

Commissioner Franco Frattini,  
European Commission,  
DG Justice, Freedom and Security,  
Rue Luxembourg 46  
Bruxelles  
B-1049  
Belgium

8 November 2007

Dear Commissioner Frattini,

**Re: Hague Programme on strengthening freedom, security and justice  
in the European Union**

I am writing on behalf of the European Criminal Bar Association (ECBA)<sup>1</sup> regarding the current situation in relation to a number of measures identified in the Hague Programme on strengthening freedom, security and justice in the European Union 2004 and the accompanying action plan, published in August 2005. We would like to know about progress on a number of issues.

Whilst we note that the European Commission fought for the adoption of the framework decision on procedural rights, it is shocking that the Member States did not reach agreement on this earlier this year. The ECBA considers it a disgrace that national governments could not agree on such a limited number of safeguards to protect the rights of EU citizens when they routinely agree on giving further powers to law-enforcement agencies. It is inconceivable that the EU can proceed with extensive law enforcement co-operation and a mutual recognition regime and not provide the fundamental rights and minimum procedural safeguards to underpin this. Where is the equality of arms?

We are aware of the political considerations and legal basis questions that have dominated the debate surrounding proposals that relate to defence

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<sup>1</sup> The ECBA was founded in 1997 and has become the pre-eminent independent organisation of specialist defence lawyers in all Council of Europe countries. Our aim is to promote the fundamental rights of persons under investigation, suspects, accused and convicted persons. We are an independent organisation of criminal defence practitioners and membership is open to all lawyers, whether practising or in academic life, who support our aims. In an era where supra-national bodies, such as the European Union, are increasingly influencing the future of criminal justice in Europe, we believe there is a need for an organisation of practising defence lawyers able to promote and protect the rights and procedural safeguards for all EU citizens. [www.ecba.org](http://www.ecba.org)

rights. However, we would like to recall the original commitments given by Member States under the Hague Programme. Namely 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**”.

And: “the further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of **equivalent standards for procedural rights in criminal proceedings**”.

We note that in the implementation report on the Hague Programme published in July 2007, the Commission states that: “a satisfactory level of achievement occurred mainly in the following areas: respect and protection of fundamental rights...” We assume that this refers to the Fundamental Rights Agency (FRA) as it is clear to us that this analysis cannot apply in the area of judicial co-operation. As you will be aware the FRA does not deal with criminal law or fair trial rights. We would be grateful if you would clarify what was achieved in relation to the respect and protection of fundamental rights.

Moreover, the ECBA would welcome an explanation as to why the Green Paper on handling of evidence, scheduled in the Hague Programme Action Plan for 2006, and the Green Paper on default (in absentia) judgments, again scheduled in the Hague Programme for 2006, have not been published yet. We note that in the report on implementation of the Hague Programme it merely states that the in absentia paper has been delayed. What is the reason for this? Moreover, the report only makes reference to the Green Paper on the presumption of innocence and not the follow up paper on handling of evidence. Can you confirm when these Green Papers will be published in 2007-2008? We would also welcome clarification of the timetable for the draft Framework Decision on conflicts of jurisdiction and ne bis in idem in criminal proceedings.


It is the responsibility of the European Commission to bring forward instruments in this area for the European Parliament to debate and the Council of Ministers to agree in order that Hague Programme commitments are honoured. The ECBA has long been concerned that whilst mutual recognition instruments designed to facilitate co-operation between law enforcement authorities – police, investigating authorities, prosecutors and judges – have been advanced, the counter-balancing proposals designed to reinforce mutual trust have been forgotten or significantly delayed. 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.

We are not satisfied with the argument that the European Convention on Human Rights (ECHR) provides adequate protections. There is currently a considerable backlog of cases awaiting consideration at the court in Strasbourg, which in itself demonstrates the volume of breaches of rights under the ECHR. Further, the court cannot provide a timely remedy for EU citizens, but only a mechanism by which a ruling can be made many years after the breach has occurred.

The citizens of Europe rely on the European Commission to fulfil its role in advancing the Hague Programme. We seek an assurance from you that this is being regarded as a priority by your office.

I look forward to hearing from you and receiving information on progress in this area.

Yours sincerely,



Han Jahae  
Chairman of the European Criminal Bar Association.