



House of Commons  
European Scrutiny Committee

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# The EU's Justice and Home Affairs work programme for the next five years

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Twenty–eighth Report of Session  
2003–04

*Report, together with formal minutes*

*Ordered by the House of Commons  
to be printed 14 July 2004*

## The European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Standing Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

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## Summary

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At Tampere in 1999 the European Council approved a programme of action for creating an “area of freedom, security and justice”, covering civil and criminal justice, visas, asylum and immigration, and police and customs cooperation. The Commission’s Communication assesses progress in the first five years and sets out priorities for the next five. Many of these priorities relate to matters which are at the core of national sovereignty and also directly affect the lives of individual citizens. The European Council will be asked to endorse the next five-year programme in December.

The Commission considers that substantial progress has been made on most aspects of justice and home affairs since 1999, but that the original ambitions of Tampere have been hampered by institutional constraints and sometimes by lack of sufficient political consensus. It regards the requirement for unanimity as a particular problem.

The Government supports the continuation of the programme for five more years, noting that “practical cooperation between the police, courts and immigration and customs services has already made a real difference to people’s lives”.

However, the Commission does not evaluate the practical benefits of the measures already adopted; nor does it state what practical benefits it expects from the priorities proposed for the next five years. We consider that Member States should withhold commitment from the programme until they have been able to examine such a statement.

We believe it bodes ill for the future if, on such sensitive matters, the Commission envisages reliance on qualified majority voting to impose on Member States legislation to which they are opposed.

### *Visas, asylum and immigration*

The Commission proposes an integrated border management system and visa policy, including a European Corps of Border Guards, biometric identifiers in travel documents, a common policy on management of migration flows and a common policy on European asylum.

The Government broadly supports the Commission’s proposals, but opposes the proposed border guards and is not convinced of the need for further harmonisation of asylum policy.

We regard operational cooperation as necessary for the effective management of asylum and immigration, but agree with the Government on the border guards and on asylum policy.

### *Civil and criminal justice*

The Commission proposes “a European judicial area” respecting the legal traditions and systems of the Member States. It says that this will be based on mutual recognition rather than total harmonisation, but that mutual recognition requires a basis of shared principles and minimum standards. It wishes to avoid a situation where Member States have separate

legal regimes for cases with cross-border elements and purely internal ones. Proposed measures relate to the definition of fundamental guarantees, the conditions for the admissibility of evidence, strengthening the protection of victims, minimum penalties for certain offences, further approximation of national laws on some matters and a European Public Prosecutor's Office.

The Government strongly supports the principle of mutual recognition, but does not wish the avoidance of separate legal regimes to be translated into interference with domestic systems which work well. It supports the approximation of substantive criminal law but only where a clear need is demonstrated. It does not wish minimum standards in criminal procedural law to be seen as a precondition for mutual recognition.

We endorse the Government's reservations, and draw attention to the danger of measures ostensibly concerned with mutual recognition creating uniform rules which then apply to all cases including those without cross-border implications. If Parliament has not chosen to unify the separate legal systems within the UK we see no justification for this being attempted by the EU.

#### *Police and customs cooperation*

The Commission's proposals include strengthening the role of Europol, improving the sharing of intelligence, stronger action on crime prevention and reduction in the demand for drugs.

The Government supports most of what the Commission proposes, though, on drugs, it does not agree with the emphasis on demand reduction.

We recognise the potential benefits of operational cooperation. But we object to giving Europol its own investigative powers, which would change it from an agency for the exchange and analysis of criminal intelligence into a European police force. Proposals concerning crime prevention should go ahead only if fully consistent with the principles of subsidiarity and proportionality.

#### *Conclusion*

Because of the many issues of concern in the Commission's proposals, we recommend the Communication for debate on the floor of the House.

# I – Introduction

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1. In 1999, the European Council held a special meeting at Tampere to set priorities for the European Community as an “area of freedom, security and justice”. The meeting approved a detailed programme of action for the next five years, covering civil and criminal justice; visas, asylum and immigration; and police and customs cooperation.
2. The European Council invited the Commission to produce regular “scoreboards” on progress in implementing the programme. The Commission’s Communication, presented in June, accordingly summarises the Commission’s assessment of progress in implementing the Tampere programme. It also outlines the priorities the Commission proposes for the next five years. As in the first five-year programme, many of these priorities relate to matters which are at the core of national sovereignty, and also directly affect the lives of individual citizens. It is therefore an extremely important document, which will give rise to a great deal of legislative and other activity by the EU.
3. The Commission invites comments on the Communication by 31 August. It will be discussed by the Justice and Home Affairs (JHA) Council later this month and again in October. The European Council will be asked to endorse the next five-year JHA programme in December.
4. The Communication is supported by two annexes. The first, ADD I, is a paper by the Commission’s staff listing the most important JHA instruments adopted by the Community since 1999. This provides the detailed “scoreboard”. The other annex, ADD II, provides a commentary on the progress achieved so far on each of the items in the Tampere programme; it also elaborates on what the Communication says about priorities for the future.

**This Report relates to the following document:**

(25730) 10249/04 COM(04) 401	Commission Communication — Area of freedom, security and justice: assessment of the Tampere Programme and future orientations
+ ADD 1 SEC(04) 680	Commission Staff Working paper — List of the most important instruments adopted
+ ADD 2 SEC(04) 693	Commission Staff Working paper — Annex to the Communication

<i>Legal base</i>	—
<i>Document originated</i>	2 June 2004
<i>Deposited in Parliament</i>	9 June 2004
<i>Department</i>	Home Office
<i>Basis of consideration</i>	EM of 28 June 2004
<i>Previous Committee Report</i>	None
<i>To be discussed in Council</i>	19 July 2004
<i>Committee's assessment</i>	Politically important
<i>Committee's decision</i>	For debate on the Floor of the House

Note: Of the three document numbers, the first is the Committee's, the second the Council's and the third the Commission's. 'EM' means the Government's Explanatory Memorandum.



## II – Background

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5. In 1997, the Treaty of Amsterdam created a new objective for the European Community: “to provide citizens with a high level of security in an area of freedom, security and justice”. The Treaty on the European Union (the EU Treaty) and the Treaty establishing the European Community (the EC Treaty) were amended to give effect to this objective. The provisions came into effect in May 1999.

6. Title VI (Articles 29 to 42) of the EU Treaty provides for police and judicial cooperation in criminal matters.<sup>1</sup> Article 34 empowers the Council to adopt common positions, framework decisions, other decisions and conventions. These measures may be proposed on the initiative of any Member State or the Commission. With one exception,<sup>2</sup> the Article requires the Council to act unanimously in adopting measures.

7. Title IV (Articles 61 to 69) of the EC Treaty contains provisions on visas, asylum, immigration and other policies relating to the free movement of people, including measures on judicial cooperation in civil matters having cross-border implications. Articles 61 to 63 require the Council, by 1 May 2004, to adopt measures on the following: visas and residence permits; illegal immigration and residence; determining which Member State is responsible for considering applications for asylum; and minimum standards “on the reception of asylum seekers”, for the qualification of third country nationals as refugees, for the procedures for granting or withdrawing refugee status, and for temporary protection for displaced persons who need international protection. Article 67(1) provides that, until 1 May 2004, any Member State or the Commission may initiate a proposal for a measure under Article 63, and the Council’s unanimous agreement is required for the adoption of such measures. Article 67(2) requires the Council, after 1 May 2004, to decide that action under all or part of Title IV should be subject to co-decision with the European Parliament and qualified majority voting (QMV). The Council has not so far reached such a decision.

8. Article 69 of the EC Treaty provides that measures adopted under Title IV are not to apply to the United Kingdom unless it expressly opts into them.

9. In October 1999, the Tampere European Council approved a programme of action on:

- A common asylum and migration policy (including partnership with countries of origin; a common European asylum system; fair treatment of third country nationals; and management of migration flows).
- A European area of justice (including better access to justice; mutual recognition of judicial decisions; and greater convergence in civil law).
- A Union-wide fight against crime (including crime prevention; increased cooperation against crime; and special action against money laundering).

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1 Article 42EU provides that the Council, acting unanimously on the initiative of the Commission or a Member State and after consulting the European Parliament, may decide that action on police and judicial cooperation on criminal matters is to “fall under” Title IV of the EC Treaty. So far, the provision has not been used.

2 The exception is contained in Article 34(2)(c), which permits qualified majority voting (QMV) for the adoption of decisions which do not approximate the laws of Member States; so far, this provision for QMV has never been used.

- Stronger external action, such as agreements with third countries.

10. The Commission has provided the European Council with regular six-monthly scoreboards on progress in implementing the Tampere programme.

11. The draft Constitutional Treaty would change the above arrangements by specifying co-decision and QMV as the procedure for the adoption of legislation on border checks, asylum and immigration; judicial cooperation in civil matters (other than family law, for which consultation and unanimity is the required procedure); most aspects of judicial cooperation in criminal matters, including the harmonisation of criminal law and procedure; and police cooperation (other than operational cooperation and measures concerning the conditions and limitations under which one Member State may operate in the territory of another Member State).

## III – Progress so far and obstacles to progress

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### The Commission's view

12. The Commission's document describes the creation of an area of freedom, security and justice as:

“one of the most outstanding expressions of the transition from an economic Europe to a political Europe at the service of its citizens”.<sup>3</sup>

The Commission considers that substantial progress has been made in most aspects of justice and home affairs since 1999, but that the original ambitions of Tampere have been hampered by institutional constraints and sometimes by lack of sufficient political consensus.

13. This point is elaborated as follows in ADD II:

“Despite the resolute line taken by the Tampere conclusions and the recognition that the Union institutions have quickly adapted their approach to promote the area of freedom, security and justice in their respective areas of responsibility, it was not always possible to reach agreement at European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty.

“The legal and institutional constraints of the current Treaties, where unanimity in the Council generally remains the rule, partly explain these difficulties. The Member States are sometimes reluctant to cooperate within this new European framework, and when their interests are at stake they do not hesitate to threaten the use of the veto that they enjoy on account of the unanimity rule in order to lower the level of ambition of the Commission's proposals and reject [the European]Parliament's opinions.

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3 ADD II, page 4, para 1.

“Moreover, the right of initiative shared with the Member States sometimes had the effect that national concerns were given priority over Tampere priorities... .

“Once the instruments are adopted, the institutional limits regarding the real possibilities for verifying the implementation of policies by national authorities, given the limited role of the [European] Court of Justice and the restricted powers of the Commission as regards police and judicial cooperation in criminal matters, are a real obstacle to ensuring that the instruments and decisions adopted are actually effective. It should be borne in mind that Framework Decisions, the legal instruments used to approximate the Member States’ legislation on police and judicial cooperation in criminal matters, do not have direct effect and that the Commission cannot bring actions in the Court of Justice for failure to transpose them properly or indeed at all.”<sup>4</sup>

14. The Commission notes, however, that since 1 May the Commission has had the exclusive right to propose measures under Title IV of the EC Treaty, and it says that it would now be timely to use the powers of Article 67(2) of that Treaty to introduce co-decision and QMV for such measures. The Commission adds that:

“the institutional progress envisaged in the field of justice and home affairs at the Intergovernmental Conference [on the Constitutional Treaty], and in particular the transition to qualified majority voting in the enlarged Union, will make it possible to increase the rate of completion of work.”<sup>5</sup>

15. ADD II comments:

“Enlargement will also considerably increase the number of citizens wishing to enjoy the benefits of living and moving in the area of freedom, security and justice. In an international environment which can be a cause for concern, there will therefore be expectations and demands for ‘**more Europe**’, this being seen, in particular in the new Member States, as the only way of assuring European citizens of the **level of security** to which they legitimately aspire.”<sup>6</sup>

16. The Commission says that, in addition to taking action on new priorities for the next five years, it will be necessary to:

- complete work already planned;
- implement measures which have already been adopted; and
- attain the improved institutional arrangements included in the Constitutional Treaty and the increased expenditure on freedom, security and justice included in the Commission’s proposals for the next Financial Perspective.

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4 ADD II, page 9.

5 Commission Communication, page 5.

6 ADD II, page 11.

## The Government's view

17. The Parliamentary Under-Secretary of State at the Home Office (Caroline Flint) tells us that:

“The Government welcomes the Commission Communication and fully supports the continuation of the Justice and Home Affairs work programme for another five years. The first JHA work programme has been a success and much has been achieved in terms of the added value that EU level action has brought. Practical co-operation between the police, courts and immigration and customs services has already made a real difference to peoples’ lives and further advances in this area have the potential to make an even greater impact.”

## Our assessment

18. We note the long list in ADD 2 of the Regulations, Directives and Decisions which have been adopted since 1999 to give effect to the Tampere programme. Legislation is not, however, an end in itself. The Communication does not evaluate the practical benefits of the measures that have already been adopted. It is not possible to judge, therefore, whether all this effort and expense has achieved the expected benefits. **In our view, the absence of a proper evaluation diminishes the value of the Communication as a final report on the Tampere programme.**

19. **Moreover, the Communication does not state what practical benefits the Commission expects from the priorities it proposes for the next five years. We consider that it would be prudent, therefore, for Member States to withhold commitment to the inclusion of the proposals in the work programme until they are presented with, and have considered, such a statement.**

20. The Communication refers to the present requirements in the EU and EC Treaties for unanimity for JHA legislation. The Commission says that Member States “do not hesitate to threaten the use of the veto they enjoy... in order to lower the level of ambition of the Commission’s proposals”, and that “it was not always possible to reach agreement at European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty”. The Commission comments that it would now be timely to use the powers of Article 67(2) of the EC Treaty to introduce co-decision and QMV for measures under Title IV of the Treaty.<sup>7</sup>

21. We are concerned by these passages of the Communication. **It seems to us reasonable and proper for Member States to withhold their agreement from measures they do not support and which, to use the Commission’s own words, “remain at the core of national sovereignty”. It bodes ill for the future if, on such sensitive matters, the Commission envisages reliance on QMV to impose on Member States legislation to which they are opposed.**

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7 Paras 13-14 above.

## IV – Visas, asylum and immigration

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### The Commission's proposals

22. The Commission proposes the development of an integrated border management system and visa policy. It says that:

“the smooth operation of the External Borders Agency must be ensured. The development of coordination mechanisms must be strengthened and supplemented with the long-term objective of establishing a European Corps of border guards to complement the national border guards.”<sup>8</sup>

Visa policy should address the security of documents and improved consular cooperation. The work that has begun on biometric identifiers in travel documents should continue. The Visa Information System and the new Schengen Information System (SIS II) should be brought into operation and used to their full potential.

23. The Commission also proposes the promotion of a common policy on the management of migration flows. The Commission refers to the proposals discussed at greater length in its Communication on links between legal and illegal migration, such as legal admission for employment purposes, better integration of legal migrants, targets for legal admissions, an effective policy on returns and readmissions and partnerships with countries of origin to deter illegal immigration and trafficking in human beings.<sup>9</sup>

24. Moreover, the Commission proposes the development of a common policy on European asylum. This would include a uniform status for asylum and subsidiary protection, a common procedure for granting and withdrawing refugee status and an integrated approach to deter unfounded claims for asylum and combat trafficking in human beings.

### The Government's view

25. On *border management and the proposal for a European Corps of Border Guards*, the Minister tells us that:

“The Government supports the development of an integrated border management system, including the establishment of the Border Agency, but we would need to consider the detail of any new legislation in this area and consider UK participation in any case. The Government's main concern in this area is the Commission's stated long-term goal of establishing a European Corp of Border Guards. We would not support this objective and will press for it not to be included in the work programme. The Government supports the principle of burden sharing between Member States, which should be focused on operations at the borders of the EU. Operations should be based on an intelligence-led approach to strengthening vulnerable points and be

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8 Commission Communication, page 9.

9 (25716) 10244/04: Commission Communication, Study of links between legal and illegal migration; HC 42-xxv (2003-04), para 14 (30 June 2004).

subject to a cost benefit analysis to ensure that resources are focused on areas where they add value.

“The Government would like to see the EU take steps to improve the security of all ID cards by including them in the biometrics programme. The Government welcomes the Commission’s recognition of the importance of the Visa Information System (VIS). The UK is continuing to seek interoperability between the VIS and the UK’s national systems as we believe there would be significant benefits for the EU from exchange information [sic] of this data. In the current global climate, it is essential that we make the most of information gathered at the EU’s borders by making it available to law enforcement agencies and that we find a way of ensuring all Member States have access to that information.

“The Government welcomes the importance attached to integration policy and the promotion of exchange of best practice and practical co-operation rather than a legislative approach. With regard to working in partnership with third countries to manage migration flows, it is important that operational co-operation continues to be a priority and that proposals to set minimum standards in the field of returns are based on an evaluation of operational co-operation and will add value to existing removal efforts.”

26. On *asylum policy*, the Minister says:

“The Government supports the development of a common EU asylum policy which quickly and fairly identifies those in need of protection whilst tackling abuse and inefficiencies in the system. We support a more practical approach to EU co-operation in asylum, in particular through partnership with countries of origin and transit. However, we are not convinced of the need for further harmonisation of EU asylum policy at this time, and will carefully assess each measure as they are brought forward.”

## Our assessment

27. Clearly, operational cooperation between Member States and with third countries is required for the effective management of asylum and immigration.

28. We are concerned, however, by the Commission’s proposal for the creation of a European Corps of Border Guards. **In our view, the Commission has not presented a sufficient justification for the proposal.** We also note that the draft Constitutional Treaty does not expressly refer to the creation of such a Corps, but only to the “establishment of an integrated management system” for external borders. We are also aware that provision for the creation of such a Corps, although supported by the Commission, was a divisive issue within the Convention and that express reference to such a Corps in the Convention text did not gain acceptance. **Moreover, we consider the proposal for a Corps of Border Guards objectionable in principle. Control over admission is a good illustration of the sensitive matters which remain at the core of national sovereignty. We are glad, therefore, that the Government will press for the exclusion of the proposal for a European Corps of Border Guards from the JHA work programme for the next five years.**



29. A “common policy” on asylum is not necessarily the same as a “uniform policy”. The UK’s obligations under the Geneva Convention on Refugees do not require a uniform policy. Certainly, **we recognise the importance of common minimum standards for asylum, but we share the Government’s view that the case remains to be made for further harmonisation of EU asylum policy.**

## V – Civil and criminal justice

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### The Commission’s proposals

30. The Commission proposes the creation of “a European judicial area” respecting the legal traditions and systems of the Member States. The Commission says that:

“The development of the European judicial area has neither the objective nor the effect of challenging the legal and judicial traditions of the Member States, and total harmonisation would be neither proportionate nor appropriate.... For this reason, the principle of mutual recognition has been placed at the heart of European integration in this field. It makes it possible indeed to respect the differences between the Member States’ legal systems while extending the validity of judgements to the entire territory of the Union.

“However, mutual recognition requires a common basis of shared principles and minimum standards.”<sup>10</sup>

Later, the Commission comments:

“it will be necessary to avoid a situation where in each Member State there are two separate legal regimes, one relating to the disputes with a cross-border implication and the other to purely internal disputes.”<sup>11</sup>

31. The Commission says that, in establishing a judicial area in civil and commercial matters to facilitate cooperation and access to justice, efforts should be concentrated on matters about which there are not yet Community rules on mutual recognition, such as successions, wills, and paternity. Moreover, the necessary resources should be committed to the implementation of the Community legislation that has already been adopted.

32. The Commission says that the promotion of a coherent criminal justice policy requires priority. It proposes that “a single instrument” should gradually replace the entire current system of mutual legal assistance, in particular for all questions concerning the obtaining of evidence. This “will have to be accompanied by measures to clarify the allocation of jurisdiction in order to prevent and solve conflicts of jurisdiction.”<sup>12</sup> The Commission also says that the system for the enforcement in one Member State of a judgement made in another will have to be defined, along with conditions for the exchange of information on convictions and disqualifications (“European criminal record”).

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10 ADD II, page 39.

11 ADD II, page 40.

12 Commission Communication, page 12.

33. In the Commission's view, mutual trust should be strengthened by assuring all European citizens of a high-quality system of justice based on common values. Measures to this end should cover the definition of fundamental guarantees, the conditions for the admissibility of evidence and strengthening the protection of victims.

34. The Commission also calls for the development of a coherent crime policy to enable the European Union to fight serious crime effectively. Among other things, the Commission considers that action to define and fix minimum penalties for certain offences will have to be "deepened" and further approximation of national laws will be necessary on some matters.

35. The Commission proposes that the Community should "put Eurojust at the centre of European criminal policy". A European Public Prosecutor's Office, with specific responsibility for offences against the European Union's financial interests, should be created from Eurojust. Moreover, Eurojust should support and strengthen cooperation between Member States in the prosecution of serious cross-border crime.

### The Government's view

36. The Minister tells us that:

"The UK has led the way in pushing for mutual recognition of judicial decisions and legal systems as the basis for stronger judicial co-operation in the EU. The Government therefore strongly supports the Communication's statement that the principle of mutual recognition should continue to be the cornerstone of judicial co-operation in the EU, whilst respecting the distinct and diverse legal traditions of Member States. The Government also welcomes the statement in the second annex ... to this Communication that 'total harmonisation would be neither proportionate nor appropriate'."

37. On *civil judicial cooperation*, the Minister says:

"the Government wishes to see a programme of practical measures designed to improve the ability of citizens to live, study, work, buy and sell and do business across European borders with the same security and ease of access to justice as at home. Measures should arise from a demonstrable need for action at the European level and should take account of experience with existing rules. Progress is looked for through the development of e-justice (harnessing IT to facilitate quicker and cheaper initiation and progress of cross-border cases), further promotion of alternative, proportionate dispute resolution across borders and enhanced access to information (not least through the expansion of the civil judicial network) so that citizens can make informed decisions on cross-border matters. The Government is concerned to ensure that the Commission is as good as its pledge to respect the integrity of different legal traditions. It does not wish the Commission's advocacy of the avoidance of separate legal regimes (between domestic and cross-border cases) to be translated into interference with domestic systems (such as small claims) which work well and do not need amendment. Whether to bring purely domestic systems into line with European legislation should be a matter for the Member States themselves."

38. On *criminal judicial cooperation*, the Minister tells us:



“the main emphasis is on continuing to deliver on the current programme, which the Government supports. The idea of a single mutual recognition instrument dealing with mutual legal assistance and replacing the Convention and Protocol of 2000/2001, and the emphasis on preserving the legal and judicial traditions of Member States are also welcome. The Government also supports approximation of substantive criminal law but only where a clear need for such action is demonstrated by available evidence. Any deepening of EU action on minimum standards for criminal penalties will, of course, need to take account [of] the differences between the national laws of Member States. In this regard the Government notes the indication in the Commission’s recent Green Paper on the mutual recognition, approximation and enforcement of criminal sanctions that Member States should not be required to apply minimum penalties for specified types of offending.

“The Commission’s view that Eurojust should be at the centre of European criminal policy is welcome. It is now delivering real benefits to judicial cooperation. Eurojust should be strengthened to improve the co-ordination of investigations and prosecutions into cross-border serious crime whilst retaining the principle that prosecution decisions should remain a national competence.

“We support strong action to tackle fraud against the Union’s interests. But any role for a European Public Prosecutor in this area is dependent on our agreement. We will not agree to anything that is not in the national interest.

“The Government has reservations about the statement that mutual recognition requires a common base of shared principles and minimum standards, which suggests that criminal procedural law measures are a pre-condition for mutual recognition. We believe that some minimum standards in criminal procedural law can facilitate mutual recognition and would help our citizens abroad but should not be seen as a pre-condition for mutual recognition.

“The Communication has merit in its medium and long-term aim of establishing a European institutional framework in criminal justice, based on the principle of mutual recognition.”

## Our assessment

39. **The Government’s comments on civil and criminal judicial cooperation highlight an important aspect of the principle of mutual recognition: namely, that the principle does not necessitate uniformity of procedural or substantive law. Indeed, in our view, the principle of mutual recognition is devoid of any meaning if the condition for its operation is uniformity in the law between Member States.** Under the general principles of private international law of the Member States, a foreign civil judgment may be recognized even if the domestic court would not have reached the same result, applied the same law, or followed the same procedure.

40. For example, under Article 34(1) of Council Regulation 44/2001,<sup>13</sup> recognition of a judgment given by a court of another Member State may be refused if such recognition “is

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13 OJ No. L 12, 16.1.01, p.1.

manifestly contrary to public policy” in the Member State in which recognition is sought, but the judgment is not otherwise reviewed as to its substance (Article 36). In rulings on the identically worded provision in the 1968 Brussels Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, the Court of Justice has confirmed that the foreign judgment may be refused recognition on public policy grounds only where recognition and enforcement “would be at variance to an unacceptable degree with the legal order of the State in which enforcement is sought” in as much as it constitutes a “manifest breach of a rule of law regarded as essential in the legal order of the State in which enforcement is sought”.<sup>14</sup>

41. The experience of the Brussels Convention accordingly demonstrates that uniformity of law and procedure is not required as a condition for mutual recognition. **We regard such uniformity both as unnecessary and as prejudicial to the integrity of the different legal systems of the Member States.**

42. Like the Government, we are concerned by the implications of the Commission’s view that “it will be necessary to avoid a situation where in each Member State there are two separate legal regimes, one relating to the disputes with a cross-border implication and the other to purely internal disputes” and by its further comment that “duality could be inconsistent with the aim of a single area of justice for all”. We believe that these remarks indicate an intention to circumvent the current restrictions on EC and EU involvement in national legal systems, and those in the draft Constitutional Treaty, which do not envisage action in relation to matters which are purely internal to a Member State. **We draw attention to the danger that measures which are ostensibly concerned with mutual recognition will have the effect of creating uniform rules which will then apply to all cases, whether they have any cross-border implications or not. As we have commented before, Commission proposals on the “area of freedom security and justice” have appeared to treat this “area” as synonymous with a unitary State, with only one legal system.**<sup>15</sup> We do not believe that there is any treaty basis for such an approach, or that it complies with the principle of subsidiarity. If Parliament has not chosen to unify the separate legal systems of England and Wales, Scotland and Northern Ireland, we see no justification for this being attempted by the European Union.

## VI – Police and customs cooperation

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### The Commission’s proposals

43. In discussing priorities for this area of policy, the Commission refers to the proposals in its recent Communication on police and customs cooperation.<sup>16</sup> These include strengthening the role of Europol (including giving Europol some powers of investigation), extending the work of the European Police College (CEPOL) and creating a legal framework to improve the sharing of intelligence between enforcement authorities. The

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14 Case No C 38/98 *Renault v. Maxicar and Formento*, Case 7/98 *Krombach v. Bamberski*.

15 See (25658) 9317/04: HC 42–xxiv (2003-04), para 1 (23 June 2004).

16 (25706) 9903/04: Commission Communication on enhancing police and customs cooperation in the European Union; HC 42–xxv (2003-04), para 5 (30 June 2004).

Communication says that it might be desirable to make Europol a Union agency, financed from the Community budget.

44. The Commission notes that the main lines of action on counter-terrorism were identified by the European Council on 25/26 March 2004. Implementing that action will need to be a priority, and include the creation of an information exchange centre and action to combat the financing of terrorism. The Commission adds that the fight against serious crime requires the development of public-private partnerships to combine the expertise, resources and information available to the private sector and the police in order to prevent and detect crimes such as counterfeiting, corruption and piracy.

45. The Commission calls for stronger action on crime prevention. Efforts are required to make goods and services less vulnerable to crime, and action to prevent general crime should be prioritised and supported financially.<sup>17</sup>

46. The Commission says that demand for drugs must be reduced and there must be a tighter link between justice and home affairs policies and the EU's actions with third countries and international organisations to counter drug trafficking.

## The Government's view

47. On *cooperation between law enforcement authorities*, the Minister tells us that:

“The Government believes that the EU can add significant value in the fight against organised crime and terrorism by sponsoring an intelligence-led and multi-disciplinary approach. Improvement in the co-ordination of law enforcement bodies within the EU is crucial. We believe that there should be a renewed effort to remove any barriers to the exchange of intelligence between Member States, particularly via Europol. The UK would also support the promulgation of best practice in this area. There have already been successes, for example in operations against drug trafficking and people trafficking, and by replicating and increasing this sort of information exchange and co-operation, and by removing artificial barriers to it, we can demonstrate the real value added by the EU.

“The Government supports establishing a legal framework for cooperation between law enforcement authorities for the purposes of exchanges of information in criminal matters. This would clarify obligations on the competent authorities in relation to such matters as access to, and use of, information and have regard to data protection and human rights safeguards. Such a framework could provide a more certain legal base, thereby speeding up and enhancing the effectiveness of law enforcement cooperation. It would also complement the arrangements for cooperation already elaborated in the EU Convention on mutual legal assistance.”

48. On the Commission's proposals for *Europol*, the Minister says:

“The Government believes that Europol is not yet delivering to its full potential and would like to see it operate with greater flexibility and efficiency. Whilst the JHA

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<sup>17</sup> In April, the Commission produced a Communication on crime prevention: see (25487) 7763/04; HC 42-xviii (2003-04), para 3 (28 April 2004) and HC 42-xx (2003-04), para 22 (18 May 2004).

chapter in the Constitutional Treaty will provide the opportunity to properly review working procedures we would, in the meantime, support a more flexible interpretation of the Europol Convention in order to overcome rigidities in operating its provisions. We would also be content for Europol to be financed from the Community budget. We attach importance to Europol continuing to function in support of Member States' own investigations.”

49. On *the European Police College*, the Minister says:

“The Government will seek to ensure that the CEPOL network, to be based at Bramshill in the UK, becomes a centre of excellence for law enforcement training. It should do this by developing a well-managed and properly resourced Secretariat, supporting a network of national colleges providing training on the mechanisms and structures available to facilitate cross-border co-operation in tackling serious crime. Having an institution of this importance based in the UK is an excellent opportunity to share the UK's considerable expertise in this area and to promote the sort of high standards in European policing that will bring significant benefits to all Member States.”

50. On *counter-terrorism*, the Minister tells us that:

“The Government welcomes the acknowledgement that the fight against terrorism remains a priority. The Communication endorses the Government's view that security is enhanced through EU co-operation. Security is paramount because without it the full realisation of freedom and justice is impossible. Effective use of intelligence assessments, a multidisciplinary approach to counter-terrorist finance and improvements in aviation security are all key. We all also need to take forward longer-term work on understanding and tackling the underlying factors behind support for terrorism, both within the EU and externally. We endorse the emphasis on maximising the potential of EU information systems, such as the Visa Information System. We also need to recognise the link between elements of the integrated border management policy and the counter-terrorism agenda.”

51. The Minister says that *crime prevention*

“is a new area of activity (the Commission has recently produced a Communication on the subject) where the EU could make a difference to the lives of its citizens, adding demonstrable value through support and incentive measures. Work in this area would be crosscutting because strong, safe communities allow citizens to actively participate in a society where freedom, justice and security are mutually reinforcing[,] terrorism and crime are less able to flourish, witnesses are more willing to appear in court and migrants integrate more easily. The Government believes that the EU should focus on the development and sharing of evidence-based good practice on crime prevention, improved protection for children and promotion of the civil renewal agenda. Priorities should include designing out crime, measures to reduce violent and youth crime, and the application of community engagement and restorative justice techniques to crime reduction.”

52. Commenting on the Commission's proposals to counter *trafficking in drugs*, the Minister says:

“We expect agreement to a new EU Drugs Strategy, that will run from 2005-2013, underpinned by a series of target-driven action plans to see it through. We do not agree with the Commission’s particular emphasis on demand reduction. We favour a balanced approach. Europe should add value to national efforts through encouraging practical operational cooperation and this lends itself best to supply reduction issues. Work on demand reduction should be limited to the exchange of best practice to allow the development of policies tailored to local needs.”

## Our assessment

53. Again, we recognize the potential benefits of further operational cooperation between Member States and of improved exchanges of information (subject to robust safeguards for legitimate personal freedom) so as to counter serious cross-border crime, including terrorism and trafficking in drugs, arms and human beings.

54. **But we see objections of principle to giving Europol its own investigative powers, as proposed in the recent Communication on police and customs cooperation to which the Commission refers. This would fundamentally change Europol from an agency for the exchange and analysis of criminal intelligence into a European police force.**

55. There may well be useful lessons to be learned from sharing best practice and information on crime prevention. **But any proposals about crime prevention should be included in the JHA work programme for the next five years only if they can be shown to be fully consistent with the principles of subsidiarity and proportionality.**

## VII – Conclusion

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56. **Some of the Commission’s proposals for the next five-year justice and home affairs (JHA) work programme affect policies which are at the core of national sovereignty. Moreover, we are particularly concerned by the following issues:**

- i. **The omission from the Communication of an evaluation of the practical benefits achieved so far as a result of the Tampere programme.**
- ii. **The omission of a statement of the practical benefits expected from the Commission’s proposals for the next five years.**
- iii. **The Commission’s apparent wish to rely on qualified majority voting to secure the adoption of JHA legislation against the wishes of some Member States.**
- iv. **The risk that the expression “an area of freedom, security and justice” is encouraging the notion that such an area is a unitary State separate from the Member States which make up the European Union and Community. Our concern on this point is illustrated by the statement in the Commission’s document that “there will therefore be expectations and demands for ‘more Europe’, this being seen, in particular in the new Member States, as the only way**

of assuring European citizens of the level of security to which they legitimately aspire".<sup>18</sup>

- v. The further harmonization of asylum policy, going beyond the establishment of reasonable common minimum standards.
- vi. The proposals for the creation of a European Public Prosecutor and a European Corps of Border Guards and to give Europol some investigative powers. We have not yet seen sufficient justification for giving the European Union its own prosecutor, border guards and police force.
- vii. The extension of the Community's activities into crime prevention. We question such an extension unless it can be shown to be fully consistent with the principles of subsidiarity and proportionality.
- viii. The proper scope of measures in relation to civil and criminal justice. We believe that such measures should be strictly confined to those which are necessary for mutual recognition, and that such measures should not affect purely internal cases or otherwise encroach on the integrity of the legal systems of the Member States.

57. Accordingly, we recommend the Communication for debate on the Floor of the House. The debate needs to be held in good time for the Government to take account of the views of the House before the Communication is discussed at the JHA Council in October.

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18 See para 15 above.

# Formal minutes

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**Wednesday 14 July 2004**

Members present:

Mr Michael Connarty  
Jim Dobbin  
Nick Harvey

Anne Picking  
Angus Robertson  
John Robertson

In the absence of the Chairman, Mr Michael Connarty was called to the Chair.

The Committee deliberated.

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Draft Report, proposed by the Chairman, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 57 read and agreed to.

Summary read and agreed to.

*Resolved*, That the Report be the Twenty-eighth Report of the Committee to the House.

*Ordered*, That the Chairman do make the Report to the House.

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[Adjourned till Wednesday 21 July at half-past Two o'clock.]