JHA 153

(Acts adopted pursuant to Title VI of the Treaty on European Union)

ACTION PLAN OF THE COUNCIL AND THE COMMISSION ON HOW BEST TO IMPLEMENT THE PROVISIONS OF THE TREATY OF AMSTERDAM ON AN AREA OF FREEDOM, SECURITY AND JUSTICE

Text adopted by the Justice and Home Affairs Council of 3 December 1998

(1999/C 19/01)

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PART I

INTRODUCTION

1. The European Council, meeting at Cardiff called on the Council and the Commission to submit at its meeting in Vienna an action plan on 'how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice'.

Heads of State or Government at Pörtschach further confirmed the importance they attach to this subject by agreeing to hold a special European Council in Tampere in October 1999.

Under the Amsterdam Treaty, the areas of visa, asylum, immigration and other policies related to free movement of persons, like judicial cooperation in civil matters, are transferred from the EU's third pillar to its first pillar (albeit not all of the first pillar procedures will be applicable), whereas provisions on police and judicial cooperation in criminal matters contained in the new Title VI of the Treaty on European Union remain within the EU's third pillar. In addition to these changes in responsibilities, the Amsterdam Treaty also lays down the broad lines of action in the areas currently assigned to the third pillar.

2. When the Cardiff European Council called on the Council and the Commission to present the action plan, it clearly indicated its view that those provisions offer new opportunities to tackle an area of major public concern and thus to bring the European Union closer to the people.

3. Without underestimating what has already been achieved in this area under the EC Treaty, under the Title VI provisions of the Maastricht Treaty and within Schengen, it is worth recalling the reasons why the new provisions adopted in Amsterdam open up improved possibilities. First, the objective of maintaining and developing the Union as an area of freedom, security and justice is asserted and the various aspects involved are reviewed. Secondly, the Union has been given the necessary framework in which to accommodate it and the instruments required have been strengthened and at the same time, thanks to the enhanced role foreseen for the European Court of Justice and the European Parliament, made subject to tighter judicial and democratic review. The Community method is extended: several of the areas of the current third pillar are brought under Community arrangements and restrictions which used to apply to the Community institutions in the areas of police and criminal justice cooperation have been lifted. Access to the Community budget has been made less cumbersome. Finally, the integration of Schengen recognises the efforts of the Member States which embarked on this cooperation and gives the Union a base on which to build further.

4. In drawing up this action plan, the Council and the Commission take as their starting point that one of the keys to its success lies in ensuring that the spirit of interinstitutional cooperation inherent in the Amsterdam Treaty is translated into reality. This applies in particular to the new responsibilities, including an extended right of initiative, which Amsterdam bestows on the Commission. What is important is not so much where the right of initiative lies, be it shared or exclusive, as the way in which this right is exercised. In any case the Treaty provides that for the five years earmarked for the full attainment of the free movement of persons, the right of initiative will be shared between the Commission and the Member States for matters transferred to the Community framework.

5. Although any action plan drawn up must, in concrete terms, necessarily reflect the priorities and timetable set out in the Amsterdam Treaty itself, it needs to reflect also the general approach and philosophy inherent in the concept of an 'area of freedom, security and justice'. These three notions are closely interlinked. Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. These three inseparable concepts have one common denominator 'people' and one cannot be achieved in full without the other two. Maintaining the right balance between them must be the guiding thread for Union action. It should be noted in this context that the Treaty establishing the European Communities (Article 61 (ex) Article 73(i)(a), makes a direct link between the measures establishing freedom of movement of persons and the specific measures seeking to combat and prevent

crime (Article 31(e) of the Treaty on European Union), thus creating a conditional link between the two areas.

A. AN AREA OF FREEDOM

(a) A wider concept of freedom

6. Freedom in the sense of free movement of people within the European Union remains a fundamental objective of the Treaty, and one to which the flanking measures associated with the concepts of security and justice must make their essential contribution. The Schengen achievement has shown the way and provides the foundation on which to build. However, the Treaty of Amsterdam also opens the way to giving 'freedom' a meaning beyond free movement of people across internal borders. It is also freedom to live in a law-abiding environment in the knowledge that public authorities are using everything in their individual and collective power (nationally, at the level of the Union and beyond) to combat and contain those who seek to deny or abuse that freedom. Freedom must also be complemented by the full range of fundamental human rights, including protection from any form of discrimination as foreseen by Articles 12 and 13 of TEC and 6 of the TEU.

7. Another fundamental freedom deserving special attention in today's fast-developing information society is that of respect for privacy and in particular the protection of personal data. When, in support of the development of police and judicial cooperation in criminal matters, personal data files are set up and information exchanged, it is indeed essential to strike the right balance between public security and the protection of individuals' privacy.

(b) Immigration and asylum policies

8. When looking at the priorities ahead, different considerations must apply to immigration policy on the one hand and asylum policy on the other. Future work in these areas will essentially be determined by the fact that the new Treaty itself contains an obligation to take action within five years in a wide range of immigration and asylum-related areas involving both substance and procedure. An impressive amount of work has already been carried out. However, the instruments adopted so far often suffer from two weaknesses: they are frequently based on 'soft law', such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements. The commitment in the Amsterdam Treaty to use European Community instruments in the future provides the opportunity to correct where necessary these weaknesses. Particular priority needs to be attached to combating illegal immigration on the one hand, while on the other hand ensuring the integration and rights of those third country nationals legally present in the Union as well as the necessary protection for those in need of it even if they do not meet fully the criteria of the Geneva Convention.

B. AN AREA OF SECURITY

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

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

11. Amsterdam rather provides an institutional framework to develop common action among the Member States in the indissociable fields of police cooperation and judicial cooperation in criminal matters and thus not only to offer enhanced security to their citizens but also to defend the Union's interests, including its financial interests. The declared objective is to prevent and combat crime at the appropriate level, 'organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud'.

(a) Organised crime

12. The Union's response to the challenge posed by organised crime is contained in the action plan endorsed by the Amsterdam European Council, which foresees an integrated approach at each step on the continuum from prevention to repression and prosecution. Important progress has already been made, as the Cardiff European Council recognised, but even when the plan is fully implemented, the opportunities offered by Amsterdam to go further will have to be exploited.

(b) **Drugs**

13. Drugs deserve a particular mention. They constitute a threat to collective and individual security in numerous ways, often but not always linked to organised crime. It is an area to which Europe has brought a distinctive and influential approach through its insistence on a comprehensive policy based on shared responsibility between consumer and producer countries. Within that comprehensive framework, however, it is clear that a major component will be the mobilisation of the full weight which various law enforcement agencies can collectively bring to bear against the traffickers and the criminal organisations which lie behind them. The Union's action plan against drugs for the period 2000 to 2004, currently under discussion in the Commission and the Council, will need to be drawn up and implemented in a way which fully exploits the possibilities of the new Treaty.

(c) **Europol**

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

C. AN AREA OF JUSTICE

15. The new impetus and instruments introduced by Amsterdam provide the opportunity to examine what the area of 'justice' should seek to achieve, while respecting the reality that, for reasons deeply imbedded in history and tradition, judicial systems differ substantially between Member States. The ambition is to give citizens a common sense of justice throughout the Union. Justice must be seen as facilitating the day-to-day life of people and bringing to justice those who threaten the freedom and security of individuals and society. This includes both access to justice and full judicial cooperation among Member States. What Amsterdam provides is a conceptual and institutional framework to make sure that those values are defended throughout the Union.

Both in civil and criminal matters speedy ratification and effective implementation of adopted conventions are crucial for achieving an area of Justice.

(a) **Judicial cooperation in civil matters**

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

(b) **Judicial cooperation in criminal matters**

17. There is a clear need for improving and speeding up judicial cooperation in criminal matters both among Member States and with third countries, specially in view of intensified police cooperation. However effective it may be, judicial cooperation in criminal matters is hard pressed today to deal with phenomena such as organised crime, unless there is facilitation of procedures and where necessary approximation of legislation.

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

Treaty of Amsterdam, the powers of Europol should be developed and the place and the role of judicial authorities in relation to Europol, either at the level of Member State or at the Union level, have to be examined.

(c) Procedures

19. Procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case. In principle, this function of adequate and comparable procedural guarantees is already achieved by the safeguards of the European Convention on Human Rights and Fundamental Freedoms and their dynamic interpretation by the European Court of Human Rights, in particular regarding the rights of the defence in criminal proceedings. It appears useful, however, to complement those basic principles by standards and codes of good practice in areas of transnational relevance and common concern (e.g. interpretation) which may also extend to certain parts of the enforcement of criminal decisions, including, for instance, confiscation of assets and to aspects of offender reintegration and victim support.

(d) Cross-border litigation

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

D. ENLARGEMENT

21. There is an important link with the enlargement process, in particular with the preaccession strategy.

The countries applying for membership of the European Union are well aware that Justice and Home Affairs will have a special significance for their applications.

However, the JHA *acquis* is different in nature from other parts of the Union's *acquis*. Much still needs to be done and the *acquis* will therefore constantly develop over the preaccession years.

The adoption of the action plan will have the additional advantage of setting out for the benefit of the applicant countries a clear and comprehensive statement of the Union's priorities in this area.

E. RELATIONS WITH THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

22. The advances introduced by the Amsterdam Treaty will also enhance the Union's role as a player and partner on the international stage, both bilaterally and in multilateral forums. As a result, and building on the dialogue that it has already started in Justice and Home Affairs cooperation with an increasing number of third countries and international organisations and bodies (e.g. Interpol, UNHCR, Council of Europe, G8 and the OECD), this external aspect of the Union's action can be expected to take on a new and more demanding dimension. Full use will need to be made of the new instruments available under the Treaty. In particular, the 'communautarisation' of the matters relating to asylum, immigration and judicial cooperation in civil matters permit the Community, to the extent permitted by the established case-law of the European Court of Justice related to the external competence of the Community, to exercise its influence internationally in these matters. In those subjects which remain in Title VI of the TEU, the Union can also make use of the possibility for the Council to conclude international agreements in matters relating to Title VI of the Treaty, as well as for the Presidency, assisted by the General Secretariat of the Council and in full association with the Commission, to represent the Union in these areas.

F. STRUCTURE OF WORK IN THE FIELD OF JUSTICE AND HOME AFFAIRS

23. The new provisions of the Amsterdam Treaty as well as its Protocol integrating the Schengen *acquis* into the framework of the European Union, with their emphatically cross-pillar characteristic, will need to be reflected also in the working structures of the Council. It was clearly not the intention of the Treaty to compartmentalise the way in which the different components of this area of freedom, security and justice are handled as between the structures of the European Community on the one hand and the European Union on the other, particularly since in both cases the responsibility for taking the objective forward will fall irrespective whether they are first or third pillar competence, to the Council in its composition of Ministers for Justice and Home Affairs. It will therefore be essential to establish before the entry into force of the Treaty of Amsterdam for this purpose appropriate arrangements which both respect the

provisions of the Treaty and facilitate the coordinating role of the Committee of Permanent Representatives.

It will also be important to establish the appropriate arrangement to cover the particular case of the Schengen information system in order to ensure smooth transition, with no reduction in the system's efficiency. A discussion could, also, be started in the medium term on the prospects for developing SIS II after it has been expanded.

Work on the necessary structural arrangements, including reflexions on the need for further coordination in the fields of migration and asylum as well as in the area of civil law by committees composed of high officials is already under way within the K4 Committee acting on the basis of Article K4(1) of the TEU.

This reform of the working structures should be based on the following principles: rationalisation and simplification (an appropriate number of working parties to meet the objectives laid down in the Treaty, no duplication), specialisation and responsibility (working parties to consist of experts having an adequate degree of responsibility in their Member States, appropriate allowance for operational structures — Europol, European judicial network), continuity (permanence of working parties to reflect the permanent objectives of the Treaty, mechanism for following-up all the instruments adopted), transparency (clarity of terms of reference and of relations between working parties) and flexibility (possibility of extremely short-term adjustment of structures to deal with new problems requiring urgent specific handling).

The entry into force of the Treaty of Amsterdam also raises a number of legal questions resulting from the transition of certain policies from the third pillar to the first pillar as well as from the transition to new forms of acts and procedures in the third pillar. This concerns, for example, the question of how to handle conventions in the field to be transferred to Community competence which will be signed but not yet ratified at the time of entry into force of the Treaty of Amsterdam.

PART II

PRIORITIES AND MEASURES

A. SELECTION CRITERIA FOR PRIORITIES

24. A number of principles have determined the way in which the Council and the Commission have identified, and intend to implement, the measures listed in this part:

(i) the *Amsterdam Treaty* itself has set out some clear guidance on the measures to which priority importance must be attached, particularly during the first five years after its entry into force. The action plan must respect this guidance;

(ii) the principle of *subsidiarity*, which applies to all aspects of the Union's action, is of particular relevance to the creation of an area of freedom, security and justice;

(iii) the principle of *solidarity* among Member States and between them and the European institutions, should apply in facing the transnational challenges presented by organised crime and migration movements;

(iv) *operational efficiency* in implementing the legal framework established by the Treaty is no less important than the legislative framework itself. Measures taken shall meet factual needs and add value in this context, working methods which have proved already their worth, for example in the Schengen context, should find their place in the Union's action plan;

(v) *responsibility for safeguarding of internal security rests with Member States.* It is therefore important, when developing European cooperation, to take into account national interests and common approaches as well as differences;

(vi) a *realistic approach* requires, when selecting priorities, the resources and time available to be taken into account.

25. According to Article 2 of the TEU, the Union shall set itself the objective to maintain and develop an area of freedom, security and justice in which the free movement of persons is assured in conjunction with appropriate measures with respect to external

borders, asylum, immigration and the prevention and combating of crime. The mutual interdependence between the different aspects of this overall objective is confirmed by Article 61(a) which mentions Article 31(e) of the TEU. It is therefore in the interest of as high level as possible of security for the public that some activities in one area be meshed in timing and substance with those in the other.

26. Integration of the Schengen *acquis* into the framework of the European Union will have as a consequence that as from the date of entry into force of the Treaty of Amsterdam the objectives of the Community as set out in the entire Article 62 of the TEC and to a large extent in Article 63(3)(b) of the TEC in their versions of the Treaty of Amsterdam will largely have been realised in respect of 10 Member States, and in respect of 13 Member States as from the date of the decision of the Council referred to in Article 2(2) of the Schengen Protocol. This is to say that much of the substantive work will have been done far in advance of the five years' time limit set by the Articles concerned. It would permit the Council to concentrate initially particularly on other objectives of the Community and the Union in the field of Justice and Home Affairs for the realisation of which a maximum time limit of five years has been determined (Article 63(1)) and (2)(a) of the TEC and Article 30(2) of the TEU, for example and to deal with matters which would require urgent handling or which become politically important.

In order to put the priorities listed in those Articles into practice, efforts will have to be made to adopt measures detailed in the following sections.

27. In the context of the Treaty requirements, account should also be taken of the position of the United Kingdom and Ireland under the Protocols to the Amsterdam Treaty and, in setting priorities, of existing plans and the need to continue taking forward present medium-term work programmes.

28. In establishing substantive and political priorities, first consideration has had to be given in particular to those projects on which work is already in hand at present or for which work is likely still to be in progress at the time of entry into force of the Amsterdam Treaty. It has basically been attempted here, in fully adjusting to the new environment, to ensure maximum continuity.

29. In legislative work, account has also had to be taken of the existing third-pillar *acquis*; making it necessary to decide which, if any, of the present provisions should be replaced by more effective ones. Those classifiable as 'soft law' formed the prime candidates for this purpose.

30. The entry into force of the Treaty of Amsterdam is likely to have the effect of increasing the caseload of the European Court of Justice, whereas an area of freedom, security and justice precisely requires judicial proceedings to be as expedient as possible. It is therefore in the interest of both the Member States and the individuals concerned that priority be given to examining jointly with the Court all possible means to shorten the average length of procedures before the Court, in particular of requests for preliminary rulings under Title VI of the TEU and Title IV of the TEC.

31. The levels of priority set out below become effective, logically, on entry into force of the Amsterdam Treaty. The priority measures are to be found in two categories. On the one hand, the actions and measures for which it is important that they are implemented or adopted within two years from the entry into force of the Treaty of Amsterdam (hereinafter referred to as 'measures to be taken within two years'), and on the other hand the actions and measures which must be adopted or implemented within five years following the entry into force of the Treaty or, at least, to commence elaboration of the actions and measures in the area (hereinafter referred to as 'measures to be taken within five years'). However, a start may have to be made on many activities in the first level of priority without delay on adoption of this action plan as they require preparatory work, for example in technical working parties, which should if possible have been completed by the date of the entry into force. Such particularly urgent measures are specifically indicated below.

B. POLICIES RELATED TO FREE MOVEMENT OF PERSONS

I. Measures in the field of asylum, external borders and immigration

32. The objective is to introduce the area of freedom within the next five years. As a result, to ensure increased security for all European citizens, achieving this objective requires accompanying measures to be drawn up, particularly in the areas of external border controls and the combating of illegal

immigration while full account is taken of the principles set out in Article 6 of the TEU and Articles 12 and 13 of the TEC. The HCR will be consulted on asylum issues when necessary.

33. The measures to be drawn up must take due account of the fact that the areas of asylum and immigration are separate and require separate approaches and solutions.

34. An overall migration strategy should be established in which a system of European solidarity should figure prominently. The experiences gained and progress achieved through cooperation in the Schengen framework should prove particularly pertinent as regards short-term residence (up to three months), the fight against illegal immigration as well as the controls at external borders.

An overall priority should be to improve the exchange of statistics and information on asylum and immigration. This exchange should include statistics on asylum and immigration, information on the status of third country nationals and national legislation and policy on the basis of the Commission's action plan.

35. In order to complete the area of free movement, it is crucial for there to be a swift and comprehensive extension of the principles of the free movement of persons in accordance with the protocol integrating the Schengen *acquis* into the framework of the EU.

Measures to be taken within two years

36. The following measures should be taken within two years after the entry into force of the Treaty:

(a) measures in the fields of asylum and immigration,

assessment of countries of origin in order to formulate a country specific integrated approach;

(b) measures in the field of asylum:

(i) effectiveness of the Dublin Convention: continued examination of the criteria and conditions for improving the implementation of the Convention and of the possible transformation of the legal basis to the system of Amsterdam (Article 63(1)(a) of the TEC).

A study should be undertaken to see to what extent the mechanism should be supplemented *inter alia* by provisions enabling the responsibility for dealing with the members of the same family to be conferred on one Member State where the application of the responsibility criteria would involve a number of States and by provisions whereby the question of protection when a refugee changes his country of residence can be resolved satisfactorily;

(ii) the implementation of Eurodac;

(iii) adoption of minimum standards on procedures in Member States for granting or withdrawing refugee status (Article 63(1)(d) of the TEC) with a view, *inter alia*, to reducing the duration of asylum procedures. In this context, a special attention shall be paid to the situation of children;

(iv) limit 'secondary movements' by asylum seekers between Member States;

(v) defining minimum standards on the reception of asylum seekers with a particular attention to the situation of children (Article 63(1)(b) of the TEC).

(vi) undertake a study with a view to establishing the merits of a single European asylum procedure;

(c) Measures in the field of immigration:

(i) instrument on the lawful status of legal immigrants;

(ii) establish a coherent EU policy on readmission and return;

(iii) combat illegal immigration (Article 63(3)(b) of the TEC) through, *inter alia*, information campaigns in transit countries and in the countries of origin.

In line with the priority to be given to controlling migration flows, practical proposals for combating illegal immigration more effectively need to be brought forward swiftly;

(d) Measures in the fields of external borders and free movement of persons:

(i) procedure and conditions for issuing visas by Member States (resources, guarantees of repatriation or accident and health cover) as well as the drawing up of a list of countries whose nationals are subject to an airport transit visa requirement (abolition of the current grey list);

(ii) define the rules on a uniform visa (Article 62(iv) of the TEC);

(iii) draw up a regulation on countries:

— whose nationals are exempt from any visa requirement in the Member States of the European Union,

— whose nationals are subject to a visa requirement in the Member States of the European Union (Article 62(2)(b)(i) of the TEC);

(iv) further harmonising Member States' laws on carriers' liability.

Measures to be taken as quickly as possible in accordance with the provisions of the Treaty of Amsterdam

37. (a) Minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin (Article 63(2)(a) of the TEC).

(b) Promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons (Article 63(2)(b) of the TEC).

Measures to be taken within five years

38. The following measures should be taken within five years of the entry into force of the Treaty:

(a) measures in the fields of asylum and immigration:

identification and implementation of the measures listed in the European migration strategy;

(b) Measures in the field of asylum:

(i) adoption of minimum standards with respect to the qualification of nationals of third countries as refugees,

(ii) defining minimum standards for subsidiary protection to persons in need of international protection (Article 63(2)(a) second part);

(c) Measures in the field of immigration:

(i) improvement of the possibilities for the removal of persons who have been refused the right to stay through improved EU coordination implementation or readmission clauses and development of European official (Embassy) reports on the situation in countries of origin,

(ii) preparation of rules on the conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purposes of family reunion (Article 63(3)(a) of the TEC).

The question of giving third-country nationals holding residence permits the freedom to settle in any Member State of the Union will shortly be discussed by the relevant working party,

(iii) determination of the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States (Article 63(4) of the TEC).

Within the competent Council bodies discussions could be held, taking account of the consequences for social equilibrium and the labour market, on the conditions under which, like Community nationals and their families, third country nationals could be allowed to settle and work in any Member State of the Union;

in these two last fields, although the Amsterdam Treaty does not request action to be accomplished in a five year period, efforts should be made towards an improvement of the situation in due time;

(d) Measures in the fields of external borders and free movement of persons:

(i) extension of the Schengen representation mechanisms with regard to visas:

a discussion could be initiated on the possibility of establishing an arrangement between the Member States, which will improve the possibility of preventing visa applicants from abusing the foreign representations of one or more Member States in order to gain access to another Member State, which at time of application was the actual intended country of destination,

(ii) attention will be given to new technical developments in order to ensure as appropriate, an even better security of the uniform format for visas (sticker).

II. Judicial cooperation in civil matters

39. The aim is to make life simpler for European citizens by improving and simplifying the rules and procedures on cooperation and communication between authorities and on enforcing decisions, by promoting the compatibility of conflict of law rules and on jurisdiction and by eliminating obstacles to the good functioning of civil proceedings in a European judicial area. It will be necessary to improve the coordination of Europe's courts and the awareness of Member States' laws, particularly in cases with important human dimensions, having an impact on the everyday life of the citizens.

Measures to be taken within two years

40. The following measures should be taken within two years after the entry into force of the Treaty:

(a) finalisation, if it has not been completed, of work on the revision of the Brussels and Lugano Conventions,

(b) drawing up a legal instrument on the law applicable to non-contractual obligations (Rome I),

(c) begin revision, where necessary, of certain provisions of the Convention on the Law applicable to contractual obligations, taking into account special provisions on conflict of law rules in other Community instruments (Rome I),

(d) examine the possibility of extending the concept of the European judicial network in criminal matters to embrace civil proceedings.

Highly individualised contact points in each Member State could permit greater awareness of Member States' laws and ensure better coordination of proceedings in cases with important human dimensions (crossborder parental disputes, for example).

Measures to be taken within five years

41. The following measures should be taken within five years after the entry into force of the Treaty:

(a) examine the possibilities to draw up a legal instrument on the law applicable to divorce (Rome III):

After the first step on divorce matters taken with Brussels II in the field of jurisdiction and the recognition and enforcement of judgments, the possibilities to agree on rules determining the law applicable in order to prevent forum shopping needs to be explored on the basis of an in-depth study,

(b) examine the possibility of drawing up models for non-judicial solutions to disputes with particular reference to transnational family conflicts. In this context, the possibility of mediation as a means of solving family conflicts should be examined,

(c) examine the possibility of drawing up a legal instruments on international jurisdiction, applicable law, recognition and enforcement of judgments relating to matrimonial property regimes and those relating to succession.

In elaborating such instruments, the connection between matrimonial property and rules relating to succession should be taken into account. Work already undertaken within the framework of the Hague Conference of Private International Law should be taken into account,

(d) identifying the rules on civil procedure having cross-border implications which are urgent to approximate for the purpose of facilitating access

to justice for the citizens of Europe and examine the elaboration of additional measures accordingly to improve compatibility of civil procedures.

This could include the examination of the rules on deposition of security for litigation costs and expenses of the defendant in a civil procedure, the granting of legal aid as well as other possible obstacles of an economic nature,

(e) improving and simplifying cooperation between courts in the taking of evidence,

(f) examine the possibility of approximating certain areas of civil law, such as creating uniform private international law applicable to the acquisition in good faith of corporal movables.

C. POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS

42. The aim is to give citizens a high level of protection as provided for in the Treaty of Amsterdam and to promote the rule of law. This implies greater cooperation between the authorities responsible for applying the law with due regard for legal certainty. It also implies giving practical form to a judicial area in which judicial authorities cooperate more effectively, more quickly and more flexibly. Encourage an integrated approach, through close cooperation, of judicial, police and other relevant authorities in preventing and combating crime, organised or otherwise.

Measures to be taken within two years

I. **Police cooperation**

43. The following measures should be taken within two years after the entry into force of the Treaty:

1. as regards Europol cooperation:

(a) improve Europol cooperation in the following areas:

(i) examine the feasibility of setting up a database of pending investigations, within the framework of the provisions of the Europol Convention, allowing the avoidance of any overlap between investigations and the involvement of several European competent authorities in the same investigation, thus combining their knowledge and expertise,

(ii) direct Europol's documentary work towards operational activity.

Wherever possible, its analyses should lead to operational conclusions,

(iii) make the fight against illegal immigration networks one of the priorities of operational cooperation, particularly by using the national units as a network of national contact points responsible for dealing with them,

(iv) combat terrorism: reinforce exchanges of information and the coordination of competent authorities of Member States in the fight against crimes committed or likely to be committed in the course of terrorist activities, using Europol in particular,

(v) extend the competencies of Europol to other activities, as necessary (e.g. falsification of euro and other means of payments);

(b) draw up an adequate legal instrument extending Europol's powers to the activities referred to in Article 30(2) of the TEU and focusing Europol's work on operational cooperation. An important subject is the place and the role of judicial authorities in their relations with Europol.

One of the priorities stated by the Treaty is to determine the nature and scope of the operational powers of Europol, which will have to be able to 'ask the competent authorities of the Member States to conduct and coordinate [their] investigations' and also to act within the framework of 'operational actions of joint teams',

(c) examine Europol access to SIS or EIS investigation data,

(d) develop the role for Europol concerning the exchange of information in order to implement the Preaccession pact on organised crime;

2. other police cooperation measures:

44. the other police and customs cooperation measures comprise:

(a) the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime (Article 30(1)(d) of the TEU);

(b) consideration of the arrangements under which a law enforcement service from one Member State could operate in the territory of another (Article 32 of the TEU) taking into consideration the Schengen *acquis*.

Consideration should be given to two points in particular:

— the determination of the conditions and limitations under which the competent law enforcement authorities of one Member State may operate in the territory of another Member State, in liaison and in agreement with the latter,

— in return, what types of operation, and under what arrangements, is each Member State willing to accept in its own territory?

The creation of a collective framework for this type of operation is one of the priorities of police cooperation. This framework can be a flexible one;

(c) the development and expansion of operational cooperation between law enforcement services in the Union and the strengthening of technical police cooperation.

The joint action carried out in particular by the Member States' customs administrations should be used where appropriate as a model and should be expanded in cooperation with national police forces and gendarmeries and in close conjunction with the judicial authorities. In the medium term, Europol could serve as a backup for these future initiatives, which it will be possible to activate under what the Amsterdam Treaty has established as 'decisions for any other purpose consistent with' the objectives of Title VI of the TEU;

(d) the development of the annual report on organised crime with a view to defining common strategies.

Harmonisation of the analysis parameters will have to be ensured so that the data collected can be compared;

(e) in the field of customs law enforcement cooperation, the implementation of the CIS and Naples II Conventions.

Europol's powers must be taken into account when points (a) to (e) are implemented.

II. **Judicial cooperation in criminal matters**

45. The following measures should be taken within two years after the entry into force of the Treaty:

(a) implement effectively and, where appropriate, further develop the European judicial network:

The effective implementation of the European judicial network is a priority matter. It will bring about a practical improvement in cooperation and needs to be equipped with modern tools to enable efficient cooperation. Consideration ought to be given now to making it more operational;

(b) finalise the Convention on Mutual Assistance in Criminal Matters as well as an additional Protocol to the Convention and implement them as soon as possible.

The possibility should be examined to foresee the simplification of the procedures and the limitation of ground for refusal of assistance;

(c) facilitate extradition between Member States by ensuring that the two existing conventions on extradition adopted under the TEU are effectively implemented in law and in practice;

(d) strengthen and develop fight against money laundering;

(e) facilitate and accelerate cross-border cooperation between the competent ministries and judicial or equivalent authorities of the Member States;

(f) initiate a process with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters;

(g) examine the role and the place of the judicial authorities in the framework of a further development of Europol in accordance with the Amsterdam Treaty, with a view to improving the efficiency of the institution;

(h) consideration of the arrangements under which judicial or equivalent authorities from one Member State may operate in the territory of another Member State (Article 32 of the TEU).

Consideration should be given to two points in particular:

— the determination of the conditions and limitations under which the competent judicial and/or prosecutorial authorities of one Member State may operate in the territory of another Member State, in liaison and in agreement with the latter,

— in return, what types of operation, and under what arrangements, is each Member State willing to accept in its own territory?

The creation of a collective framework for this type of operation is one of the priorities of judicial cooperation. This framework could be a flexible one.

III. **Approximate the Member States' rules on criminal matters**

46. The following measures should be taken within two years of the entry into force of the Treaty:

(a) identify the behaviour in the field of organised crime, terrorism and drug trafficking, for which it is urgent and necessary to adopt measures establishing minimum rules relating to the constituent elements and to penalties and, if necessary, elaborate measures accordingly.

Prime candidates for this examination could include, in so far as they relate to organised crime, terrorism and drug trafficking, offenses such as trafficking in human beings and sexual exploitation of children, offences against drug trafficking law, corruption, computer fraud, offences committed by terrorists, offences committed against the environment, offences committed by means of the internet and money laundering in connection with those forms of crime. Parallel work in international organisations like the Council of Europe have to be taken into consideration;

(b) examine the possibility to approximate, where necessary, national legislation on counterfeiting (protection of the euro), fraud and counterfeiting involving means of payment other than currency.

IV. **Horizontal problems**

47. The following measures should be taken within two years of the entry into force of the Treaty:

(a) examine the possibilities for harmonised rules on data protection,

(b) finalise, if it has not been completed, evaluate the implementation and consider a follow up to the plan of action on organised crime, approved by the European Council at Amsterdam,

(c) continue the process of mutual evaluation under the Joint Action adopted by the Council on 5 December 1997,

(d) continue and develop the work started under the action plan on organised crime on the question of safe havens and fiscal paradises.

Measures to be taken within five years

I. **Police cooperation**

48. The following measures should be taken within five years after the entry into force of the Treaty:

(a) as regards cooperation within the framework of Europol:

(i) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in

close cooperation with Europol (Article 30(2)(c) of the TEU),

(ii) establish a research and documentation network on cross-border crime (Article 30(2)(d) of the TEU),

(iii) improve the statistics on cross-border crime (Article 30(2)(d) of the TEU),

(iv) set up a system for the exchange of information and analysis on money laundering,

(v) examine whether and how Europol could have access to the Customs Information System,

(vi) in cooperation with Europol, elaborate and implement an information strategy in order to make the work and powers of Europol known to the public,

(vii) study the possibility of setting up a system of exchanging fingerprints electronically between Member States;

(b) other police cooperation measures

(i) encourage general policy and operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services and the judicial authorities of the Member States in relation to the prevention, detection and investigation of criminal offences (Article 30(1)(a) of the TEU).

In this context it would be useful to develop and enhance existing bilateral and regional cross-border cooperation, for instance by continuing and extending on a similar basis the experiments with joint police stations.

It would also be desirable to continue the development of customs risk analysis techniques and the improvement of customs control methods such as the implementation of the container control action plan and to consider the new avenues where there is a possibility for fraud, such as internet,

(ii) organise the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subjet to appropriate provisions on the protection of personal data (Article 30(1)(b) of the TEU),

(iii) promote cooperation and joint initiatives in training, the exchange of liaison officers, secondment, the use of equipment, and forensic research (Article 30(1)(c) of the TEU).

II. **Judicial cooperation in criminal matters**

49. The following measures should be taken within five years of the entry into force of the Treaty:

(a) consider whether substantive and formal improvements can still be made to extradition procedures including rules to reduce delays.

The issue of extradition in relation to procedures in *absentia*, with the full respect of fundamental rights granted by the European Convention of Human Rights, might also be examined in this context,

(b) further facilitate cross-border cooperation between ministries and judicial authorities in the field of criminal proceedings,

(c) examine the feasibility of improved cross-border cooperation on the transfer of proceedings and the enforcement of sentences,

(d) study the feasibility of extending and possibly formalising the exchange of information on criminal records,

(e) prevent conflicts of jurisdiction between Member States, by, for instance, examining the possibility of registering whether there are proceedings against the same persons on the same offences pending in different Member States.

Establish measures for the coordination of criminal investigations and prosecutions in progress in the Member States with the aim of preventing duplication and contradictory rulings, taking account of better use of the *ne bis in idem* principle.

III. **Approximation of the rules on criminal matters**

50. The following measures should be taken within five years of the entry into force of the Treaty:

(a) ensure compatibility of the rules applicable between Member States in so far as necessary to improve judicial cooperation. A reflection should also be started on possibilities for avoiding that abuse of judicial remedies can affect or delay cooperation.

Efficient procedural standards should be sought that will improve mutual assistance in criminal matters while complying with the requirements of fundamental freedoms. Consideration should begin in the field of telecommunication interception and also on civil actions relating to criminal offences. In that connection, compensation for the victims of crime must be an avenue not to be neglected,

(b) improve and approximate, where necessary, national provisions governing seizures and confiscation of the proceeds from crime, taking account of the rights of third parties *in bona fide*,

(c) continued elaboration of measures establishing minimum rules relating to the constituent elements of behaviour and to penalties in all fields of organised crime, terrorism and drug trafficking.

IV **Horizontal problems**

51. The following measures should be taken within five years of the entry into force of the Treaty:

(a) identify which specific forms of crime which can be best combated by a general EU approach, such as computer crime, in particular child pornography on the Internet, racism and xenophobia, drug trafficking and the approximation of offences in that area, taking into account work in other international organisations,

(b) develop cooperation and concerted measures on matters relating to crime prevention,

(c) address the question of victim support by making a comparative survey of victim compensation schemes and assess the feasibility of taking action within the Union,

(d) effectively implement the Preaccession Pact on Organised Crime.