The Presidency submits the annexed draft Action Plan, which incorporates (text underlined) many of the suggestions made at the session of the K4 Committee on 10 November as well as many of the comments made in writing by delegations and sent to the General Secretariat of the Council before Friday 13 November 1998 (B,D,DK,FIN,GR,I,NL,S,UK and the Commission).
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PART I - INTRODUCTION

1. The European Council, meeting at Cardiff called on the Council and the Commission to submit at its meeting in Vienna an action plan on "how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice".

Under the Amsterdam Treaty, the areas of visa, asylum, immigration and other policies related to free movement of persons, like judicial cooperation in civil matters, are transferred from the EU's third pillar to its first pillar (albeit not all of the first pillar procedures will be applicable), whereas provisions on police and judicial cooperation in criminal matters contained in the new Title VI of the TEU remain within the EU's third pillar. In addition to these changes in responsibilities, the Amsterdam Treaty also lays down the broad lines of action in the areas currently assigned to the third pillar.

2. When the Cardiff European Council called on the Council and the Commission to present the Action Plan, it clearly indicated its view that those provisions offer new opportunities to tackle an area of major public concern and thus to bring the European Union closer to the people.

3. Without underestimating what has already been achieved in this area under the EC Treaty, under the Title VI provisions of the Maastricht Treaty and within Schengen, it is worth recalling the reasons why the new provisions adopted in Amsterdam open up improved possibilities. First, the objective of maintaining and developing the Union as an area of freedom, security and justice is asserted and the various aspects involved are reviewed. Secondly, the Union has been given the necessary framework in which to accommodate it and the instruments required have been strengthened and at the same time, thanks to the enhanced role foreseen for the European Court of Justice and the European Parliament, made subject to tighter judicial and democratic review. The Community method is extended: several of the areas of the current "third pillar" are brought under Community arrangements and restrictions which used to apply to the Community institutions in the areas of police and criminal justice cooperation have been lifted. Access to the Community budget has been made less cumbersome. Finally, the integration of Schengen recognizes the efforts of the Member States which embarked on this cooperation and gives the Union a base on which to build further.
4. In drawing up this action plan, the Council and the Commission take as their starting point that one of the keys to its success lies in ensuring that the spirit of interinstitutional cooperation inherent in the Amsterdam Treaty is translated into reality. This applies in particular to the new responsibilities, including an extended right of initiative, which Amsterdam bestows on the Commission. What is important is not so much where the right of initiative lies, be it shared or exclusive, as the way in which this right is exercised. In any case the Treaty provides that for the five years earmarked for the full attainment of the free movement of persons, the right of initiative will be shared between the Commission and the Member States for matters transferred to the Community framework.

5. Although any action plan drawn up must, in concrete terms, necessarily reflect the priorities and timetable set out in the Amsterdam Treaty itself, it needs to reflect also the general approach and philosophy inherent in the concept of an "area of freedom, security and justice". These three notions are closely interlinked. Freedom loses much of its meaning if it cannot be enjoyed in a secure environment and with the full backing of a system of justice in which all Union citizens and residents can have confidence. These three inseparable concepts have one common denominator – people – and one cannot be achieved in full without the other two. Maintaining the right balance between them must be the guiding thread for Union action. It should be noted in this context that the Treaty instituting the European Communities (article 61 ex article 73 I a), makes a direct link between the measures establishing freedom of movement of persons and the specific measures seeking to combat and prevent crime (article 31 e TEU), thus creating a conditional link between the two areas.
A. AN AREA OF FREEDOM

a) A wider concept of freedom

6. Freedom in the sense of free movement of people within the European Union remains a fundamental objective of the Treaty, and one to which the flanking measures associated with the concepts of security and justice must make their essential contribution. The Schengen achievement has shown the way and provides the foundation on which to build. However, the Treaty of Amsterdam also opens the way to giving "freedom" a meaning beyond free movement of people across internal borders. It is also freedom to live in a law-abiding environment in the knowledge that public authorities are using everything in their individual and collective power (nationally, at the level of the Union and beyond) to combat and contain those who seek to deny or abuse that freedom. Freedom must also be complemented by the full range of fundamental human rights, including protection from any form of discrimination as foreseen by Articles 12 and 13 of TEC and 6 of the TEU.

7. Another fundamental freedom deserving special attention in today's fast-developing information society is that of respect for privacy and in particular the protection of personal data. When, in support of the development of police and judicial cooperation in criminal matters, personal data files are set up and information exchanged, it is indeed essential to strike the right balance between public security and the protection of individuals' privacy.

b) Immigration and asylum policies

8. When looking at the priorities ahead, different considerations must apply to immigration policy on the one hand and asylum policy on the other. Future work in these areas will essentially be determined by the fact that the new Treaty itself contains an obligation to take action within 5 years in a wide range of immigration and asylum-related areas involving both substance and procedure. An impressive amount of work has already been carried out. However, the instruments adopted so far often suffer from two weaknesses: they are frequently based on "soft law", such as resolutions or recommendations that have no legally binding effect. And they do not have adequate monitoring arrangements. The commitment in the Amsterdam Treaty to use European Community instruments in the future provides the opportunity to correct where necessary these weaknesses. Particular priority needs to be attached to combating illegal immigration on the one hand, while on


the other hand ensuring the integration and rights of those third country nationals legally present in the Union as well as the necessary protection for those in need of it even if they do not meet fully the criteria of the Geneva Convention.

**B. AN AREA OF SECURITY**

9. The full benefits of any area of freedom will never be enjoyed unless they are exercised in an area where people can feel safe and secure.

10. The agreed aim of the Treaty is not to create a European Security area in the sense of a common territory where uniform detection and investigation procedures would be applicable to all law enforcement agencies in Europe in the handling of security matters. Nor do the new provisions affect the exercise of the responsibilities incumbent upon Member States to maintain law and order and safeguard internal security.

11. Amsterdam rather provides an institutional framework to develop common action among the Member States in the indissociable fields of police cooperation and judicial cooperation in criminal matters and thus not only to offer enhanced security to their citizens but also to defend the Union's interests, including its financial interests. The declared objective is to prevent and combat crime at the appropriate level, "organised or otherwise, in particular terrorism, trafficking in persons and offenses against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud".

   a) Organised crime

12. The Union's response to the challenge posed by organised crime is contained in the Action Plan endorsed by the Amsterdam European Council, which foresees an integrated approach at each step on the continuum from prevention to repression and prosecution. Important progress has already been made, as the Cardiff European Council recognised, but even when the Plan is fully implemented, the opportunities offered by Amsterdam to go further will have to be exploited.
b) Drugs

13. Drugs deserve a particular mention. They constitute a threat to collective and individual security in numerous ways, often but not always linked to organised crime. It is an area to which Europe has brought a distinctive and influential approach through its insistence on a comprehensive policy based on shared responsibility between consumer and producer countries. Within that comprehensive framework, however, it is clear that a major component will be the mobilisation of the full weight which various law enforcement agencies can collectively bring to bear against the traffickers and the criminal organisations which lie behind them. The Union's action plan against drugs for the period 2000-2004, currently under discussion in the Commission and the Council, will need to be drawn up and implemented in a way which fully exploits the possibilities of the new Treaty.

c) Europol

14. The new Treaty recognises the essential and central role Europol will play, by requiring that a number of specific measures be adopted within five years of its entry into force. It provides in particular further coordination and support for operational tasks by Europol. It is therefore important to start to work on the implementation of these measures as soon as possible, now that the Europol Convention has at last been ratified by all Member States, so as to allow Europol to play fully its new role as an indispensable European cooperation tool. These developments should build upon the "acquis" of the Europol Drugs Unit which, as a precursor for the future Europol, has gained experience in areas like information exchange, technical and operational support, threat analyses and situation reports.
C. AN AREA OF JUSTICE

15. The new impetus and instruments introduced by Amsterdam provide the opportunity to examine what the area of "justice" should seek to achieve, while respecting the reality that, for reasons deeply imbedded in history and tradition, judicial systems differ substantially between Member States. The ambition is to give citizens a common sense of justice throughout the Union. Justice must be seen as facilitating the day-to-day life of people and bringing to justice those who threaten the freedom and security of individuals and society. This includes both access to justice and full judicial cooperation among Member States. What Amsterdam provides is a conceptual and institutional framework to make sure that those values are defended throughout the Union.

Both in civil and criminal matters speedy ratification and effective implementation of adopted conventions are crucial for achieving an area of Justice.

a) Judicial cooperation in civil matters

16. Reinforcement of judicial cooperation in civil matters, which many believe has developed too slowly, represents a fundamental stage in the creation of a European judicial area which will bring tangible benefits for every Union citizen. Law-abiding citizens have a right to look to the Union to simplify and facilitate the judicial environment in which they live in the European Union context. Here principles such as legal certainty and equal access to justice should be a main objective, implying easy identification of the competent jurisdiction, clear designation of the applicable law, availability of speedy and fair proceedings and effective enforcement procedures.

b) Judicial cooperation in criminal matters

17. There is a clear need for improving and speeding up judicial cooperation in criminal matters both among Member States and with third countries, specially in view of intensified police cooperation. However effective it may be, judicial cooperation in criminal matters is hard pressed today to deal with phenomena such as organised crime, unless there is facilitation of procedures and where necessary approximation of legislation.
18. In concrete terms this means first of all that criminal behaviour should be approached in an **equally efficient** way throughout the Union: terrorism, corruption, traffic in human beings, organised crime, should be the subject of minimum common rules relating to the constituent elements of criminal acts, and should be pursued with the same vigour wherever they take place. If serious criminal conduct receives an equivalent response and procedural guarantees are comparable throughout the Union, the possibilities of improving coordination of prosecution, whenever greater efficiency can be reconciled with respect for individual rights, must be examined. This goes in particular for policy areas where the Union has already developed common policies, and for policy areas with strong cross-border implications such as environmental crime, high-tech crime, corruption and fraud, money laundering etc. While developing the powers of Europol, adequate control procedures of a judicial nature -either at the level of Member State or at the Union level -have to be examined.

c) Procedures

19. Procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case. In principle, this function of adequate and comparable procedural guarantees is already achieved by the safeguards of the European Convention on Human Rights and Fundamental Freedoms and their dynamic interpretation by the European Court of Human Rights, in particular regarding the rights of the defence in criminal proceedings. It appears useful, however, to complement those basic principles by standards and codes of good practice in areas of transnational relevance and common concern (e.g. interpretation) which may also extend to certain parts of the enforcement of criminal decisions, including, for instance, confiscation of assets and to aspects of offender reintegration and victim support.

d) Cross-border litigation

20. Difficulties with which citizens are intrinsically confronted in cross-border litigation, be it in civil or in criminal matters, should be neutralised as much as possible. This means, for example, streamlined communication of documents and information, use of multilingual forms, creation of mechanisms or networks to assist and advise in trans-national cases and possible legal aid schemes in such cases.
D. ENLARGEMENT

21. There is an important link with the enlargement process, in particular with the pre-accession strategy.

The countries applying for membership of the European Union are well aware that Justice and Home Affairs will have a special significance for their applications.

However, the JHA acquis is different in nature from other parts of the Union's acquis. Much still needs to be done and the acquis will therefore be developing constantly over the pre-accession years.

The adoption of the Action Plan will have the additional advantage of setting out for the benefit of the applicant countries a clear and comprehensive statement of the Union's priorities in this area.

E. RELATIONS WITH THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS

22. Achieving an area of freedom, security and justice will also require close cooperation at international level.

23. The dialogue that the Union has started recently in Justice and Home Affairs cooperation with an increasing number of third countries or groups of countries and international organisations and bodies such as Interpol, UNHCR, Council of Europe, G8 and the OECD, will become even more intense in the future.

24. The advances introduced by the Amsterdam Treaty will also enhance the Union's role as a player and partner on the international stage, both bilaterally and in multilateral fora. As a result, and building on the dialogue that it has already started in Justice and Home Affairs cooperation with an increasing number of third countries and international organisations and bodies, this external aspect of the Union's action can be expected to take on a new and more demanding dimension. Full use will need to be made of the new instruments available under the Treaty. In particular, the communautarisation of the matters relating to asylum, immigration and judicial cooperation in civil matters permit the Community -to the extent permitted by the established case law of the European Court of Justice related to
the external competence of the Community- to exercise its influence internationally in these matters. In those subjects which remain in Title VI of TEU, the Union can also make use of the possibility for the Council to conclude international agreements in matters relating to Title VI of the Treaty, as well as for the Presidency, assisted by the Secretary General of the Council and in full association with the Commission, to represent the Union in these areas.

[F. STRUCTURE OF WORK IN THE FIELD OF JUSTICE AND HOME AFFAIRS]

25. The new provisions of the Amsterdam Treaty, with their emphatically cross-pillar characteristic, will need to be reflected also in the working structures of the Council. It was clearly not the intention of the Treaty to compartmentalise the way in which the different components of this area of freedom, security and justice are handled as between the structures of the European Community on the one hand and the European Union on the other, particularly since in both cases the lead responsibility for taking the objective forward will fall to Ministers of Justice and Home Affairs. It will therefore be essential to establish for this purpose appropriate arrangements which both respect the provisions of the Treaty and support the coordinating role of the Committee of Permanent Representative. Document 9836/3/98 CK4 28 offers proposals to that end] (1)

(1) This paragraph F would replace Part III of this document if K4 Committee/Coreper was to decide to delete it, focusing the discussion on structures on document 9836/3/98 CK4 28 REV 3.
PART II - PRIORITIES AND MEASURES

A. Selection criteria for priorities

26. A number of principles have determined the way in which the Council and the Commission have identified -and intend to implement- the measures listed in this Part:

(i) The Amsterdam Treaty itself has set out some clear guidance on the measures to which priority importance must be attached, particularly during the first five years after its entry into force. The Action Plan must respect this guidance;

(ii) the principle of subsidiarity, which applies to all aspects of the Union's action, is of particular relevance to the creation of an area of freedom, security and justice.

(iii) the principle of solidarity among Member States and between them and the European institutions, should apply in facing the transnational challenges presented by organised crime and migration movements;

(iv) operational efficiency in implementing the legal framework established by the Treaty is no less important than the legislative framework itself. Measures taken shall meet factual needs and add value. In this context, working methods which have proved already their worth, for example in the Schengen context, should find their place in the Union's Action Plan.

(v) Articles 64(1) of the TEC and 33 of the TEU which recall that the political responsibility for safeguarding of internal security rests with Member States. It is therefore important, when developing European cooperation, to take into account national interests and common approaches as well as differences.

(vi) The principle of reality which commands to take into account, when selecting priorities, the resources and time available.
27. Integration of the Schengen acquis into the framework of the European Union will have as a consequence that as from the date of entry into force of the Treaty of Amsterdam the objectives of the Community as set out in the entire Article 62 TEC and to a large extent in Article 63(3)(b) of the TEC in their versions of the Treaty of Amsterdam will largely have been realized in respect of 10 Member States, and in respect of 13 Member States as from the date of the decision of the Council referred to in Article 2(2) of the Schengen Protocol. This is to say that much of the substantive work will have been done far in advance of the 5 years time limit set by the Articles concerned. It would permit the Council to concentrate initially particularly on other objectives of the Community and the Union in the field of Justice and Home Affairs for the realization of which a maximum time limit of 5 years has been determined (Article 63(1)) and (2)(a) TEC and Article 30(2) TEU, for example and to deal with matters which would require urgent handling or which become politically important.

In order to put the priorities listed in those Articles into practice, efforts will have to be made to adopt measures detailed in the following sections.

28. In the context of the Treaty requirements, account should also be taken, in setting priorities, of existing plans and the need to continue taking forward present medium-term work programmes.

29. According to art. 2 of the TEU, the Union shall set itself the objective to maintain and develop an area of freedom, security and justice in which the free movement of persons is assured in conjunction with appropriate measures with respect to external borders, asylum, immigration and the prevention and combatting of crime. The mutual interdependence between the different aspects of this overall objective is confirmed by art. 61, a) which, among the flanking measures directly related to the free movement of persons, mentions measures to prevent and combat crime in accordance with the provision of art. 31 (e) of the TEU. It is therefore in the interest of as high level as possible of security for the public that some activities in one area be meshed in timing and substance with those in the other.
30. In establishing substantive and political priorities, first consideration has had to be given in particular to those projects on which work is already in hand at present or for which work is likely still to be in progress at the time of entry into force of the Amsterdam Treaty. It has basically been attempted here, in fully adjusting to the new environment, to ensure maximum continuity.

31. In legislative work, account has also had to be taken of the existing third-pillar "acquis"; making it necessary to decide which, if any, of the present provisions should be replaced by more effective ones. Those classifiable as "soft law" formed the prime candidates for this purpose.

32. The levels of priority set out below become effective, logically, upon entry into force of the Amsterdam Treaty.

33. The priority measures are to be found in two categories. On the one hand, the actions and measures for which it is important that they are implemented or adopted within two years from the entry into force of the Treaty of Amsterdam (hereinafter referred to as "measures to be taken within 2 years"), and on the other hand the actions and measures which must be adopted or implemented within 5 years following the entry into force of the Treaty or, at least, to commence elaboration of the actions and measures in the area (hereinafter referred to as "measures to be taken within 5 years"). However, a start may have to be made on many activities in the first level of priority without delay upon adoption of this action plan as they require preparatory work, e.g. in technical working parties, which should if possible have been completed by the date of the entry into force. Such particularly urgent measures are specifically indicated below.

B. Policies related to free movement of persons

I. Measures in the field of asylum, external borders and immigration

34. The aim is to achieve the area of freedom over the next five years. Consequently, in order to guarantee greater security for all European citizens, the achievement of this aim calls for the establishment of compensatory measures, particularly in the areas of external frontier checks and the fight against illegal immigration, while taking full account of the principles contained in Article 6 of the TEU and Articles 12 and 13 of the TEC. UNHCR will be consulted where necessary.
An overall migration strategy should be established in which a system of European solidarity should figure prominently. The experiences gained and progress achieved through cooperation in the Schengen framework should prove particularly pertinent as regards short term residence (up to three months) and as regards the fight against illegal immigration.

An overall priority should be to improve the exchange of statistics and information on asylum and immigration. This exchange should include statistics on asylum and immigration, information on the status of third country nationals and national legislation and policy on the basis of the Commission's Action Plan.

35. In order to complete the area of free movement, a swift and comprehensive implementation of the Protocol integrating the Schengen acquis into the framework of the EU is crucial.

1. Measures to be taken within two years

a) Measures in the fields of asylum and immigration

   Establishment of a Task Force which will assess countries of origin on an inter-pillar basis in order to formulate a country specific approach.

b) Measures in the field of asylum

   i) Minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and for promoting a balance of effort between Member States in receiving and bearing the consequences of receiving displaced persons (Article 63(2)(a) and (b) TEC).

   ii) Effectiveness of the Dublin Convention: continued examination of the criteria and conditions for improving the implementation of the Convention and transformation of the legal basis to the system of Amsterdam (Article 63(1)(a) TEC).
A study should be undertaken to see to what extent the mechanism should be supplemented inter alia by provisions enabling the responsibility for dealing with the members of the same family to be conferred upon one Member State where the application of the responsibility criteria would involve a number of States and by provisions whereby the question of protection when a refugee changes his country of residence can be resolved satisfactorily.

iii) The implementation of Eurodac

iv) Adoption of minimum standards on procedures in Member States for granting or withdrawing refugee status (Article 63(1) (d) TEC) with a view, inter alia, to reducing the duration of asylum procedures. In this context, a special attention shall be paid to the situation of children.

There is a Council Resolution on minimum guarantees for asylum procedures. But it would seem that one of the determining factors in the pattern of flows is the duration of procedures. An attempt should be made to harmonise the duration of asylum procedures by aiming - at least as a first step - at greater brevity.

v) Limit "secondary movements" by asylum seekers between Member States.

vi) Defining minimum standards on the reception of asylum seekers with a particular attention to the situation of children (Article 63(1) (b) TEC).

vii) Undertake a study with a view to establishing a single European asylum procedure and a common basis for granting asylum status.

c) Measures in the field of immigration

i) Instrument on the lawful status of legal immigrants

ii) Establish a coherent EU policy on readmission and return and take a pragmatic approach to the issuing of laissez-passer

iii) Combat illegal immigration (Article 63(3)(b) TEC) through, inter alia, information campaigns in transit countries and in the countries of origin
In line with the priority to be given to controlling migration flows, practical proposals for combating illegal immigration more effectively need to be brought forward swiftly.

(...)

d) Measures in the field of external borders

i) Procedure and conditions for issuing visas by Member States (resources, guarantees of repatriation or accident and health cover) as well as the drawing up of a list of countries whose nationals are subject to an airport transit visa requirement (abolition of the current grey list).

ii) Define the rules on a uniform visa (Article 62 (iv) TEC)

iii) Draw up a Regulation on countries:

- whose nationals are exempt from any visa requirement in the Member States of the European Union;
- whose nationals are subject to a visa requirement in the Member States of the European Union (Article 62(2)(b)(i) TEC).

iv) Further harmonising Member States' laws on carriers' liability.

(...)

2. Measures to be taken within five years

a) Measures in the fields of asylum and immigration

Identification and implementation of the list of measures in the European migration strategy

b) Measures in the field of asylum

i) Adoption of minimum standards with respect to the qualification of nationals of third countries as refugees

ii) Defining minimum standards for subsidiary protection to persons in need of international protection (Article 63(2) (a) second part).
c) Measures in the field of immigration

(…)

i) Improvement of the possibilities for the removal of persons who have been refused the right to stay through improved EU co-ordination implementation of readmission clauses and development of European official (Embassy) reports on the situation in countries in origin.

ii) Preparation of rules on the conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purposes of family reunion (Article 63(3)(a) TEC):

"the question of giving third-country nationals holding residence permits the freedom to settle in any Member State of the Union will shortly be discussed by the relevant working party. (…)"

iii) Determination of the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States (Article 63(4) TEC).

"Within the competent Council bodies discussions could be held, taking account of the consequences for social equilibrium and the labour market, on the conditions under which, like Community nationals and their families, third country nationals could be allowed to settle and work in any Member State of the Union."

In these two last fields, although the Amsterdam Treaty does not request action to be accomplished in a five year period, efforts should be made towards an improvement of the situation in due time.

d) Measures in the field of external borders

i) Extension of the Schengen representation mechanisms with regard to visas:

"A discussion could be initiated on the possibility of establishing an arrangement between the Member States, which will improve the possibility of preventing visa applicants from abusing the foreign representations of one or more Member States in order to gain access to another Member State, which at the time of application was the actual intended country of destinations."

ii) Attention will be given to new technical developments in order to ensure -as appropriate- an even better security of the uniform format for visas (sticker)."
II. Judicial cooperation in civil matters

36. The aim is to make life simpler for European citizens by improving and simplifying the rules and procedures on cooperation and communication between authorities and on enforcing decisions, by promoting the compatibility of conflict of law rules and rules on jurisdiction and by eliminating obstacles to the good functioning of civil proceedings in a European judicial area. It will be necessary to improve the coordination of Europe's courts and the awareness of Member States' laws, particularly in cases with important human dimensions, having an impact on the every-day life of the citizens.

Measures to be taken within two years

37. The following measures should be taken within two years after the entry into force of the Treaty:

a) Finalisation, if it has not been completed, of work on the revision of the Brussels and Lugano Conventions

b) Drawing up a legal instrument on the law applicable to non-contractual obligations (Rome II)

c) **Begin** revision, where necessary, of certain provisions of the Convention on the Law applicable to Contractual Obligations, taking into account special provisions on conflict of law rules in other Community instruments (Rome I)

d) Examine the estensione ai procedimenti civili del principio della rete giudiziaria europea in materia penale

*Highly individualized contact points in each Member State could permit greater awareness of Member States' laws and ensure better coordination of proceedings in cases with important human dimensions (cross-border parental disputes, for example).*
Measures to be taken within five years

38. The following measures should be taken within five years after the entry into force of the Treaty:

a) Examine the possibilities to draw up a legal instrument on the law applicable to divorce (Rome III):

After the first step on divorce matters taken with Brussels II in the field of jurisdiction and the recognition and enforcement of judgments, the possibilities to agree on rules determining the law applicable in order to prevent forum shopping needs to be explored on the basis of an in-depth scientific study.

b) Examine the elaborazione di modelli di soluzione non giudiziaria delle controversie con particolare riferimento ai conflitti familiari transazionali. In this context, examine the possibility of mediation as a means of solving family conflicts should be examined.

c) Examine the possibility of drawing up a legal instruments on international jurisdiction, applicable law, recognition and enforcement of judgments relating to matrimonial property regimes and those relating to succession.

In elaborating the instrument, the connection between matrimonial property and rules relating to succession should be taken into account. Work already undertaken within the framework of the Hague Conference of Private International Law should be taken into account.

d) Identifying the rules on civil procedure having cross-border implications which are urgent to approximate for the purpose of facilitating access to justice for the citizens of Europe and examine the elaboration of additional measures accordingly to improve compatibility of civil procedures.

In this respect, the rules on deposition of security for litigation costs and expenses of the defendant in a civil procedure, the granting of legal aid as well as other possible obstacles of an economic nature. (...)

e) Improving and simplifying cooperation between courts in the taking of evidence.

f) Examination of the issue of approximation of certain areas of contract law.
C. Police and judicial cooperation in criminal matters

39. The aim is to give citizens a high level of protection as provided for in the Treaty of Amsterdam and to promote the rule of law. This implies greater cooperation between the authorities responsible for applying the law with due regard for legal certainty. It also implies giving practical form to a judicial area in which judicial authorities cooperate more effectively, more quickly and more flexibly. Encourage an integrated approach, through close co-operation, of judicial, police and other authorities in combating organised crime, as foreseen in the Action Plan on organised crime.

Measures to be taken within two years

I. Police cooperation

40. The following measures should be taken within two years after the entry into force of the Treaty:

1. as regards Europol cooperation:

   a) Improve Europol cooperation in the following areas:

   i) Set up a database of pending procedures, within the framework of the provisions of the Europol Convention, for use by specialised squads allowing to avoid any overlap between investigations and to involve several European competent authorities in the same investigation, thus combining their knowledge and expertise.

   ii) direct Europol's documentary work towards operational activity by the competent authorities of Member States.

   Wherever possible, its analyses should lead to operational conclusions.

   iii) Make the fight against illegal immigration networks one of the priorities of operational cooperation, particularly by using the national units as a network of national contact points responsible for dealing with them, by setting analysis files on illegal immigration networks and by initiating joint actions between Europol and departments responsible for suppressing clandestine work, in which Europol aids investigation in the Member States.
iv) Combat terrorism: reinforce exchanges and the coordination of competent authorities of Member States in the fight against crimes committed or likely to be committed in the course of terrorist activities, using Europol in particular.

v) Extend the competences of Europol to other activities, as necessary (e.g. falsification of Euro).

b) Draw up an adequate legal instrument extending Europol's powers to the activities referred to in Article 30(2) TEU and focusing Europol's work on operational cooperation. An important subject is the place and the role of judicial authorities in their relations with Europol.

One of the priorities stated by the Treaty is to determine the nature and scope of the operational powers of Europol, which will have to be able to "ask the competent authorities of the Member States to conduct and coordinate [their] investigations" and also to act within the framework of "operational actions of joint teams".

c) Prüfung des Zugriffs von Europol auf Fahndungsdaten SIS bzw EIS.

d) Develop the role for Europol concerning the exchange of information in order to implement the Pre-Accession Pact on organised crime.

(b) other police cooperation measures

41. The other police and customs cooperation measures comprise jeweils unter Prüfung einer Einbeziehung/Nutzbarmachung von Europol:

a) The common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime (Article 30(1)(d) TEU).

b) Consideration of the arrangements under which a law enforcement service from one Member State could operate in the territory of another (Article 32 TEU).

Consideration should be given to two points in particular:

– the determination of the rights and possibilities for operations by law enforcement services of a Member State in the territory of another Member State, in liaison and in agreement with the latter, and on the basis of respect for national sovereignty?
in return, what types of operation – and under what arrangements – is each Member State willing to accept in its own territory?

The creation of a collective framework for this type of operation is one of the priorities of (...) police cooperation. This framework can be a flexible one.

c) A discussion of the future of SIS within the Union

SIS is a fundamental tool of police and judicial cooperation in order to maintain public policy and to apply the (Schengen) provisions relating to the free movement of people. Its integration into the Union framework will have to be settled before the Amsterdam Treaty comes into force. The Council's priority here must be to ensure a smooth transition, with no reduction in the system's efficiency. A discussion could, however, be started in the medium term on the prospects for developing SIS II after it has been expanded.

d) The development and expansion of operational cooperation between law enforcement services in the Union and the strengthening of technical police cooperation

The joint action carried out in particular by the Member States' customs administrations with logistical support from the Commission should be used where appropriate as a model and should be expanded in cooperation with national police forces and gendarmeries and in close conjunction with the judicial authorities. In the medium term, Europol could serve as a back-up for these future initiatives, which it will be possible to activate under what the Amsterdam Treaty has established as "decisions for any other purpose consistent with" the objectives of Title VI of the TEU.

e) The development of the annual report on organized crime with a view to defining common strategies.

Il conviendra de veiller à assurer une harmonisation des paramètres d'analyse afin de pouvoir comparer les données collectées.

f) In the field of customs law enforcement co-operation, the implementation of the CIS and Naples II Conventions

(2) This point would be deleted if the new point 48(e) suggested by the Commission was to be accepted.
II. Judicial cooperation in criminal matters

42. The following measures should be taken within two years after the entry into force of the Treaty:

a) Implement effectively and, where appropriate, further develop the European judicial network. The effective implementation of the European judicial network is a priority matter. It will bring about a practical improvement in cooperation and needs to be equipped with modern tools to enable efficient cooperation. Consideration ought to be given now to making it more operational, for instance in order to encourage the resolution of conflicts of jurisdiction through coordination in order to determine which State could most usefully prosecute.

b) Finalise the Convention on Mutual Assistance in Criminal Matters as well as an additional Protocol to the Convention and implement them as soon as possible.

\textit{Nel protocollo dovranno essere previste regole che da un lato limitino al massimo la possibilità di rifiuto da parte dello Stato richiesto ai soli atti contrari ai principi fondamentali dell'ordinamento di quest'ultimo e che simplifichino al massimo le procedure di ammissibilità, dall'altro che prevedano formule alternative alla rogatoria in caso di consenso o in caso di inoltro spontaneo delle informazioni da parte dello Stato o in caso di indagini collegate.}

c) Facilitate extradition between Member States by ensuring that the two existing conventions on extradition adopted under the TEU are effectively implemented in law and in practice.

d) Strengthen and develop fight against money laundering.

e) Facilitate and accelerate cooperation between the competent ministries and judicial or equivalent authorities of the Member States.

f) Initiate a process with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters.

g) Specify the role and the place of the judicial authorities in the framework of a further development of Europol in accordance with the Amsterdam Treaty, with a view to improving the efficiency of the institution.
h) Consideration of the arrangements under which judicial and/or prosecutorial authorities from one Member State could operate in the territory of another (Article 32 TEU)

Consideration should be given to two points in particular:

- the determination of the rights and possibilities for operations by law enforcement services of a Member State in the territory of another Member State, in liaison and in agreement with the latter, and on the basis of respect for national sovereignty?

- in return, what types of operation – and under what arrangements – is each Member State willing to accept in its own territory?

The creation of a collective framework for this type of operation is one of the priorities of judicial cooperation. This framework can be a flexible one.

III. Approximate the Member States' rules on criminal matters

43. The following measures should be taken within two years of the entry into force of the Treaty:

a) Identify the behaviour in the field of organized crime, terrorism and drug trafficking, for which it is urgent and necessary to adopt measures establishing minimum rules relating to the constituent elements and of penalties and, if necessary, elaborate measures accordingly.

*Prime candidates for this examination could be domestic legislation insofar as it relates to organized crime, terrorism and drug trafficking, offenses such as those which are against drug trafficking law, corruption, computer fraud, offenses committed by terrorists, offenses committed against the environment, offenses committed by means of the Internet and money laundering in connection with those forms of crime. Parallel work in international organisations like the Council of Europe have to be taken into consideration.*

b) Examine the feasibility of approximation of the criminal penalties for the behaviour mentioned under a)
c) Approximate national legislation on counterfeiting (protection of the Euro), fraud and counterfeiting involving means of payment other than currency.

IV. Horizontal problems

44. The following measures should be taken within two years of the entry into force of the Treaty:

a) Finalise, if it has not been completed, evaluate the implementation and update the Plan of Action on Organised Crime, approved by the European Council at Amsterdam.

b) Continue the process of mutual evaluation under the Joint Action adopted by the Council on 5 December 1997.

c) Address the question of safe havens and fiscal paradises.

Measures to be taken within five years

I. Police cooperation

45. The following measures should be taken within five years after the entry into force of the Treaty:

(a) as regards cooperation within the framework of Europol:

i) Promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol (Article 30(2)(c), TEU).

ii) Establish a research and documentation network on cross-border crime (Article 30(2)(d), TEU).

iii) Improve the statistics on cross-border crime (Article 30(2)(d), TEU).

iv) Set up a system for the exchange of information and analysis on money laundering.
v) Develop links between the Customs Information System and Europol

vi) In cooperation with Europol, elaborate and implement an information strategy in order to make the work and powers of Europol known to the public

vii) Study the possibility of setting up a system of exchanging fingerprints electronically between Member States

(b) other police cooperation measures

i) Encourage general policy and operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services and the judicial authorities of the Member States in relation to the prevention, detection and investigation of criminal offenses (Article 30(1)(a), TEU).

*In this context it would be useful to continue and extend the experiments with joint police stations and to identify all the sites on which new units are necessary in order to complete the coverage of Union territory.*

It would also be desirable to continue the development of customs risk analysis techniques and the improvement of customs control methods such as the implementation of the container control action plan

ii) Organise the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data (Article 30(1)(b), TEU).

iii) Promote cooperation and joint initiatives in training, the exchange of liaison officers, secondment, the use of equipment, and forensic research (Article 30(1)(c), TEU).

II. Judicial cooperation in criminal matters

46. The following measures should be taken within five years of the entry into force of the Treaty:

a) Consider whether substantive and formal improvements can still be made to extradition procedures.
Prevedere norme per contenere i tempi delle procedure estradizionali e per garantire la estradizione anche in presenza di sentenze contumaciali.

b) Further facilitate cooperation between ministries and judicial authorities in the field of criminal proceedings, in particular as regards procedures.

c) Examine the feasibility of improved cooperation on the transfer of proceedings and the enforcement of sentences.

d) Study the feasibility of a European criminal record.

e) Prevent conflicts of jurisdiction between Member States, by, for instance, examine the possibility of registering whether there are (... proceedings pending in different Member States.

Establish measures for the coordination of criminal investigations and prosecutions in progress in the Member States with the aim of preventing duplication and contradictory rulings, taking account of better use of the ne bis in idem principle (...)

III. Approximation of the rules on criminal matters

47 The following measures should be taken within five years of the entry into force of the Treaty:

a) Ensure compatibility of the rules applicable between Member States insofar as necessary to improve judicial cooperation.

Efficient procedural standards should be sought that will improve mutual assistance in criminal matters while complying with the requirements of fundamental freedoms. Consideration should be begun in the field of telecommunication interception (...) and also on civil actions relating to criminal offenses. In that connection, compensation for the victims of crime must be an avenue not to be neglected.

b) Improve and approximate, where necessary, national provisions governing seizures and confiscation of the proceeds from crime.
c) Continued elaboration of measures establishing minimum rules relating to the constituent elements of behaviour and to penalties in all fields of organized crime, terrorism and drug trafficking.

IV. Horizontal problems

Measures to be taken within five years

48. The following measures should be taken within five years of the entry into force of the Treaty:

a) Examine the possibilities for harmonised rules on data protection.

b) Establish a general plan of action to combat specific forms of crime which can be best combatted by a general EU approach, such as computer crime, in particular child pornography on the Internet and racial extremism and the approximation of offenses in that area taking into account work in other international organisations.

c) Develop cooperation and concerted measures on matters relating to crime prevention.

d) Address the question of victim support by making a comparative survey of victim compensation schemes and assess the feasibility of taking action within the Union.

e) Develop further the Schengen Information System as an instrument of police and judicial cooperation, including for the purposes of combating illegal immigration

f) Effectively implement the Pre-Accession Pact on Organized Crime

(3) Proposal by the Commission on which the French delegation had a reservation in K4.
PART III - FUTURE WORKING METHODS IN THE FIELD OF JUSTICE AND HOME AFFAIRS

49. The Communitarisation of part of the field of justice and home affairs also alters the working method of many Council working parties. Some Council working parties which under the Maastricht Treaty dealt exclusively with third pillar matters will now be dealing with those matters under the first pillar and others will in future have to apply sometimes the law of the Treaty establishing the European Community and sometimes the law of the Treaty on European Union. Despite these changes, there will remain, in some specific areas, close links of substance between matters covered by Title IV of the EC Treaty and by Title VI of the future EU Treaty.

50. This division of the field of justice and home affairs has various consequences. It may be useful to take into account the results of the work of the K4 Committee as it was submitted in the document [9836/3/98 CK4 28 REV 3.]

A. Impact of communitarisation on the activities of the Council, K.4 Committee and Coreper:

51. The transfer of the fields of visa, asylum and immigration policy and judicial cooperation in civil matters to Community law has no effect on the fact that these subjects will in future continue to be dealt with by the Council in its composition of Ministers of Justice and Home Affairs. It will be for that Council to ensure the required cross-pillar coordination through all appropriate standing arrangements.

52. The question is, however, which bodies should coordinate preparatory work for the Justice and Home Affairs Council in the sphere of the two pillars after that date. There is a need for cross-pillar coordination at the level of officials in various areas. At present and even after entry into force of the Treaty of Amsterdam, coordination at the highest level will be through Coreper.

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The Commission and the Netherlands ask for the deletion of Part III. The Commission considers that this question should be addressed separately in the context further of work on document 9836/3/98 CK4 28 REV 3.
53. The Treaty of Amsterdam provides explicitly for a Coordinating Committee consisting of senior officials on third-pillar matters (police cooperation and judicial cooperation in criminal matters) (Article 36 of the TEU). The Committee's mandate is clearly defined in the Treaty on European Union. For areas transferred to the first pillar (i.e. the fields of immigration policy, external border controls, visa, asylum policy, the free movement of third country nationals, on the one hand, and the fields of judicial cooperation in civil law matters and other private international law issues, on the other hand), this Committee has no competence.

54. With respect to judicial cooperation in civil matters a standing Working Party on "judicial cooperation in civil matters" could be set up, able to deal with specific topics [...] for the various areas of judicial cooperation covered by Article 65 of the TEC, as well as areas of private international law which will continue to be covered by Article 293 of the TEC. A Working Party of this nature could also consider questions with some bearing on general questions concerning judicial cooperation in civil matters arising from other acts of secondary Community law. The need for coordination in this area has become commonly felt.

55. It is necessary to coordinate the problems in the fields of immigration, visa, external border controls, asylum policy below the level of Coreper.

This work can be carried out by a Steering Committee solely competent for such matters. Establishment and definition of the terms of reference would be carried out by Coreper. It would allow for properly informed coordination in the migration field and with regard to security matters. It shall be subject to evaluation at the latest after five years in the light of practical experience.

B. Impact of the Treaty of Amsterdam and the integration of the Schengen acquis into the framework of the EU on the work of Council working parties

56. In view of the entry into force of the Treaty of Amsterdam and the integration of the Schengen acquis into the framework of the EU, the organisation of the work within the Council in the field of justice and home affairs will have to be reassessed. The implications will need further consideration at the level of Coreper with a view to settle the new organisational structures in due time before the entry into force of the Treaty of Amsterdam.
This reform of working structures should be based on the following principles: rationalisation and simplification (a reduced number of working parties corresponding to the objectives laid down in the Treaty, with no duplication); specialisation and responsibility (working parties composed of experts with a sufficient level of responsibility within their States, an adequate place reserved for operational structures – Europol, European judicial network); continuity (permanence of working parties corresponding to the permanent objectives of the Treaty, monitoring mechanism for all the instruments adopted); transparency (clarity of mandates and relations between working parties); and flexibility (possibility of adapting structures at very short notice to deal with new problems which call for special urgent treatment).

Integration of the Schengen acquis into the framework of the European Union means in the first place that Schengen working groups will cease to exist and that they will be absorbed by corresponding working parties of the Council. Where necessary the existing mandates of some working parties of the Council would have to be enlarged and in cases where no corresponding working parties of the Council existed, they will have to be created in order to ensure the continued application of the provisions of the Schengen acquis and their further development. The fact that the provisions of the Schengen acquis will not apply to some Member States has only an effect on the voting procedures in the Council, not on its composition or of that of its subordinate bodies.

Integration of the Schengen acquis implies the introduction of certain activities of an operational nature within the working methods of the Council, which will be new and for which the necessary practical accommodation shall have to be found. In the second place, the Council will have to be in a position to assess the situation in States candidates for accession to the EU and to help them to prepare for the full application of the Schengen acquis at the time of their actual accession.