

**EUROPEAN UNION
THE COUNCIL**

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SEMDOC

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NOTE

from :	Incoming Finnish Presidency
to :	Committee on Civil Law (general questions)
Subject :	Preparation of the European Council of Tampere (15-16.10.1999) - Establishment of a European Area of Justice (civil matters)

The Tampere European Council offers a unique opportunity for Heads of State and Government to reaffirm the priority they attach to building up the European Union as an area of freedom, security and justice, and thus bringing it closer to its people. This is an aim which was launched by the Treaty of Amsterdam and has been subsequently reaffirmed and consolidated at the level of Heads of State and Government in Cardiff and Vienna. The European Council of Tampere will represent the next step in this process. It is the importance which they attach to this project which has lead Chancellor Schröder and Prime Minister Lipponen to write to their fellow Heads of State and Government in order to engage their personal commitment and to learn their views by means of the recently completed tour of capitals conducted by the German and future Finnish Presidencies accompanied by representatives of the Commission and the Secretariat General of the Council.

The Treaty of Amsterdam and the detailed Vienna Action Plan, for all their importance and coverage, still leave gaps which the European Council of Tampere needs to fill. The meeting provides the opportunity to ensure that the new provisions of the Treaty are given full effect and to give further guidance in the fields of justice and home affairs. There is clearly a need for strong political guidelines, commitments and concrete objectives.

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The area of freedom, security and justice should be based on the idea of the European Union as a common *area*. This represents a significant change of approach and of concept. The Treaty of Maastricht dealt primarily with measures to compensate for the abolition of internal border controls. It contained no comprehensive objective nor a coherent approach in this respect. The Treaty of Amsterdam sets out more far-reaching objectives, supported by new legal instruments. Underlying this major project is shared determination to take joint responsibility for the project of developing the area and to refrain from unilateral actions as they will inevitably affect everyone.

The Treaty of Amsterdam, with its five year programme for establishing the area of freedom, security and justice recalls the successful methods that were used to create and to accomplish the internal market, i.e. a combination of, on the one hand, harmonisation of legislation, or where it is considered more appropriate, creation of common minimum standards with, on the other hand, the application of the principle of mutual recognition. Furthermore the administrative and legal obstacles which impede co-operation should be removed.

The Treaty requires a more coherent, cross-pillar approach. The aim should be to ensure consistency in the Union's activities as a whole. All Union competencies and instruments should be used in an integrated way in order to achieve the goal, i.e. to maintain and to develop the area.

This approach should also be reflected in relation to third countries and international organisations. Not only is it in the interest of the Union to establish its international presence in the fields of justice and home affairs, third countries too have high expectations of the Union as a partner in this area.

In order to secure a balanced and concentrated discussion in Tampere one should limit the deliberations to central issues in the fields of immigration and asylum, the fight against cross-

border crime and the establishment of a European judicial area, including access to justice. These different areas should be seen as dynamic and inter-linked elements within the overall concept of freedom, security and justice.

The results of the special meeting should have a direct and perceptible impact on individuals lives and demonstrate "Union added value".

II ESTABLISHMENT OF A EUROPEAN AREA OF JUSTICE, INCLUDING IMPROVEMENT OF THE INDIVIDUALS' ACCESS TO JUSTICE

Goals: Creating a true area of justice within the Union, ensuring access to justice and administration for individuals throughout the Union and enhancing victims' legal rights and protection.

1 BEYOND THE ACTION PLAN: NEW CHALLENGES

Over the past decades Europe has developed into a uniform economic area. Two areas of peoples' lives are increasingly characterised by cross-border implications: their participation in economic transactions and their family relationships. However, there are still inadequacies which are linked to the functioning of legal and administrative systems. In a number of cases access to justice and sufficient legal protection are impaired. Many of these questions do not only relate to the individuals but also impede the action of the economic operators within the internal market.

The individuals and economic operators should be able to obtain adequate legal protection, independent of where they are. It is increasingly in the common interest to create a uniform European area of justice. The creation and development of such an area can be seen as one of the best ways to overcome various legal and administrative difficulties in cross border relations. The

area should give a better response to the legitimate expectations of the individuals and economic operators. It should be based upon far reaching and clearly identified goals.

In the context of cross-border litigation, individuals and economic operators cannot necessarily rely on an as easy access to justice as in connection with disputes located within their own country. Information of the proper forum, legislation, initiating proceedings, hearing witnesses, serving documents, facing the administrative or judicial authorities, requesting enforcement of judgements are often rather complicated and expensive. The results of such cross-border judicial action are far from being the same all over the Union. There are difficulties relating to among other things the following:

- which judicial authority to approach in another Member State,
- what to do as to enforce one's rights,
- the contents of law in another Member State,
- the question of languages and translations,
- how to obtain legal aid free of charge or public legal aid,
- how to serve documents in another Member State,
- the receiving of evidence in a Member State other than where the proceedings take place and
- is the judgement enforceable in an expedient manner.

Moreover, cross-border litigation in cases of minor commercial value may be too cumbersome and involve excessive expenditure. The cost of the recovery of small sums may often exceed the claim itself.

One of the main problems is lack of information relating to the legal and administrative systems (legislation, judicial authorities, administrative and legal procedures, legal aid, enforcement etc.) of the other Member States or to the respective practices. There are also problems in the co-operation between Member States authorities and functioning between the different systems. This results in delays, lack of mutual recognition and enforcement and complicated and slow

exequatur procedures. It is of great importance to the individual that the judgement is enforceable in an expedient manner and with reasonable costs.

When a person moves to another Member State, he or she may be confronted with problems related to family law. For instance, the disputes relating to the custody of children and the distribution of matrimonial assets in a case of divorce are topical. Already the question of determining the applicable law to the dispute may be problematic.

In exercising their right to free movement, individuals may become victims of an offence in another Member State. Sometimes their rights as victims, for example the right to compensation, differ considerably. The victims may also need different kinds of assistance and other supportive measures.

2 THE WAY FORWARD: THEMES

It is clear that the judicial and administrative systems of the Member States differ. It would not be realistic to propose uniformity of national legal systems in all fields. However, it is reasonable to seek to encourage the development of a common sense of justice throughout the Union. The area of justice is not only a collection of individual legal instruments. It is also a carefully elaborated entity consisting of a clear definition of aims and a programme for how to reach these aims.

The development of the area of justice seems to require the same approach as that adopted in the development of the internal market, taking into account both the concept of positive integration (harmonisation and mutual recognition) and the concept of negative integration (the removal of technical, legal and administrative barriers). Furthermore, better conditions for trust should be created in each other's legal systems, e.g. by setting of minimum standards and evaluating best practices.

3 RESULTS

The establishment of a European area of Justice could entail the following policy guidelines

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In establishing the European area of justice the following methods should be used: laying down the fundamental principle of mutual recognition of judicial decisions, harmonisation of certain areas of substantive and procedural legislation, and the removal of technical, legal and administrative barriers. Special attention should be paid to improving individuals' access to justice and to enhancing victims' rights.

* Many of the items dealt with in this section are also relevant within the context of the fight against cross-border crime. These items shall be discussed accordingly.

1) Access to Justice and Victims' Rights

Information and awareness of law, administration and legal systems

- Providing citizens with adequate means and sufficient information on the legal systems of other Member States, e.g. by drawing up a "user's guide", by codifying the relevant legislation and improving its quality or by establishing on-line system of access.
- Making use of modern technologies to facilitate cross-border contacts.

Facilitating access to administration and judiciary

- Developing arrangements designed to facilitate direct contacts of individuals to administrative and judicial authorities all over the Union (without intermediate consular proceedings or other obstacles).
- Establishing national ombudsmen and/or dispute settlement bodies.
- Developing uniform multilingual documents and forms to be used in judicial proceedings and administration in Member States.
- Codes of good practice and certain minimum standards in arranging the access for individuals.
- Legal aid

Enhancing/approximating the rights of the victims of crime in the Union

- Launching legislative work on victims' rights, e.g. victims' access to the judiciary and their rights to compensation of damages (including legal costs).

- Other supportive measures (European Help-lines, Community programs, networks, relevant multilingual information to potential crime victims, assistance to victims etc.)

2) Removal of Technical, Administrative and Legal Barriers

- Developing the European judicial network further:
 - judges, including administrative judges,
 - enforcement authorities,
 - networks of national ombudsmen and/or dispute settlement bodies (possibly).
 - (- prosecutors)
- Improving the training of practitioners and providing them with better information
- Introducing an informal or simplified procedure in mutual legal assistance
- Speeding up the mutual legal assistance in specific fields
- The definition of the notion of "essential interests" that should allow one Member State to refuse legal assistance of another Member State.
- Simplifying cross-border proceedings in small claims or orders for money payment
- Facilitating the tracing of the debtor's assets in order to permit enforcement of judgements, by instituting co-operation mechanisms between judicial and administrative authorities

3) The Principle of Mutual Recognition

(Criminal matters)

Civil matters

- Establishing within new areas rules on jurisdiction as well as rules on automatic recognition and enforcement of judgements (regime of the type Brussels/Lugano).
- Establishing for the areas already covered by a Brussels/Lugano-type regime, a "Single European Judicial Title".
- Simplifying exequatur requirements
 - as a first step, particular kinds of judgements or judicial orders be given this character, e.g. certain fast-track judgements existing in national laws, provisional measures; titles on "small commercial/consumer claims" or orders for money payment, certain judgements in family litigation.
- Promoting within new areas the compatibility of the rules applicable in the Member States concerning the conflicts of laws.

4) Harmonisation or Minimum Standards in the Field of Substantive and Procedural Legislation

- Defining the concrete areas of the law where efforts of harmonisation or the setting of minimum standards should be pursued with priority in the next years and on the longer run. In doing so, it should be focused on procedural law but also identified some areas of substantive law.

- Procedural law (e.g. service of documents, taking of evidence, provisional measures, legal aid, enforcement of judgements, orders for money payment, right to appeal.)
- Substantive civil law (e.g. the law of contracts, perhaps specific fields of it such as sales of goods, "new" types of contracts (franchise, lease), or bona fide acquisitions).

5) Co-operation with Third Countries and International Organisations

- Making the Union action more coherent and developing it further
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