

Brussels, 24 NOV. 2010
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Dear President,

Thank you very much for transmitting the Bundesrat's position on the Commission's Communication "Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme" {COM(2010)171}.

In line with the Commission's decision to encourage national Parliaments to react to its proposals to improve the process of policy formulation, we welcome this opportunity to respond to your comments. I enclose the Commission's response and hope you will find this a valuable contribution to your own deliberations.

I look forward to developing our policy dialogue further in the future.

Yours sincerely,

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COMMENTS OF THE EUROPEAN COMMISSION ON AN OPINION FROM THE GERMAN BUNDESRAT

COM(2010)171 - COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS "DELIVERING AN AREA OF FREEDOM, SECURITY AND JUSTICE FOR EUROPE'S CITIZENS -ACTION PLAN IMPLEMENTING THE STOCKHOLM PROGRAMME"

The Commission thanks the German Bundesrat for its opinion on the Commission's Communication on "Delivering an area of freedom, security and justice for Europe's citizens – Action Plan Implementing the Stockholm Programme". The Commission welcomes the support of the Bundesrat for the creation of an area of freedom, security and justice. The Commission is fully committed to the proper implementation of the principles of subsidiarity and proportionality which are key elements in order to ensure an efficient functioning of the EU. The respect of these principles is further ensured through the impact assessments that are carried out before amending existing legislation or proposing new legislative initiatives.

The Council mandated the Commission to come forward with an Action Plan which would translate the aims and priorities of the Stockholm Programme into concrete actions. The Commission considers that it has fulfilled this mandate and that the Action Plan implementing the Stockholm Programme is fully in line with both the spirit and the substance of the Stockholm Programme. Although the Action Plan provides a detailed overview of the planned initiatives and their timing, it should not be seen as an agenda that is fixed once and for all: the Commission will table initiatives as necessary and appropriate, taking into account Member States' concerns. The timing proposed in the Action Plan is therefore indicative, based on reasonable estimates taking into account the necessary preparation time and the maturity of the debates on the various issues.

The Commission has also taken note of the opinions expressed previously by the Bundesrat, in particular in relation to the Stockholm Programme and the discussions preceding its adoption.

Regarding the areas of migration and the right to asylum

With regard to the statement of the Bundesrat on the need for a regulation to combat abuse in relation to the **right of free movement**, the Commission set up an expert group and issued in July 2009 comprehensive guidelines on how to improve the implementation and application of the Directive in order to assist Member States in implementing the Directive and tackle abuse and fraud. The Commission recently set up a CIRCA network for Member States to exchange information on statistics and cases of abuse, which is currently in a pilot phase and will be evaluated later this year. Assisting Member States in tackling abuse and fraud is a continuous action. For this reason, the Commission included the "Follow-up of the implementation of Directive 2004/38/EC on the right to free movement" in the Stockholm Programme Action Plan as an ongoing initiative.

Concerning provisions in the area of **legal migration**, the Commission is evaluating existing legislation in the field of legal migration in line with the Stockholm Programme. On the basis of these evaluations, it will determine whether there is a need for consolidating existing legislation in this field and welcomes the support of the Bundesrat for this exercise. Legislative action at the European level is necessary because a Member State's decision on the rights of third-country nationals could affect other Member States and it may cause distortion of migratory flows. Whereas the European level is the most appropriate to decide on aspects such as conditions of admission and stay or rights of third-country nationals, it is left to Member

States to decide about the volumes of migrants admitted into their territory, so that the Member States can take account of the needs of their national labour markets as well as their reception capacity. The possible extension of EU law to new categories of third-country nationals will be considered only where there is a proven need for this.

The Stockholm Programme also provides that the EU must ensure fair treatment of third-country nationals who reside legally in the territory of its Member States and that a more vigorous integration policy should aim at granting their rights and obligations comparable to those of EU citizens. This is also reflected in the Action Plan implementing the Stockholm Programme which states that the EU must strive for a uniform level of rights and obligations for legal immigrants comparable to that of EU citizens. These rights and common rules to effectively manage family reunification are essential to maximise the positive effects of legal immigration for the benefit of all stakeholders and will strengthen the Union's competitiveness.

With respect to a possible amendment of the Directive on the Right to Family Reunification (2003/86/EC), it should be noted that, in accordance with the call of the European Pact on Immigration and Asylum to regulate family migration more effectively, the Stockholm Programme invites the Commission to evaluate and review, where necessary, the directive on family reunification. The Commission therefore intends to launch a wide consultation in 2010 on the future of the family reunification regime, on the basis of a Green Paper.

The Commission shares the conviction expressed in the Stockholm Programme that effective action against **illegal immigration** is an essential element of a common migration policy. The Commission will therefore continue to develop an appropriate legislative framework. The Commission currently monitors the transposition in the Member States of the 2009 Directive on sanctions for employment of illegally staying migrants. The Commission will examine the possibility of strengthening EU instruments aimed at the fight against facilitated immigration, currently consisting of Directive 2002/90/EC and Framework Decision 2002/946/JHA establishing a penal framework to prevent the facilitation of unauthorised entry, transit and residence. A single, coherent instrument might be adopted on the basis of the Lisbon Treaty.

Concerning the comments of the Bundesrat on the foreseen activities in the area of **asylum**, the Commission has taken note of the Bundesrat's previous opinions in the field.

The Commission has proposed in the Action Plan the *"establishment of a mechanism to review the Member States' national asylum systems and identify the issues related to capacities which will enable Member States to support each other in building capacity"*. This closely reflects the Stockholm Programme invitation to *"create instruments and coordinating mechanisms which will enable Member States to support each other in building capacity, building on Member States own efforts to increase their capacity with regard to their national asylum systems"*. Any such mechanism is not intended to impinge on the principle that individual asylum decisions should be taken by national instances.

The Commission also considers that the plan to issue a Communication in 2014 on the transfer of protection and mutual recognition is perfectly in line with the Stockholm Programme's invitation to the Commission to consider, *"once the second phase of the CEAS has been fully implemented and on the basis of an evaluation of the effect of that legislation and of the EASO, the possibilities for creating a framework for the transfer of protection of beneficiaries of international protection when exercising their acquired residence rights under EU law"*. The 2014 communication will take into account the development of the CEAS at that stage and its content will reflect progress made on all fronts, including by the EASO.

The Bundesrat often emphasises the importance of impact assessments and evaluations of the different measures taken in the areas of migration and asylum. Such assessments and

evaluations must be based on **reliable and comparable information**, including statistical data. Therefore, it will be essential for national data providers to collect statistics on asylum and migration and to communicate them to Eurostat, as is already the case under the framework established by Regulation 862/2007. When assessing whether additional data should be collected, the Commission will consider the need for this information for the purposes of developing and monitoring Union policies and shall consider the availability of appropriate data sources and the costs involved.

The Commission's proposal for a Joint EU **Resettlement Programme** foresees the participation of the Member States on a voluntary basis. The Commission is committed to the rapid adoption of the programme because it considers that resettlement of the most vulnerable refugees from third countries to the EU should become an integral part of the EU's asylum policy in meeting the protection needs of refugees in third countries. It hopes that as the interest of Member States in resettlement continues to grow, an increasing number of Member States will become involved. The EASO will also play a major role in enhancing cooperation in resettlement activities.

The conclusion of **visa facilitation agreements** with Albania, Bosnia-Herzegovina and Kosovo will depend on the further progress achieved by these countries against the requirements set out in the relevant roadmaps. The fulfilment of these criteria is currently evaluated by the Commission in cooperation with independent experts from Member States, in view of further deliberations in the Council. The European Parliament has adopted his consent on 7 October 2010. It should moreover be noted that readmission agreements between the European Union and respectively Albania and Bosnia and Herzegovina are being implemented successfully. As regards Kosovo, the envisaged opening of a visa liberalisation dialogue remains subject to the adoption and effective implementation of a law on the readmission of persons from Kosovo.

The Commission considers that the problems faced by some Member States due to the mass arrival of migrants after the visa facilitation agreements with Serbia, Montenegro and FYROM were rather isolated cases. These problems were dealt with immediately and effectively and steps are currently being taken to put in place a post-visa facilitation monitoring mechanism to follow the progress on the accomplishment of specific measures taken by the three countries.

The Commission welcomes the Bundesrat's support for the Entry/Exit System as a tool to combat illegal immigration.

Cooperation in the judicial area

A European judicial area will only function effectively on the basis of mutual trust among judges, legal professionals, businesses and citizens. Mutual trust requires minimum standards and a reinforced understanding of the different legal traditions across the EU. To improve cross-border legal cooperation, the Commission will step up its support for legal training. In the long run, a European Law Institute might be proposed, building on existing structures and networks. While the Commission takes note of the concerns of the Bundesrat, the Commission emphasizes that the idea of the European Law Institute is to create a structure complementing national legal systems, not replacing them.

On the harmonisation of criminal procedural law, the European Council invited the Commission to "propose a comprehensive system, after an impact assessment, to replace all the existing instruments in this area, including the Framework Decision on the European Evidence Warrant, covering as far as possible all types of evidence". On the basis of this mandate, the Commission has announced the introduction of two legislative proposals in the Stockholm Action Plan. The Commission is currently carrying out an impact assessment in order to

identify the best way to achieve the policy objectives stemming from the Stockholm Programme. Since this impact assessment has not yet been concluded, the Commission cannot at this stage provide any detailed comments to the opinion of the German Bundesrat. However, the Commission will carefully analyse the opinion in connection with the impact assessment.

The Commission would like Eurojust to become a central player in the European judicial area and in supporting judicial cooperation. The main priority is to ensure the full implementation of the recent amendment of Eurojust's Decision of 2008. The Commission has begun an in-depth analysis of how to improve Eurojust's efficiency, in line with the Treaty, by providing it with powers to directly initiate any investigations, and rendering its internal structure more efficient. A study on the necessary provisions for the involvement of the European Parliament and national Parliaments in the evaluation of Eurojust's activities is under way, with adoption of the initiative foreseen for 2012.

Article 86 of the Treaty provides for the establishment of a European Public Prosecutor's Office "*from Eurojust*", in order to combat crimes affecting the financial interests of the Union. As the Commission announced in the Stockholm Action Plan, it will prepare the establishment of a European Public Prosecutor's Office from Eurojust in 2013, with the responsibility to investigate, prosecute and bring to justice offences against the Union's financial interests. In doing so, the Commission will further reflect on the cooperation with all the actors involved, including the European Anti-Fraud Office (OLAF).

Concerning EU legislation for the mutual recognition of financial penalties, the Framework Decision 2005/214/JHA foresees the recognition and execution of a financial penalty imposed in another Member State. This instrument was adopted by unanimity in 2005 and has unfortunately not yet been implemented by Germany (deadline for transposition passed in March 2007). The experience gathered shows that the application of the Framework Decision is limited by non-implementation, misinterpretation of the provisions as well as provisions clearly not in line with the Framework Decision. An impact assessment being carried out currently will indicate the way forward.

Regarding minimum standards in procedural law, the Commission is currently preparing an impact assessment. However, a proposal on the subject is not foreseen before 2014.

Regarding civil law issues

The fragmentation of national **contract laws** constitutes a deterrent for the European economy. It also creates legal uncertainty, as well as legal and other compliance costs for businesses. The Commission has adopted a Green paper on progress towards a European Contract Law for consumers and businesses that will explore options to make it easier and less costly for businesses and consumers to conclude contracts across borders.

Indeed, after years of intensive academic analysis, the issue has reached sufficient maturity for options to be envisaged and discussed. On this basis, and on the basis of a comprehensive impact assessment, the Commission will study the most feasible options and may propose legislation on the subject. The Green Paper and the public consultation that will last until January 2011 may be followed by a legislative proposal on the Common Frame of Reference in the course of 2011. The approach of the Commission is fully in line with the Stockholm Programme.

The Commission fully shares the opinion of the German Bundesrat that the European Union must take a coherent approach to **collective redress**. The Commission intends to establish a common European framework for collective redress which would ensure that any future proposal in this field fits well into the EU legal system and complies with the legal traditions of the 27 Member States. It is the purpose of the public consultation on collective redress, which

will be launched shortly, to identify common principles for collective redress in the national legal systems and to explore in which areas different forms of collective redress could have an added-value for improving the enforcement of EU legislation or for better protecting the rights of victims.

As to opt-out procedures, the Commission is aware that many Member States have concerns about the compatibility of such procedures with due process requirements, notably the right to be heard. The Commission can assure the German Bundesrat that any future EU initiative on collective redress will fully comply with Article 6 ECHR.

On the area of police cooperation

The Commission welcomes the Bundesrat's support for its initiatives in the area of information management and for a Police code including the codification of the main instruments of access to information, planned for 2014. The Commission is also pleased with the support of the Bundesrat for its initiatives in the area of crime prevention.

The Commission agrees on the importance of the fight against corruption in the EU and welcomes the Bundesrat's support in this respect. The Commission acknowledges that corruption remains a problem throughout the EU, be it in the public or in the private sector. There is currently no comprehensive EU mechanism to monitor compliance with existing international anti-corruption instruments and thus little effective pressure upon Member States to comply with these internationally agreed standards. Being aware of the need to make further progress in fighting corruption in all EU Member States and in line with the "The Stockholm programme", the Commission is preparing the adoption of an "anti-corruption package" in the spring of 2011. This package should include a reporting mechanism which allows monitoring progress in EU Member States in fighting corruption, a roadmap for the EU's accession to GRECO and an implementation report on the Framework Decision regarding the fight against corruption in the private sector.

As far as EURODAC is concerned, the priority for the Commission is to facilitate the agreement on the asylum package currently under negotiation in the European Parliament and in the Council with a view to meeting the 2012 deadline agreed upon by Heads of State and Governments in the Stockholm programme. The Commission *acknowledges* the importance of providing law enforcement authorities with access to information to perform its duties. The Commission is in the process of considering what would be the appropriate way and timing to allow such access. Access to law enforcement purposes to existing or future databases could for example be revisited in the framework of the feasibility study on EURODAC as a supporting tool for the entire Common European Asylum System foreseen for 2012, taking also into account the latest developments on the Internal Security Strategy.

The Commission takes the view that funding forms an important part of the internal security strategy. The Commission is currently undertaking a full, wide ranging review covering all aspects of EU spending which will, in turn, feed into the discussions on the next multi-annual financial framework. A thorough reflection is therefore being conducted on the objectives and future needs in the area of Home Affairs, as well as an assessment of existing and possible future financial instruments, including the creation of an Internal Security Fund.