

Post-Laeken Assessment Justice and Home Affairs

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Justice and Home Affairs was one of the fields on the spotlight for the Laeken Council. Not only a mid-term review of the progress achieved in the creation of an area of freedom, security and justice since the Tampere Council would take place¹, and guidelines issued on the further steps to take, but also because, since the events of September 11th, this area has understandably deserved a lot of attention from the EU Institutions, the press and the public in general.

Following those tragic events, a Special Council was held in Brussels on 21st September and a Plan of Action² was approved, identifying measures urged to be taken on the fight against terrorism, covering several policy areas. An Extraordinary Justice and Home Affairs Council Meeting had taken place a day before, where detailed Conclusions were approved, ranging judicial cooperation in criminal matters and police cooperation, but also including implications on external border controls.

Also in September, the Commission presented two important proposals in the aftermath of the events of September 11th:

- one for a Council Framework Decision on the European Arrest Warrant and the surrender procedures between the Member States (Com (2001) 522 Final/2)
- and one for a Council Framework Decision on combating terrorism (Com (2001) 521 Final).^{3,4}

What was expected, then, of the Laeken Council, in respect of the area of freedom, security and justice?

- a review of the progress accomplished since Tampere and further steps to take
- a reaffirmation of the priority on the fight against terrorism, stressing the importance of judicial cooperation (namely through the EUROJUST⁵ unit)
- a recognition of the work achieved in asylum and immigration, as well as redefinition of clear guidelines, giving it a further impulse.

In a speech dated September 27th 2001, Commissioner Vitorino had veiled his concerns referring to “(...) a loss of momentum in the work being done in the Council (...)” and hoping that the Laeken Council would “(...) put more effort into providing clear political instructions on working methods and shared priorities to be set, so as to establish a hierarchically structured strategy for the second part of the Tampere timetable”.⁶

There was a general feeling, particularly in the area of asylum and immigration and concerning the adoption of legislation, that not enough was being done, and not fast enough.⁷ This is all the more true considering the high hopes for a more dynamic approach in this area, since it was transferred to the First Pillar by the Treaty of Amsterdam (new Title IV of the EC Treaty), and since the instruments approved are now Community instruments, of a binding nature.

On the other hand, international organisations issued appeals and recommendations for the European Council, revealing concerns on issues of human rights protections, that may be overridden by security issues, and on the hasty adoption of instruments (namely on the fight against terrorism), that may put at risk the principles of transparency and democratic control called for in Tampere.⁸

Where all these hopes and concerns mirrored in the Presidency's Conclusions?

Under the title “Strengthening the area of freedom, security and justice” – underlining that the creation of such an area is accomplished, although there is a need to reinforce it – the European Council reaffirms the commitment towards the fulfilment of the Tampere milestones. It clearly indicates the need for speeding up work and new guidelines. Which are these guidelines and how can work be speeded up?

On the common asylum and immigration policy, the European Council calls for an integration of the policy on migration into the EU's foreign policy (in particular through the conclusion of readmission agreements), for an action plan on illegal immigration⁹; for a European system for exchanging information on asylum and migration, for the implementation of EURODAC¹⁰; for specific programmes to combat racism and discrimination. It further asks the Council to submit by April 2002 amended proposals on asylum procedures, family reunification and the “Dublin II” Regulation¹¹, as well as to accelerate work on the proposals on reception standards, on the definition of refugee and on subsidiary protection.

Although the actions called for are not new, emphasis is now placed in some of the aspects of the asylum and immigration policy:

- cooperation with countries of origin and transit (conclusion of readmission agreements), an essential instrument for the effectiveness of the migration policy¹²

- managing migration flows (fighting illegal immigration and smuggling of human beings), that, as it should be stressed, includes preventive as well as repressive measures- implementing EURODAC, an essential tool for an improved application of the existing Dublin Convention
- integration – the need for a balanced approach is expressed on the call for measures to combat racism and discrimination.

By setting a time limit, until 30 April 2002, for the submission of amended proposals, the European Council also puts a clear emphasis on the common asylum policy, and on the need to approve legislative instruments in order to achieve a common European asylum system.

On the other hand, the management of external border controls was mainly referred to as a tool in the fight against terrorism, illegal immigration and trafficking in human beings, and the Council was asked to set up a common visa identification system.

As it was expected, the fight against terrorism deserved attention in the Presidency Conclusions of the Laeken Council, as well as did the fields of judicial and police cooperation in criminal matters: there was a recognition of the work done and of the results achieved so far, a verification that work is proceeding according to schedule and a reaffirmation that more action will be taken in this regard. The message is clear and it comes in line with the conclusions of the Special Council held in September. The European Council acknowledged

the progress achieved by the setting up of Eurojust, by the increased powers of Europol and by the European Police College and the Police Chiefs Task Force.

In fact, the events of September 11th had as a result a reorientation of priorities in Justice and Home Affairs, and a push forward to police and judicial cooperation in criminal matters (the third pillar issues). Besides the new actions called for, also the instruments and measures already scheduled to be approved were achieved and approved quicker than previously.

The fight against terrorism is also a major priority of the Spanish Presidency, through an integrated strategy that includes the reinforcement of the rule of law instruments throughout the Union, the strengthening of the cooperation among the Law Enforcement Forces of the Member States, the response to the current dimensions of terrorism and international cooperation.

However, not all the expectations were mirrored in the Presidency's Conclusions. There was a limited recognition of the efforts done so far. Moreover, there was some disappointment on the confirmation of an approach more turned to ensure effective security and fight against crime than to ensure a balance with provisions on human rights and international protection.¹³

Also, despite the setting of a short deadline for the submission of amended proposals and the indication of priorities and guidelines, acknowledgement that progress did not achieve the expected level on the common asylum and immigration policy still leaves a bitter feeling that more could be done.

NOTES

¹ The Laeken European Council was held on early December 2001, halfway between the entry into force of the Treaty of Amsterdam and the end of the 5 year period set out in the Treaty for the adoption of measures related with the free movement of persons, asylum, immigration and external border controls, in order to create an area of freedom, security in justice; also, 1 May 2004 is the target date for the application of the co-decision procedure to the areas under new Title IV of the Treaty of the E.C.

² Conclusions and Plan of Action of the Extraordinary European Council Meeting, of 21st September 2001 – see site www.europa.eu.int.

³ The European Arrest Warrant replaces the lengthy procedures of extradition and, in respect of listed offences, without verification of the principle of double criminality; the Framework Decision on combating terrorism does not include a definition of "terrorism", but it defines terrorist aims and offences and establishes minimum penalties – for more details and for the text of the European Commission's proposals, see site www.europa.eu.int.

⁴ Political agreement was reached, on the European arrest warrant, on 11 December 2001, that shall be in force on January 1st 2004. Agreement was also reached on the Framework Decision on combating terrorism.

⁵ EUROJUST is a unit constituted of judges, magistrates,

prosecutors and legal experts from the Member States, with responsibility for coordinating criminal investigations in matters pertaining to the interests of the EU or/and of several Member States; a provisional EUROJUST unit was already in place since December 2000 (Council Decision of 14 December 2000 setting up a Provisional Judicial Cooperation Unit, OJ L324, 21.12.00).

⁶ Commissioner António Vitorino, speech of 27th September 2001, from website The European Policy Centre, also found at the European Commission's site www.europa.eu.int/comm/dgs/justice_home/index_en.htm.

⁷ See the Belgian Presidency's document dated 6 December 2001, on the evaluation of the Conclusions of the Tampere European Council, that can also be found on the mentioned site www.europa.eu.int.

⁸ See, among others, UNHCR's Recommendations to the Laeken Summit, *Strengthening the Tampere Process*, the UNHCR's Preliminary Observations on the European Commission's Proposal's for Council Framework Decisions on combating terrorism and on the European arrest warrant and the surrender procedures between member States, and, under UNHCR Press Releases, "Ten refugee protection concerns in the aftermath of Sept. 11", from the site www.unhcr.ch; ILPA Submissions to the EU Laeken Summit, from the site www.ilpa.org; Statement to the Laeken Summit

by the European Council on Refugees and Exiles and Observations by the European Council on Refugees and Exiles on the Presidency Conclusions of the European Council Meeting in Laeken, from site www.ecre.org; "Europe and Refugees: Freedom, Security and Justice?", speech by Amnesty International, from site www.amnesty-eu.org.

⁹ The Action Plan was adopted by the JHA Council on 28 February/1 Mar. – site: www.ue.eu.int/newsroom

¹⁰ EURODAC is a database system for the comparison of fingerprints of asylum seekers, designed to help the implementation of the Dublin Convention – Council Regulation EC 2725/2000, concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316, 11.12.00.

¹¹ Regulation to replace the Dublin Convention on asylum, on

the rules and mechanisms to determine the Member State responsible for examining asylum applications lodged in one of the Member States, published in OJ L 254, of 19.08.97; the new Commission proposal for a Regulation (Com (2001) 447) can be found on site www.europa.eu.int.

¹² In fact, the integration of Justice and Home Affairs matters in the EU's external relations is of growing importance, as well as is an integrated approach to this area; one of the first initiatives in this sense was the creation, in 1998, of the High Level Group on Asylum and Migration, attempting a crosspillar approach at the root causes of asylum and migration issues.

¹³ See for instance ECRE's Observations on the Presidency's Conclusions, on site www.ecre.org. □