

Working Group X

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Working group X "Freedom, security and justice"

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**Contribution to the Working Group on Freedom, Security and Justice
of the European Convention by Mr. Pál Vastagh MP**

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1. Aspects of the justice and home affairs reform

When drawing up, by way of a European constitution or constitutional agreement, the specific image of a European Union evolving into a political union of separate legal status, than the security and the basic values of the rule of law shall play a special role. The European Area of freedom, security and justice shall become a tangible reality for the citizens. The future constitution or constitutional agreement of the Union shall include the following principles with regard to the creation of the European Area of freedom, security and justice:

- the basic principles;
- the strategic goals to be achieved;
the principles of “a wider Europe” which shall determine Europe’s place in the world order.

In order to provide for cohesion within the Area of freedom, security and justice, the co-operation shall be governed by mutual confidence and trust. Although the political areas in question may be deemed as highly sensitive, the lack of trust may undermine the effectiveness of co-operation and even the cohesion within the community. Without trusting each other's criminal and civil law order, police, customs and border control measures and security standards, no effective co-operation can be expected, especially in an enlarged European Union. Without sufficient trust, we will not be in the position to use for the advantage of our citizens those revolutionary new instruments and possibilities (e.g. the European arrest warrant) leading to a co-operation more flexible and effective than ever before.

Within the framework of asylum, migration and protection of external borders, new approach of solidarity among the member states is needed.

It is necessary to find a delicate balance between the need for security and the individual fundamental rights especially in the light of the new threats of terrorism.

The co-operation in the field of justice and home affairs has to respond to the expectations of the citizens as it has a major effect on our everyday life. The new co-operation shall strengthen the effectiveness of the national authorities, and at the same time it shall respect the Community interests and values.

2. The significance of reforming justice and home affairs - a Hungarian perspective

Hungary pays great significance to the following issues:

- Guaranteeing democracy, respect for human rights, the rule of law within the European Union, and promoting their development outside the community;
- Incorporation of principles laid down in the Charter of Fundamental Rights into the future (Constitutional) Treaty of the European Union and the incorporation of the Charter of Fundamental Rights itself into the constitution;
- An appropriate procedure for legal remedies to guarantee of the fundamental rights is necessary.

Keeping in mind the principle of subsidiarity, the reform of the co-operation in justice and home affairs shall clarify and determine the competencies and their application in order to create an appropriate structure of institutions and instruments, and to provide a better financial support of this policy area. The basis of such financial request is the current low share of this area from the EU' s budget. (ca. 2 %)

3. Division of Competencies

In order to increase the effectiveness of co-operation and to make the treaties more simple and transparent, we support the incorporation of justice and home affairs co-operation, presently included in the first and third pillars, into a unified legal regime. This unified legal framework should incorporate an appropriate system of institutions and instruments that corresponds to each policy areas.

In order to maintain the dynamic development of justice and home affairs policy within the enlarged European Union, the differences between the legal and institutional instruments of the community and of the inter-governmental policy issues must be minimised, and we should take advantage of the possibility of enhanced co-operation provided by the Treaties.

It is also necessary to clearly define the division of national and European level competencies in the area of Justice and Home Affairs. As for fight against crime for example, we have to define the crimes that fall under EU level competence. The basic criteria should be the transnational implications of the crime or of its consequences.

4. Concepts of reforming certain Policy Fields

a) Development of a European Investigation and Law Enforcement Area

Fight against organised crime has been defined as a priority issue on EU level. Further development of a European law enforcement co-operation system is a sine qua non for meeting the defined targets in the area. Therefore it is necessary to increase the efficiency of community institutions and instruments used in fighting crime at the level of the European Union and the better harmonisation of existing law enforcement potentials.

Regarding the further development of institutions:

An integrated law enforcement strategy shall be established at the level of the Union, in order to avoid duplication of competencies and to provide for most effective utilisation of the results of work and investigation of European law enforcement organisations at different areas of law enforcement with different core activity, instruments and structure. This strategy, on the one side, would determine the relation among Union level organisations specialised in police, administrative-investigative and judicial activities, the conditions of information exchange and on the other side it would serve as the frame of multilateral operative co-operation among Member States. This strategy would incorporate the strategies established at certain fields of co-operation; e.g. the strategy already established for fighting organised crime.

As a result of the lack of integrative law enforcement strategy in Europe there is no unified procedure of law enforcement. The demand for European criminal law comes up in this situation. Certain harmonisation of material and procedural provisions of criminal law, based on the principle of mutual recognition, as the Treaty determines it, seems to be necessary. The flexibility of co-operation would be best served if the Council, taking into account the principle of subsidiarity, would define the priorities of harmonisation of material and procedural provisions of criminal law in the integrative law enforcement strategy. Such a priority could be the approximation of national laws on combating organised crime or it could even be an example for possible EU level regulation.

Individual institutions of international law enforcement:

Regarding Europol, widening of competencies, a leading role in the common investigation groups and certain operative competencies should be provided for. Unless the above requirements are met, any further development in the field of crime prevention and law enforcement would face serious difficulties. Since the operative competence will affect certain individual personal interests it is necessary to bring Europol under the democratic supervision of the European Parliament and the judicial supervision of the European Court of Justice.

Eurojust could be regarded as the antecedent of the European Public Prosecutor. The office of the European Public Prosecutor, to be created gradually, may contribute to better co-operation, establishment and legal supervision of Union institutions specialised in international law enforcement. This will contribute to a new quality in the creation of European investigation and law enforcement area. Regarding its competencies, we must answer the question, whether it should be entitled only to protect the financial interests of the community, or there are other crimes against the community of the same magnitude that should be included in its competence.

In the long run the establishment of the European Public Prosecutor requires the separation of powers at a European level, as well. Beside the European Public Prosecutor we will need judicial bodies, which will provide for judicial supervision not only of Europol, but also of all European law enforcement bodies. This development also requires the strengthening of the legislative role of the European Parliament, especially in the field of criminal law co-operation. In all the areas of justice a broader European dimension should be raised. At the same time national parliaments should be involved in the elaboration of European legislation.

b) Lifting of control on the internal borders – Protecting the external borders

The enlargement of the European Union highlights the issues related to the external borders. Along the new external borders of the European Union the new neighbouring countries are countries of transit and origin with regard to illegal migration and organised crime. Therefore, the workload of the customs and border authorities of the new Member States – which constitute the new external border of the Community – will probably increase. This is a challenge for all Member States, since it is a common threat to the whole area of freedom, security and justice. This also applies for the Mediterranean.

Therefore it is necessary to meet new commitments such as:

- “communitarisation” of the policies related to the external border control,
- developing a new financial mechanism related to the external border control, which better responds to the new challenges,
- integrated border management on the basis of the Commission proposal,
- defining the national contribution by each Member State to the system of integrated border management,
- the establishment of close co-operation on European level of the national Border Guard authorities, with the aim of creating networks and the legal and institutional framework which might be the basis of enhanced co-operation on the basis of the relevant provisions of the Treaty and the possible creation of a new institution with EU level competencies, (Some specific new measures like the proposal to establish a rapid reaction Border Guard force has already been initiated.)
- finding adequate symbols and tools which aim at creating the European identity of the national Border Guard authorities.

c) Asylum, immigration, policies regarding nationals of third countries

Hungary, as a future Member State on the external border of the European Union and the Schengen area lies in the crossroads of migration movements from the South to the North and from East to the West. Besides being a transit-country Hungary has increasingly become a country of destination. Therefore, - in accordance with Article 2 paragraph 4 of the Nice Treaty – we are stressing the importance of the establishment of a common asylum policy based on the balanced allocation of burdens. In the long run it is also important to create a common asylum procedure and a Europe wide status for temporarily protected persons. The endeavours of the Commission to reduce the secondary migration of asylum seekers are to be supported, because this is the only way to avoid the abuse of asylum (asyl-shopping) and the overload of target countries, which endangers the internal peace and stability of their societies. Asylum policy should be considered as a comprehensive policy. Special issues like the Refugee Fund and the solidarity of Member States are important elements of it. The community legislation on temporary protection in the case of mass influx should cover the balanced burden sharing among Member States.

Harmonised laws adopted by the member states concerning legal immigration and residence of third country nationals, and furthermore the step-by-step development of a flexible common migration policy taking into account current effective legal regulations of the Member States is to be supported.

In the field of employment related migration – with regard to subsidiarity – the division of competencies among Member States and the Community should be established. With regard to the regional, demographic, cultural differences of the labour market of the Member States, it is of utmost necessity to preserve the competencies of the Member States to regulate their national labour market.

5. The necessity to further develop the European information fora related to the JHA co-operation

The European Police Academy and the European Legal Academy are key, standing elements fostering the European police and justice affairs co-operation. The role of these two institutions is promoting the cohesion of the area of freedom, security and justice, in the harmonisation of the *acquis communautaire*. It is important to draft in the Treaty the intention to further develop the above mentioned institutions. With regard to the protection of the external borders of the Community and the Schengen area – the medium term establishment of the information network of the European border guard authorities, and the elaboration of the common methods of the border guards training programs is to be supported. Hungary would be willing to host such a permanent centre. However, in medium term it is conceivable to establish such a European information centre to align the consular work of the Member States.