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THE HAGUE PROGRAMME AND POLICE COOPERATION BETWEEN THE MEMBER STATES OF THE EU

BY CYRILLE FIJNAUT¹

1. INTRODUCTION

For anyone following the development of the European Union (EU) in the area of public order and security, it is clear that police cooperation between its Member States is growing steadily more important for achieving the Area of Freedom, Security and Justice (AFSJ) spoken of so emphatically in Article 29 of the Treaty on European Union (EU). Above all serious crime (organised or not), particularly the 'new' terrorism, all kinds of difficulties in maintaining (cross-border) order, the growing need for more (qualified) police supervision of the free movement of both persons and goods and – not to forget – the use of police officers in peace-keeping operations throughout the world: all of these have placed this form of international cooperation ever higher on the EU's political agenda than many people deemed possible, or even desirable, when the Maastricht Treaty was adopted. Therefore it is also appropriate that police cooperation between the Member States stands as a separate topic on the programme of this symposium.

The purpose of this contribution is to examine the extent to which the Hague Programme – which is the successor of the Tampere Programme – is proving to be a stimulus for the EU's policy on police cooperation between its Member States. Thus the first part of this contribution explains the role which is played by police cooperation in the Hague Programme (in full: the Hague Programme: strengthening freedom, security and justice in the European Union).² We then look at the place which the Council and the Commission gave to this form of cooperation between the Member States in their Action Plan implementing the Hague Programme on strengthening freedom, security and justice in the European Union.³ And, thirdly, we explore how much progress has been achieved in implementing the promises made in the Action Plan on police cooperation. After all, the proof of the pudding is in the eating.

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2. OJ C 53/1 of 3 March 2005.

3. OJ C 198/1 of 12 August 2005.

This contribution concludes by answering the question of whether the EU should not be more aggressively seeking to adopt a policy on police cooperation between its Member States which is both more comprehensive and more coherent.

2. THE KEY POINTS IN THE HAGUE PROGRAMME

The Hague Programme is structured in accordance with the description of (the objective of) the EU's Third Pillar: the achievement of a high level of safety in an 'area of freedom, security and justice.' The various programme points are thus successively grouped under 'Freedom,' 'Security' and 'Justice.'

The consequence of this is that the policy which the EU wishes to implement with regard to police cooperation between the Member States is to some extent scattered throughout the entire programme. True, this form of cooperation is primarily dealt with in the chapter on strengthening security, but (for example) the chapter on strengthening freedom explicitly speaks of police cooperation in relation to combating trafficking in human beings, while in the chapter on strengthening justice this form of cooperation is highlighted in relation to promoting cross-border judicial cooperation in criminal matters. This fragmentation – which *per se* is difficult to reconcile with the heading of title VI (Police and judicial cooperation) of the EU – obviously does not help to make the policy any clearer.

As mentioned, however, most of the policy intentions in the police area are included in the chapter on strengthening security. And in this sense naturally it is not so difficult to discern in the Hague Programme the main outlines of the police policy to be conducted. Nevertheless, the drawback of positioning the policy in this way is that it mistakenly implies that police cooperation does not also serve the cause of strengthening freedom and justice. For this reason as well, the structure of the Hague Programme with regard to police cooperation is not an altogether happy one.

In substantive terms, the police policy that is proposed in section 2 on strengthening security, and in particular in sub-section 2.3 ('Police cooperation'), can be summarised in four major points: coordinating operational cooperation, improving the exchange of information, expanding practical cooperation and intensifying external police policy. It must be immediately noted that one's expectations about how these points are presented in the programme text must not be too high. Usually their descriptions are extremely sparing, more like a bare-bones musical score than a lushly orchestrated piece of music.

2.1 Coordinating operational cooperation

Wasting few words, the Hague Programme states as if it were self-explanatory that the 'coordination of operational activities by law enforcement agencies and other agencies in all parts of the area of freedom, security and justice, and monitoring of the strategic priorities set by the Council, must be ensured.' This self-confident pronouncement obviously dates from the period when 'everybody' was assuming

that the Constitutional Treaty would be accepted without difficulty by all Member States. We now know better, of course.

In any event, with a view to coordinating the operational activities of all services which are active in the area of the AFSJ, the Council is invited to make preparations for setting up the Committee on Internal Security (referred to under the French acronym of COSI), as provided for in Article III-261 of the Constitutional Treaty ('A standing committee shall be set up within the Council in order to ensure that operational coordination on internal security is promoted and strengthened within the Union.(...) it shall facilitate coordination of the action of Member States' competent authorities'). These preparations should relate to the tasks of this committee, its powers and its composition, so that it can commence its activities as quickly as possible after the acceptance of the Treaty.

In order already to gather experience with the above-mentioned form of coordination in the EU, the Council is invited to organise every six months a joint meeting of the chairmen of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the Article 36 Committee (CATS) and of representatives of the Commission, Europol, Eurojust, SitCen (Situation Centre) and the Police Chiefs Task Force.

2.2 Improving the exchange of information

The second major point in this policy concerns the cross-border exchange of information, both in general between law enforcement agencies and especially between intelligence and security services within the framework of combating terrorism.

With regard to the general exchange of information, it is stated here that with effect from 1 January 2008 such exchange should be governed by the 'principle of availability,' meaning that a law enforcement officer in one Member State

'who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that State.'

Further, the Commission is invited by the end of 2005 to come up with proposals on how and under what conditions this principle can be put into practice. And it is stressed that for exchanging information, full use should be made of new technologies in order to allow access to both national databases and EU databases: 'new centralised European databases should only be created on the basis of studies that have shown their added value.'

On the other hand, as mentioned, in this programme the exchange of information plays a very major role with respect to preventing and combating terrorism. The starting point here is that Member States must not confine their activities to 'maintaining their own security, but to focus also on the security of the Union as a whole.' In the eyes of the authors of the Hague Programme, this means (among other things) that the Member States must apply the powers which are at the dis-

posal of their intelligence and security services not only with a view to combating threats to their own security, but also with a view to protecting the internal security of the other Member States. This starting point also entails that the Member States must immediately inform one another of (the possession of) information concerning their internal security, and that they must jointly ensure that the surveillance of persons or goods is not interrupted 'as a result of their crossing a border.'

In this connection it is particularly recommended that the high level of exchange of information between the security services of the Member States be improved by applying the 'principle of availability,' subject, however, to the special circumstances that apply to the working methods of such services, e.g. 'the need to secure the methods of collecting information, the sources of information and the continued confidentiality of the data after exchange.' Almost immediately it is added that, with effect from 1 January 2005, SitCen will provide the Council with 'strategic analysis of the terrorist threat based on intelligence from Member States' intelligence and security services and where appropriate, on information provided by Europol.'

2.3 Expanding practical cooperation

Thirdly, it is expressly stated in the Hague Programme that effectively combating (cross-border) crime and terrorism requires more intensive practical cooperation between the police services (and customs services) of the Member States with one another and their cooperation with Europol, also through a better use of the existing treaties.

For this it is proposed that the European Council will urge the Member States 'to enable Europol in cooperation with Eurojust to play a key role in the fight against serious cross-border (organised) crime and terrorism,' *inter alia* by ratifying the existing relevant treaties and by providing Europol with all 'necessary high quality information' in good time. Europol, in turn, must as of 1 January 2006 have replaced its 'crime situation reports' by 'threat assessments' which can be used by the Council for establishing yearly strategic priorities in the criminal policy of the EU. Moreover, Europol should be designated by all Member States as the central office of the EU – within the meaning of the Geneva Convention of 1929 – for combating euro counterfeiting.

Were the Constitutional Treaty to be accepted, then no later than 1 January 2008 the Council should adopt a European law on the tasks, organisation, etc. of Europol, as provided for in Article III-276. Until that time, Europol should improve its functioning by cooperating fully with Eurojust. Europol and Eurojust should report annually to the Council on their common experiences and results. They should encourage the Member States to use joint investigation teams, in which they would themselves also participate.

Further, the Council should promote cross-border police cooperation 'on the basis of common principles.' Along these same lines, the Commission is invited to bring forward proposals to further develop 'the Schengen-acquis in respect of cross border operational police cooperation.' This request should certainly be seen

in light of the assertion in the programme that in specific border areas 'closer cooperation and better coordination is the only way to deal with crime and threats to public security and national safety.' And where the strengthening of police cooperation is largely based on confidence in one another's legal systems, the Council and Member States, in cooperation with the European Police College (CEPOL), should develop, by the end of 2005, educational programmes for police officers in the Member States relating to the practical aspects of this form of cooperation in the EU. With this objective, the Commission and CEPOL should also set up exchange programmes for police officers from the Member States.

2.4 Intensifying external police policy

And fourthly, the Hague Programme makes explicit reference to the increased importance of cooperation with third countries for combating terrorism. Thus it is proposed that the Council – together with Europol and others – should form a network of national experts which can give third countries (at their request) technical assistance in the training and instruction of their services.

Moreover, the Council urges that funding be increased in order to organise 'counter-terrorism related capacity-building projects' in third countries and the Commission is specifically called on to ensure 'that, in the proposed revision of the existing instruments governing external assistance, appropriate provisions are made to enable rapid, flexible and targeted counter-terrorist assistance.'

Finally, it is recommended also to use the experience which has been acquired with external police operations 'with a view to improving internal security of the European Union.' It is not specified exactly what experience is involved here, or how it should be exchanged.

3. THE TRANSFORMATION OF THE 'HAGUE' POLICE POLICY INTO AN ACTION PLAN

3.1 A few general comments about the transformation as such

On the whole, the Hague Programme is not really that extensive. And only a relatively small part thereof relates to the strengthening of police cooperation. Partly for that very reason it is of great importance to explore how much attention is devoted in the Action Plan to police cooperation, and in particular naturally to the four major points presented in this connection.

Before focusing on the Action Plan itself – which was only published on 12 August 2005 – it must be pointed out that already in May 2005 the Commission sent a communication to the Council and the European Parliament in which it reformulates the Hague Programme in ten priorities.⁴ It is striking that, in this

4. Document COM(2005) 184 final of the Commission of 10 May 2005.

communication, police cooperation as such is not labelled a priority. While the Hague Programme at least devoted a whole sub-section to police cooperation, that is not the case here: in none of the ten priorities is police cooperation treated as a separate sub-priority. So, is this form of cooperation not such a major issue in the eyes of the Commission after all?

That appears quite likely, when one sees that in this communication better border surveillance and a more coherent immigration policy, for example, are raised to the level of priorities. Or is this more of an optical illusion, created by this reformulation of the Hague Programme, with police cooperation concealed, as it were, inside a number of the explicit priorities? From the explanations given for these priorities, it would seem not.

On the other hand, joined to this communication is a 'List of measures and timetable for adoption' which does follow the structure of the Hague Programme and in which – again in the section on strengthening security – specific attention is paid to police cooperation. In other words: the Commission would have done better not to sow confusion by naming the priorities in the Hague Programme in the way that it did.

Perhaps this unfortunate working method was facilitated by the fact that the Commission, during the months when it was busy preparing the implementation of the Hague Programme, was also occupied – within the framework of the financial planning of the EU for the years 2007-2013 – with setting up the Framework Programme 'Security and Safeguarding Liberties.' Because in (various parts of) this programme, which is intended to secure the financial resources which are necessary for further developing the area of freedom, security and justice in the indicated period, the priorities are not defined in the same way as they were in the Hague Programme.⁵

On a number of points, the just-mentioned list of measures was substantially amended in the following months, in consultation with the Council. In August 2005 it was published as the 'Council and Commission Action Plan Implementing the Hague Programme on Strengthening Freedom, Security and Justice in the European Union,' to which reference has already been made. However, for those who are not immersed in the current policy with regard to the Third Pillar, this plan – in which the relevant sub-programmes deriving from the 'Security and Safeguarding Liberties' programme are also interwoven – is an utterly incomprehensible document.

Why? Because it consists of a series of bare mentions of plans, proposals, studies, reports, evaluations etc. for each of the points which are discussed in the Hague Programme. Only someone who possesses a great deal of foreknowledge about the developments in the Third and Second Pillar can, for a number of the enumerated measures, have any idea of what they actually involve, and thus can also more or less comprehend the content, scope and objective of this Action Plan. However, not only for the average citizen in Europe, but also for the average

5. Document COM(2005) 124 final of the Commission of 6 April 2005.

police officer, this Action Plan is quite simply mumbo-jumbo. Why did the Council and the Commission shirk from the effort necessary for properly elaborating this plan? Had they done so, it could have served as a point of reference for the public discussion and for the policy on the AFSJ.

In any event, anyone attempting to decipher what the policy contains about police cooperation will not have an easy time of it: in many cases, even for relative insiders it is difficult to discern what is concealed behind all kinds of indications in this accounting document.

3.2 The elaboration of the four major programme points

Divided up according to the four major themes in the Hague Programme which were distinguished earlier, more concretely the following action items are included in the Action Plan.

The Action Plan does not say much about coordinating operational cooperation at the EU level – understandably, after the negative votes in the Netherlands and France on the Constitutional Treaty. Not for nothing is it expressly stated in the preamble to the Action Plan that this plan will be implemented ‘in strict compliance with the legal bases laid down in the Treaties and the principles of solidarity, subsidiarity and proportionality.’ Only here and there does one spot something of the plans which were agreed upon in the Hague Programme. The most striking vestige is to be found in the section on cooperation between the police and the customs services: ‘Definition of the role of the security committee (COSI) (no later than 1 November 2006).’ Because this means that the ambition to coordinate the operational cooperation between services (also) from above, from the general secretariat of the Council, has still not been entirely abandoned. The draft of the Constitutional Treaty may already be formally dead in the EU, but *de facto* it still plays a certain (modest) role.

With regard to improving the exchange of information, section 3 lists a large number (15) of general action items. Among others, these include a proposal on the (technical and legal) conditions under which personal data can be exchanged for the purpose of cooperation in criminal matters (in 2005), the elaboration of a framework decision to simplify the exchange of information between (*inter alia*) police and customs services (in 2005), the further development of the Europol Information System at Europol (in 2006), and a proposal for introducing a principle of availability for information (concerning *inter alia* DNA, fingerprints, telephone numbers and registration numbers) which is relevant for law enforcement agencies (2005).

In addition, the exchange of information in particular also plays a role in the sections which relate to combating terrorism (3.2) and organised crime (3.3). In the first case, there is reference *inter alia* to the development of specialised contact points in the Member States ‘which will have access to all necessary information and intelligence with respect to terrorist activities involving persons, groups or entities’ (in 2005). In the second case no such concrete measures are proposed, but obviously they lie locked (as it were) within some of the action items listed

under the heading: 'Improve the knowledge of organised and serious crime and strengthen the gathering and analysis of information,' for example the regular preparation of a threat analysis by Europol (as of 2006).

With regard to expanding practical cooperation in general, the *Action Plan* places emphasis, firstly, on cooperation along the (internal) borders between Member States: the plans which are supposed to exist on this point in 2005 are being worked out in greater detail. Then – no less important – it is promised that proposals will be developed for improving security on the trans-European transport networks 'through the creation of an area of police and judicial cooperation.' And along the lines of these kinds of actual cross-border operational cooperation, initiatives are announced such as setting up multidisciplinary joint teams and the development of minimum standards for the cross-border use of investigation techniques. A number of additional stand-alone action items are also listed. One can mention here the setting up of systematic exchange programmes for police officers via CEPOL (2005–2006), the further development of ethical police standards, the policy on cooperation between Europol and Eurojust (no later than 2008) and the improvement of the cooperation between services involved in combating corruption.

Further, in this connection one must not lose sight of the fact that the issue of practical police cooperation also plays a role in the parts of the Action Plan which specifically relate to combating terrorism and organised crime. With regard to combating terrorism, one should think in particular of the intention in 2006 both to further develop the cooperation within the framework of ATLAS and to strengthen the legal basis of this cooperation. Those who do not know what sort of collaboration this is naturally understand absolutely nothing about this intention. However, this involves the very important cooperation between the special (police and military) units which are given the responsibility in the Member States for intervening in situations which may or may not be terrorist-related, but which in any case are potentially extremely violent. In the area of combating organised crime, it is important to note that the Action Plan refers to the necessity of improving coordination and cooperation between high-tech crime units in the Member States (in 2006). Here in a certain sense the action item relates to the fact that criminal assets intelligence units would have to be set up in all Member States. Obviously, without a European network of such units, systematic cooperation between the Member States on a point like this would have a very hard time getting off the ground; in that case it would be impossible to have any proper coordination.

Finally, with regard to intensifying external police policy, one cannot ignore the intention in mid-2005 to draft a communication 'on all the external aspects of the Union policy on freedom, security and justice,' because this automatically entails that the role of police cooperation in the external policy of the EU would also have to be more precisely defined. Further, attention is paid to the external policy particularly within the context of combating terrorism. For example – entirely in the spirit of the Hague Programme, moreover – without wasting words it is said:

'Build capacity in third countries to fight terrorism and appropriate clauses on counter-terrorism in the agreements to be concluded by EU/EC with third countries.' Naturally, this 'capacity' and these 'clauses' cannot relate exclusively to police cooperation with third countries, but this form of cooperation is quasi-necessarily a part of the external policy conducted to fight terrorism. In relation to combating organised crime, the Action Plan merely refers to agreements made with a view to fighting such crime in the Western Balkans.

Does the Action Plan also include intentions concerning issues other than the four discussed above? It is not unimportant that, to strengthen security within the context of the Framework Programme 'Security and Safeguarding Liberties,' proposals will be made in 2005 for two special programmes: one aimed at preventing and combating crime, and the other at the 'prevention, preparedness and consequence management of terrorism.'

4. IMPLEMENTATION OF THE ACTION PLAN: WHERE THINGS STAND TODAY

Only those who constantly and doggedly consult the websites (and the underlying databases) of the Council, the Commission and the European Parliament can have some idea of how things are currently—November 2005—going with the implementation of the Action Plan. Below, this situation will be sketched out on the basis of the proposals and communications of the Commission and the decisions of the Council. More cannot be expected from a relative outsider. Those who would like to know more about what is actually going on will have to conduct anthropological fieldwork around Schuman Square in Brussels and in the capitals of a number of Member States. Nevertheless, it is of course tempting to go into greater detail concerning a number of points on the policy that is proposed or already established, but one will refrain from doing so in this contribution, because that is a separate exercise. This contribution merely attempts to map out what dynamic the Hague Programme has generated in the police field. Naturally, the following overview of the implementation of the Action Plan employs the same four-part division of the policy as was used earlier.

4.1 Coordinating operational cooperation

According to the documents, little progress has been made so far with regard to coordinating operational cooperation between all kinds of services of the Member States from the Council. My impression is that one is still consulting on the objectives, the tasks, the composition, the support of the COSI.

In May 2005, a meeting was held with representatives of all involved institutions and services (see 2.1 above) in order to exchange ideas on this.⁶ The outcome of this brainstorming session was more or less that COSI should play a primarily strategic role in the decision-making at the EU level on issues touching

6. Document 8989/05 of the Council of 8 June 2005.

on internal security. Exactly what this comes down to concretely has certainly not yet been crystallised. Some parties, especially on the police side, nevertheless underlined how important it is that COSI firstly defines the priorities in the operational cooperation and secondly evaluates this cooperation with a view to improving it. To what extent COSI also has to play a role in the application of the solidarity principle between the Member States and in the formulation of the external security policy is as yet a long way from being resolved.

In any event, the intention of working out a clear status for COSI before 1 November 2005 has gone unrealised. Or at least there has been no official document which suggests otherwise.

4.2 Improving the exchange of information

In a certain sense, improving the exchange of information forms the core of the Hague Programme. Therefore it is not surprising that it is precisely on this point that the Commission has taken a great deal of action in recent months. In conformity with the Action Plan, it published three very important proposals:

- on 21 September, the proposal for a directive of the European Parliament and the Council ‘on the retention of data processed in connection with the provision of public electronic communication services and amending Directive 2002/58/EC’;⁷
- on 4 October, the proposal for a Council framework decision ‘on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters’;⁸
- and on 12 October, the proposal for a Council framework decision ‘on the exchange of information under the principle of availability.’⁹

Specifically with regard to the exchange of information between Europol and the police services in the Member States, it can be reported that the mutual evaluations per country are still being conducted – for example, in June 2005 the reports were published on the relations between Europol and the Netherlands and Ireland – but because in these reports the chapters on the actual cooperation are ‘not declassified,’ one can say little or nothing on their basis about how things are really going in the Raamweg in the Hague.¹⁰

In connection with the foregoing, reference can be made to one of the initiatives which were taken to turn the Hague Programme into a living reality also within the context of combating the ‘new’ terrorism.¹¹ After a great deal of discussion (which began after 9/11, but which only really took off after the Madrid attacks in March 2004), on 29 September 2005 the Council finally published a decision ‘on

7. Document COM(2005) 438 final of the Commission of 21 September 2005.

8. Document COM(2005) 475 final of the Commission of 4 October 2005.

9. Document COM(2005) 490 final of the Commission of 12 October 2005.

10. See e.g. document 5430/05 of the Council of 15 June 2005.

11. See for all the measures taken in this regard: document 10694/05 of the Council of 27 June 2005.

the exchange of information and cooperation concerning terrorist offences.¹² It imposes on the Member States an obligation to provide to Europol (and Eurojust) as much data as possible on a number of aspects of terrorist activities on which they are conducting or have conducted a criminal investigation. It is possible that, with this decision, the exchange of information via Europol will indeed take place more quickly and on a larger scale than has been the case until now.¹³ Nevertheless, how far the Member States have come in designating specialised contact points in order to improve the mutual informative cooperation within the framework of combating terrorism – also one of the points in the Action Plan – cannot be determined from the ‘Revised action plan on terrorism.’¹⁴ It does appear from point 3.2.4. that the Counter-Terrorism Task Force at Europol is firstly being reinforced by a wide range of specialists in The Hague, and secondly by various specialists at the Europol National Units in the Member States. One can assume that in this way the relevant proposal in the Action Plan is being concretely achieved to some extent.

Further, in this connection one must not lose sight of the fact that the Commission several months ago also published a communication on updating the policy on combating organised crime.¹⁵ The exchange of information between the Member States themselves and between the Member States and Europol also plays an important role in this communication. The Commission thinks that a part of the problems which still exist here will be resolved when the above-mentioned proposals which have been published in recent months to improve police information exchange in general are accepted. In addition, it is expecting a great deal from the implementation of the long-awaited Europol Information System in all Member States because, as it writes, ‘the flow of information to Europol is still insufficient. Ways of increasing the systematic forwarding of high quality, live investigative data by Member States must be developed.’ In this connection, it is also important that this communication urges the development of a European Criminal Intelligence Model which – if it were used by all relevant services in the (Member States of the) EU – would significantly facilitate the collection, exchange, analysis and assessment of data.

In particular the proposal of 18 October 2005 for an action plan to combat trafficking in human beings specifically urges an improvement in the exchange of information between the national police services and Europol. The Member States ‘should ensure that national law enforcement agencies regularly involve Europol in the exchange of information, in joint operations and joint investigative teams.’¹⁶

12. Council Decision 2005/671/JHA of 20 September 2005 (OJ L 253/22 of 29 September 2005).

13. See the interviews with the director of Europol in the *Financial Times* (12 March 2005) and *NRC Handelsblad* (27 and 28 August 2005). Important also in this context is the interview with the director of MI5 in the *Financial Times* (10 September 2005): ‘if we splash (intelligence) around carelessly, we shall soon have none of it.’

14. See n. 10.

15. Document COM(2005) 232 final of the Commission of 2 June 2005.

16. Document COM(2005) 514 final of the Commission of 18 October 2005.

4.3 Expanding practical cooperation

In connection with this last quotation, it should be noted that the Commission also kept its word with regard to publishing a proposal for a Decision of the Council on operational police cooperation between the Member States, in particular along their (shared) internal borders.¹⁷ This proposal, which on a number of levels has points of contact with (the revision of) the Schengen Application Agreement,¹⁸ firstly justifies in detail why the EU as such also has to play a role in establishing police cooperation in border areas.

In my view, the principal argument is that in this way the EU can develop a system of starting points and forms of cooperation that can serve throughout the EU as the basis for organising such cooperation. It is then up to the Member States themselves to determine to what extent they actually structure their cooperation within such a framework. In this sense, there is no limit placed on the national responsibility of states to ensure the security of their citizens, nor on their power within this framework to do what they think best. This account alone already indicates how sensitive the relationship between the EU and the Member States still is on this point.

Further, viewed from an operational perspective, this proposal has three central elements: the exchange of information, both within the framework of the investigation and within the framework of the maintenance of order and the assistance, the coordination of actions between the services which are competent in border areas and simply operational cooperation in the form of common patrols, investigative actions, etc. In light of how much importance is attached in both the Hague Programme and the Action Plan to CEPOL's role in informing police officers about the legal systems in neighbouring countries as well as in developing programmes for their exchange between Member States, it is fitting also to mention here that the 'CEPOL annual work programme for 2006' lists all kinds of initiatives which to a greater or lesser degree respond to these expectations of the Commission and the Council. Moreover, they can also all be classified under the first objective of CEPOL according to the Council Decision of 20 September 2005, which formally established this European Police College: 'to increase knowledge of the national police systems and structures of the other Member States and of cross-border cooperation within the European Union.'¹⁹

In this connection one must also return to the intention in the Hague Programme to regulate the organisation etc. of Europol by European law. Of course, the negative results of the Dutch and French referenda on the Constitutional Treaty made it impossible to implement this plan. Moreover, no new specific measures have been taken recently with a view to intensifying the cooperation between Europol and Eurojust – an issue which, in recognition of this important

17. Document COM(2005) 317 final of the Commission of 18 July 2005.

18. With regard to the revision of the Schengen Application Agreement, see document COM(2005) 230 final of the Commission of 31 May 2005.

19. Council Decision 2005/681/JHA of 20 September 2005 (OJ L 256/63 of 1 October 2005).

legal point, was touched upon in the Hague Programme. In part given the fact that the 'Agreement between Eurojust and Europol' has been in existence since June 2004, this was also unnecessary.

The plan to designate Europol – within the framework of the 1929 Geneva Convention for the suppression of counterfeiting currency – as the 'central office for combating euro counterfeiting' has come a long way, but it is still not fully implemented. Evidently not all Member States are as yet convinced of the desirability of creating such a position for Europol, even if only with a view to facilitating the exchange of information with third countries.²⁰ In line with this it should be noted that although particularly in the Action Plan it is urged to set up special units (high tech crime units and criminal assets intelligence units) in the Member States with a view to better combating organised crime and it is stated that, within the framework of combating terrorism, the cooperation between the special intervention units must be better organised (ATLAS), these two major action items do *not* appear as such in the policy documents which have been published for implementing this plan.

4.4 **Intensifying external police policy**

As promised in the Action Plan, the Commission on 12 October 2005 did indeed publish a communication on 'a strategy on the external dimension of the Area of Freedom, Security and Justice.'²¹ This communication not only examines the important role of an external policy in the area of justice and home affairs, both for promoting internal security in the EU and for promoting its external policy in general, but also indicates how such an 'external dimension' can actually be realised.

When the proposals made on this are related to the central issues in this contribution, it is clear that what is being sought above all is a strengthening of the services (the police services, of course, but also the customs services and the prosecution services, for example) which in third countries are responsible for combating organised crime, terrorism and human trafficking or smuggling. This choice is evidently based on one of the starting points for the external policy of the EU which were formulated earlier in the 'European security strategy' of December 2003 and in the 'European neighbourhood policy' of November 2004: the best guarantee for the (internal) security of the EU is to be found in well-administered, prosperous and democratically-governed states in the wider world around it.²² And it is obvious that improving the exchange of information with relevant services in third countries is also possible precisely when the above goal is indeed realised to the greatest possible extent.

20. See, for example, document 14028/04 of the Council of 3 November 2004 and document 8380/05 of the Council of 4 May 2005.

21. Document COM(2005) 491 final of the Commission of 12 October 2005.

22. See for a more specified and updated version of these policies in regard to the wider Europe: document COM(2005) 561 final of the Commission of 9 November 2005.

This policy naturally has major consequences. Firstly, it leads to a large amount of (financial) resources being invested in all kinds of projects in third countries, and secondly it entails that authorities like Europol, Eurojust and CEPOL are expressly involved in the implementation of these projects. And the fact that this is more than mere words can be deduced from, among other things, the 'JHA external relations multi-presidency work programme' which was drawn up in July 2005 by the British Presidency.²³ There it is indicated – both for a number of parts of the world and for a number of countries outside the EU in Europe – which projects will be taken up in the present field: development of services, exchange of information, personnel training, etc. In addition, the practical consequences of this policy can be clearly read from documents of the Commission concerning the external policy which, in its judgement, should be conducted with regard to countries in Central Europe. An important role is played here by institution building with regard to combating all kinds of serious crime.²⁴

5. CONCLUSION

Now that we have sketched how things stand with (the implementation of) the Hague Programme with respect to police cooperation between the Member States, it is naturally very tempting to compare this current situation with what has been achieved in the past 15 years on this level in the EU.²⁵ However, that was not the purpose of this contribution, which instead was merely (as emphasised in the introduction) to examine what has been achieved up until now of the ambitions and promises which the Hague Programme fosters on this level.

In general it can be said that the Hague Programme – certainly also via the corresponding Action Plan – has undoubtedly been a major stimulus for the policy of the EU concerning the present form of cooperation between the Member States. That this cooperation is very unilaterally embedded in that programme and that the transformation of this programme into an Action Plan also generates confusion on this point is unfortunate, but these two defects do not diminish the stimulating effect which the two programmatic documents have had on the further development of the EU's police policy.

If one regards this development in terms of the four substantive core areas which were distinguished above in the Hague Programme in the police field, it can firstly be stated that, as a result of the rejection of the Constitutional Treaty in the Netherlands and France, coordinating operational cooperation has thus far not come into its own. Must this be regretted? It is difficult to answer this question with a simple

23. Document 10728/05 of the Council of 1 July 2005.

24. See e.g. document COM(2005) 562 final of the Commission of 9 November 2005 and document COM(2005) 529 final of the Commission of 21 October 2005.

25. C. Fijnaut, 'Police co-operation and the area of freedom, security and justice', in: N. Walker (ed.), *Europe's area of freedom, security and justice*. Oxford: Oxford University Press 2004, pp. 242–282.

yes or no. But when one sees how extensive and profound the police policy of the EU is beginning to become, and one considers that this policy is beginning to display more and more operational traits, then I think there is much to say for the formation of a strategic body, a COSI or something similar, within the Council in order to not only monitor the consistency and coherence of the policy conducted, but also its appropriateness, lawfulness and effectiveness.

Secondly, it should be noted that although the external police policy admittedly does not play such a prominent role in the general policy documents, in reality it is much more important than those documents suggest. The specific documents quoted from above in this connection are already enough to make this clear. Nevertheless, someone who wishes to thoroughly canvass the important role of police cooperation in external policy is obliged to carry out an in-depth study of the agreements which have been concluded by the EU with a wide range of countries and regions, and of all projects which have been commenced on the basis of these agreements. In any event, it is a good thing that the Hague Programme, as the successor to the Tampere Programme, makes no secret of the EU's external police policy, but instead openly calls for attention to be paid to this. Nevertheless, an important field for scientific research is lying fallow here.

This having been said, in the third place the conclusion is obvious: up to now, the Hague Programme has most visibly stimulated the EU's police policy on two points: that of improving the exchange of information and that of expanding practical cooperation. Thus far, these two core areas still weigh heaviest in this policy. Apart from a couple of important – in particular the organisation of the police supervision on the traffic corridors in the EU and the organisation of the ATLAS cooperation – and less important – think of the formation of certain specialist units in the field of investigation in the Member States – issues, it can be said that at the level of the Council and the Commission most of the ambitions of the Hague Programme have been achieved: at present there are a number of major proposals and communications which – when they are converted into legal instruments and practical measures – can and will have a major impact on the functioning as well as (although to a lesser degree) on the organisation of police cooperation in (and between the Member States of) the EU.

My closing remark bears directly on this: precisely because this last-mentioned will undoubtedly be the case – in the final analysis the policy that was formulated during the first half of the 1990s has also had a major practical impact on police cooperation in the EU: see the important role of (for example) the Schengen Application Convention in day-to-day cross-border police traffic – it would be a good thing if in the near future the Council and the Commission no longer merely treat the policy they conduct (whether or not jointly with the European Parliament) in the police field as a subordinate part of a large number of other policies, but rather were to give this police policy its own, separate, in any case more recognisable, place in the overall policy of the EU. Such an approach would not only square with the major place which police cooperation assumes in the entirety

of the Third, the Second as well as the First Pillar, but it would also do justice to the important role which this cooperation is increasingly playing in the day-to-day lives of the people residing on the territory of the EU.²⁶ Such a working method could also benefit the completeness and thoroughness of this policy.

For example, it would be able to offer more room for establishing links between the police policy of the EU and the developments in the police field in and between the Member States, e.g. where preventing and combating organised crime and terrorism are involved.²⁷ And perhaps it would thus be possible to bring the police policy conducted more into line with the scientific research that is being carried out in the EU in the police area. It is a pity that the Commission, in its programme for 2006, makes no mention of such initiatives.²⁸

26. C. Fijnaut, 'Het politiebeleid van de Europese Unie', in: G. Corstens and M. Groenhijsen (eds.), *Rede en recht*. Deventer: Gouda Quint 2000, pp. 249–278.

27. See e.g. C. Fijnaut and L. Paoli (eds.), *Organised crime in Europe*, Dordrecht: Springer 2004.

28. Document COM(2005) 531 final of the Commission of 25 October 2005.