

## **18-Month-Presidency Programme in the area of Justice**

**by Germany, Portugal and Slovenia**

**1 January 2007 – 30 June 2008**

- Strengthening Citizens Rights
- Increasing Legal Certainty for Citizens and the Business Sector
- Strengthening the Justice System and Practical Cooperation

Europe's citizens have quite concrete expectations for the area of justice policy: They expect their civil rights to be strengthened, a secure legal framework for both their private and business affairs transcending the borders of Europe, and a strengthening of the justice system, particularly with regard to practical cooperation.

Over the next eighteen months, the German, Portuguese and Slovenian Council presidencies will make these expectations the focus of their work.

## 1. **Strengthening citizens rights**

Creating an area of freedom, security and justice requires protecting and, in equal measure, securing the rights of the citizens. Since the adoption of the Tampere Programme in 1999, the primary focus of the work in the field of justice has been the adoption of common criminal law provisions and enhancing judicial cooperation. The second aspect – securing civil rights – is indispensably connected with the first, and has been expressly resumed by the Hague Programme, which has returned it to the foreground. We would like to make progress with this approach by focusing on the following areas:

**Securing procedural rights in criminal proceedings.** Since the Tampere Programme, one of the major cornerstones of judicial cooperation in criminal matters has been the principle of mutual recognition. It obliges the judicial authorities of the Member States, if certain prerequisites are met, to recognise decisions issued by the judicial authorities of other Member States. The principle of mutual recognition thereby leaves national legal orders essentially unaffected and is based upon the idea of trust in the respective other legal order.

The key now is to strengthen this trust in the legal orders of the other Member States. Many of our citizens wish to take advantage of their freedom of movement within the

European Union. They must be able to clearly recognise which rights they have in another Member State and which investigative and court proceedings they may have to expect. During our Presidencies, we would like to move this aspect to the forefront. Our desire and our responsibility is to create more transparency and foreseeability of state action.

This involves quite practical issues: For example, when must defence counsel or an interpreter be made available in a criminal proceeding, or how is it ensured that the accused is informed of his rights? For this, we need an agreement regarding a uniform basic level in the Member States. This does not mean that every Member State must accept the same concept of securing civil rights. Rather, we are striving to anchor such rights in the form of minimum standards which would then apply to all Member States.

The same is true of other principles of criminal procedure law, for example the presumption of innocence which applies in criminal proceedings.

The issues of the procedural stage of a criminal investigation at which this presumption begins to apply, and how the prohibition against forced self-incrimination is dealt with, are resolved quite differently in our various national legal systems. On these topics as well, our citizens expect there to be at least a minimum standard of agreement, and thus legal certainty, with regard to their procedural rights.

For this reason, we will strive to make significant progress on the Framework Decision on certain procedural rights in criminal proceedings as well as the future Framework Decision on the presumption of innocence and the Framework Decision on judgments rendered in absentia, and the Framework decision on conflicts of jurisdiction and to bring these to a conclusion to the extent possible.

**Protection against racism and xenophobia.** Racism and xenophobia must be combated in a clear and unambiguous manner. Some progress has indeed been attained in the past few years in terms of minimum harmonisation of criminal law on the EU level, particularly with respect to the combating of certain areas of organised crime and terrorism. But the negotiations on the Framework Decision on racism and xenophobia are currently stalled. We plan to resume the negotiations.

We need a minimum harmonisation of the criminal provisions of the Member States of

the European Union, particularly with regard to criminalising the dissemination of racist and xenophobic statements.

**Transparency and foreseeability of state action** Another topic of focus will be placing the principle of mutual recognition in more precise terms. In the past few years, we have concluded a number of important individual endeavours, for example the Framework Decision on the European arrest warrant and the Framework Decision on the European evidence warrant. These represented important steps toward improving judicial cooperation in criminal matters.

As a parallel measure, however, we must also critically assess the approaches which have been taken in the existing regulations. In 2007, the European Commission will submit a study which will form one of the bases for this assessment.

Having in consideration the mandate issued by the Justice and Home Affairs Council upon adoption of the Framework Decision on the European Evidence warrant to address the issue of defining more precisely the listed offences, the presidencies will initiate discussions on the horizontal issue of the scope of the categories of listed offences.

## **2. Increasing legal certainty for citizens and the business sector**

More legal certainty, both for citizens and the business sector, is the basis for enhancing trust in Europe.

### **2.1. A citizens' Europe**

Our citizens expect to be able to move freely across the borders of the Member States in their every day lives, and that they are thereby covered by a secure and foreseeable legal framework. This encompasses a multitude of issues in the most diverse areas of everyday life.

During our presidencies, we will strive to focus on addressing the following areas:

**Legal certainty in family law.** Doing away with the borders between the Member States has led to greatly increased mobility within Europe. Citizens often move to other Member States, start their families there, and then possibly again go their separate ways. As a result, our European legal system must pose itself new questions.

This does not mean that harmonising the various national family law systems is on the agenda. Rather, the foundation of our activities will be mutual acceptance. Building upon that foundation, we shall focus on the following issues:

- Spouses must know which law will be applicable to their relationship in the case of divorce and its consequences. For this reason, we shall promote the negotiations on the Regulation on the law applicable to matters of divorce (so-called Rome III Regulation).
- Maintenance claims following divorce or separation must be able to be enforced rapidly and in a foreseeable manner in trans-European cases. We thus plan to make progress on the Regulation on the recognition and the enforcement of maintenance claims – coordinated with the work of the Hague Conference.
- Also, we wish to discuss the legal issues which are posed in the international context of matrimonial property regimes and the law of succession as soon as concrete proposals for rules have been submitted by the European Commission.

**Legal certainty in private law.** More and more often, courts must decide private legal disputes involving connections to various Member States of the European Union. Citizens must be able to clearly discern which law will apply to their case in the event of a dispute.

There are initial reflections regarding a European private law which is uniform and applies to all. At this point, however, the focus is on establishing rules to decide which national law should be most appropriately applied in a concrete case. For this reason, we would like to complete the work on the Regulations on the law applicable to contractual obligations (Rome I Regulation) and on the law applicable to non-contractual obligations (Rome II Regulation).

**Efficient assertion of rights.** Legal certainty always also necessitates the possibility of effectively asserting one's rights. Citizens will be much more likely to take advantage of the opportunities presented by the internal market if they can be sure that a rapid and efficient court proceeding is available for cross-border cases as well. Particularly in cases with low values in dispute, it is currently simply too complicated to assert cross-border claims. The Regulation on small claims will provide relief in the future, among other things with the introduction of forms and deadlines for decision for the courts.

## **2.2. Legal certainty and simplified procedures for companies**

The realisation of the European internal market also includes the creation of a secure legal framework for companies. In the past, for example, significant progress has been made in the areas of company law and commercial law. The acceptance of the European Stock Corporation is only one example among many.

At the same time we want to tackle the simplification of administrative procedures for doing business in the Internal Market.

There is still a need for a regulation with regard to transfer of the registered office of companies to other Member States. This involves allowing companies in the internal market to be permitted to transfer their registered office to any Member State and thereby take on a new legal form. However, the result of this might be that company-law requirements contained in the individual legal orders – whether these be those of creditor or debtor protection, or those designed to secure the rights of employees – would get lost only because the registered office is relocated.

The Directive on cross-border transfers of registered offices, announced by the European Commission, is designed to provide a secure legal framework for the transfer of registered offices of companies. Both for the companies and for all others affected, the company-law rules to which a company is bound in the case of such a transfer must be foreseeable. During our presidency, we will strive to make progress in those consultations.

### **2.3. Protection of intellectual property in Europe**

On the international level, there is consensus that the protection of intellectual property must be placed closer to the top of the political agenda, for example by effectively combating product piracy on the borders of the European Union. We would like to continue with that approach.

At the same time, we need an affordable, secure, simple and efficient patent system for the Member States of the European Union themselves. Subsequent to the consultation of the Commission on the European patent strategy, we plan to work actively on promoting this type of good system which is advantageous to all participants. Inventors need a secure framework in order to be able to market their inventions and protect them against abuse.

### **2.4. Strengthening European consumer protection law**

The internal market is sometimes understood primarily under the aspect of the free exchange of goods and services. But consumers already have an additional advantage from the internal market due to various rules on consumer protection. In some specific areas, rules of EU law have secured adequate and coherent consumer protection. Important instruments have already been achieved; and we plan to continue on that path.

We would like to conclude the already-introduced revision of the consumer credit Directive. Important to us in this context is the maintenance of a high level of consumer protection. We need a balanced system of consumer protection which takes seriously the legitimate interests of consumers without burdening industry with disproportionate conditions.

The revision of individual Directives in the area of contractual consumer protection should in the future be embedded in the comprehensive review of contractual consumer protection law. In this way, the individual provisions, some of which are contradictory and confusing, may be systematically revised.

## **2.5. More coherence in civil and criminal law**

More and more often and for the most diverse of reasons, civil-law rules, for example regarding the liability of individuals, are designed extremely differently in various fields of law.

This makes civil law extremely complicated and unsystematic; as a result, it is unforeseeable both for consumers and the business sector.

Securing coherence in civil law is thus taking on ever greater importance. A similar development is discernible in criminal law. Instruments on the various fields more and more often contain criminal-law sanctions that are designed in various ways or are completely new and not familiar in all Member States.

The Hague Programme acknowledges this problem and expressly calls for securing more coherence, both in civil and in criminal law. Therefore, we shall focus particularly on the topic of coherence at the JHA Council meetings.

The goal of this must be to create uniform basic rules and thereby avoid having the same multidisciplinary issues discussed for every new proposal and potentially decided in various ways. For example, more coherence may be achieved by way of a common frame of reference for European contract law which creates general rules with a model character for other specific endeavours at the EU level. We support that approach.

## **3. Strengthening the justice system and practical cooperation**

We will strive to support initiatives which will assist in enhancing cooperation between courts and judicial authorities in both criminal and civil law. This applies primarily to law enforcement. Especially since the Framework Decision on the European arrest warrant, several instruments have been adopted that have improved and strengthened judicial cooperation. We would like to continue on that path and thereby address quite practical issues of judicial cooperation.

**Judicial cooperation in criminal matters.** This includes, for example, cross-border supervision of probation and mutual recognition of non custodial pre-trial supervision measures. Criminal justice on the national level has an interest in effectively exercising the control appropriate in a concrete case. In practice, however, it happens that conditions of probation and the application of alternative sanctions and suspended sentences may not be effectively monitored because a convicted person lives in another Member State. This would change if the Member States would provide one another with more support in supervising and monitoring convicted persons. We plan to submit our own initiative on this question and make progress on it.

The enforcement of criminal sentences in other Member States goes in the same direction, for example if the enforcement is to be carried out in the state where the convicted person resides. The Framework Decision on the transfer of prisoners will make an important contribution in this regard.

**Exchange of criminal record information.** Furthermore, we plan to make progress on the extremely important practical issue of the exchange of excerpts from the criminal registers. The model project initiated by Germany, France, Belgium and Spain on networking criminal registers, according to the JHA Council Conclusions of 14 April 2005, forms the basis for work on the Framework Decision on implementation and substance of exchanges of information from the criminal registers of the Member States. Our goal is to have information from the criminal registers be made available to every judge in the European Union rapidly and electronically to the extent possible, in order to reduce informational deficits in law enforcement and in evaluating criminal offenders.

Improving practical cooperation is equally as important as creating common legal framework conditions. This is the only way to truly attain the goals to which the respective instruments aspire. For example, it is unsatisfactory if a European evidence warrant is issued and forwarded within a tight deadline, but cannot be carried out until the translation into the respective language of the enforcing State has been completed.

**European Judicial Networks.** Finally, another endeavour of our presidencies is to work on the improvement and follow up of the debate concerning the future of the European judicial networks in civil and criminal matters, as well as promoting their visibility. Work will also be done on the improvement of the information system and tools of the European Judicial Network.

We consider the European judicial network in civil matters to be an essential tool for establishing a genuine European judicial-enforcement area. However, the network is still far from having developed its full potential, therefore, subject to the proposal by the Commission, we plan to amend the Council Decision 2001/470/EC establishing a European Judicial Network in civil and commercial matters in view of strengthening the practical cooperation.

We also wish to discuss additional problems which are currently hindering cross-border cooperation. For example, we plan to address the question of how to solve in a pragmatic manner competency conflicts between national law enforcement authorities. In this context, another topic of discussion will be whether the role of Eurojust should be strengthened.

**E-Justice.** To conclude, we would like to achieve having the judicial authorities of various Member States be able to communicate directly with one another to the extent possible. Promoting electronic communication on legal matters ("E-Justice") is of crucial significance here. We plan to initiate discussion on questions that arise in this context. For example, judicial practice has an interest in gaining information as to how internal procedures may be transferred to a modern electronic data processing system. For communication with the judicial authorities of other Member States, it is also important to know in what manner common EDP standards may be determined which facilitate and structure the transfer of information. We wish to discuss these and other issues in the circle of Member States, for example in an international conference on "E-Justice," in order to find practical solutions which will result in providing citizens with improved access to justice.

**Judicial Training.** In order to achieve a uniform and qualified application of EU law among Member States we find also necessary to address the theme of the training of judicial professionals on European Union law in the area of judicial cooperation.