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What next for Justice and Home Affairs?

The Hague Programme Review

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Scoreboard for progress under the Hague Programme

The Hague Programme, the multi-annual framework programme for strengthening the area of freedom, security and justice set out the aims and objectives in the field of EU criminal justice and police and judicial co-operation (amongst other issues such as civil judicial co-operation and asylum and immigration matters). It was adopted by Justice Ministers in November 2004. The Hague Programme was followed by a more-detailed Action Plan which set out tight deadlines for adoption of legislative proposals and elaborated upon the political guidelines - May 2005.

The Hague Programme is now up for review. The Finnish Presidency which takes over in July 2006 is charged with assessing the progress made under the Hague Programme. The joint plan for the Austrian and Finnish Presidencies states that this mid-term review "should provide an opportunity to evaluate the progress and coherence of the Programme and the Action Plan as a whole, and if necessary to adjust priorities."

Another special Justice summit, along the lines of that which launched the original Tampere Conclusions, will take place during the Finnish Presidency. In preparation for this the European Commission is undertaking a review of the implementation of the Hague Programme. Progress will be charted with a scoreboard and accompanied by an annual report.

Progress – fact or political fiction?

The Commission report and scoreboard will be published in the next few months – scheduled for June. It is likely that this will be positive in tone, but with a nod towards the fact that in some areas the objectives of the Hague Programme have not been reached. Moreover as regards some specific proposals, deadlines have been missed.

It is worth remembering that the scoreboard is a "self-assessment" in terms of whether the Commission has met its deadlines in terms of presenting proposals. It is also, more importantly perhaps, a review of whether the Council has met its objectives and targets of reaching agreement by a certain date and whether Member States have met their implementation deadlines.

Now in some cases delay is just due to the complex legislative structure of the European Union and the delicate inter-institutional political scene. Moreover, some proposals have been shelved due to unforeseen political consequences, such as the stalemate as regards the European Constitution e.g. the proposal for the European Union to adhere to the European Convention on Human Rights currently stuck in limbo.

However, on the other hand we have witnessed wilful delay. A real unwillingness to commit in practice to the political promises made under the Tampere Conclusions and the Hague Programme.

This audience knows well the saga of the framework decision on procedural safeguards, referred to this morning and long discussed. I don't wish to elaborate on this here but just to highlight this as a real failure – indeed embarrassment to the Member States – and a big black mark on the scoreboard.

Indeed, if this conference were to do a little scoreboard of our own we may come up with a different story as to progress in this area. Indeed if there is to be talk of re-prioritising under the next phase of action in this area it is likely that our priorities will be different to that of the Ministers of Justice and the Ministers of the Interior.

Whilst a number of legislative proposals have been brought forward and agreement reached on some important dossiers these are principally those that fall within the "security" area. Where they can be deemed to be "justice" proposals they fall within the police and prosecution bracket.

In terms of priorities under the Hague Programme it is clear where the Member State priorities currently stand. Take for example the recent Directive on data retention which was adopted at a great speed – rushed through under the UK Presidency. It is unlikely that the same political urgency will be seen in terms of forging agreement on the data protection instrument recently proposed. A familiar pattern if we think of the European Arrest Warrant and the supposedly parallel provision for safeguards.

In terms of individual rights and safeguards the Hague Programme showed much promise. It built on hints in the Tampere Conclusions and clearly spelt out that:

"The objective of the Hague programme is to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice".

It went on to re-affirm that:

"The further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceedings".

The unwillingness or inability to live up to these promises is the biggest failure of the work under the Hague Programme to date.

The number of legislative proposals that have come out of the European Commission since the Hague Programme was launched, and a number of those carried over from the Tampere Conclusions is astounding. We heard this morning a

run down of the proposals currently on the table: mutual recognition of criminal records, a future criminal records database, proposals on conflicts of jurisdiction and ne bis in idem, transfer of sentence persons, the European Evidence Warrant - to name but a few! All under the banner of mutual recognition and judicial co-operation.

But this mutual recognition – the so-called cornerstone of judicial co-operation - is prosecution biased. It is tool used by Member States for Member States. Access to information, access to previous convictions, fast-track access to evidence. Where we might ask is the mutual recognition of an individual's rights?

Mutual trust and a belief in the value of mutual recognition can only develop on the basis that practitioners can rely on the concrete application of procedural rights and access to justice in the daily legal life of the Member States.

The impulse on the part of the European Commission and the Member States in the Council of Ministers to forge ahead with the "creation" of an area of freedom, security and justice is a laudable aim. BUT in my opinion the political will to push ahead, to demonstrate that there is a real fight against terrorism and organised crime is actually detrimental to real progress in terms of effective justice across the board.

I hope that the Finnish Presidency in leading this mid-term review will demonstrate their commitment to procedural safeguards and rally the Council to really commit to their Hague Programme promises. There should be a serious re-prioritisation in terms of bolstering mutual trust, guaranteeing safeguards and ensuring access to justice. Only then can the mutual recognition regime really work and the claim made that the Hague Programme has strengthened the area of freedom, security *and* justice.

My mid-term review of progress under the Hague Programme? Must try harder!

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