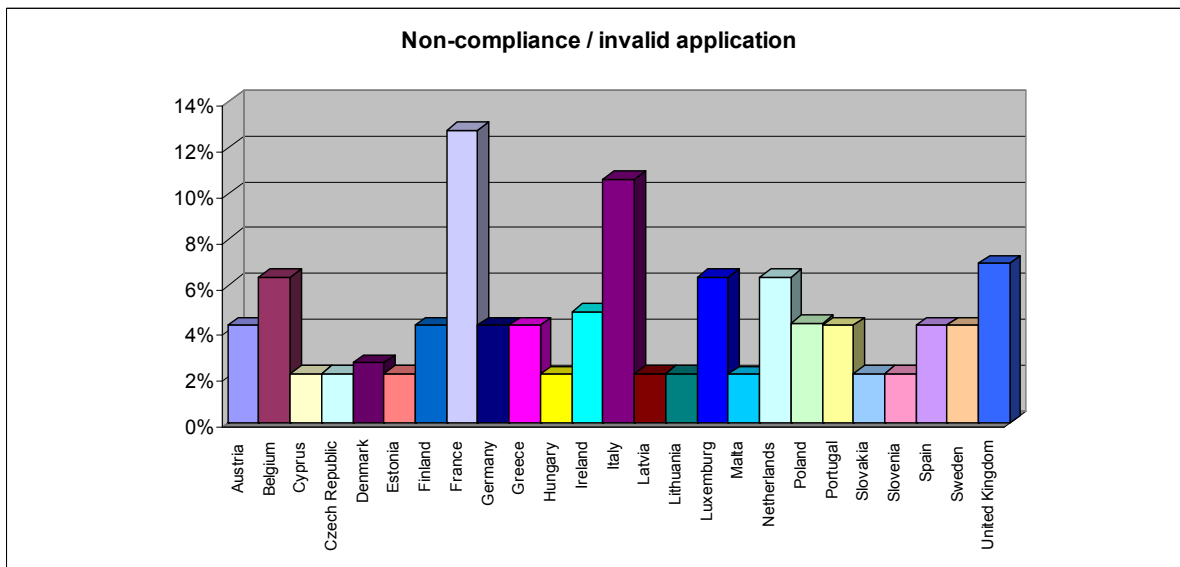
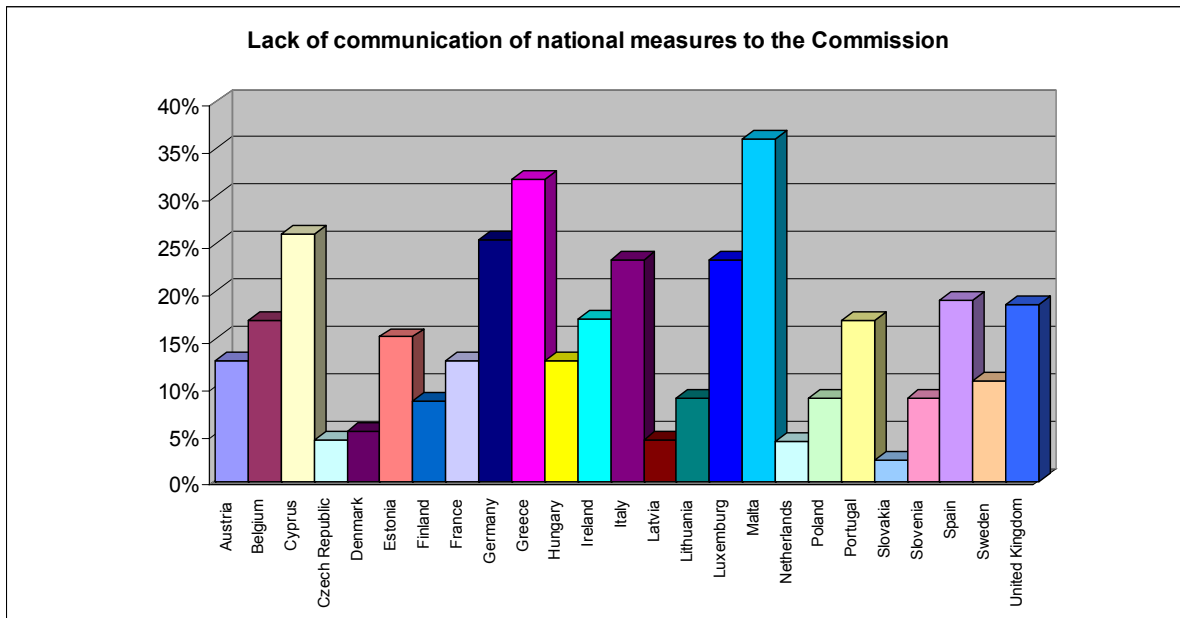
111. The transposition of two Directives relating to **legal aid** and relating to **compensation to crime victims** can be considered satisfactory, although shortcomings remain with respectively one and four Member States not having had fully complied with their communication obligation.
112. The application of two Regulations – one on cooperation between courts in the taking of evidence in civil or commercial matters and another one on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters – will be evaluated in the course of 2007. For "Brussels II bis Regulation" (concerning jurisdiction and the recognition and enforcement of judgements in matrimonial

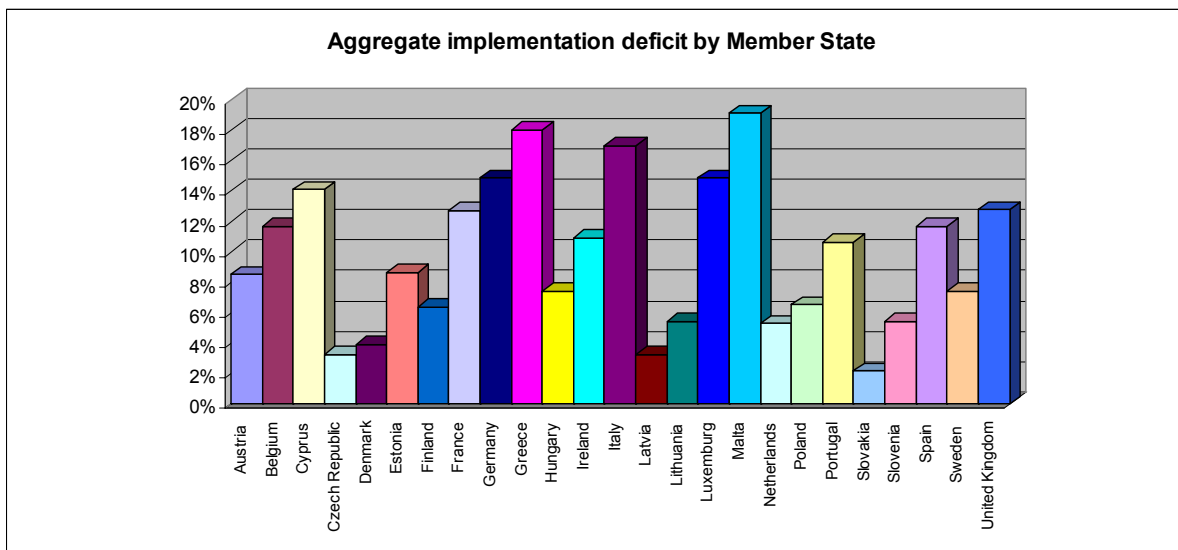


matters and the matters of parental responsibility), all Member States have communicated information relating to courts and redress procedures.

### 2.3. Monitoring by Member State

113. The following overall data, all instruments combined, can be derived from the two indicators appearing in the table at Annex 2. The first two tables reflect Member States' failures to notify transposition measures and cases of incorrect transposition or application respectively. The third table gives aggregate figures for the two categories.





### 3. CONCLUSIONS

114. This second monitoring exercise of The Hague programme shows **wide variation** between the progress at EU level adoption and **national implementation**. Whilst institutional adoption has been generally positive in matters under Title IV of the EC Treaty, national implementation leaves a lot of room for improvement.
115. Even though significant progress was made at EU level, **overall implementation of the Programme was lower than in 2005**. This is mainly due to **insufficient progress** in areas mainly related to the Third Pillar, such as prevention of and fight against organised crime, police and customs cooperation, management of crisis within the EU and judicial cooperation in criminal matters.
116. Yet, important progress was made. Compared to 2005, this year saw a **higher level of achievement in the areas** – mainly in the First Pillar - related to respect and protection of fundamental rights, drugs policy, migration and asylum, visa and border policies, civil judicial cooperation in civil matters.
117. Regarding **legal instruments under Title IV of the EC Treaty**, and in terms of communication of national transposition measures, relative progress has been achieved by some EU-15 Member States in comparison to the situation as examined at last year's report. Generally, EU-10 Member States have also achieved progress in complying with their communication obligation. On the other hand, the situation remains disappointing in terms of the number of Member States that fail to comply with the transposition deadline, as well as delays in transposition, which often exceed one year and at times reach several years.
118. As for **legal instruments under Title VI of the EU Treaty**, efforts both for timely as well as complete implementation should be stepped up. Even though progress has been achieved by Member States for some of the legal instruments during the last year, lengthy delays in communicating transposition measures have been noted for Framework Decisions. Such delays sometimes amount up to several years. Such delays as in absence of transposition of EU instruments at national level, leads to a **"virtual" legislative framework** in police and judicial cooperation in criminal

matters. Furthermore, the transposition by the Member States examined is often incomplete or incorrect.

119. Although there are different reasons for the drop in progress during 2006, the slow progress in matters involving Title VI of the Treaty of the European Union **confirms the concerns** expressed by the Commission in its 2005 Annual Report.
120. This negative trend brings further value to the assessment made by the Commission in its Communication of 28<sup>th</sup> June 2006 "Implementing The Hague Programme: the way forward" concerning the need to **improve decision making** in the areas covered by the Title VI of the EU Treaty.
121. As highlighted by the European Council of December 2006, the decision making mechanisms which apply in the justice and home affairs area do not always contribute to effective and efficient decision making progress. The Commission confirms its assessment that, with a view to making further progress in the establishment of an Area of Freedom, Security, and Justice in the areas covered by Title VI of the EU Treaty, more effective, transparent and accountable decision making procedures are still needed.