



**Programme of the  
Federal Ministry of Justice  
for the German EU Council Presidency 2007/1**

- **Strengthening citizens' rights**
- **Increasing legal certainty for citizens and the business sector**
- **Strengthening the justice system and practical cooperation**

Europe must be an area of freedom, security and justice. This is what our European treaties say; this is what our citizens expect; and this is what our political endeavours strive to achieve.

During the German Council Presidency, we will strive to strengthen citizens' rights in Europe. The process of integration must not be targeted only toward governmental and European institutions; rather, it must serve the Union's citizens as well.

We wish to create more legal certainty for cross-border activities. We need clarity as to which law applies where, and who possesses what rights, so that citizens and companies are able to take even better advantage of the opportunities presented by a Europe without borders.

The more permeable the borders and the more varied the cross-border activities of citizens and the business sector become, the greater is the necessity of closer practical cooperation among the national judicial authorities, because only in this manner will the justice system remain the guarantor of law and justice in a unified Europe.

## **1. Strengthening citizens' rights**

Creating an area of freedom, security and justice also includes protecting and securing citizens' rights. Since the adoption of the Tampere Programme in 1999, the primary focus of work in the field of justice has been on harmonising criminal law provisions and enhancing cooperation among judicial authorities. The Hague Programme of 2004, however, accorded equal weight to a focus on securing citizens' rights. We would like to make progress in this area by focusing on the following priorities:

### **1.1. Common minimum rights in criminal proceedings**

Since the Tampere Programme, judicial cooperation in criminal matters has been based upon the principle of mutual recognition. This principle obligates the judicial authorities of the Member States to recognise, subject to certain preconditions, decisions by judicial authorities in the other Member States – even though criminal law has thus far been harmonised only in areas where the cross-border nature of a crime has made a Europe-

wide definition necessary, for example in the areas of organised crime and international terrorism.

The principle of mutual recognition thus leaves national legal systems essentially unaffected and is based upon the notion of trust in the legal systems of other Member States. We would like to strengthen that trust by determining certain minimum rights in criminal proceedings, which are always guaranteed to persons subject to investigative and court proceedings in all Member States.

This involves quite practical issues:

- When must an accused be provided with defence counsel in a criminal investigation?
- When must an interpreter be made available in criminal proceedings?
- How do we ensure that accused persons are informed of their rights?

Here, we need an agreement as to certain minimum guarantees. But one thing is clear: We do not wish to harmonise the law of criminal procedure and implement identical citizens' rights in criminal proceedings in all Member States. We are simply striving to agree on a basic standard among the Member States by laying down common minimum rights.

This applies to other principles of criminal procedure law as well. To some extent, these are structured very differently in the Member States; one example is the prohibition against an accused's forced self-incrimination. We are awaiting the proposals of the European Commission on this issue.

In order to create this minimum level of agreement and thereby to establish legal certainty in criminal proceedings, during the German Presidency we will seek to achieve significant progress on, and bring to a conclusion, the Framework Decision on certain procedural rights within the European Union, which is currently under deliberation.

For this reason, Germany is promoting the European discussion process by organising a series of seminars and events in Brussels and Berlin. These will include participation by civil-society actors such as scholars, legal practitioners and citizens' rights activists. From

20-22 February 2007 in Berlin, the German government will organise a Conference on common minimum rights in criminal proceedings. This conference will focus primarily on the discussion of various concepts to secure procedural rights in Europe.

## **1.2. Protection against racism and xenophobia**

For Germany, the active commitment to combating racism and xenophobia is both an enduring historical obligation and a present-day political priority.

We therefore plan to resume the stalled negotiations on the Framework Decision on combating racism and xenophobia. The goal here is to achieve a minimum level of harmonisation in the criminal codes of the Member States. Above all, this involves criminalising the dissemination of racist and xenophobic statements, for example the public incitement to violence and hatred or the denial or trivialisation of genocide with racist or xenophobic motives.

## **1.3. Transparency and predictability of state action**

In states governed by the rule of law, transparent and predictable laws regulate when and under what conditions citizens must expect state interference. We will thus advocate precise compliance with this rule-of-law principle in the area of judicial cooperation within the European Union as well. Therefore, we need to make more precise specifications with respect to the principle of mutual recognition.

We have substantially improved judicial cooperation in the past several years, for example with the Framework Decisions on the European arrest warrant and the European evidence warrant. Cooperation here is based upon the principle of mutual recognition; this means that an order from another Member State will be recognised and enforced without verification of double criminality if any of the categories of offences specified in the respective Framework Decision apply. Thus far, however, this has at times been the case as well for categories of offences which are sometimes understood very differently by various Member States, for example sabotage, terrorism, or racism and xenophobia. For this reason, the transparency and predictability of state action are not always completely guaranteed at present.

The JHA Council has thus decided, by the end of 2007, to state in more precise terms the so-called listed offences for which the verification of double criminality will be waived. We shall work to formulate more precise definitions in order to make state action more predictable in this area as well. We will strive to ensure that in recognising the decision of another Member State in a given case, judicial authorities are able to assume that certain precisely delineated elements of an offence have been fulfilled.

#### **1.4. European Court of Justice**

The European Court of Justice has thus far only rarely addressed cases involving mutual cooperation in criminal matters. This will occur more often in the future, for example when a dispute exists as to whether a Member State has correctly implemented the Framework Decision on the European arrest warrant and whether an imprisonment based upon such an arrest warrant is permissible.

In cases involving an ongoing deprivation of liberty, as well as in cases involving status under asylum or family law, courts must make decisions very rapidly. The Court of Justice needs a suitable procedure for this. We will strive to conclude the discussion, and quickly reach a solution, on possible ways to accelerate proceedings – for example, by amending the Court of Justice's Rules of Procedure.

#### **1.5. Using criminal law to provide protection from crime**

Criminal law is an instrument used both to combat crime and to protect the population. In order to use this instrument effectively throughout Europe, in the past few years we have attained a minimum level of harmonisation regarding the elements and scope of punishment for particularly important categories of offences, such as organised crime and terrorism.

We plan to continue on this path. One example involves the use of criminal law to protect the environment. We advocate European standards that obligate the Member States to provide for effective, appropriate and deterrent sanctions for crimes against the environment in their legal systems. We plan to take up a relevant proposal by the Commission, which we expect at the beginning of 2007, and initiate deliberations thereon.

## 2. Increasing legal certainty for citizens and the business sector

More and more citizens and companies are taking advantage of the new freedoms in Europe and becoming active beyond the borders of their own country. Cross-border contacts resulting in personal and business relationships are becoming both closer and more common. The law must keep pace with these developments. Therefore, for more and more areas of life, we need clear rules regarding which laws apply to cross-border factual situations. This might involve a traffic accident in another Member State, the divorce of a bi-national marriage, or the establishment of a European company law.

### 2.1. Legal certainty in family law

The increasing number of bi-national marriages and partnerships is the best sign that Europe is successfully growing together. But it also raises new issues, for example in family law. The solution cannot be a general harmonisation of family law. But despite the differences among the national legal systems, we must cooperate in attaining the following goals based upon the principle of mutual acceptance:

- Spouses must know which law will be applicable in the case of their **divorce and the consequences thereof**. The question of which law is applicable should not be dependent upon which Member State the spouses wish to get divorced in.

The goal is to have one and the same national law be applicable to a specific international divorce case, regardless of which court in the European Union is seized with the case. For this, we need rules regarding connecting factors, which would point the judge to the relevant law. For this reason, we will strive to promote deliberations on the Regulation on the applicable law in divorce matters (so-called Rome III Regulation), because that Regulation will establish uniform rules on connecting factors for all Member States of the European Union.

- **Maintenance claims following divorce or separation** must be enforceable rapidly and predictably in cross-border cases as well. The enforcement of maintenance claims must not be more complicated and much lengthier than purely national cases simply because a former spouse lives in another Member State. We thus plan to make progress on the Regulation on the enforcement of maintenance claims, in

coordination with the work of the Hague Conference.

## **2.2. Legal certainty in private law**

More and more often, courts are called upon to decide private legal disputes with cross-border aspects – for instance, because a traffic accident occurs in another Member State, or because a tourist enters into a contract during his holiday which he later wishes to terminate at home.

In these cases, everyone must know: Which law will apply to my case if a dispute ever arises? There are initial considerations regarding creation of a European private law which is uniform and applies to all. But here as well, it would be easier to have uniform rules for all Member States which decide which national law should be most appropriately applied in a concrete case.

For this reason, we will strive to achieve political agreement on the Regulation on the law applicable to contractual obligations (Rome I Regulation). During the German Presidency, we would also like to complete the more advanced work on the Regulation on the law applicable to non-contractual obligations (Rome II Regulation).

## **2.3. Efficient enforcement of rights**

Legal certainty also requires the speedy and efficient assertion of legal claims - and this includes cross-border cases. Enforcement of court decisions must be easier in the future. We have already facilitated the recovery of uncontested claims with the Regulation on the European order for payment procedure. But it still involves too much cost and effort to assert cross-border contested claims with a low value.

The Regulation on small claims will provide relief in the future, among other things with the introduction of forms and limitation of costs. We wish to establish a rapid and simple procedure for small claims in the case of cross-border disputes. This would help everyone who wishes to assert their claims in the European Union to obtain justice more rapidly.

## **2.4. Legal certainty in company law**

The realisation of the European internal market also includes the creation of a secure legal framework for companies. We have made significant progress in the past in the areas of company and commercial law. The high degree of acceptance of the European Stock Corporation is one example of this.

However, we have not yet regulated the transfer of the registered office of a company from one Member State to another. Within the internal market, companies should be permitted to transfer their registered office to any Member State and thereby take on a new legal form. However, transferring the registered office might result in the loss of company-law requirements of the respective national legal system, for example protective provisions benefiting creditors and minority shareholders, or employee rights. We thus need a Directive on the cross-border transfer of registered offices of corporations (the so-called 14<sup>th</sup> Company Law Directive). It should provide legal certainty and ensure that protective rights may not be evaded by transfers of registered offices. We plan to initiate work on this Directive during the German Presidency.

The Directive on the exercise of shareholder rights serves the continued realisation of the European internal market as well. This Directive will guarantee minimum rights to shareholders if they wish to participate in a shareholders' meeting in another Member State - for example, by ensuring the more rapid dissemination of cross-border information or facilitating the granting of proxy. During the German Presidency, we wish to conclude work on the Directive, which is designed to ensure that the effective exercise of shareholder rights is possible across borders as well.

Furthermore, Germany will promote work on the planned statute for the European private company, which is designed to improve and simplify the access of small and medium-sized enterprises to the internal market. Therefore, an international conference will take place in Berlin on 27-28 June 2007, which will address the future of European company law, particularly the European private company.

## **2.5. Protection of intellectual property in Europe**

Inventions, good ideas, and their resulting innovations serve as the guarantors of Europe's economic strength. Product and trademark piracy endanger our prosperity and often present a danger to consumers as well. It is therefore incumbent upon us to



effectively protect intellectual property – both in the European internal market and throughout the world.

We will increase our international efforts to protect intellectual property, and will more effectively combat product piracy on the borders of the European Union. We need an affordable, secure and efficient patent system for the companies in the European Union.

Inventors need harmonised rules at the European level in order to be able to suitably market their inventions and effectively protect them against abuse. For this, we need three things:

- A qualitatively high and simultaneously affordable central granting procedure.
- Uniform, transnational legal certainty of patents.
- An efficient court system with decentralised elements which determines the validity or nullity of patents throughout Europe and ensures efficient securing and enforcement of rights arising from patents.

To attain these goals, we must focus on realising the endeavours already underway, such as the London Protocol and the litigation settlement system in the European Patent Litigation Agreement (EPLA). These agreements will bring substantial advantages for the business sector: decreased costs, increased legal certainty and a more effective system of asserting rights.

We support the Commission's suggestion that the European Union participate in the concluding negotiations on EPLA. One goal remains an affordable Community patent which enjoys legal certainty. Currently, however, it would not make sense to continue eminently difficult and complex debate where there is no prospect of bringing it to a successful conclusion in the near future. We must rather focus on the options for which short-term success is possible.

On 29 and 30 May 2007, we will organise the Conference titled "A Europe of Innovation – Fit for the Future?" in Berlin. There, we hope to address the concrete expectations and suggestions of experts from industry, research and politics. The goal is to take better account of practical concerns in undertaking the necessary reforms of the European patent system.

Further, we plan to make progress with respect to the Directive on the enforcement of intellectual property rights through criminal law. We wish to attain a minimum level of harmonisation in criminal provisions because it is precisely the organised violation of intellectual property rights that must be combated with the criminal law.

## **2.6. Strengthening European consumer protection law**

The European internal market serves not only the free exchange of goods and services, but the common securing of consumer protection as well. We will strive to make progress on this topic.

The Consumer Credit Directive enhances consumers' trust in assuming credit across borders. However, thus far the Directive provides only for common minimum standards for consumer credit.

For that reason, we support efforts to raise this level throughout Europe. However, comprehensive harmonisation must not lead to requiring countries like Germany, which already have extensive national protective provisions, to lower their level of protection in the interests of harmonisation. We need a balanced system of consumer protection which takes seriously the legitimate interests of consumers without burdening the business sector with disproportionate conditions. We would thus like to complete the Directive during our Presidency.

The revision of specific Directives in the area of contractual consumer protection should be embedded within a comprehensive review of contractual consumer protection law in the European Community. Specific contradictions and ambiguities of numerous provisions may be removed in this way.

We will strive to attain practical improvements for consumers in the law of European passenger transport. We plan to conclude work on the Regulation on railway passengers' rights and obligations, and make progress on the discussion on a Regulation on the liability of carriers of passengers by sea and inland waterways.

## **2.7. More coherence in civil and criminal law**

European Union law always regulates only partial areas of life, and this is not done in the form of comprehensive codification, but rather through specific Regulations, Directives or Framework Decisions. This increases the danger that the law will become complicated and unsystematic and consequently unpredictable both for consumers and the business sector.

In civil law, for example, rules of liability are designed quite differently depending on the area. In criminal law, penal sanctions are increasingly being established, which are very different in terms of their design and are sometimes even completely unknown in individual Member States. The Hague Programme acknowledges this problem and expressly calls for securing more coherence, i.e. a systematic approach, in both civil and in criminal law. We will therefore pay special attention the coherence of the rules. Thus, our goal is to create uniform basic rules for European norms so that not every new legislative project must be accompanied by discussion on fundamental questions.

For example, we can attain more coherence with a common frame of reference for European contract law. It will strive to create general rules with a model character for other specific endeavours. But a model makes sense only if it works in practice and is more than just a theoretical formula. For this reason, we plan to implement an international conference on European contract law on 1 and 2 March 2007 in Stuttgart. Scholars, legal practitioners and policymakers will debate there on the planned frame of reference.

### **3. Strengthening the justice system and practical cooperation**

The more permeable the borders within Europe become, the closer cross-border cooperation among judicial authorities must become as well. This applies primarily to law enforcement: If criminal offenders are able to overcome borders more easily than law enforcement authorities, we risk failing in our efforts to effectively combat crime. Cross-border crime may be combated only in a cross-border manner. This is why we hope to continue to improve practical judicial cooperation in both criminal and civil law.

#### **3.1. Cross-border supervision of probation**

We will strive to improve the cross-border supervision of probation. At present, it frequently occurs that sentences of probation may not be effectively monitored because a convicted person lives in another Member State. This could be changed if the Member States provided one another with more support in supervising and monitoring convicted persons. As an independent initiative, we shall submit and continue work on the draft of a Framework Decision on cross-border supervision of probation.

Similar problems exist in enforcing criminal sentences in other Member States; for example, in the state where the convicted person resides. We will strive to conclude deliberations on the Framework Decision on the mutual recognition and enforcement of sentences of imprisonment.

### **3.2. Networking national criminal registers**

We will strive to improve the exchange of excerpts from criminal registers. Along with France, Belgium and Spain, we have initiated a model project for networking criminal registers. This is the technological basis for the exchange of register information in a way which transcends borders – electronically rather than with paper and fax machines. We will strive to provide a clear legal basis for this exchange of information with the Framework Decision on the organisation and content of the exchange of information extracted from criminal records between Member States.

Our goal is to have information from the criminal registers be made available to every judge in the European Union rapidly and electronically to the extent possible, in order to reduce informational deficits in law enforcement and in evaluating criminal offenders. Negotiations should conclude with a system of networked national registers without the necessity of building up a central new unit of registry for all of Europe.

### **3.3. Work on E-Justice**

The judiciary in all Member States is increasingly relying on modern information and communication technology. This enables work to be performed more rapidly, more efficiently, and more economically. The use of ultra-modern technology also presents an opportunity to improve cross-border communication among the judiciary. One example of this is the Regulation on the European order for payment procedure. It creates the

foundation for being able in the future to electronically pursue cross-border claims with a payment order procedure.

We plan to continue to develop this cross-border electronic communication among the judiciary. The following questions arise in this context:

- How can judicial authorities of different Member States communicate directly with one another to the extent possible?
- How can common EDP standards be determined which facilitate and structure the transmission of information?
- How can internal judicial procedures be adapted to a modern EDP system?

These types of practical questions are often more important than the legal issues of cross-border activities. We shall thus organise an international conference in Bremen titled "Work on E-Justice" from 29-31 May 2007. Its purpose will be to make practical progress in using information technologies in cross-border judicial procedures in Europe and in structuring work on European standards.

We would also like to involve Eurojust in resolving competency conflicts among national law enforcement authorities. The European Commission plans to submit a proposal on this topic. The goal must be to select the most pragmatic procedure possible without creating new protracted decision-making procedures to determine competence. This is also governed by the following principle: We do not want harmonisation for its own sake. We need European solutions only where actual problems exist, and where new procedures result in a true added value for all concerned.

#### **3.4. EU external relations in the area of justice policy**

With the "Strategy for the external dimension of the JHA: Global Freedom, Security and Justice," adopted by the Council in December 2005, the European Union has declared the goal of creating an area of freedom, security and justice for its citizens. Since that time, judicial cooperation in external relations with third countries has played an increasingly significant role. The key is to work together to counter threats to security and to strengthen freedom and justice for the benefit of the citizens of Europe.

We support this development; in EU external relations as well, we plan to even more actively promote our policy priorities: Strengthening citizens' rights, increasing legal certainty for citizens and the business sector, and improving cross-border judicial cooperation.

During our Presidency, we will hold Troika meetings with the United States, Russia and Ukraine. Improving concrete cooperation in the areas of justice and home affairs will be on the agenda of those meetings as well.