Østre Landsret
Præsidenten

Den 13 AUG. 2009
J.nr. 40A-ØL-34-09
init. jni

Justitsministeriet
Civil- og Politiafdelingen
Det Internationale Kontor
Slotsholmsgade 10
1216 København K

Justitsministeriet har ved brev af 28. juli 2009 (Sagsnr. 2009-3060-0083) anmodet om en eventuel udtalelse vedrørende Kommissionens meddelelser om *"Et område med frihed, sikkerhed og retfærdighed i borgerens tjeneste"* og *"Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen"*

I den anledning skal jeg meddele, at meddelelserne ikke giver landsretten anledning til at fremkomme med bemærkninger.

Med venlig hilsen

Bent Carlsen

Ellen Busck Porsbo

Vestre Landsret
Præsidenten

Justitsministeriet
Slotsholmsgade 10
1216 København K

J.nr. 40A-VL-33-09
Den 12/08-2009

Justitsministeriet har i brev af 28. juli 2009 (Sagsnummer 2009-3060-0083) anmodet om en eventuel udtalelse om Kommissionens meddelelser om "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" og "Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen".

I den anledning skal jeg meddele, at landsretten ikke finder anledning til at fremkomme med bemærkninger.

Dette svar sendes efter anmodning elektronisk til jm@jm.dk.

Med venlig hilsen

Bjarne Christensen

Domstolsstyrelsen

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EAN-nr.5798000161184

J. nr. 2009-4101-0026-2
Sagsbeh. Johann Herzog
Dir.tlf.
Mail joh@domstolsstyrelsen.dk

27. august 2009

Høringssvar

Domstolsstyrelsen har den 28. juli 2009 modtaget Justitsministeriets høring over Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263.

Styrelsen har ingen bemærkninger hertil.

Med venlig hilsen

Johann Herzog

RIGSADVOKATEN

Jmt. modt.
- 2 SEP. 2009

Justitsministeriet
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Slotsholmsgade 10
1216 København K

DATO 1. september 2009

JOURNAL NR.
RA-2009-220-0022

BEDES ANFØRT VED SVARSKRIVELSER
SAGSBEHANDLER: AG

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Vedr. Deres sagsnummer 2009-3060-0083

Ved brev af 28. juli 2009 har Justitsministeriet anmodet om Rigsadvokatens eventuelle bemærkninger til EU-Kommissionens meddelelser om "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" samt " Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen".

I den anledning kan jeg oplyse, at Rigsadvokaten ikke har bemærkninger til EU-Kommissionens meddelelser.

Dette brev er også fremsendt per email.

På rigsadvokatens vegne

Alessandra Giraldi

RIGSPOLITIET

Just. Min.
1 SEP. 2009

POLITI

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J nr. 2009-071-210 / GAH 378
Sagsbehandler: GAH

31 AUG. 2009

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Ved skrivelse af 28. juli 2009 (sagsnr. 2009-3060-0083) har Justitsministeriet anmodet Rigspolitiet om en udtalelse vedrørende Kommissionens meddelelser om Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste og Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplan samt et grundnotat herom.

Det kan i den anledning oplyses, at meddelelserne og grundnotatet ikke giver Rigspolitiet anledning til bemærkninger.

Med venlig hilsen

Mogens Hendriksen
politimester

DATATILSYNET

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Sendt til: jm@jm.dk

16. september 2009

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Vedrørende Kommissionens oplæg til Stockholmprogrammet – Justitsministeriets j.nr. 2009-3060-0083

Ved e-post af 28. juli 2009 har Justitsministeriet anmodet om Datatilsynets eventuelle bemærkninger til Kommissionens meddelelser om "Retfærdighed, Frihed og Sikkerhed i EU siden 2005: evaluering af Haagprogrammet og handlingsplanen" (KOM(2009)263) og "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" (KOM(2009)262).

Som det fremgår af Kommissionens meddelelse om "Retfærdighed, Frihed og Sikkerhed i EU siden 2005: evaluering af Haagprogrammet og handlingsplanen", er der de seneste år gennemført en række initiativer, der indebærer en øget udveksling af personoplysninger. Disse initiativer har i flere tilfælde givet Datatilsynet anledning til at udtrykke betænkeligheder i forhold til beskyttelsen af de registrerede personers privatliv. Eksempelvis kan nævnes Rådets afgørelse om intensivering af det grænseoverskridende samarbejde, navnlig om bekæmpelse af terrorisme og grænseoverskridende kriminalitet (den såkaldte Prümafgørelse).

Datatilsynet finder det derfor positivt, at der i Kommissionens meddelelse om "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" sættes fokus på databeskyttelse, herunder også beskyttelse i forhold til tredjelande, jf. særligt afsnit 2.3. i meddelelsen.

Samtidig har Datatilsynet noteret sig, at der i meddelelsen omtales flere initiativer, der vil medføre en øget registrering og udveksling af personoplysninger. Der kan bl.a. henvises til indførelsen af et system for elektronisk registrering af indrejse til og udrejse fra EU- medlemsstaternes område samt programmer for registrerede rejsende, se afsnit 4.2.3.2., hvilket umiddelbart forekommer vidtgående.

Datatilsynet skal anmode om at blive hørt i forbindelse med konkrete forslag, som efter Justitsministeriets vurdering kan indeholde databeskyttelsesretlige problemstillinger.

Datatilsynet kan i øvrigt henvise til udtalelsen af 10. juli 2009 fra Den Europæiske Tilsynsførende for Databeskyttelse vedrørende Kommissionens meddelelse om "Et område med frihed, sikkerhed og retfærdighed i borgernes

tjeneste". I denne udtalelse findes en nærmere omtale af en række databeskyttelsesretlige problemstillinger. Udtalelsen vedlægges.

Desuden vedlægges en udtalelse af 14. januar 2009 fra Working Party on Police and Justice (WPPJ), der består af repræsentanter fra de europæiske datatilsyn.

Med venlig hilsen

Janni Christoffersen
Direktør

Bilag: Udtalelse af 10. juli 2009 fra Den Europæiske Tilsynsførende for Databeskyttelse
Udtalelse af 14. januar 2009 fra Working Party on Police and Justice (WPPJ)

EUROPEAN DATA PROTECTION SUPERVISOR

Opinion of the European Data Protection Supervisor

on the Communication from the Commission to the European Parliament and the Council on an Area of freedom, security and justice serving the citizen

THE EUROPEAN DATA PROTECTION SUPERVISOR,

Having regard to the Treaty establishing the European Community, and in particular its Article 286,

Having regard to the Charter of Fundamental Rights of the European Union, and in particular its Article 8,

Having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and in particular its Article 41,

HAS ADOPTED THE FOLLOWING OPINION:

I. Introduction

1. On 10 June 2009, the Commission adopted its Communication to the European Parliament and the Council on an Area of freedom, security and justice serving the citizen[1]. In accordance with Article 41 of Regulation (EC) No 45/2001, the EDPS presents this opinion.

2. Prior to the adoption of the Communication, the Commission informally consulted the EDPS on it, by letter of 19 May 2009. The EDPS responded to this consultation on 20 May 2009 by sending informal comments which intended to further improve the text of the Communication. Furthermore, the EDPS has actively contributed to the letter of 14 January 2009 of the Working Party on Police and Justice on the Multi-annual Programme in the area of freedom, security and justice.[2]

[1] COM (2009) 262 final ("the Communication")

[2] Not published. The Working Party on Police and Justice (WPPJ) was established by the European Conference of Data Protection Commissioners to prepare its positions in the area of law enforcement, and to act on its behalf in urgent matters.

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3. The Communication (paragraph 1) emphasises that the Union "needs a new multi-annual programme that builds on the progress made so far and learns the lessons of the current weaknesses in order to make an ambitious push forward. The new programme should define the priorities for the next five years". This multi-annual programme (already known as the 'Stockholm-programme') will be the follow up of the Tampere and Hague programmes which gave a strong political impetus to the Area of freedom, security and justice.

4. The Communication is meant to be the basis of this new multi-annual programme. The EDPS notes in this context that, even if multi-annual programmes are not as such binding instruments, they have a considerable impact on the policy that the institutions will develop in the area concerned, as many of the concrete legislative and non legislative actions will stem from the programme.

5. The Communication itself must be seen in this perspective. It is the next step in a debate which more or less started with two reports presented in June 2008 of the so called "Future Groups" set up by the Presidency of the Council to provide ideas: "Freedom, Security, Privacy - European Home Affairs in an open world"[3] and "Proposed Solutions for the Future EU Justice Programme"[4].

II. Main content of the opinion

6. The present opinion not only provides a reaction to the Communication, but is also a contribution of the EDPS to the more general debate on the future of the Area of freedom, security and justice which must result in a new strategic work programme (the Stockholm-programme) as announced by the Swedish Presidency of the EU[5]. This opinion will also deal with some consequences of the possible entry into force of the Lisbon Treaty.

7. After a specification of the main perspectives of the opinion in Part III, a general assessment of the Communication will be given in Part IV.

8. Part V deals with the question how to respond to the need for continued respect for the protection of privacy and personal data in a context of increasing exchanges of personal data. The focus will be on paragraph 2.3 of the Communication on Protection of personal data and privacy, and more in general the needs for further legislative and non legislative actions to improve the framework for data protection.

9. Part VI discusses the needs and possibilities for the storage, access and exchange of information as instruments for law enforcement, or in the words of the Communication, for "a Europe that protects". Paragraph 4 of the Communication contains a number of objectives on the flow of information and technological tools, in particular in paragraphs 4.1.2 (Controlling the flow of information), 4.1.3 (Mobilising the necessary technological tools) and 4.2.3.2 (Information Systems). The development of a European information model (in paragraph 4.1.2) can be seen as the most challenging proposal in this context. The EDPS opinion analyses this proposal in depth.

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[3] Council Doc Nr 11657/08. Hereinafter "the Home Affairs Report".
[4] Council Doc Nr 11549/08 ("the Justice Report").
[5] The Governments EU Work programme, www.regeringen.se.

10. Part VII briefly touches upon a specific topic within the Areas of freedom, security and justice with relevance for data protection, namely access to justice and e-Justice.

III. Perspectives of the opinion

11. This opinion will take the need for protection of fundamental rights as main angle for the analysis of the Communication and more in general the future of the Area of freedom, security and justice, as shaped by a new multi-annual programme. It will furthermore build on the contributions of the EDPS to the development of the EU policy in this area, mainly in his consultative role. Until now, the EDPS has adopted more than thirty opinions and comments about initiatives stemming from the Hague Programme which all can be found on the website of the EDPS.

12. In his assessment of the communication, the EDPS will take into account in particular the following four perspectives that are relevant for the future of the Area of freedom, security and justice. All these perspectives have a key role in the Communication as well.

13. The first perspective is the exponential growth of digital information on citizens as a result of evolving information and communication technologies[6]. The society is moving towards what is often called a 'surveillance society' in which every transaction and almost every move of the citizens is likely to create a digital record. The so-called 'internet of things' and 'ambient intelligence' are already developing fast through the use of RFID tags. Digitalised characteristics of the human body (biometrics) are increasingly used. This leads to an increasingly connected world in which public security organisations may have access to vast amounts of potentially useful information, which can directly affect the life of the persons concerned.

14. The second perspective is internationalisation. On the one hand, in the digital age data exchange is not bound by the external borders of the European Union, while on the other hand there is an increasing need of international cooperation in the whole range of EU activities in the Area of freedom, security and justice: fight against terrorism, police and judicial cooperation, civil justice and border control are only some examples.

15. The third perspective is the use of data for law enforcement purposes: recent threats to society, whether or not related to terrorism, have led to (demands for) more possibilities for law enforcement authorities to collect, store and exchange personal data. In many cases, private parties are actively involved, as *inter alia* shown by the data retention directive[7] and the various instruments relating to PNR[8].

16. The fourth perspective is free movement. The gradual development of an Area of freedom, security and justice requires that the internal borders and possible barriers for free movement within the area are further removed. New instruments in this area should in any event not reinstall barriers. Free movement comprises in the present

[6] The Home Affairs Report speaks in this context even of a "digital tsunami".

[7] Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ L 105, 13.4.2006, p. 54.

[8] See e.g. Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS) (2007 PNR Agreement), OJ L 204, 4.8.2007, p. 18 and Proposal for a Council framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes, COM (2007) 654 final.

context, on the one hand, the free movement of persons, and on the other hand, the free movement of (personal) data.

17. These four perspectives demonstrate that the context in which information is used is changing rapidly. In such a context, there can be no doubt about the importance of a strong mechanism for the protection of fundamental rights of the citizen, and in particular privacy and data protection. It is for these reasons that the EDPS chooses the need for protection as main angle for his analysis, as mentioned in point 11.

IV. General assessment

18. The Communication and the Stockholm Programme are set to specify the intentions in the EU for the coming five years, with effects possibly on an even longer term. The EDPS notes that the Communication is written in a so called 'Lisbon neutral'-manner. The EDPS understands fully why the Commission has taken this approach, but also regrets that the Communication could not fully take advantage of the additional possibilities offered by the Lisbon Treaty. The perspective of the Lisbon Treaty will be given more emphasis in this opinion.

19. The Communication builds on the results of the actions of the EU in the Area of freedom, security and justice in recent years. Those results can be characterised as event driven, with an emphasis on measures extending the powers of law enforcement authorities and intrusive for the citizen. This is certainly the case in the domains where personal data are intensively used and exchanged and that are therefore crucial for data protection. The results are event driven since external events, like 9/11 and the bombings in Madrid and London, gave a strong impetus to legislative activities. For instance, the transfer of passenger data to the United States can be seen as the consequence of 9/11[9], whereas the London bombings led to the data retention Directive 2006/24/EC[10]. The emphasis was on more intrusive measures, since the EU legislator focused on measures that facilitate data use and exchange whereas measures aiming to guarantee the protection of personal data were discussed with less urgency. The main protective measure that was adopted is Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters [11], after discussions of three years in Council. The result was a Council Framework Decision that is not fully satisfactory (see points 29-30).

20. The experience in recent years demonstrates that there is a need for reflection on the consequences for law enforcement authorities and for European citizens before new instruments are adopted. This reflection should duly take into account the costs for privacy and the effectiveness for law enforcement, in the first place when new instruments are proposed and discussed, but also after those instruments are implemented, by means of periodic reviews. Such reflection is also essential before a new multi-annual programme is to set out main initiatives for the near future.

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[9] The 2007 PNR Agreement mentioned in the previous footnote and its predecessors.

[10] Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ L 105, 13.4.2006, p. 54. Although the legal basis is Article 95 EC, it was an immediate reaction to the London bombings.

[11] Council framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters, OJ L 350, 30.12.2008, p. 60.

21. The EDPS is glad that the Communication recognises the protection of fundamental rights, and in particular the protection of personal data, as one of the key issues of the future of the Area of freedom, security and justice. Paragraph 2 of the Communication qualifies the EU as a unique area for the protection of fundamental rights based on common values. It is also good that the accession to the European Convention on Human Rights is mentioned as priority issue - even the first priority issue in the Communication. Accession is an important step forward in ensuring a harmonious and coherent system for the protection of fundamental rights. Last but not least, data protection has been given a prominent place in the Communication.

22. This focus of the Communication shows a strong intention to ensure the protection of the rights of the citizen and - by doing so - take a more balanced approach. Governments need appropriate instruments to guarantee the security of the citizen, but within our European society they have to fully respect the citizen's fundamental rights. Serving the citizen[12] requires a European Union that guards this balance.

23. In the view of the EDPS, the Communication takes the need for this balance very well into account, including the need for protection of personal data. It recognises the need for a change of emphasis. This is important since the policies in the Area of freedom, security and justice should not foster the gradual move towards a surveillance society. The EDPS expects the Council to take the same approach in the Stockholm Programme, also by acknowledging the orientations in point 25 hereinafter.

24. This is all the more important since the Area of freedom, security and justice is an area which "shapes the citizens' circumstances of life, in particular the private space of their own responsibility and of political and social security', which is protected by the fundamental rights", as very recently emphasised by the German Constitutional Court in its Judgement of 30 June 2009 relating to the Lisbon Treaty.[13]

25. The EDPS underlines that in such an area:
    - Information should be exchanged between the authorities of the Member States, including where relevant European bodies or databases, on the basis of adequate and effective mechanisms that fully respect the fundamental rights of the citizen and ensure mutual trust.
    - This requires not only availability of information, combined with mutual recognition of the legal systems of the Member States (and the EU), but also a harmonisation of standards of protection of information, for instance but not solely through a common framework of data protection.
    - These common standards should not only be applicable to situations with cross border dimensions. Mutual trust can only exist when the standards are solid, and are always respected, without a risk that they will not apply once the cross border dimension is not or no longer evident. Apart from this, especially when it comes to the use of information, differences between 'internal' and 'cross border'-data can not work in practice[14].

[12] See the title of the Communication.
[13] Press Release no. 72/2009 of 30 June 2009 of the Federal Constitutional Court of Germany, para 2 c).
[14] The EDPS has elaborated this last point in his Opinion of 19 December 2005 on the Proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters (COM (2005)475 final), OJ C 47, 25.02.2006, p. 27, paras 30-32.

V. Instruments for data protection

V.1 Towards a comprehensive data protection scheme

26. The EDPS endorses the strategic approach of giving data protection a prominent place in the Communication. Indeed, many initiatives in the Area of freedom, security and justice rely on the use of personal data, and good data protection is crucial for their success. Respect of privacy and data protection is not only a legal obligation with an increasing recognition at EU level, but is also an issue which is crucial for European citizens, as shown by the results of the Eurobarometer[15]. Moreover, restricting access to personal data is also crucial to ensure trust by law enforcement agencies.

27. Paragraph 2.3 of the Communication states that a comprehensive data protection scheme is needed that covers all areas of EU competence.[16] The EDPS fully supports this objective, independently of the entry into force of the Lisbon Treaty. He also notes that such a scheme does not necessarily mean one legal framework applying to all processing. Under the current treaties, the possibilities for adopting one, comprehensive legal framework applying to all processing are limited due to the pillar structure and due to the fact that - in the first pillar at least - protection of data processed by European institutions takes place on a separate legal basis (Article 286 EC). However, the EDPS points out that some improvements may be implemented by fully exploiting the possibilities offered by the current treaties, as already highlighted by the Commission in its Communication on "Implementing The Hague programme - The way forward"[17]. After the entry into force of the Lisbon Treaty, Article 16 TFEU will provide for the necessary legal basis for one comprehensive legal framework applying to all processing.

28. The EDPS notes that it is crucial - in any event - to ensure consistency within the legal framework for data protection where necessary through harmonisation and consolidation of the various legal instruments applicable in the area of freedom, security and justice.

Under the current treaties

29. A first step was recently taken through the adoption of Council Framework Decision 2008/977/JHA[18]. However, this legal instrument can not be qualified as a comprehensive framework, in essence because its provisions do not have general application. They do not apply to internal situations, when personal data originate from the Member State which uses them. Such a limitation is bound to diminish the added value of the Council Framework Decision, unless all the Member States would decide to include the internal situations in the national implementing legislation which is not likely to happen.

30. A second reason why the EDPS considers that in the long run the Council Framework Decision 2008/977/JHA does not contain a satisfactory data protection framework in an Area of freedom, security and justice is that several essential provisions are not in line with Directive 95/46/EC. Under the current treaties, a second step could be set by widening the scope and aligning the Council Framework Decision to Directive 95/46/EC.

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[15] Data Protection in the European Union - Citizens' perceptions - Analytical report, Flash Eurobarometer Series 225, Jan. 2008, ec.europa.eu/public_opinion/flash/fl_225_en.pdf.
[16] See also the priority issues of the Communication.
[17] COM(2006) 331 final of 28.6.2006.
[18] See footnote 11.

31. Another impetus to the realisation of a comprehensive data protection scheme could be given by establishing a clear and long-term vision. This vision could contain a global and coherent approach to define collection and exchanges of data - as well as the exploitation of existing databases - and at the same time the data protection guarantees. This vision should prevent useless overlapping and duplication of instruments (and thus of processing of personal data). It should also foster the consistency of the EU policies in this area as well as the trust about how public authorities handle citizen data. The EDPS recommends Council to announce the need for a clear and long-term vision in the Stockholm-programme.

32. A further recommendation of the EDPS is to evaluate and put into perspective the measures that have already been adopted in this area, their concrete implementation and their effectiveness. This evaluation should duly take into account the costs for privacy and the effectiveness for law enforcement, Should these evaluations prove that certain measures do not deliver the results envisaged or are not proportionate to the purposes pursued, the following steps should be considered:
    - As a first step, amending or repealing the measures in so far as they do not appear to be sufficiently justified in generating a concrete added value for law enforcement authorities and for European citizens
    - As a second step, assessing the possibilities for improving the application of the existing measures,
    - Only as a third step, proposing new legislative measures, if it is probable that those new measures are needed for the purposes envisaged. New instruments should only be adopted if they have a clear and concrete added value for law enforcement authorities and for European citizens.

    The EDPS recommends making a reference to a system of evaluation of existing measures in the Stockholm programme.

33. Last but not least, special emphasis should be put on the better implementation of existing safeguards, in line with the Commission Communication on the follow-up of the Work Programme for better implementation of the Data Protection Directive[19] and the suggestions made by the EDPS in his opinion on that Communication[20]. Unfortunately, in the third pillar the Commission lacks the possibility of starting infringement procedures.

Under the Lisbon Treaty

34. The Lisbon Treaty opens up for a genuine comprehensive data protection framework. Article 16.2 of the Treaty on the Functioning of the European Union requires from Council and European Parliament to lay down the rules relating to data protection by Union institutions, bodies, offices and agencies, by the Member States when carrying out activities which fall within the scope of Union law, and by private parties.

35. The EDPS understands the emphasis of the Communication on a comprehensive data protection scheme as an ambition of the Commission to propose a legal framework which applies to all processing activities. He fully endorses this ambition, which enhances the consistency of the system, ensures legal certainty and by doing so improves the protection. In particular, it would avoid in the future the difficulties of finding a dividing line between the pillars when data collected in the private sector for

[19] COM (2007) 87 final of 7 March 2007
[20] Opinion of 25 July 2007, OJ C 255, 27.10.2007, p. 1, in particular pt 30

commercial purposes are later on used for law enforcement purposes. This dividing line between the pillars does not fully reflect reality, as the important judgements of the Court of Justice in PNR[21] and in data retention[22] prove.

36. The EDPS suggests emphasising this rationale of a comprehensive data protection scheme in the Stockholm programme. It shows that such a scheme is not just a simple preference but is a necessity due to the changing practices in data use. He recommends including as a priority in the Stockholm-programme the need for a new legislative framework, *inter alia* replacing Council Framework Decision 2008/977/JHA.

37. The EDPS underlines that the notion of a comprehensive data protection scheme based on a general legal framework does not exclude the adoption of additional rules for data protection for the police and the judicial sector. Those additional rules could take into account the specific needs for law enforcement, as foreseen by Declaration 21, attached to the Lisbon Treaty.[23]

V.2 Restating data protection principles

38. The Communication notes the technological changes transforming the communication between individuals and public and private organisations. This calls according to the Commission for restating a number of basic principles of data protection.

39. The EDPS welcomes these intentions of the Communication. An evaluation of the effectiveness of these principles in the perspective of technological changes is extremely useful. As a first point, it is important to note that restating and reaffirming data protection principles must not always be directly related to technological developments. It could also be needed in the light of other perspectives, mentioned in Part III above, the internationalisation, the growing use of data for law enforcement and the free movement.

40. Moreover, in the view of the EDPS, this evaluation can be included in the public consultation that was announced by the Commission in the Conference "Personal data - more use, more protection?" on 19 and 20 May 2009. This public consultation could give valuable input.[24] The EDPS suggests emphasising the link between the intentions of the Communication in paragraph 2.3 and the public consultation on the future of data protection, by the Council in the text of the Stockholm-programme and by the Commission in its public statements on the consultation.

41. As an illustration of what such evaluation could cover, the following points are mentioned:
    - Personal data in the area of FSJ are likely to be of a specially sensitive nature, such as data relating to criminal convictions, police data and biometric data such as fingerprints and DNA profiles.

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[21] Judgment of the Court of 30 May 2006, European Parliament v Council of the European Union (C-317/04) and Commission of the European Communities (C-318/04), Joined cases C-317/04 and C-318/04, ECR [2006], P. I-4721.

[22] Judgment of the Court of 10 February 2009, Ireland v European Parliament and Council of the European Union, Case C-301/06, nyr.

[23] See Declaration 21 on the protection of personal data in the field of judicial cooperation in criminal matters and police cooperation, annexed to the final act of the intergovernmental conference that adopted the Treaty of Lisbon, O.J. 2008, C 115/345.

[24] The Article 29 Data Protection Working Party, in which the EDPS participates, has decided to work intensively on its contribution to this public consultation.

- Their processing may entail negative consequences for the data subjects, especially when considering the coercive powers of law enforcement authorities. Moreover, data monitoring and analysis is increasingly automated, quite often without human intervention. Technology allows use of databases with personal data for general searches (data mining, profiling etc). Legal obligations on which data processing is based should be clearly laid down.
- A cornerstone of data protection law is that personal data shall be collected for specified purposes and not used in a way incompatible with those purposes. Use for incompatible purposes should only be allowed insofar as it is laid down by law and necessary to pursue specific public interests, as those laid down by Article 8.2 ECHR.
- The need to respect the purpose limitation principle might have consequences for current trends in data use. Law enforcement uses data which were collected by private companies for commercial purposes, in the telecommunications, transport and financial sectors. Furthermore, large scale information systems are set up, for example in the areas of immigration and borders control. Moreover, interconnections and accesses to databases are allowed, thus expanding the purposes for which personal data were originally collected. A reflection on these current trends is needed, including any possible adjustments and/or additional safeguards, where required.
- In addition to the principles of data protection mentioned in the Communication, the evaluation should pay attention to the need for transparency of the processing, allowing the data subject to exercise his rights. Transparency is a specially difficult issue in the law enforcement area, in particular since transparency should be weighed against risks for the investigations.
- Solutions should be found for the exchanges with third countries.

42. This evaluation should furthermore focus on the possibilities for improving the effectiveness of the application of data protection principles. In this context, it could be useful to concentrate on instruments that can reinforce the responsibilities of the data controllers. These instruments must allow full accountability of the data controllers for data management. "Data governance" is a useful notion in this context. This covers all legal, technical and organisational means by which organisations ensure full responsibility over the way in which data are handled, such as planning and control, use of sound technology, adequate training of staff, compliance audits, etc.

V.3 Privacy aware technologies

43. The EDPS is glad that paragraph 2.3 of the Communication mentions privacy certification. In addition to this, reference could be made to 'privacy by design' and the need to identify 'Best Available Techniques' compliant to the data protection framework of the EU.

44. In the view of the EDPS, 'privacy by design' and privacy aware technologies, could be helpful tools for a better protection, as well as for a more effective use of information. The EDPS suggests two - not mutually exclusive - ways forward:
    - A privacy and data protection certification scheme[25] as option for builders and users of information systems, either or not supported by EU funding or EU legislation.

[25] An example of such a scheme is the European Privacy Seal (EuroPriSe).

- A legal obligation for builders and users of information systems to use systems which are in accordance with the principle of privacy by design. This might require enlarging the present scope of data protection law to make builders responsible for the information systems they develop.[26]

The EDPS suggests mentioning these possible ways forward in the Stockholm Programme.

V.4 External aspects

45. Another subject mentioned in the Communication is the development and promotion of international standards for data protection. Presently, many activities take place in view of the establishment of feasible standards for global application, for instance by the International Conference of Privacy and Data Protection Commissioners. In the near future, this might lead to an international agreement. The EDPS suggests that the Stockholm Programme supports these activities.

46. The Communication also mentions the conclusion of bilateral agreements, based on the progress already made together with the United States. The EDPS shares the need for a clear legal framework for transferring data to third countries, and thus welcomed the joint work of the EU and the US authorities in the High Level Contact Group on a possible transatlantic instrument on data protection, while calling for more clarity and attention to specific issues[27]. In this perspective, it is also interesting to note the ideas in the Home Affairs Report for a Euro-Atlantic Area of cooperation in freedom, security, justice on which, according to this report, the EU should decide by 2014. Such area would not be possible without proper guarantees on data protection.

47. According to the EDPS, the European standards for data protection, based on Council of Europe Convention 108 for the protection of individuals with regard to automatic processing of personal data[28] and the case law of the European Court of Justice and the European Court for Human Rights, should determine the level of protection in a general agreement with the United States on data protection and data exchange. Such a general agreement could be the basis for specific arrangements for the exchange of personal data. This is even more important in the light of the intention formulated in paragraph 4.2.1 of the Communication that the European Union must conclude police cooperation agreements wherever necessary.

48. The EDPS fully understands the need of enhancing international cooperation, in some cases also with countries not protecting fundamental rights. However[29], it is crucial to take into account that this international cooperation is likely to generate a large increase in the collection and international transfer of data. Therefore, it is essential that principles of fair and lawful processing - as well as principles of due process in general - apply to the collection and transfer of personal data across Union borders, and that personal data are transferred to third countries or international organisations only if an adequate level of protection or other appropriate safeguards are guaranteed by those third parties concerned.

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[26] Users of information are covered by data protection law, as data controllers or processors.

[27] See EDPS Opinion of 11 November 2008 on the Final Report by the EU-US High Level Contact Group on information sharing and privacy and personal data protection, O.J. C 128, 06.06.2009, p. 1

[28] ETS No. 108, 28.01.1981.

[29] See Letter EDPS of 28 November 2005 on the Commission communication on the external dimension of the Area of Freedom, Security and Justice available at the EDPS-website.

49. To conclude, the EDPS recommends emphasising in the Stockholm-programme the importance of general agreements with the United States and other third countries on data protection and data exchange, based on the level of protection guaranteed within the territory of the EU. In a broader perspective, the EDPS points at the importance of actively promoting the respect of fundamental rights, and in particular of data protection, in relation with third countries and with international organizations.[30] Furthermore, the Stockholm programme could mention the general notion that exchange of personal data with third countries requires an adequate level of protection or other appropriate safeguards in those third countries.

VI. The use of information

VI.1 Towards a European Information model

50. A better exchange of information is an essential policy goal for the European Union, in the Area of freedom, security and justice. Paragraph 4.1.2 of the Communication emphasises that security in the European Union depends on effective mechanisms for exchanging information between national authorities and other European players. This emphasis on information exchange is logical, in the absence of a European police force, a European criminal justice system and a European border control. Measures relating to information are therefore essential contributions of the European Union allowing the authorities of the Member States to address cross border crime in an effective way and to effectively protect the external borders. However, they do not only contribute to the security of the citizens but also to their freedom - the free movement of persons was mentioned before as a perspective of this opinion - and to justice.

51. It is precisely for these reasons that the principle of availability was introduced in the Hague Programme. It entails that information needed for the fight against crime should cross the internal borders of the EU without obstacles. Recent experiences show that it was difficult to implement this principle into legislative measures. The Commission proposal for a Council Framework Decision on the exchange of information under the principle of availability of 12 October 2005[31] was not accepted in the Council. The Member States were not ready to accept the consequences of the principle of availability to its full extent. Instead, more limited instruments[32] were adopted such as the Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime ("Prüm-decision)[33].

52. While the principle of availability was at the core of the Hague programme, the Commission now seems to take a more modest approach. It envisages further stimulating the exchange of information between authorities of the Member States by introducing the European information model. The Swedish EU-Presidency thinks in the same line.[34] It will present a proposal for a strategy for the exchange of

[30] The recent case law on terrorists' lists confirms that guarantees are needed - also in the relations with the United Nations - in order to ensure that counter-terrorism measures comply with EU standards on fundamental rights (Joined cases C-402/05 P and C-415/05 P, Kadi and Al Barakaat Foundation v. Council, judgment of 3 September 2008, nyr).

[31] COM (2005) 490 final.

[32] In the perspective of availability; the Prüm-Decision contains far reaching provisions for the use of biometric data (DNA and fingerprints).

[33] OJ L 210, 6.8.2008, p. 1.

[34] See The Governments EU Work programme cited in footnote 5, p. 23.

information. The Council already started its work on this ambitious project of a European Union Information Management Strategy, which is closely linked to the European information model. The EDPS notes these developments with great interest and underlines the attention that should be given in these projects to data protection elements.

A European information model and data protection

53. As a starting point, it should be emphasised that the future of the Area of freedom, security and justice should not be "technology-driven", in the sense that the almost limitless opportunities offered by new technologies should always be checked against relevant data protection principles and used only in so far as they comply with those principles.

54. The EDPS notes that the Communication presents the information model not only as a technical model: a powerful strategic analysis capacity and better gathering and processing of operational information. It also acknowledges that policy related aspects - like criteria for gathering, sharing and processing of information - should be taken into account, while complying with data protection principles.

55. Information technology and legal conditions are - and will continue to be - both essential. The EDPS welcomes the Communication that starts from the assumption that a European information model may not be construed on the basis of technical considerations. It is essential that information is gathered, shared and processed only on the basis of concrete needs for security and taking into account data protection principles. The EDPS also fully subscribes the need for defining a follow up mechanism for assessing how the exchange of information operates. He suggests that the Council further elaborates these elements in the Stockholm Programme.

56. In this context, the EDPS underlines that data protection, aiming to protect the citizen, should not be seen as hampering effective data management. It provides important tools to improve the storage, access and exchange of information. The rights of the data subject to be informed about which information concerning him or her is processed and to rectify incorrect information can also strengthen the accuracy of data in data management systems.

57. Data protection law has in essence the following consequences: if data are needed for a specific and legitimate purpose they can be used; if they are not needed for a well defined purpose, personal data should not be used. In the first case, it may well take additional measures to provide adequate safeguards.

58. The EDPS however is critical to the extent in which the Communication mentions the 'identification of future needs' as part of the information model. He emphasises that also in the future the purpose limitation principle should be guiding when building information systems[35]. It is one of the essential guarantees that the data protection system gives to the citizen: he must be able to know in advance for what purpose data relating to him are collected and that it will be used only for that purpose, notably in the future. This guarantee is even enshrined in Article 8 of the Charter of the Fundamental Rights of the Union. The purpose limitation principle allows exceptions - which are in particular relevant in the Area of freedom, security and justice - but those exceptions should not determine the construction of a system.

[35] See also point 41 above.

Choosing the right architecture

59. Choosing the right architecture for information exchange is the start of it all. The importance of proper information architectures is recognised in the Communication (paragraph 4.1.3) but unfortunately only in relation to interoperability.

60. The EDPS stresses another aspect: within the European information model, data protection requirements should be an integral part of all system development and should not just be seen as a necessary condition for the legality of a system[36]. Use should be made of the concepts of 'privacy by design' and need to identify 'Best Available Techniques'[37], as introduced in point 43 above. The European information model should build on these concepts. This means more concretely that information systems which are designed for purposes of public security should always be built in accordance with the principle of 'Privacy by design'. The EDPS recommends the Council to include these elements in the Stockholm Programme.

Interoperability of systems

61. The EDPS underlines that interoperability is not a purely technical issue but also has consequences for the protection of the citizen, in particular data protection. From the perspective of data protection, interoperability of systems, if done well, has clear advantages in terms of avoiding double storage. However, it is also obvious that making access to or exchange of data technically feasible becomes, in many cases, a powerful drive for 'de facto' acceding or exchanging these data. In other words, interoperability has particular risks of interconnection between databases having different purposes[38]. It can affect the strict limitations on the purpose of data bases.

62. In short, the mere fact that it is technically possible to exchange digital information between interoperable databases or to merge these databases does not justify an exception to the purpose limitation principle. Interoperability should in concrete cases be based on clear and careful policy choices. The EDPS suggests specifying this notion in the Stockholm Programme.

VI.2 The use of information collected for other purposes

63. The Communication does not explicitly address one of the most important tendencies of the recent years, namely the use for law enforcement purposes of data collected in the private sector for commercial purposes. This tendency does not only relate to the traffic data of electronic communications and the passenger data of individuals flying to (certain) third countries[39] but also focuses on the financial sector. An example is Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money

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[36] See "Guidelines and criteria for the development, implementation and use of Privacy Enhancing Security Technologies" developed in the PRISE project (www.prise.oeaw.ac.at).

[37] Best Available Techniques shall mean the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing in principle the basis for ITS applications and systems to be compliant with privacy, data protection and security requirement of the EU regulatory framework.

[38] See EDPS Comments on the Communication of the Commission on interoperability of European databases, 10 March 2006, available at http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2006/06-03-10_Interoperability_EN.pdf

[39] See e.g. point 15 above.

laundering and terrorist financing.[40] Another well known and much debated example concerns the processing of personal data by the Society for Worldwide Interbank Financial Telecommunication (SWIFT)[41] of data which are necessary for the purpose of the U.S. Treasury Department's Terrorist Finance Tracking Programme.

64. The EDPS considers that these tendencies require specific attention in the Stockholm Programme. They can be seen as derogations from the purpose limitation principle and are often very privacy-intrusive since the use of these data can reveal a lot about the behaviour of individuals. In each case where such measures are proposed, there must be very strong evidence that such an intrusive measure is needed. If this evidence is given, it must be ensured that rights of individuals are fully safeguarded.

65. According to the EDPS the use for law enforcement of personal data collected for commercial purposes should only be allowed under strict conditions, such as:
    - Data are only used for specifically defined purposes such as the fight against terrorism or serious crime, to be determined on a case by case basis.
    - Data are transferred through a 'push' rather than a 'pull' system.[42]
    - Requests for data should be proportionate, narrowly targeted and in principle based on suspicions on specific persons.
    - Routine searches, data mining and profiling should be avoided.
    - All use of the data for law enforcement purposes should be logged in order to allow effective control on the use, by the data subject exercising his rights, by data protection authorities and by the judiciary.

VI.3 Information systems and EU bodies

Information systems with or without centralised storage[43]

66. Over the last years, the number of information systems based on EU law has significantly grown within the Area of freedom, security and justice. Sometimes decisions are made to establish a system which entails centralised storage of data on the European level, in other cases the law only foresees exchange of information between national databases. The Schengen Information System is probably the best example of a system with centralised storage. Council Decision 2008/615/JHA (Prüm-decision)[44] is from the perspective of data protection the most significant example of a system without centralised storage since it foresees a massive exchange of biometric data between the authorities in the Member States.

67. The Communication illustrates that this tendency of creating new systems will continue. A first example, taken from paragraph 4.2.2 is an information system expanding the European Criminal Records Information System (ECRIS) to cover nationals of non EU countries. The Commission already commissioned a study on the European Index for Convicted Third Country Nationals (EICTCN), possibly leading to a centralised database. A second example is the exchange of information of

[40] OJ L 309, 25.11.2005, p. 15.
[41] See Opinion 10/2006 on the processing of personal data by the Society for Worldwide Interbank Financial Telecommunication (SWIFT) of the Article 29 Working Party.
[42] Under the 'push'-system the data controller sends the data on request ('pushes') to the law enforcement agency. Under the 'pull'-system the law enforcement agency has access tio the database of the controller and extracts ('pulls') information from this data base. Under the 'pull'-system it is more difficult for the controller to resume its responsibility.
[43] Centralised storage is in this context understood as storage on a central European level, whereas decentralised storage means storage on the level of the Member States.
[44] See footnote 33.

individuals in insolvency registers in other Member States, in the frame of e-Justice (paragraph 3.4.1 of the Communication) without centralised storage.

68. A decentralised system would have certain advantages from the perspective of data protection. It avoids double storage of data by the authority of the Member State and by the centralised system, the responsibility for the data is clear since the authority of the Member State will be the controller, and control by the judiciary and by data protection authorities can take place on Member States level. But this system also has weaknesses when data are exchanged with other jurisdictions, for instance in ensuring that information is kept up to date both in the country of origin and the country of destination and how to ensure effective control on both sides. It is even more complicated to ensure responsibility for the technical system for the exchange. These weaknesses can be overcome by choosing for a centralised system with a responsibility for European bodies at least for parts of the system (such as the technical infrastructure).

69. In this context, it would be useful to develop substantive criteria for the choice between centralised and decentralised systems, ensuring clear and careful policy choices in concrete cases. These criteria can contribute to the functioning of the systems themselves, as well as to the protection of the citizen's data. The EDPS suggests including the intention of developing such criteria in the Stockholm Programme.

Large scale information systems

70. Paragraph 4.2.3.2 of the Communication briefly discusses the future of the large scale information systems with an emphasis on the Schengen Information System (SIS) and the Visa Information System (VIS).

71. Paragraph 4.2.3.2 also mentions the establishment of an electronic system for entry to and exit from Member States' territory alongside registered traveller programmes. This system was announced earlier by the Commission as part of the 'borders package' on the initiative of Vice-President Frattini[45]. In his preliminary comments[46], the EDPS was fairly critical about this proposal because the need for such an intrusive system, on top of existing large scale systems was not sufficiently demonstrated. The EDPS does not notice any additional evidence of the need for such a system and therefore suggests to the Council not to mention this idea in the Stockholm programme.

72. In this context, the EDPS wishes to refer to his opinions on various initiatives in the field of EU information exchange[47] in which he made numerous suggestions and comments on the data protection implications of the use of the large databases at EU level. Amongst other issues, he paid particular attention to the need for strong and tailor-made safeguards that should be in place as well as the proportionality and necessity of impact assessments before any measures are proposed or undertaken in

[45] Communication of the Commission "Preparing the next steps in border management in the European Union", 13.02.2008, COM [2008], 69..

[46] Preliminary comments EDPS on three Communications from the Commission on border management (COM (2008) 69, COM (2008)68 and COM (2008)67), 3 March 2008.
http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2008/08-03-03_Comments_border_package_EN.pdf.

[47] In particular: Opinion of 23 March 2005 on the Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas, OJ C 181, 23.7.2005, p. 13, and Opinion of 19 October 2005 on three Proposals regarding the Second Generation Schengen Information System (SIS II), OJ C 91, 19.04.2006, p. 38.

this area. The EDPS has always advocated a right and data protection compliant balance between security requirements and the protection of privacy of individuals subject to the systems. He took the same position when acting as the supervisor of the central parts of the systems.

73. Furthermore, the EDPS takes this opportunity to emphasise the need for a consistent approach to the EU information exchange as a whole, in terms of legal, technical and supervisory consistency between the systems already in place and those which are being developed. Indeed, nowadays, more than before, there is a clear need for a courageous and comprehensive vision on how the EU information exchange and the future of large-scale information systems should look like. Only on the basis of such a vision, an electronic system for entry to and exit from Member States' territory could possibly be reconsidered.

74. The EDPS suggests referring in the Stockholm Programme to the intention to develop such a vision, which should include a reflection on the possible entry into force of the Lisbon Treaty and its implications on the systems based on a first and third pillar legal basis.

75. Finally, the Communication mentions the setting up of a new agency which according to the Communication should also become competent for the electronic entry and exit system. In the meantime, the Commission adopted a proposal for the setting up of such an agency.[48] The EDPS supports this proposal in principle since it can make the functioning of these systems, including data protection more effective. He will present an opinion on this proposal in due time.

Europol and Eurojust

76. The role of Europol is mentioned at several places in the Communication which emphasises as a priority issue that Europol must play a central role in coordination, exchange of information, and training of professionals. Equally, paragraph 4.2.2 of the Communication refers to the recent changes in the legal framework of cooperation between Eurojust and Europol and announces that work will continue on strengthening Eurojust, particularly as regards investigations into areas of cross-border organised crime. The EDPS fully supports these objectives, provided that safeguards for data protection are respected in an appropriate way.

77. In this context, the EDPS welcomes the new draft agreement recently reached between Europol and Eurojust[49], which aims at improving and enhancing mutual cooperation between the two bodies and providing for efficient exchange of information between them. This is a work in which efficient and effective data protection plays a crucial role.

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[48] Commission Proposal of 24 June 2009 for a Regulation of the European Parliament and of the Council establishing an Agency for the operational management of the Schengen Information System (SIS II), Visa Information System (VIS), EURODAC and other large-scale IT systems in the area of freedom, security and justice (COM(2009) 293/2).

[49] Draft agreement, approved by Council, and still to be signed by both parties. See Council register:
http://register.consilium.europa.eu/pdf/en/09/st10/st10019.en09.pdf
http://register.consilium.europa.eu/pdf/en/09/st10/st10107.en09.pdf

VI.4 The use of biometric data

78. The EDPS notes that the Communication does not address the issue of the increasing use of biometric data in different legal instruments of the European Union on the use of information exchange, including the instruments establishing the large-scale information systems. This is regrettable given that it is a matter of particular importance and sensitivity from the perspectives of data protection and privacy.

79. Although the EDPS recognises the general advantages of the use of biometrics, he has been constantly stressing the major impacts of the use of such data on individuals' rights and has been suggesting the insertion of stringent safeguards for the use of biometrics in each particular system. The recent judgment of the European Court of Human Rights in *S. and Marper v. the United Kingdom*[50] provides useful indications in this context, in particular on the justification and the limits of the use of biometric data. In particular the use of DNA information can reveal sensitive information about individuals, also taking into account that the technical possibilities of extracting information from DNA are still growing. In the case of large scale use of biometric data in information systems, there is also a problem due to inherent inaccuracies in the collection and comparison of biometric data. For these reasons, the EU legislator should show restraint with the use of these data.

80. Another recurring issue in recent years has been the use of fingerprints of children and of elderly people, because of the inherent imperfections of biometric systems for those age groups. The EDPS asked for an in-depth study in order to identify properly the accuracy of the systems[51]. He proposed an age limit of 14 years for children, unless this study proves otherwise. The EDPS recommends mentioning this issue in the Stockholm Programme.

81. Having said this, the EDPS suggests it would be useful to develop substantive criteria for the use of biometric data. Those criteria should ensure that the data are only used when necessary, adequate and proportionate, and when an explicit, specified and legitimate purpose has been demonstrated by the legislator. To be more specific, biometric data and in particular DNA data should not be used if the same effect can be reached by using other, less sensitive information.

VII. Access to justice and e-Justice

82. Technology will also be used as a tool for better judicial cooperation. In paragraph 3.4.1 of the Communication, e-Justice is presented as providing the citizens easier access to justice. It consists of a portal with information and videoconferences as part of the legal procedure. It furthermore opens up for on line legal procedures and it foresees the interconnection of national registers, such as insolvency registers. The EDPS notes that the Communication does not mention new initiatives about e-Justice but consolidates actions that are already set in motion. The EDPS is involved in some of these actions, as a follow up of the Opinion he issued on 19 December 2008 on the Communication from the Commission towards a European e-Justice Strategy.[52]

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[50] Joined appl. 30562/04 and 30566/04, S. and Marper v. United Kingdom, judgment of 4 Dec. 2008, ECHR nyr

[51] Opinion of 26 March 2008 on the proposal for a Regulation amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States, OJ C 2008, 06.08.2008, p.1.

[52] EDPS Opinion of 19 December 2008 on the Communication from the Commission towards a European e-Justice Strategy, OJ C 28, 06.06.2009, p. 13

83. e-Justice is an ambitious project that needs full support. It can effectively improve the justice system in Europe and the judicial protection of the citizen. It is a significant step forward towards a European Area of Justice. Keeping this positive appreciation in mind, a few remarks can be made:
    - The technological systems for e-Justice should be built in accordance with the principle of 'Privacy by design'. As said before, in relation to the European information model, choosing the right architecture is the start of it all.
    - The interconnection and interoperability of systems should respect the purpose limitation principle.
    - The responsibilities of the different actors should be precisely defined.
    - The consequences for individuals of the interconnection of national registers with delicate personal data, such as insolvency registers, should be analysed in advance.

VIII. Conclusions

84. The EDPS endorses the emphasis in the Communication on the protection of fundamental rights, and in particular the protection of personal data, as one of the key issues of the future of the Area of freedom, security and justice. In the view of the EDPS, the Communication rightly promotes a balance between the needs for appropriate instruments to guarantee the security of the citizen and the protection of their fundamental rights. It recognises that more emphasis should be given to the protection of personal data.

85. The EDPS fully supports paragraph 2.3 of the Communication that calls for a comprehensive data protection scheme covering all areas of EU competence, independently of the entry into force of the Lisbon Treaty. He recommends in this context:
    - to announce the need for a clear and long-term vision on such a comprehensive scheme, in the Stockholm-programme;
    - to evaluate the measures that have been adopted in this area, their concrete implementation and their effectiveness, taking into account the costs for privacy and the effectiveness for law enforcement;
    - to include as a priority in the Stockholm-programme, the need for a new legislative framework, *inter alia* replacing Council Framework Decision 2008/977/JHA.

86. The EDPS welcomes the intentions of the Commission to reaffirm the data protection principles, which must be connected to the public consultation announced by the Commission in the Conference "Personal data - more use, more protection?" on 19 and 20 May 2009. On substance, the EDPS emphasises the importance of the purpose limitation principle as a cornerstone of data protection law, and of focusing on the possibilities for improving the effectiveness of the application of data protection principles, by instruments that can reinforce the responsibilities of the data controllers.

87. 'Privacy by design' and privacy aware technologies, could be promoted by
    - A privacy and data protection certification scheme as option for builders and users of information systems;
    - A legal obligation for builders and users of information systems to use systems which are in accordance with the principle of privacy by design.

88. As to the external aspects of data protection, the EDPS recommends:
    - emphasising in the Stockholm-programme the importance of general agreements with the United States and other third countries on data protection and data exchange;
    - actively promoting the respect of fundamental rights, and in particular of data protection, in relation with third countries and with international organizations;
    - mentioning in the Stockholm programme that exchange of personal data with third countries requires an adequate level of protection or other appropriate safeguards in those third countries.

89. The EDPS notes the developments towards a European Union Information Management Strategy and a European information model with great interest and underlines the attention that should be given in these projects to data protection elements, to be further elaborated in the Stockholm programme. The architecture for information exchange should be based on 'privacy by design' and 'Best Available Techniques'.

90. The mere fact that it is technically possible to exchange digital information between interoperable databases or to merge these databases does not justify an exception to the purpose limitation principle. Interoperability should in concrete cases be based on clear and careful policy choices. The EDPS suggests specifying this notion in the Stockholm Programme.

91. The use for law enforcement of personal data collected for commercial purposes should, according to the EDPS, only be allowed under strict conditions, specified in point 65 of this opinion.

92. Other suggestions as to the use of personal information include:
    - Develop substantive criteria for the choice between centralised and decentralised systems, and include the intention of developing such criteria in the Stockholm Programme.
    - The establishment of an electronic system for entry to and exit from Member States' territory alongside registered travellers programmes should not be mentioned in the Stockholm programme.
    - Support for the strengthening of Europol and Eurojust and for the new agreement recently elaborated between Europol and Eurojust.
    - Develop substantive criteria for the use of biometric data, ensuring that the data are only used when necessary, adequate and proportionate, and when an explicit, specified and legitimate purpose has been demonstrated by the legislator. DNA data should not be used if the same effect can be reached by using other, less sensitive information.

93. The EDPS supports e-Justice and has made a few remarks on how to improve the project (see point 83).

Done in Brussels, 10 July 2009

Peter HUSTINX
European Data Protection Supervisor

GARANTE
PER LA PROTEZIONE
DEI DATI PERSONALI

IL PRESIDENTE

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CC:
Vice President Commissioner Jacques Barrot, Commissioner for Freedom, Security and Justice
Mr Jonathan Faull, Director General – DG Freedom, Security and Justice
Chairman and Members of the LIBE Committee of the European Parliament

Brussels, 14 January 2009

Re: Multi-Annual Programme in the area of Freedom, Security and Justice

Dear Sir,

The Working Party on Police and Justice (WPPJ) has taken note of the report of the High-Level Advisory Group on the Future of European Home Affairs Policy, `Freedom, Security and Privacy – European Home Affairs in an open world`, adopted in June 2008 and of the Council Conclusions of 24 October 2008 on the principle of convergence and architecture for internal security.

The WPPJ has also taken note of the public consultation the European Commission has launched to define future priorities relating to freedom, security and justice.

Discussions on the new Multi-Annual Programme in the area of freedom, security and justice, as a follow up to the Hague Programme, are clearly taking place and the WPPJ,

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mandated by the Conference of European Data Protection Authorities to monitor developments in the area of law enforcement, wishes to constructively contribute to these discussions.

Many measures intended to facilitate the exchange of law enforcement information have recently been adopted on a EU level without an adequate and prior evaluation of existing measures.

The WPPJ therefore calls for a comprehensive overview of all existing measures, including an overview of their implementation and the evaluation of these measures in order to assess their effectiveness in reaching the purposes they were developed for. The WPPJ also stresses the need for raising public awareness with regard to the existence of data processing and exchange mechanisms and data subjects rights.

The Working Party of Police and Justice urges the Czech Presidency, the Council, the European Commission and the European Parliament to take into account the issues raised by the WPPJ to ensure that the new Multi-Annual Programme in the area of Freedom, Security and Justice will respect and strengthen the civil liberties of citizens living in the EU.

I look forward to hearing from you.

Wishing you success in your Presidency.

Yours sincerely,

Francesco Pizzetti
Chairman of the WPPJ

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Contribution of the Working Party on Police and Justice to the new Multi-Annual Programme in the area of Freedom, Security and Justice

The Working Party on Police and Justice (WPPJ) has taken note of the report of the High-Level Advisory Group on the Future of European Home Affairs Policy, `Freedom, Security and Privacy – European Home Affairs in an open world`, adopted in June 2008 and of the Council Conclusions of 24 October 2008 on the principle of convergence and architecture for internal security.

The WPPJ has also taken note of the public consultation the European Commission has launched to define future priorities relating to freedom, security and justice.

Since discussions on a new Multi-Annual Programme in the area of freedom, security and justice, as a follow up to the Hague Programme, are taking place, the WPPJ, mandated by the Conference of European Data Protection Authorities to monitor developments in the area of law enforcement, wishes to constructively contribute to these discussions.

In the context of combating terrorism and improving internal security, the European Union in recent years has taken many initiatives to improve the effectiveness of law enforcement. Enhancing cross-border exchange of law enforcement information, and facilitating the sharing of data stored in national files have, in accordance with the principle of availability, been priorities in enhancing police and judicial cooperation.

Many of these initiatives made in the remit of security have affected privacy and data protection of European citizens and have shifted the balance between public security and the fundamental right of protection of personal data.

Monitoring these developments over recent years, the Conference of European Data Protection Authorities called on the Council, the European Commission, and the European Parliament to establish strong and harmonized data protection safeguards in the area of police and judicial cooperation.[1] The recent adoption of the Council Framework Decision on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters is partly going in that direction.

Consolidation and overview

[1] Krakow Declaration, 25-26 April 2005, Budapest Declaration, 24-25 April 2006, London Declaration, November 2006, Cyprus Declaration, 11 May 2007; WPPJ Statement, 17 October 2007.

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The WPPJ believes the future Multi-Annual Programme should focus on evaluation and, to the necessary extent, consolidation and implementation of existing measures. Measures in the remit of security that have been adopted in recent years, should first be put into practice before new initiatives are proposed.[2] After a certain period of practical experience, these measures need to be evaluated in order to assess their appropriateness and effectiveness. In this context, a comprehensive overview of all existing measures in the area of freedom, security and justice is imperative.[3] Furthermore, in the implementation of recently adopted measures the use of privacy enhancing technologies and privacy by design should be fostered.

Convergence

The WPPJ takes note of the concept of the principle of convergence, as introduced in the abovementioned report of the Future Group and in the Council Conclusions of 24 October 2008. The WPPJ stresses that in the coming years the focus should be on practical implementation of the principle and that, when assessing implementing measures under the principle of convergence, fundamental principles of data protection such as purpose limitation, proportionality and data minimization should always be respected.

Public discussion and awareness

The WPPJ endorses the call for a wider public discussion on privacy and security, as mentioned in the abovementioned report from the Future Group. The WPPJ believes an open public discussion could result in new solutions acceptable to governments, business and citizens and could possibly generate new suitable formats for privacy and safety deliverables.

Data protection rights

The introduction of various measures aimed at stimulating an increased exchange of law enforcement information between Member States throughout the EU is creating a

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[2] The third annual report on the implementation of the Hague Programme on achievements in Justice, Freedom and Security policies, also referred to as the Scoreboard, published by the European Commission on 2 July 2008, shows serious shortcomings in the level of implementation by the Member States.
[3] In the Common position on the use of the concept of availability in law enforcement, including the checklist for assessing proposals using availability of personal data as its basis (Larnaka, 11 May 2007), European Data Protection Authorities called for the evaluation of existing measures before the adoption of new measures allowing processing and exchange of law enforcement data.

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situation in which data relating to the same data subject may be processed in different Member States and/or by EU organizations for different purposes. This situation makes it extremely difficult for a data subject to be aware of such exchanges and thus to know where, why and by whom his or her data is processed, let alone to exercise his or her rights of access and/or correction. Different national laws and procedures, as well as language barriers only add to these obstacles.

In view of the vital importance for data subjects, it is necessary to create awareness of existing measures and rights and to invest in the creation of a common, effective "infrastructure" enabling individuals to exercise those rights and to receive remedies in different Member States.

Transparency and democratic control

Also, the WPPJ would like to stress the need for more transparency in the legislative process leading to the adoption of any initiative in the area of law enforcement cooperation and regardless of the adoption of the Lisbon Treaty, an enhanced democratic control by both national parliaments and the European Parliament in this area.

Transparency and enhanced democratic control can, amongst others, be achieved by making clear and understandable impact assessments with regard to the implications on fundamental human rights and the right to data protection, before any decision – whether legal or technical- is taken. Such assessments must also be compulsory when decisions are taken on Member States' initiatives. We would expect consultation with the relevant parties such as WPPJ to be an essential part of any impact assessment.

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DATO: 18. september 2009
J.NR.: 04-011202-09-0995
REF.: rmm-tfe

Høring vedrørende Kommissionens meddelelse om *"Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" og "Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen"* (sagsnr. 209-3060-0083)

Ved brev af 28. juli 2009 har Justitsministeriet anmodet Advokatrådet om en udtalelse vedrørende Kommissionens dokumenter KOM (2009) 262 og KOM (2009) 263. Høringen er vedlagt et grundnotat om dokumenterne udarbejdet af Justitsministeriet den 21. juli 2009.

Sagen er behandlet i CCBE (the Council of Bars and Law Societies in Europe), og CCBE's anbefalinger, samt programmet the Right Kind of Justice vedlægges.

Sagen har også været behandlet i Advokatrådets Strafferetsudvalg og Procesretsudvalg, og Advokatrådet har følgende bemærkninger, for så vidt angår de nationale aspekter af forslaget.

Advokatrådet har med tilfredshed noteret, at der i arbejdsprogrammet lægges op til et "borgernes Europa", og at programmet som sin første målsætning nævner sikring af borgernes rettigheder. En række af de ønskværdige tiltag, som programmet lægger op til, har Advokatrådet allerede påpeget i sit *Retssikkerhedsprogram*. Det gælder f.eks. behovet for forbedret kvalitet af den europæiske lovgivning og de retssikkerhedsmæssige aspekter af den moderne informationsteknologi.

Advokatrådet håber, at der vil blive holdt fast ved behovet for sikring af borgernes rettigheder i den kommende implementering af Stockholm-programmet, også selvom andre dele af programmet lægger op til en anden form for beskyttelse af borgerne, f.eks. beskyttelse mod terrorisme. Der kan i EU's arbejde med at sikre borgernes rettigheder, bl.a. i højere grad lægges vægt på mistænkte, sigtede, og tiltaltes rettigheder.

Advokatrådet hilser det meget velkomment, når der i grundnotatet peges på, at ny EU-lovgivning bør baseres på faktuel viden, bør ledsages af evalueringer over den faktiske virkning samt bør respektere principperne om proportionalitet og subsidiaritet. Det er holdninger, som Advokatrådet i adskillige høringssvar om EU-lovgivning har givet udtryk for, og som efter Advokatrådets opfattelse ikke altid har været tilstrækkeligt varetaget ved de senere års EU-lovgivning på strafferetsområdet.

Om de enkelte elementer i programmet skal Advokatrådet udtale følgende:

Ifølge oplæg til Stockholm-programmet bør princippet om gensidig anerkendelse på det strafferetlige område udvides til at omfatte foranstaltninger til beskyttelse af ofre og vidner samt eventuelt frakendelse af rettigheder.

Advokatrådet er enig i, at der kan være behov for en bedre beskyttelse af ofre og vidner. Advokatrådet understreger dog samtidigt, at "et borgernes Europa" også bør omfatte sigtede og tiltalte i straffesager. Advokatrådet anbefaler derfor en bemærkning i Stockholm-programmet om, at der ved indførelse af nye instrumenter til sikring af ofre og vidners rettigheder bør indgå konkrete forslag til, hvordan balancen mellem tiltalte og ofre eller vidner sikres.

Ifølge oplæg til Stockholm-programmet bør der stræbes mod en systematisk europæisk uddannelse af alle nye dommere og anklagere undervejs i deres uddannelsesforløb, og der bør i højere grad træffes ledsagende foranstaltninger i forbindelse med gennemførelsen af retsakterne, navnlig i forhold til de erhvervsmæssige udøvere, så der sker en forbedring og effektivisering af, hvordan retsvæsenets aktører konkret anvender EU-retten.

Advokatrådet er meget enig i, at et større kendskab til EU-retten for praktikere er efterstræbelsesværdigt. Det indgår også i Advokatrådets Retssikkerhedsprogram. Advokatrådet anbefaler, at der i denne del af Stockholm-programmet også overvejes medtaget spørgsmålet om uddannelse af forsvarsadvokater, med henblik på, at sikre, at der omvendt i EU er veluddannede advokater, til rådighed for behandlingen af straffesager . Det er vigtigt bl.a. af hensyn til princippet om equality of arms.

Ifølge oplæg til Stockholm-programmet bør den tiltaltes rettigheder styrkes ved indførelse af fælles processuelle minimumsgarantier mv.

Advokatrådet kan tilslutte sig indførelse af fælles processuelle minimumsgarantier i det omfang det ikke fører til forringelse af de danske retsgarantier.

Ifølge oplæg til Stockholm-programmet bør EU fremme internationalt retligt samarbejde bl.a. gennem udveksling af bedste praksis med tredjelande. EU bør etablere et netværk af bilaterale aftaler med EU's vigtigste handelspartnere om anerkendelse og fuldbyrdelse af retsafgørelser på det civil- og handelsretlige område. På det strafferetlige område bør navnlig aftaler om gensidig retshjælp og udlevering prioriteres.

Advokatrådet er enige i nødvendigheden af et stigende internationalt samarbejde. Advokatrådet vil dog samtidig understrege, at et sådant samarbejde er forbundet med en række retssikkerhedsmæssige problemer. Hvis EU vil arbejde for "et borgernes Europa", bør der indgå overvejelser om borgernes retsstilling i forbindelse med internationalt samarbejde mellem EU og tredjelande. Advokatrådet anbefaler derfor en erklæring om, at EU skal arbejde for at styrke den borgernes rettigheder i forbindelse med internationalt samarbejde mellem EU og tredjelande, herunder især i forbindelse med internationalt samarbejde i straffesager.

Ifølge oplæg til Stockholm-programmet bør EU indføre et system for bevisoptagelse med en europæisk bevisoptagelseskendelse, som automatisk anerkendes og kan anvendes overalt.

Henset til de store forskelle, der er mellem de europæiske landes strafferetsplejesystemer i EU er Advokatrådet stærk skeptisk over for en europæisk bevisoptagelseskendelse.

Andre muligheder, som ifølge forslaget til programmet bør overvejes, er anvendelsen af elektroniske beviser og afhøring af vidner ved hjælp af videokonferencer. Advokatrådet har tidligere givet udtrykt for et vist forbehold med hensyn til udbredt brug af videokonferencer i straffesager. I Danmark er der i foråret 2009 indført lovhjemmel til at afholde videokonferencer mod den sigtedes ønske i fristforlængelsessager. Advokatrådet er af den opfattelse, at der skal udvises tilbageholdenhed med videokonferencer, da retten til at blive stillet for en dommer er fundamental. Advokatrådets bekymringer gør sig i endnu højere grad gældende ved anvendelse af videoafhøringer på tværs af de nationale grænser.

Der fremgår af Stockholmprogrammet, at Eurojust bør styrkes yderligere, navnlig for så vidt angår inddragelse i efterforskning af grænseoverskridende organiseret kriminalitet. Endvidere bør informationsudvekslingen mellem strafferegistre (ECRIS) udvides til bl.a. at omfatte domme over statsborgere fra tredjelande.

Ifølge Stockholmprogrammet kan det vise sig nødvendigt at tage supplerende initiativer, eventuelt i form af retsakter, på grund af de hurtige teknologiske forandringer. Advokatrådet finder, at i det omfang, der udvikles til nye teknologiske muligheder for udveksling og registrering af oplysninger i EU og på tværs af landegrænser, bør EU være opmærksom på at opretholde en balance, der sikrer respekten for privatlivets fred.

Ifølge oplæg til Stockholm-programmet bør det overvejes at fremme pilotforsøg vedrørende alternativer til fængsling, idet fængsling har vist sig bl.a. at kunne føre til radikalisering. Advokatrådet kan principielt støtte brug af alternativer til varetægtsfængsling.

Ifølge oplæg til Stockholm-programmet bør det fortsat prioriteres at forbedre kvaliteten af den europæiske lovgivning, så man i videst muligt omfang undgår komplicerede regler, der er vanskelige at anvende. EU bør i den forbindelse fokusere på de områder, hvor der kan gives hensigtsmæssige løsninger på borgernes problemer. Det skal allerede under udarbejdelse af forslagene overvejes, hvilke virkninger forslagene kan få for borgerne og deres grundlæggende rettigheder, økonomien og miljøet.

Advokatrådet hilser i høj grad en forbedret lovkvalitet velkommen. Det er et af hovedpunkterne i Advokatrådets Retssikkerhedsprogram, og det gælder ikke mindst i forbindelse med EU-lovgivningen. Advokatrådet har i den forbindelse givet udtryk for et ønske om en styrket uddannelsesindsats for alle ansatte i ministerierne, der arbejder med lovforberedelse samt en styrkelse af Justitsministeriets lovafdeling. Det foreslås også i Retssikkerhedsprogrammet, at alle nye love bør indeholde et afsnit, der beskriver følgerne for retssikkerheden, hvis lovforslaget vedtages.

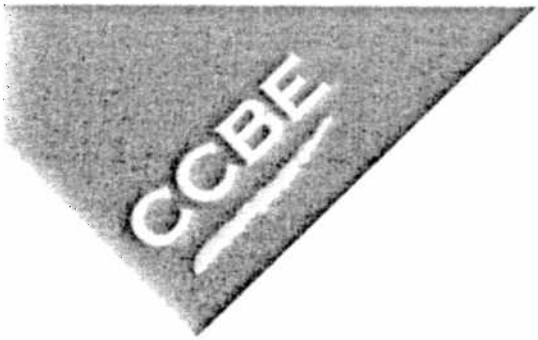
Advokatrådet

Ifølge oplæg til Stockholm-programmet skal det prioriteres højt at forbedre evalueringen af EU's foranstaltninger. Evalueringerne vil kunne forbedre udformningen af EU's politikker og være med til at vise borgerne merværdien af EU's indsats. For at opnå forbedringer er det nødvendigt, at der foreligger ajourførte, objektive, pålidelige og sammenlignelige data, og det bør bl.a. overvejes, at fastsætte mere bindende bestemmelser herom.

Set i lyset af Stockholm-programmets målsætning om sikring af borgernes rettigheder, foreslår Advokatrådet, at det udtrykkeligt skal fremgå af programmet, at der skal ske evaluering af EU-lovgivningens konsekvenser for så vidt angår borgernes grundlæggende rettigheder.

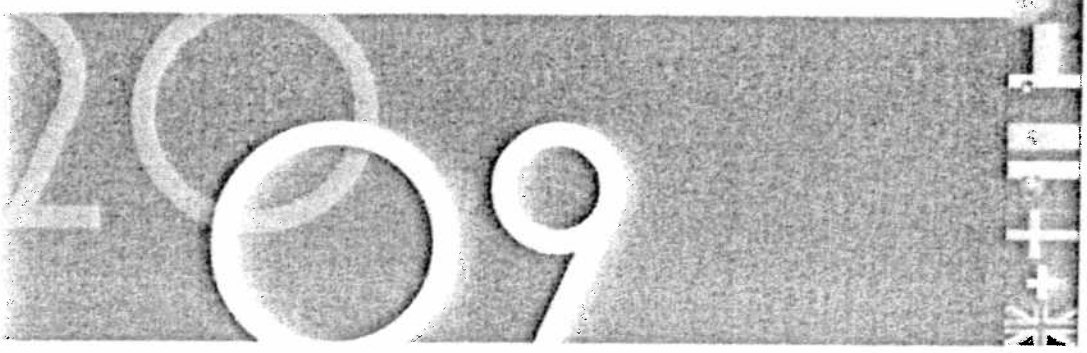
Med venlig hilsen

Henrik Rothe



THE RIGHT KIND OF JUSTICE FOR EUROPE

A CCBE manifesto around the European elections



This manifesto has been prepared for the European Parliament elections 2009 and, beyond that, for the new Commission which will be established during the Swedish Presidency of the European Union in the second half of 2009. The CCBE would like decision-makers to be aware of its concerns and recommendations concerning how justice is currently addressed at European level.

Our principal points are:

1. Finding the *right* organisation at the European Commission to deal with justice issues by setting up a DG Justice;
2. Guaranteeing the *right* of a client to consult a lawyer in full confidence;
3. Protecting the procedural *rights* of suspects and defendants in criminal proceedings in all Member States;
4. Striking the *right* balance between liberty and security in legislation against terrorism and organised crime.

All our proposals have as their aim to defend the fundamental legal principles upon which democracy and the rule of law are based. Europeans lawyers believe that these principles are at the heart of the European Union. Yet we also believe that they should never be taken for granted, especially when they clash with political priorities more focused on other issues, such as security.

It is a delicate exercise to strike the right balance between fundamental rights and security. We are concerned that current structures do not allow for proper co-ordination and coherence of policy in the justice sector, and current decisions do not always come down on the right side of the balance. We hope that our proposals will further the administration of justice and the rule of law in the EU.

Anne Birgitte Gammeljord
President of the CCBE

The Council of Bars and Law Societies in Europe (CCBE), thro

The CCBE is recognised as the voice of the European legal profession by the national bars and law societies on the one hand, and by the EU institutions on the other. It acts as the liaison between the EU and Europe's national bars and law societies. The CCBE has regular institutional contacts with those European Commission officials, and members and staff of the European Parliament, who deal with issues affecting the legal profession. Its organisation, its activities and its current strategy can be found at: **www.ccbe.eu**

1 Establishment of a separate DG Justice

We favour the establishment of a separate Directorate General for Justice at European level because it is vital to maintain separation of powers and to avoid conflicts of interest, and because there needs to be better co-ordination of legislation affecting the justice sector.

At present, justice is dealt with by DG Justice, Freedom and Security (JLS). It has the word 'justice' in its name, indeed as the first word. But JLS does not deal with justice alone. And there are other DGs which often have responsibility for justice issues[1].

Justice is one of the founding values of the European Union, and is an area of increasing activity of EU institutions. Without justice, there is no rule of law and no democracy, and so it is properly considered as one of the vital components of all correctly constituted societies. With the anticipated introduction of the Lisbon Treaty, work on justice will gain further importance in the EU for a number of reasons – for instance, because the Treaty offers greater impetus for judicial cooperation in criminal and civil matters, and sets an objective of adopting measures to facilitate access to justice. In addition, the need for unanimity in the justice area will be abolished, allowing more to be achieved

Against these values and this probable future, the CCBE believes that the current arrangements in the European Commission may lead to a justice deficit, and to a failure properly to serve the needs of European citizens. A DG Justice is a better vehicle to address these concerns. A single DG should have responsibility only for justice, without any conflicting responsibilities such as security, and deal with all matters of justice, and not just some of them, even if other DGs have subsidiary responsibilities on aspects of legislation. In addition, it should have an overall role for ensuring consistency and coherence in European legislation.

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Lawyers are guardians of fundamental rights, freedoms and liberties as well as of the rule of law principle. Lawyers thereby ensure the essential foundations of a democratic society. Everyone has the right to consult a lawyer in order to ask advice which can be provided on the basis that the client is assured that what is said to the lawyer remains confidential. This right is part of fundamental freedoms and rights, and derives from the principle of the rule of law; it serves the interest of judicial administration and in general of the State.

Denying this right leads to serious infringement of the rights of defendants. The CCBE has consistently pointed in the past to the dangers of such measures, for instance in its submissions to the European Commission on the fight against money-laundering[2] and in other regulatory moves which undermine citizens' rights, in the current Akzo Nobel appeal before the European Court of Justice on the rights of in-house counsel[3], and during the legislative passage of the Data Retention Directive[4]. Member States have the legal obligation, stemming from the European Convention on Human Rights, to guarantee and protect the confidentiality of relations between a lawyer and client, and this protection is not left at their discretion[5], not even in the context of anti money-laundering efforts[6].

Arguing for the protection of the client-lawyer relationship is not about defending the interests of a profession, but about guaranteeing the clients' rights and the administration of justice in general. That is why we consider it of the highest importance that the political leadership in the European Union understands the importance of unlimited protection of the lawyers' obligation of professional secrecy and confidentiality in the public interest.

3 Introduction of minimum common procedural safeguards for the rights of suspects and defendants in criminal proceedings

The current Hague programme, adopted on 5 November 2004, states: 'The further realisation of mutual recognition as the cornerstone of judicial cooperation implies the development of equivalent standards for procedural rights in criminal proceedings, based on the studies of the existing level of safeguards in Member States and with due respect for their legal traditions.'

The CCBE has been greatly disappointed by the lack of progress on such an important issue since the Tampere Conclusions in 1999 – 10 years ago. Furthermore, a proposal in this field has been called for by the European Parliament ever since the adoption of the proposal for a European Arrest Warrant in September 2001. The CCBE believes that the imbalance which currently exists at the European level between the rights of the prosecution and the rights of the defence threatens to undermine confidence in the principle of mutual recognition. The CCBE urges the Commission and Parliament to make every effort soon to re-open and promote this issue with the proper attention and urgency that it deserves.

Common minimum procedural rights include for this purpose the following: access to legal advice, both before the trial and at trial; access to free interpretation and translation; ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention; the right to communicate, inter alia, with consular authorities in the case of foreign suspects; and notifying suspected persons of their rights (by giving them a written "Letter of Rights").

Tip: All footnotes can be accessed by clicking here

4 Ensuring a better balance between liberty and security in legislation against terrorism and organised crime

Merely adopting new and more restrictive legislation will not in itself deal with the underlying causes of terrorism nor necessarily lead to more security. On the contrary, more laws passed in order to persuade public opinion that the government is active will have the effect of increasing insecurity by undermining citizens' rights. Accordingly, the CCBE urges Member States and the European institutions to comply fully with their European and international legal obligations to uphold human rights in all their actions against terrorism, so as to ensure security through the crucial protection of human rights and the rule of law.

The CCBE condemns terrorism and violence in 'any form'. Terrorism must be prevented and fought at national, European and international level with the firmest determination and through the rule of law. The CCBE would like to emphasize at the same time that it is the duty of all governments to preserve and promote fundamental rights, freedoms and liberties as well as the rule of law, which are the foundations of democratic societies. Undermining these fundamental values would go in the direction wished by those whose aim is to destroy democracy through the use of violence in its most inhuman form.

It can sometimes be difficult to find a balance between ensuring public security on the one hand, and preserving human rights and civil liberties on the other. However, both security and human rights can fully coexist and are absolutely necessary to prevent and fight terrorism. An example of the balance not being struck appropriately can be found in the failure to introduce minimum procedural safeguards, as mentioned above, despite the prior introduction of the European Arrest Warrant to speed extradition.

There are initiatives and declarations adopted in various international fora on this topic – in particular, by the European Parliament[8], the Council of Europe[9], the UN Security Council[10] and General Assembly[11] – which all stress the necessity to strike a fair balance between legitimate national security concerns and the protection of fundamental freedoms. The European Convention of Human Rights has proved to be an efficient and fair tool in keeping a proper balance within the European context. Both the Treaty and the jurisprudence have helped to maintain and develop the rule of law and the European system of protection of human rights. The CCBE would fully support efforts to improve the working of the current European system, including strengthening political support for its continued application, rather than introducing new legislation which undermines citizens' rights.

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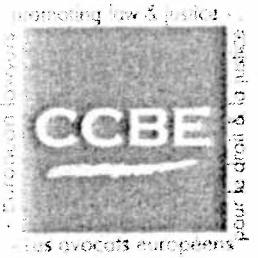

THE STOCKHOLM PROGRAMME (2010 TO 2014) ON THE FURTHER DEVELOPMENT OF THE UNION'S "AREA OF FREEDOM, SECURITY AND JUSTICE"

CCBE RECOMMENDATIONS

Conseil des barreaux européens - Council of Bars and Law Societies of Europe
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The Stockholm Programme (2010 to 2014) on the further development of the Union's "area of freedom, security and justice"

CCBE recommendations

The European Commission published its communication to the European Parliament and the EU Council on 'An area of freedom, security and justice serving the citizen' on 10 June 2009, in which it outlines its vision for the future Stockholm Programme and defines the priorities for the next five years.

The CCBE would like to respond to this communication and make its own recommendations to the drafters and implementers of the Stockholm Programme. In doing so, we build in part on our manifesto from March 2009, calling for 'The right kind of justice for Europe', in which we present our main concerns about the way that justice is currently addressed at EU level as well as suggestions for improvement in the future. We will, though, continue to follow developments in this important area and update our recommendations to decision-makers.

DG Justice

The Commission writes that "*the policies followed in the fields of justice and home affairs (...) should support each other and grow in consistency (and) fit smoothly together with the other policies of the Union.*" The Commission further writes that "*Priority must also be given to improving the quality of European legislation.*" The CCBE believes that consistency between policies is a sound objective, but not one that justifies concentrating under one and the same responsibility portfolios with divergent interests such as justice and home affairs. They should have their own and separately-led departments. The CCBE therefore calls for the establishment at the European Commission of a DG Justice that will be solely competent *for all* justice matters in order to ensure that justice is dealt with effectively and comprehensively. We believe that this is the best way to ensure coherence and consistency of legislation, certainly in the area of justice and with regard to fundamental rights and the principles of separation of powers already followed in most of the Member States. For instance, the CCBE is disappointed that the setting up of a mechanism of collective redress at EU level is not being considered within the future Stockholm Programme only because it is not dealt with by DG Justice, Freedom and Security, and although it is clearly a justice issue. This, in our view, is a good example of the negative effect of the absence of a DG Justice.

Professional secrecy and legal professional privilege

The Commission also indicates that, to improve the quality of legislation, "*thought must be given to the potential impact on citizens and their fundamental rights.*" The CCBE fully supports this statement, and would like to remind EU decision-makers that, when pursuing other objectives in legislation, however important, they must uphold the right of a citizen/client to consult a lawyer in full confidence as a cornerstone of the rule of law in a democratic society.

Human rights

The CCBE calls on the European institutions to ensure that Member States and the EU, when adopting legislation against terrorism and organised crime, comply with their European and international legal obligations to uphold human rights. The Union's accession to the European Convention on Human Rights would be important progress in that direction, as the Commission rightly points out. Further, the CCBE supports the necessary resources being allocated to the Fundamental Rights Agency, as well as the enlargement of its mandate and the proper participation of professional organisations in its structure.

Procedural guarantees in criminal proceedings

The CCBE attaches great importance to the protection of the procedural rights of suspects and defendants in criminal proceedings in all Member States. We emphasise that the rights of suspects and defendants have been marginalised for too long, and that Member States should now adopt *inter alia* the minimum procedural safeguards - as identified by the Commission - across the board. The basic minimum procedural safeguards identified by the Commission are: access to legal advice, both before the trial and at trial; access to free interpretation and translation; ensuring that persons who are not capable of understanding or following the proceedings receive appropriate attention; the right to communicate, *inter alia*, with consular authorities in the case of foreign suspects, and notifying suspected persons of their rights (by giving them a written "Letter of Rights"). These are basic rights that are immediately necessary in order for mutual recognition to succeed, and should be adopted as a whole package and not separately. The CCBE notes from the Commission communication that the work on common minimum guarantees could be extended to protection of the presumption of innocence and to pre-trial detention (duration and revision of the grounds for detention). In this respect, the CCBE welcomes any further measures that safeguard the rights of the defence.

E-Justice

The CCBE recognises the value of e-Justice as a tool to improve citizens' access to justice, and wishes to participate actively in this project. In this respect, the CCBE welcomes that the EU Council has already announced the creation of a 'legal practitioners' section of the portal. In developing e-Justice, however, the CCBE is concerned that there should be, among other issues, a proper balance between facilitating access to justice and ensuring respect for procedural guarantees and data protection. For instance, the use of video-conferencing in cross-border criminal cases and the linking of criminal databases raise some very delicate questions. The e-Justice portal should provide a single access point for finding a lawyer in Europe through national bar databases of lawyers, and it should offer professional e-identity management in order to allow lawyers to have secure e-transactions with official registries or judicial authorities in other Member States. This requires major technical and financial resources. The CCBE would therefore welcome specific financial programmes and projects to facilitate this project.

Cross-border users of legal acts

When considering ways to enhance legal security for cross-border users of legal acts, the differences in legal cultures and systems should be considered. The mechanisms for mutual recognition should benefit all citizens and residents of all Member States. Some Member States have notaries who can deliver authentic acts and lawyers and other professionals who can perform acts with equivalent legal effect. Some Member States do not have notaries. Moreover, some Member States have authentic acts that are not notarial acts. It is important for citizens and businesses that mutual recognition should not be restricted to authentic acts delivered by notaries but also cover analogous legal acts (deed, legal act by a lawyer or equivalent) which exist under national law. Otherwise, there would be discrimination against EU citizens and businesses exercising their freedom of choice to use alternatives to notaries, or not having access to notaries due to the absence of notaries in their Member State, as well as discrimination between legal professions.

Networks in the area of justice

The CCBE notes the Commission's call for "*(increased) opportunities for exchanges between professionals working in the justice system*", namely through the various networks supported by the EU. The Commission asserts that "*(...) the European civil and criminal law networks must be more actively involved in improving the effective application of EU law by all practitioners.*" The CCBE emphasises that lawyers should be included also in the European Judicial Network in criminal matters, from which they are currently excluded. The CCBE welcomes the Commission's intention to build on progress in the Justice Forum as an additional tool, and to improve the way it operates.

Training

The European Commission indicates that "*It is essential to step up training and make it systematic for all legal professions*". The CCBE would like to highlight that lawyers too should benefit from European-funded training as they are essential actors in the administration of justice and indeed the first persons

that users of justice contact. Lawyers should be on an equal footing with judges and prosecutors in initiatives to provide funding for training to legal practitioners in EU substantive and procedural law. Such training could be delivered through existing training bodies at the national and European levels. The organisation of such training, which should be optional, must fully respect the independence of lawyers in Europe. It is also important that training programmes for the accession and neighbouring countries of the European Union include lawyers and not focus only on judges and prosecutors. This should fall under what the Commission indicates as one of the five main tools for implementing the Stockholm Programme, i.e. that "*political priorities must be accompanied by adequate financial resources*".

Mutual recognition

Moves towards greater use of mutual recognition should be accompanied by increased mutual trust in the civil and criminal systems of the Member States. At present, there are mutual recognition instruments that are applied differently in different Member States due to mistrust in other legal systems. The CCBE welcomes the initiative to abolish the exequatur procedure in civil and commercial matters to facilitate enforcement, provided minimum standards of procedural safeguards for the defendants in cross-border cases are defined, such as minimum standards relating to proper service of judgments and judicial documents and a process of verification to ensure the judgment is a valid one. Regarding mutual recognition of disqualification judgements, the CCBE has concerns – similar to those with linking criminal databases above – about privacy, access and human rights issues.

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11. september 2009

Sagsnr. 209-3060-0083 – Høring vedrørende Kommissionens meddelelse om *"Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" og "Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen"*

Ved brev af 28. juli 2009 har Justitsministeriet anmodet Landsforeningen af Forsvarsadvokater, om en udtalelse om Kommissionens dokumenter KOM (2009) 262 og KOM (2009) 263, vedlagt et af Justitsministeriet den 21. juli 2009 udarbejdet grundnotat vedrørende de pågældende to meddelelser fra Kommissionen. Sagen har været behandlet i Landsforeningens bestyrelse, der herefter kan udtale følgende:

På Det Europæiske Råds møde i Bruxelles i november 2004, blev Haag-programmet til styrkelse af frihed, sikkerhed og retfærdighed i EU vedtaget. Haag-programmet udløber den 31. december 2009. Vedtagelsen af Haag-programmet var en opfølgning på Tammerfors-programmet fra 1999, der var det første flerårige arbejdsprogram indenfor retlige og indre anliggender.

Kommissionen har som oplæg til et nyt arbejdsprogram – det såkaldte "Stockholm-program" - afgivet to meddelelser af 15. juni 2009, KOM (2009) 262 og 263.

Kommissionens meddelelser, har over sommeren 2009 dannet grundlag for drøftelser i Rådet og med inddragelse af Europaparlamentet. Det forventes, at udkast til selve arbejdsprogrammet, som mere præcist vil fastlægge den fremtidige indsats indenfor retlige og indre anliggender i perioden 2010-2014 vil blive fremlagt i løbet af efteråret 2009, med henblik på vedtagelse i Det Europæiske Råd i december 2009.

Landsforeningens efterfølgende bemærkninger er alene afgivet i forhold til de strafferetlige emnekredse og Landsforeningen har således ikke fundet det relevant at kommentere i relation til de civilretlige emnekredse.

Overordnet set søger Kommissionens to meddelelser at sammenfatte og evaluere resultatet af de initiativer der er blevet taget siden 1999. Kommissionen ønsker på denne baggrund, at Det Europæiske Råd efter en tilbundsgående debat med Europaparlamentet, inden udgangen af 2009, er i stand til at vedtage et "ambitiøst program" på grundlag af meddelelserne.

I afventning heraf, finder Landsforeningen dog anledning til at fremhæve følgende områder:

Det anføres i **KOM (2009) 263, afsnit V.3. Forbedret brug af evaluering**, at *"Borgerne forventer at se resultater af EU's politikker. Der er blevet vedtaget mange instrumenter og oprettet mange agenturer inden for rammerne af Haagprogrammet. I mange tilfælde er det for tidligt at vurdere deres effektivitet, hvad angår konkrete resultater. Det er fortsat svært at evaluere de foranstaltninger, der er truffet i forbindelse*

med bekæmpelse af organiseret kriminalitet og med politi- og toldsamarbejdet samt på det strafferetlige område, da medlemsstaterne ikke formelt er forpligtet til at rapportere, hvor langt de er nået med gennemførelsen."

Landsforeningen kan i det hele tilslutte sig bemærkningerne om, at der indenfor det strafferetlige samarbejde i EU foretages alt for få, for at sige faktisk ingen, effektiv evaluering af de tiltag, der har været gennemført siden Tammersfors-programmet og efter 11. september 2001. Det er Landsforeningens generelle opfattelse, at der i lyset af begivenhederne i september 2001 og med generel henvisning til terrorbekæmpelse og forebyggelse, er blevet indført en lang række restriktioner, regler og værktøjer, der i dag er blevet udbredt til at gælde selv for bagatelagtig kriminalitet. Det er Landsforeningens opfattelse, at disse tendenser på mange områder i højere grad har svækket EU-borgernes rettigheder end de reelt har skabt sikkerhed for EU-borgerne.

Landsforeningen har i den forbindelse hæftet sig ved bemærkningerne i den samme meddelelse **afsnit III.3.1 Retligt samarbejde i kriminalsager**, hvor Kommissionen anfører, at *"Den europæiske arrestordre har i væsentlig grad forenklet proceduren og afkortet den tid, det tager, for at få udleveret kriminelle. Sager, der blev behandlet inden for rammerne af den gamle udleveringsprocedure, tog ofte mere end et år. Nu tager de mellem 11 dage og 6 uger. I 2007 blev der registreret 2667 udleveringer som følge af anvendelsen af den europæiske arrestordre, og i 2005 blev den anvendt til at sikre, at en af bombemændene i London hurtigt blev sendt tilbage til Det Forenede Kongerige fra Italien."*

Landsforeningen finder det generelt uheldigt, at betegnelsen "kriminelle", anvendes i forbindelse med omtale af arrestordren. Som bekendt finder arrestordren anvendelse, også for personer der er sigtede, medens sprogbrugen "kriminelle" synes at bortse fra, at de pågældende personer kunne være uskyldige. Det er fortsat væsentligt at fastholde uskyldsformodningsreglen, også i sager vedrørende Den Europæiske Arrestordre og Landsforeningen vil derfor finde det – i lyset af det også ovenfor af Kommissionen anførte om evaluering – væsentligt og betydningsfuldt, om der blev foretaget en nøje evaluering og analysering af de pågældende udleveringssager, herunder, hvilke sager, der måtte være endt med domfældelse, respektivt frifindelse, herunder kortvarige frihedsstraffe eller andre retsfølger, herunder betingede domme, samt sagsbehandlingstider fra udlevering til dom.

Landsforeningen bemærker ligeledes, at arrestordren, der også primært blev gennemført i lyset af terrorbekæmpelsen, tilsyneladende kun i de pågældende år, er blevet anvendt i et tilfælde, nemlig i 2005, ifølge sit direkte formål.

Det anføres i Kommissionens meddelelse, **KOM (2009) 263, afsnit III.3.3 Gensidig anerkendelse, i relation til gennemførelsen af EU-strategien og handlingsplanen for e-justice,** at *"Et effektivt samarbejde begynder med en hensigtsmæssig uddannelse af dem, der arbejder i marken. Kommissionen har prioriteret finansieringen af undersøgelser på det retlige område samt uddannelsesprogrammer og udvekslinger for ansatte i retsvæsenet. Alene i 2007 var 400 dommere og anklagere omfattet af udvekslingsprogrammer."*

Tilsvarende anføres det i Kommissionens meddelelse, **KOM (2009) 262, afsnit 3.2. Styrkelse af den gensidige tillid**, at *"Det er afgørende, at der sker en øget og systematisk indsats for at* ***uddanne*** *alle aktører inden for retsvæsenet, herunder ved forvaltningsdomstolene. I løbet af det flerårige program bør der stræbes mod en systematisk europæisk uddannelse af alle nye dommere og anklagere undervejs i deres uddannelsesforløb, idet mindst halvdelen af dommere og anklagere i EU bør have fulgt en uddannelse i EU-forhold eller have deltaget i en udveksling med en anden stat. Det er i første række medlemsstaterne, der er ansvarlige for dette område, men EU bør støtte deres indsats finansielt. Det Europæiske Netværk for Uddannelse af Dommere og Anklagere (EJTN) bør styrkes og have en struktur og midler, der står mål med disse ambitioner. ..... Der bør systematisk ske EU-uddannelse af alle nye dommere og anklagere undervejs i deres uddannelsesforløb."*

Landsforeningen bemærker, at det ikke fremgår af det anførte, hvorvidt Kommissionen finder, at uddannelsesforløbet skal gennemføres som en fælles uddannelse for dommere og anklagere. Såfremt det er tilfældet, vil Landsforeningen advare herimod, idet en fælles uddannelse ikke vil være forenelig med den helt nødvendige forudsætning om adskillelse mellem den udøvende og den dømmende magt. Hvis alle fremtidige dommere og anklagere i EU har gennemført samme fælles efteruddannelse, målrettet deres karriereforløb, synes dette tillige at være en skævvridning i forhold til den helt naturlige tredjepart i det strafferetlige system, forsvareren, på vegne sigtede og tiltalte.

Landsforeningen finder, at EU i helt samme omfang som EU agter at finansiere efteruddannelse for dommere og anklagere, bør finansiere og medvirke til efteruddannelse af forsvarere, med henblik på at sikre den nødvendige styrkelse af den gensidige tillid. Et sådant synspunkt synes tillige også at være forankret i kerneområdet for Equality of Arms. Landsforeningen vil opfordre til, at Justitsministeriet i samarbejde med Det Danske Advokatsamfund via Den Fælles Europæiske Advokatorganisation CCBE overfor Kommissionen tager initiativer på dette område.

Kommissionen anfører i meddelelsen **KOM (2009) 262, afsnit 1.2.2. Strafferet, der tjener til borgernes beskyttelse**, at *"Når det drejer sig om grænseoverskridende kriminalitet, bør den retlige indsats ikke hindres af forskelle mellem medlemsstaternes retssystemer."*

Landsforeningen kan ikke tiltræde dette synspunkt. Så længe de nationale staters nationale retssystemer, er de gældende retssystemer inden for EU, og der ikke foreligger et fælles EU-retssystem overnationalt, må der nødvendigvis tåles forskelle i, hvad der betegnes som den "retlige indsats", men som angiveligt er en følge af det enkelte lands nationale retssystem.

Landsforeningen er således betænkelig ved hensigterne med hensyn til at indføre et "fyldestgørende system for bevisoptagelse i grænseoverskridende sager", ved hjælp af "en egentlig europæisk bevisoptagelseskendelse". De nationale straffeprocessuelle regler, der gælder for bevisførelsen, forudsætter naturligt, at bevisoptagelsen finder sted på en måde, der er overensstemmende med den efterfølgende værdi beviset kan tillægges i det nationale retssystem.

I samme meddelelse anfører Kommissionen, under afsnittet **1.3. Fælles mål, ad) Økonomisk Kriminalitet**, at *"Skattesvig og privat korruption bør i højere grad straffes. På de finansielle markeder bør en tidlig registrering af svigagtig adfærd i form af markedsmisbrug (brug af insiderviden og markedsmanipulering) og finansiel uredelighed forbedres. I givet fald bør der fastsættes strafferetlige sanktioner, navnlig for de implicerede juridiske personer."*

Landsforeningen bemærker, at det forekommer ikke klart, hvad der hermed sigtes til. Landsforeningen finder, at spørgsmålet om strafniveauet og at den anvendte straf tillige baserer sig på kulturelle forskelle samt på regler i forhold til benådning, prøveløsladelse, afsoningsforhold m.v. Betegnelsen "svigagtig adfærd", forudsætter at der foreligger en skyldvurdering, og det er derfor ikke klart, hvad der sigtes til, med ordene "en tidlig registrering". Landsforeningen forudsætter at der finder en registrering sted i forbindelse med anmeldelse og en senere opdatering i forbindelse med dom.

Landsforeningen finder afslutningsvis grundlag for at bemærke, at den udbredte udveksling af personfølsomme oplysninger ikke modsvares af tilstrækkelige beskyttelsesforanstaltninger og at den gensidige anerkendelse af retsafgørelser ikke giver sikkerhed for, at personer ikke bliver dømt med urette i et andet land. Landsforeningen finder anledning til at bemærke, at evaluering af de igangsatte og tilvejebragte muligheder bør tillægges højere prioritet end tilvejebringelse af nye tiltag.

Henrik Stagetorn
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Cc: Henrik Saugmandsgaard Øe (FS); Bent Bagge (FS)
Emne: SV: Høring over Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263

Forbrugerombudsmanden har ingen bemærkninger til Kommissionens meddelelser om "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" og "Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen", jf. KOM(2009) 262 og KOM(2009) 263

Med venlig hilsen
På Forbrugerombudsmandens vegne

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Se venligst vedhæftede.

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Forbrugerstyrelsen har ingen bemærkninger til høring over meddelelse KOM(2009) 262 og KOM(2009) 263.

Venlig hilsen

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Til: post@oestrelandsret.dk; post@vestrelandsret.dk; post@shret.dk; holbaek@domstold.k; viborg@domstol.dk; helsingor@domstol.dk; svendborg@domstol.dk; naestved@domstol.dk; nykobing@domstol.dk; lyngby@domstol.dk; kolding@domstol.dk; horsens@domstol.dk; holstebro@domstol.dk; hjorring@domstol.dk; herning@domstol.dk; glostrup@domstol.dk; frederiksberg@domstol.dk; bornholm@domstol.dk; esbjerg@domstol.dk; lyngby@domstol.dk; randers@domstol.dk; hillerod@domstol.dk; odense@domstol.dk; aalborg@domstol.dk; aarhus@domstol.dk; roskilde@domstol.dk; post@procesbevillingsnaevnet.dk; Domstolsstyrelsen; Jørgen Lougart (Dommerforeningen); jar@dommerfm.dk; dankau@mail.dk; hk@hk.dk; Rigsadvokaten; gal@ankl.dk; politi@politi.dk; mail@politiforbundet.dk; Dansk Told & Skatteforbund; $Direktoratet for Kriminalforsorgen; $Erstatningsnævnet (954Erstatningsnævnet); dt@datatilsynet.dk; Advokatrådet; mail@danskeadvokater.dk; er@homannlaw.dk; info@advokatinkasso.dk; adm@nodeco.dk; office@voldgiftsinstituttet.dk; redaktion@voldgiftsforeningen.dk; voldgift@voldgift.dk; Amnesty International; Institut for Menneskerettigheder; info@drk.dk; bjorn.elmquist@advokathca.dk; post@retssikkerhedsfonden.dk; redbarnet@redbarnet.dk; brd@brd.dk; bsf@boernesagen.dk; bv@bornvilkar.dk; rigshospitalet@rh.regionh.dk; dcism@dcism.dk; kvb@vfcudsatte.dk; mail@joan-soestrene.dk; info@redeninternational.dk; voldsofre@voldsofre.dk; sekretariat@lokk.dk; mail@aktivekvinder.dk; nationalbanken@nationalbanken.dk; da@da.dk; di@di.dk; hoeringssager@danskerhverv.com; info@shipowners.dk; dansk-it@dansk-it.dk; itb@itb.dk; post@teleindu.dk; hfa@ac.dk; ac@ac.dk; ae@aeraadet.dk; 3f@3f.dk; lo@lo.dk; 1 - FS Forbrugerombudsmanden (FS); 1 - FS Forbrugerstyrelsens Officielle Postkasse; hoeringer@fbr.dk; daf@aktiveforbrugere.dk; dsk@dsk.dk; post@finansogleasing.dk; mail@finansraadet.dk; sek@fanke.dk; fp@forsikringogpension.dk; frr@frr.dk; fsr@fsr.dk; kontakt@fdih.net; horesta@horesta.dk; hvr@hvr.dk; mail@realkreditforeningen.dk; rkr@rkr.dk; regioner@regioner.dk; kl@kl.dk; jurfak@jur.ku.dk; jura@au.dk; law@law.aau.dk; law@sam.sdu.dk; pan.jur@cbs.dk; cita@asb.dk
Cc: EJOURDet Internationale Kontor (951s12)
Emne: Høring over Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263

Se venligst vedhæftede.

Red Barnet
Save the Children Denmark

Justitsministeriet
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jm@jm.dk

15. September 2009

VEDRØRENDE HØRING OM KOMMISSIONENS MEDDELELSE OM "ET OMRÅDE MED FRIHED, SIKKERHED OG RETFÆRDIGHED I BORGERNES TJENESTE" – SAGSNR. 2009-3060-0083

Red Barnet takker for muligheden for at komme med anbefalinger til Kommissionens prioriteter for det kommende program for EU's retspolitik, Stockholm-programmet.

Vi noterer os, at Integrationsministeriet har foretaget en særskilt høring over de dele af Kommissionens meddelelser, der hører under Integrationsministeriets ansvarsområde. Derfor ligger vi i dette svar størst vægt på de områder, der ikke er knyttet til indvandrings og asylpolitik. De aspekter af retspolitikken, der vedrører børn, går dog ofte på tværs af ansvarsfordelingen ministerierne i mellem i Danmark og derfor har vi fundet det nødvendigt at berøre områder, der i hvert fald delvist hører under Integrationsministeriets ansvarsområde i Danmark.

Red Barnet anerkender EU's vigtige rolle i at fremme og sikre børns rettigheder gennem EU's politikker. Vi mener derfor, at EU specifikt bør overveje, hvorledes alle tiltag, der kan få indflydelse på børns liv – og særligt på udsatte børns liv, sikrer børns ret til beskyttelse.

Derfor anerkender vi også, at kommissionen i meddelelsen klart understreger behovet for konsekvent at overveje børns rettigheder og specifikt nævner de grundlæggende principper i børns rettigheder. Vi anerkender ligeledes, at kommissionen giver særlig opmærksomhed til udsatte børn.

På denne positive baggrund vil Red Barnet gerne fremsætte følgende mere specifikke anbefalinger til områder, hvor vi mener Stockholm-programmet vil kunne få en reel og positiv betydning for børns liv. Anbefalinger, som vi mener, Danmark bør arbejde for at få med i det kommende program.

Overordnede anbefalinger:

- *Initiativer indenfor området retfærdighed, frihed og sikkerhed bør respektere og arbejde i henhold til FN's børnekonvention og EU's Charter om Grundlæggende Rettigheder.*

- *EU's strategi for Barnets Rettigheder bør være nøgle instrumentet til at sikre en integreret og balanceret tilgang til børns rettigheder i alle EU tiltag - både eksterne og interne.*

  Allerede i 2006 lovede Europa Kommissionen inden 2009 at udarbejde en omfattende EU strategi for effektivt at fremme og sikre børns rettigheder i EU's interne og eksterne politikker og at støtte medlemsstaters tiltag på dette område[1]. Red Barnet mener, at en EU-strategi for barnets rettigheder burde være et meget væsentligt element i Stockholm-programmet.

  Strategien bør tage sit afsæt i FN's konvention til Barnets Rettigheder og de gennemgående principper i konventionen. Den bør ligeledes sikre etableringen af et enkelt og effektivt system eller mekanismer, der kan støtte de implementerende aktører til, at 1) udrede om og hvorledes en specifik EU politik påvirker børn og 2) etablere effektive processer hvorigennem emner og tiltag bliver identificeret i deres sammenhæng og prioriteret. Et sådant system bør sikres de nødvendige økonomiske og menneskelige ressourcer, så implementeringen sikres. Red Barnet anerkender, at kommissionen i sin meddelelse klart har prioriteret, at "der bør udarbejdes en ambitiøs europæisk strategi om børns rettigheder".

- *Det bør være af en politisk prioritering at styrke EU's fokus på børnebeskyttelse indenfor området retfærdighed, frihed og beskyttelse.*

  Red Barnet definerer børnebeskyttelse som tiltag og strukturer, der forebygger og reagerer på misbrug, forsømmelse, udnyttelse og vold, der påvirker børn. Derfor ser vi også børns beskyttelse som et kerneområde i Stockholm-programmet.

- *Når en EU politik specifikt vedrører eller har indflydelse på udsatte børn, bør EU sikre sig, at børns ret til beskyttelse placeres centralt i politikudviklingen.*

  Hvis et EU tiltag direkte er relateret til forbrydelser mod børn, så skal det tage afsæt i og placere barnets rettigheder og barnets beskyttelse i centrum. Ellers er der en stor risiko for at tiltaget ikke vil lykkes i forhold til det egentlige formål, nemlig at beskytte børn. Eksempelvis vil tiltag til bekæmpelse af seksuel misbrug og udnyttelse af børn, der kun fokuserer på misbrugeren, oftest slå fejl af målet. Beskyttelsen og assistancen til barnet, hvis det overhovedet bliver lokaliseret og identificeret, bliver sekundært i

[1] COM(2006) 367 final, 04.07.06; SEC (2006) 888; SEC (2006) 889.

forhold til at identificere forbryderen. Fra et børnerettigheds perspektiv er det klart, at børn, der har været udsat for seksuelt misbrug skal identificeres, fjernes fra den udnyttende situation og miljø og modtage beskyttelse og omfattende støtte.

Konkret ønsker vi at pege på seksuelt misbrug og udnyttelse af børn, børnepornografi og trafficking, som eksempler på områder, der hører under Stockholm-programmet og hvor børn har behov for beskyttelse. (Trafficking er eksempel på et område, som delvist hører under Justitsministeriets ansvarsområde, men som er stærkt knyttet sammen med Migrations og Asylområdet – områder, hvor børns særlige ret til beskyttelse også bør prioriteres højt i Stockholm-programmet).

Anbefalinger i forhold til specifikke, tematiske områder:

- *Alle EU's politikker i forhold til børn, der er ofre for trafficking (samt generelt på hele asyl og migrationsområdet) bør tage udgangspunkt i, at børn skal behandles som børn. Børn skal kunne drage fordel af deres rettigheder som børn og ikke blive udsat for diskrimination.*
- *EU bør tænke i tværgående indsatser for at sikre, at alle uledsagede børn modtager beskyttelse og assistance indenfor EU. EU bør identificere handlemuligheder til barnets bedste, der kan understøtte medlemsstaterne i at finde frem til sikre, konkrete og varige løsninger for hver eneste af disse børn.*

Red Barnet finder det meget positivt at Kommissionen eksplicit nævner at: "udsatte personers og gruppers forhold vies særlig opmærksomhed. Behov for international beskyttelse samt modtagelse af uledsagede mindreårige bør ligeledes prioriteres højt".

Kommissionen beskriver endvidere at "Uledsagede mindreårige, som ulovligt indrejser på EU's område, er en anden særlig udfordring, der må give anledning til grundige undersøgelser. Disse undersøgelser må følges op af en handlingsplan med henblik på at konsolidere og supplere de lovgivningsmæssige og finansielle instrumenter på området og styrke samarbejdsmetoderne med oprindelseslandene, herunder med henblik på at lette de mindreåriges tilbagevenden til deres oprindelsesland."

Ofte er regionale tiltag i forhold til børn i migration mere effektive end nationale på grund af migrationens transnationale karakter og beskyttelse af børn kan lettere fremmes på en række områder regionalt. Red Barnet er da også enige i nødvendigheden af, at EU bør samle mere information inklusiv bedre statistik. EU kunne dog allerede nu og fra Stockholm-programmets ikrafttræden sætte ind i forhold til uledsagede børn. EU kunne således spille en aktiv rolle i udveksling af god praksis på områder som: a) modtagelsen af børn i migration og sporing af familie samt i b) processen for at finde sikre og vedvarende løsninger for børnene. Sådanne gode

praksisser skal i sagens natur anerkende princippet om barnets bedste som kerneelement i løsningerne.

Udover nye regionale tilgange for at sikre løsninger, der bygger på princippet om barnets bedste, mener vi, at en horisontal tilgang også bør inkludere, at de allerede tilstedeværende tiltag i EU i forhold til uledsagede børn burde gennemarbejdes med henblik på en sammenhængende tilgang til at sikre barnets bedste.

- *EU bør udvikle en sammenhængende og bred tilgang til bekæmpelse af seksuelt misbrug og anden udnyttelse af børn samt børnepornografi. Herunder konkrete forebyggelses- og beskyttelsestiltag.*
- *Kernen i denne indsats er at identificere og beskytte de børn, der er i risiko for eller allerede har været udsat for sådanne forbrydelser.*

Bekæmpelse af seksuelt misbrug af børn er et andet eksempel på et beskyttelsesområde, der hører under området frihed, sikkerhed og retfærdighed. Red Barnet deler Kommissionens syn på, at EU skal fremme udveksling af information for at minimere risikoen for yderligere krænkelser og koordinere tiltag, der sporer og blokerer websites som indeholder børnepornografiske billeder (child abuse images). Samtidig mener vi, at EU også kan og bør spille en vigtig rolle i at sikre at ofre bliver identificeret gennem et forbedret regionalt samarbejde mellem aktører og for et højere niveau af beskyttelse af ofre.

- *EU bør være årvågen i forhold til at sikre, at eksterne EU tiltag og politikker har fokus på at sikre børns rettigheder, - og ikke lade kriminalitet og migrationskontrol blive det primære mål.*
-

Red Barnet opfordrer til at sikre at børns rettigheder og i særdeleshed børns rettigheder til beskyttelse bliver et kerneelement i al ekstern EU-politik. EU bør tage en holistisk tilgang og begynde ved at adressere årsagerne til migration. EU bør for eksempel ikke kun belyse situationen for børn i migration, men også situationen for børn, der er ladt tilbage af deres forældre, der er migrerede.

Det er Red Barnets anbefaling, at de ovenfor anførte bemærkninger vil indgå i den danske regerings indsats for at styrke børn rettigheder i det kommende Stockholm-program.

Evt. yderligere oplysninger fås ved henvendelse til børnepolitisk konsulent i Red Barnet Inger Backer Neufeld på tlf. 35 24 85 39.

Med venlig hilsen

Bente Ingvarsen
National Programchef
35 24 85 30
bi@redbarnet.dk

Britt Mee Jee Hansen

Fra: Bettina Jill Kaysø [bettina@kaysoe.dk]
Sendt: 15. september 2009 08:21
Til: Justitsministeriet
Cc: Joan-Søstrene Mail
Emne: Høring over Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263

Justitsministeriet
Civil- og Politiafdelingen
Slotsholmsgade 10
1216 København K.

Joan-Søstrene har ved mail af 28. juli 2009 modtaget Justitsministeriets anmodning om at fremkomme med eventuelle bemærkninger til Kommissionens meddelelser om "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" og "Retfærdighed, frihed og sikkerhed i EU siden 2005: evaluering af Haag-programmet og handlingsplanen".

Joan-Søstrene har gennemgået det fremsendte materiale og kan tiltræde Kommissionens meddelelser og har iøvrigt ingen bemærkninger.

Med venlig hilsen

Joan-Søstrene

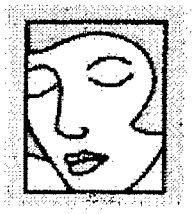
Dannerhuset

Nansengade 1

1366 København K

T: +45 33 14 74 84.

www.joan-soestrene.dk



Gratis og anonym rådgivning til kvinder udsat for vold, voldtægt incest og sexuel chikane. Rådgivningen har åbent for personlige og telefoniske henvendelser hver mandag og torsdag fra kl. 19.00 til 21.30

Britt Mee Jee Hansen

Fra: Jørgen Merrild Bie [advobie@mail.dk]
Sendt: 15. september 2009 23:08
Til: Justitsministeriet
Cc: voldsofre@voldsofre.dk; jmb@horsens.advodan.dk
Emne: sag 2009-3060-0083 høringssvar

Til Justitsministeriet

Af landsforeningen Hjælp Voldsofre er jeg blevet bedt om at fremsende eventuelle bemærkninger til Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263.
Da Kommissionens meddelelser er af overordnet karakter, vil det på dette stadium alene være muligt at redegøre for Hjælp Voldsofres generelle holdning til Kommissionens indsatsområder.
Indenfor de områder, der berører Hjælp Voldsofres arbejde, ser foreningen meget positivt på:

1. en styrkelse af et "borgernes Europa" og
2. yderligere beskyttelse af udsatte grupper.

Ad 1.
Jeg håber, at der som led heri bliver indført regler, der sikrer voldsofre advokatbistand og effektiv erstatning uanset hvilket land forbrydelsen er sket i.
Dette punkt har jeg også fremført ved tidligere høringssvar.

Ad 2.
Selvom der i Danmark er indført en række regler, der er med til at beskytte udsatte grupper af ofre, vil reglerne fortsat kunne forbedres.
Blandt andet bør man overveje at udvide adgangen til videoafhøring af børn (over 12 år) og andre særligt udsatte grupper.

Hjælp Voldsofre ser frem til at se hvilke konkrete love og EU-retsakter, der vil blive foreslået med henblik at gennemføre Kommissionens program.

Venlig hilsen
Jørgen Merrild Bie
Advokat, Advodan Horsens

DANMARKS REDERIFORENING
(DANISH SHIPOWNERS' ASSOCIATION)

Justitsministeriet
Det Internationale Kontor - Att.: Carsten Kristian Vollmer
Slotsholmsgade 10
1216 København K

15. september 2009 ulr/bc

Høring over Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263 - evaluering af Haag-programmet og handlingsplanen

Vi henviser til Justitsministeriets brev pr. mail af 28. juli 2009, hvortil vi har følgende bemærkninger:

- Vi er overordnet enig i indstillingen, herunder især punktet om forenkling frem for ny lovgivning.
- Der er (og bliver) udarbejdet et betydeligt antal internationale konventioner vedrørende søfartsforhold, og EU bør respektere det internationale arbejde, således at der ikke inden for sådanne områder udarbejdes specielle/afvigende EU-regler.
- Vi er imod EU-regler om gensidig anerkendelse og fuldbyrdelse af ikke-EU-domme, hvor vi påpeges problemerne med bl.a. amerikanske erstatningsdomme baseret på "treble damages" – jf. senest Rederiforeningens brev af 30. juni 2009 til Justitsministeriet.
- Vi kan ikke støtte en fælles referenceramme inden for aftaleret og henviser til tidligere drøftelser i Juridisk Specialudvalg og tidligere henvendelser til Justitsministeriet af 3. oktober 2001 og 31. marts 2003.

Med venlig hilsen
DANMARKS REDERIFORENING
P.D.V.

Ole Lind Rasmussen

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Voldgiftsnævnet for bygge- og anlægsvirksomhed

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e-mail: voldgift@voldgift.dk · web: www.voldgift.dk · CVR-nr.: 61 03 44 12

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Justitsministeriet, Civil- og Politiafdelingen, Det Internationale Kontor
Slotsholmsgade 10
1216 København K
Deres j.nr.: 2009-3060-0083

Dato : 10. september 2009
J.nr. : I-139
Jur. : Per Helwigh
Dir.Tlf : 33 36 98 55
Sekr. : Birthe Marion Andersen
Dir.Tlf : 33 36 98 54
Telefontid man - fre 9.00 - 15.00

KOM(2009) 262 og KOM(2009 263
Høring vedr. Kommissionens meddelelser om "Et område med frihed, sikkerhed og retfærdighed i borgernes tjeneste" m.v.

Det skal herved meddeles, at Voldgiftsnævnet for bygge- og anlægsvirksomhed ikke har bemærkninger til ovennævnte høring.

Med venlig hilsen

Per Helwigh

Justitsministeriet
Civil- og politiafdelingen
Slotsholmsgade 10
1216 København K

14. september 2009
G 400 - cmp

Att.: Det internationale kontor

Høring over Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263

Realkreditrådet har med mail af 28. juli 2009 modtaget Kommissionens meddelelser KOM(2009) 262 og KOM(2009) 263 i høring.

Realkreditrådet har ikke bemærkninger meddelelserne.

Med venlig hilsen

Cathrine Munch Pedersen