



Slovensko predsedstvo EU 2008  
Slovenian Presidency of the EU 2008  
La Présidence slovène de l'UE 2008

## **INFORMAL JHA COUNCIL ON 25/26 JANUARY 2008**

### **REPORT OF THE HIGH LEVEL ADVISORY GROUP ON THE FUTURE OF EU HOME AFFAIRS POLICIES**

Delegations will find enclosed the Interim report of the High Level Advisory Group on the Future of EU Home affairs policies. The purpose of the report is to present the issues that the Group Members have discussed without drawing any conclusions.

To steer the discussion on the future of our policies at the Informal meeting of ministers of Justice and Home Affairs, the Presidency would like to propose an exchange of ideas on the following topics:

#### **1. Exchange of information among police and law enforcement agencies at national and EU level**

- How should we develop the exchange of information in the Future? Which kind of systems for data exchange should we develop (new central basis, interoperability of national data basis or other)?
- What could be the system of exchange of information with third countries?

#### **2. Migration, e-borders management and visa policy**

- Do we all agree that migration is regular and permanent, that the EU is a natural immigration area and that well managed and legal migration can be both a challenge and an opportunity?
- Do you think that an integrated approach to border management (integrating checks carried out at each stage of persons travelling to the Union, i.e. at consulates, upon departure in third countries, upon arrival at the (physical) border itself, and inside the territory of the Schengen area) should be accompanied by a truly common visa policy with common consular centres delivering European visas?

#### **3. External dimension of security.**

- Does a comprehensive approach in the area of freedom, security and justice require conditionality in respect of development aid and other aspects of external relations?

- How could the EU enhance security in its neighbourhood? How could we use better the EU civil missions in third countries?
- What financial resources are needed to support the implementation of the external dimension of justice, freedom and security that is constantly expanding?



17 January 2008

## **Interim report on the work of the High Level Advisory Group on the Future of EU Home Affairs Policies**

### **Introduction**

1. In the framework of the informal meeting of Ministers of Home Affairs in Dresden, the German Presidency and Commission Vice President Franco Frattini proposed to establish an informal high level advisory group to discuss the future of European home affairs policies following the expiration of the Hague Programme in 2009. This proposal underwent renewed debate in the margins of the meeting of the Justice and Home Affairs Council on 14 February 2007 in Brussels and ministers agreed on the establishment of the group and its composition.
2. The High Level Advisory Group on the Future of Home Affairs Policies, also called the "Future Group", is composed on an "ad personam" basis of the Vice-President of the European Commission Franco Frattini, Interior ministers of the Member States of the current and incoming Presidencies of the Council (Germany, Portugal, Slovenia, France, the Czech Republic and Sweden), a representative from the subsequent presidency trio following 2010 (Spain, Belgium and Hungary) and a representative of the group of states using "common law" as observer (currently represented by the representative of United Kingdom). The representative of the General Secretariat of the Council of the EU and the chairman of the LIBE Committee of the European Parliament are also invited. The Future group is co-chaired by the Vice President Frattini and the President of the JHA Council of the EU. The High Level Advisory Group on the Future of Home Affairs Policies established the "Sherpa" Group for the preparation of sessions.
3. The purpose of the Group is to draft a political report with recommendations that would serve as a source of ideas for the Commission and the Member States in preparing a new programme for the design of EU policies in the area of home affairs after 2010. The group meets informally and its opinions do not commit the Commission in any way with regard to the preparation of the proposal for a post-Hague Programme or influence the Council's

decision-making regarding the latter's treatment and adoption. However, it is intended to serve as a source of thoughts and ideas.

4. The Future Group met at four meetings in 2007: in Eltville in May, Brussels in June, Madeira in October and Brussels in December. The summarized results of these debates are presented in this interim report.
5. These meetings focused on an open discussion of political issues regarded as political priorities in the upcoming years, conclusions not being drawn at this stage. Two further meetings are scheduled to take place in Slovenia in March and in Brussels in June 2008. Those meetings shall be devoted to further brainstorming debates on the one hand and to discussions on the political recommendations to be included into the final report on the other. The recommendations are to be adopted by the end of June with the objective of being discussed during the Informal Meeting of Ministers of Justice and Home Affairs under the French Presidency in July 2008.
6. The following summary report of the group debates does not reflect unanimous opinion of the Group Members as to the ideas presented. It is instead aimed at giving a general idea about the political challenges and options discussed and about some of the proposals issued by the group members. It does not bind the Group Members with regards to the elaboration of the final report of the Future group.

### **General principles**

7. The issue of a right **balance between mobility, security and privacy** will probably be of key importance in the future shaping of the area of security, freedom and justice within the EU. Thanks to the technological development we will be able to enhance our security and increase our mobility at the same time. In order to facilitate the deployment of modern, innovative technologies security research has to be enhanced, e.g. by public-private-partnership. Efforts to improve security by use of intrusive technologies and by extension of powers of law enforcement authorities could increase the danger of unjustified interventions into privacy and other fundamental rights and therefore should be pursued only when they are compatible with the fundamental rights framework, when proportionality is fully respected and they are accompanied by appropriate safeguards. Maintaining this balance while taking into account the need for continued technical development to assist law enforcement efficacy was seen by Members of the Group as one of the crucial challenges of the new JHA programme.
8. In its effort to create a common area of freedom, security and justice, the Council has adopted numerous legislative and non-legislative measures, in accordance with the Tampere and Hague programmes. The opinion was expressed that prior to adoption of any new instruments and establishment of new mechanisms, **the effectiveness of current legislation and measures** should be fully exploited or, if suitable, further enhanced.
9. In general terms, the Group agreed that in developing long and medium term prior targets and possible ways to achieve these objectives, the European decision makers should take into consideration whether European action in these fields generates an added value in accordance with the principles of subsidiarity and proportionality as is enshrined in the Treaties.

10. Some Group Members thought that during the initial debates on new instruments, possibilities of **financing future measures** from EU resources could be subject to further consideration.

## **Terrorism**

11. During the discussions, the idea was presented that the EU needs to broaden the definition of the concept of **conspiracy and its relations to terrorism** in a practical and efficient way so as to cover different forms of criminal activities (especially money laundering and other economic crimes in connection with terrorist financing). Counter-terrorism policies should be then comprehensively defined. In order to achieve this, the EU would require a consensus on the legal definition of terrorism and conspiracy.
12. The **prevention of terrorism** is one of the four pillars of the strategy for the fight against terrorism adopted by the Council in December 2005 in the aftermath of the bomb attacks in London in July 2005. Preventative operations that would prevent terrorist attacks are essential for EU citizens. In this context, the effectiveness of already adopted measures should be assessed.
13. The **exchange of information** between bodies competent for the fight against terrorism in individual Member States as well as between the Member States in general and competent European agencies is of key importance for preventative action. In this context, closer cooperation between police and intelligence services in Member States should be ensured. A possible solution for **increased synergies** between police and security intelligence services on a national level is the establishment of networks of anti-terrorist centres in Member States. The strengthening of cooperation between Member States and SITCEN in terms of an **exchange of intelligence data** should be considered. Similarly, some Group Members emphasized that closer cooperation between European agencies, particularly Europol and Eurojust, is important.
14. It was emphasised that cooperation between Member States regarding the use of **undercover investigation** measures should be developed. Useful data which could be crucial to prevent terrorist attacks are not acquired only through the use of undercover measures, but through the extremely important **observations of field police officers** while they are performing daily tasks. The local community is certainly a beneficial source of information as well. However, police officers should be suitably trained to recognize radicalisation processes and development of logistical support, for example, as well as other activities which could be related to the preparation and execution of terrorist activities. Regular **training of police officers** for these purposes is therefore necessary and CEPOL could play an important role in this context.
15. As for **preventive action in the judicial area**, it would be appropriate to examine the possibility of defining conspiracy to commit terrorist offences as a criminal offence, which would enable the conviction of individuals working together in implementing terrorist activities or promoting radicalism and recruitment for terrorism.
16. Preventing **terrorist financing** should remain a priority of Member States and EU institutions. In the first phase, cooperation between Financial Intelligence Units (FIUs)

should be enhanced, while a possible future measure could be a systematic monitoring of financial transactions in the EU. Also with regard to the financing of terrorism, future deliberation on broader connections between terrorism and other forms of crime should be made.

17. In addition to the indispensable human factor in preventing terrorist attacks, technology is acquiring an increasingly important role. It was underlined by some Group Members that although classic police and intelligence work cannot be replaced by the use of technology, technology can supplement it. The continued subsequent **development of technologies** for detecting various types of explosives, especially detonators, and the control of precursors is required. In this view, special attention must be focused on the development of systems for the effective surveillance of the external EU border.
18. It was pointed out that the EU needs a strategy against terrorist propaganda. Effort should be focused on sending a positive message to Muslim communities via modern means of communication. In the future, a greater emphasis should be put on the use of the **Internet as a tool** in the fight against radicalisation and terrorist recruitment. It is important to prevent the Internet from being used as an instrument at the service of terrorism.
19. It was said that the EU should prepare better for the threat of **non-conventional attacks** such as bio-terrorism, for example. This preparation should not only cover prevention measures but should also prepare a response to such attacks and the remedy of its consequences.
20. In preparing subsequent measures in the area of fighting terrorism, the **Lisbon Treaty** includes several key aspects. Internal security remains within the sole responsibility of Member States, however the content of the Solidarity Clause and general encouragement of the Member States to exchange information should be considered.
21. Some Group Members expressed the need of the EU for a more coherent approach, perhaps a **“global approach” for fighting terrorism**, an approach that was partially precluded as a result of the three-pillar structure of the EU. In the future, it will also be impossible to continue to separate the internal and external aspects of fighting terrorism thus it is important to further discuss and address the blurriness between internal and external security.
22. Finally, several Group Members underlined that the EU has to continue strengthening the **cooperation with third countries** in the fight against terrorism, particularly in the frame of the Trans-Atlantic Partnership, cooperation with Russia as well as within the UN. The Trans-Atlantic Partnership is important particularly in terms of information exchange which takes into account the safe-guarding of personal data. Cooperation with Middle East countries, North African countries, countries of the Western Balkans and Turkey should continue.

## **Migration**

23. The responsibilities for migration policy provided for by the treaties should be fully implemented. That also means that the right of Member states do determine volumes of admission of third country nationals coming to their territory in order to seek work is not

affected. In this framework, further development of a comprehensive European migration policy should remain a key policy objective for the purpose of meeting the challenges as well as harnessing the benefits that migration brings in the future. That comprehensive migration policy comprises a number of key interdependent elements: well-managed legal migration policies, cooperation with third countries, fight against illegal migration, an improved management of the EU's external borders, integration of migrants, respect for fundamental rights, the creation of a Common European Asylum System and allocation of adequate resources. In the course of the Group's discussion the following aspects were mentioned.

24. It was emphasized by some Group Members that at this point, due to the transition period, restricting access to the EU labour market of the new Member States nationals, the possibilities offered by **the free movement by EU citizens within the Union**, which have already contributed to economic growth in several Member States following the 2004 and 2007 EU enlargements, have not yet been fully exploited.
25. However, it was pointed out that **legal migration** should also be treated in the long term from the perspective of European demographic developments and labour market requirements in the next decade. Admission to enter the EU is not a right, but it can represent an opportunity for the citizens of third countries who can play a significant economic and social role in the European labour market in the future, while contributing to sustainable development in their countries of origin. Concrete forms of Circular Migration have to be further explored. Migration management and broader possibilities to participate legally in the European labour market for third country nationals can play an important role in preventing illegal migration and associated criminal activities, such as smuggling, trafficking in human beings and labour exploitation.
26. The prerequisite for such migration is the existence of demand for **specific qualifications** in the EU labour market and the existence of a supply of workers from third countries who possess such qualifications. Decisions on quotas of legal migrants will remain within the competences of Member States also in the future. Circular Migration could become an instrument for closer cooperation with third countries, preventing "brain drain" and establishing long-term economic, developmental and "human" components in developing countries. From the institutional standpoint, in addition to ministries of home affairs, ministries of labour, social affairs, foreign affairs and development should also deal with the question of legal migration. Closer institutional cooperation and coordination is needed. The opinion was presented that EU member states should coordinate their migration policies mainly when these policies have relevant consequences for the rest of the Union, especially through the information mechanism adopted with the Council Decision of 5 October 2006.
27. The **prevention of illegal migration** should remain a priority task for the EU according to opinions expressed. The integrated management of the external border is crucial for the prevention of illegal migration and has to be implemented in conjunction with the prevention of the trafficking in human beings and the fight against criminal organisations that smuggle people into the EU. Cooperation between Member States, FRONTEX, EUROPOL and EUROJUST is important.
28. **Integration** is one of the key elements for the successful dealing with migration and migration-related problems, nevertheless integration policies should remain within the

competences of Member States also in the future. Regular dialogue and the exchange of good practices among Member States should be continued, while the possibility of developing EU integration programmes should be considered. Their implementation will fall under the competences of the Member States.

29. The strengthening of **cooperation with third countries** in the framework of the Global Approach to migration is of key importance when preparing measures for the implementation of the comprehensive approach. Such cooperation in migration management should be based on the partnership principle with each party receiving and contributing something. The possibilities of Mobility Partnerships between the EU and third countries can be tested as a possible way of better managing migration and meeting labour demands. The establishment of quotas for legal migration to an individual Member State should remain, as already said, within its national competence, however, one Group Member suggested that the EU might coordinate such demand and negotiate with individual third country with a view to strengthening Member States' position.
30. **Information and awareness campaigns** in the countries of origin and transit should be considered as a mean of reduction of the number of illegal migrants. Detailed information about legal possibilities of migration and comprehensive description of social, cultural and other specific features of target countries as well as possible consequences of illegal migration may contribute significantly to the management of migration.
31. A more effective and coordinated **European return policy** should be established in order to achieve effective common European migration policy.

### **Modernisation of European border and visa management**

32. The EU is currently facing and will face several challenges in the area of **border management and visa policy** in the future. These include the establishment of an expanded area without internal border controls, increased mobility within the EU, increased mobility from third countries, technological advancements (Internet, biometrics, mobile communications, etc.), fighting the international terrorism threat and other challenges. In the course of the Group's discussion, the following aspects and proposals were mentioned.
33. The European perspective of the Western Balkans countries and cultural – political relationship with EU neighbours and strategic and-or economic partners (USA, Russia, Ukraine, Turkey, Moldova, North Africa, South America, etc.) should be considered among the factors affecting the flow of people on external borders. Possible criteria for identifying those Third Countries which may be considered for being partners in such an expanded area with special arrangements in terms of mobility and border management could be: 1) European Perspective 2) ENP and 3) strategic partnerships. All the aforementioned elements should be considered when preparing subsequent measures for establishing a more effective management of the external border.
34. **Synergy and interoperability of EU information systems** (SIS, VIS, EURODAC) should be attained, whereby one of more significant issues for the future will be the assurance of the common management of these and all future European information

systems in the area of justice and home affairs together with the assurance of a suitable level of personal data protection.

35. Regarding the scope of border controls we should consider a **differential treatment of various categories of third country nationals**. Differential border controls are possible with the use of contemporary technologies. Due to restrictions in the non-selective use of such technologies, solutions should be sought such as voluntary provision of biometric data in exchange for the facilitated crossing of the border (bona fide passengers).
36. There was broad agreement that the coordination role of FRONTEX should continue to be strengthened when implementing the concept of the integrated management of the external borders. However, there was no consensus on the establishment of **European border police**. While some Group members were in favour of this, other deemed it not to be a requirement as the control of the external border of each Member State is specific. Thus external border surveillance could best be implemented by national police officers. Nevertheless, in the future FRONTEX could execute tasks regarding the training, controls and professional advisory services. In the short term, the optimal operation of FRONTEX should be ensured based on its current legal basis. It is also necessary to ensure a higher responsiveness of FRONTEX to “crisis” situations, such as for example extraordinary migration pressures at the EU external borders. It was said that we should provide FRONTEX with the necessary means (planes, boats, etc.) to face their current and future responsibilities and missions.
37. **Visas** should be a constituent element of security policy. The control of visa issuance in countries of origin should be increased where common consular centres could play an important role. The visa policy should be based on regular migration and security risk assessments.
38. It was pointed out that we should promote EU IBM standards to the **EU neighbouring countries** with the aim of their adoption of these standards into their practice to the broadest extent possible in order to improve security at these borders. Finally, it is important to identify measures entitled to be financed from the European Community’s budget, in accordance with the principle of solidarity.

### **Information exchange**

39. In the context of the implementation of the principle of availability, the Group discussed the possibility of a comprehensive strategy for managing **information exchange** between Member States within the EU, between Member States and European agencies and between the EU and third countries. One prerequisite for preparing this strategy could be the identification of certain **data categories**, which are needed the most for the effective work of law enforcement agencies. In conjunction with the development of access to information and data exchange, a method for ensuring **data security and integrity** should be assured. New technologies for the protection and encryption of communications need to be developed.
40. Options discussed were the connection of "border" centres for police cooperation and exchange of information, the interconnection and interoperability of Member States'

databases and of EU agencies and bodies. Some Group Members were of the opinion that central EU databases should be established.

41. Regarding the cooperation of third countries information exchange, it was stated that a **uniform approach** should be ensured and a model agreement between the EU and a third country on the exchange of information considered, with the adequate protection of personal data in these countries as a prerequisite.
42. The creation of a Council **working group on information exchange** in order to develop these measures in the future is to be considered.

### **External dimension**

43. Further development of the area of freedom, security and justice can only be successful if backed by an external dimension and cooperation **with third countries as well as within international organizations**. The strengthening of external security is one of the fundamental elements and a prerequisite for the successful assurance of internal security. Group Members presented the opinion that EU action should be based on a common set of goals and principles spelled out in a strategic document providing a background for specific initiatives. Thus, the existing Strategy on the external dimension of the area of freedom, security and justice, adopted by the Council in December 2005, should be updated on a regular basis and its implementation evaluated. It was proposed that such a strategy be aimed at contributing to the successful building of the internal area of freedom, security and justice, and at advancing EU's external relations objectives by promoting the rule of law, respect for fundamental rights and international obligations. In this context, the **coherence of EU action** should be strengthened through an improved coordination between various EU policies, especially between policies in the area of justice and home affairs and external relations including development aid policy and economic cooperation. To this end, the possibilities to deepen cooperation and information sharing between various EU and Member States institutions should be explored.
44. **Key EU priorities** of cooperation with third countries remain the fight against terrorism, organised crime and illegal migration, where attention could be focused on specific regions. Decisions on future geographical priorities should be based on the need for an increased cooperation with the important strategic partners on the one hand and on the **assessment of threats** that specific phenomena in third countries or regions represent for the EU internal security on the other.
45. To implement the strategy on external relations in the area of justice and home affairs we could prepare further **action-oriented papers for cooperation** with individual third countries or regions. Regional cooperation among third countries should be promoted and strengthened.
46. EU civilian missions in third countries as an important instrument for ensuring stability should also be considered.
47. **EU agencies such as EUROPOL, EUROJUST and FRONTEX** should expand their cooperation with priority countries including negotiating more cooperation agreements in line with strategic objectives of the respective agencies.

## **Civil protection**

48. Recently, natural and manmade disasters have increased. Their severe consequences are not limited to single countries. In order to limit consequences of catastrophes as much as possible, it was advocated that it would be necessary to pay more attention to **preventive measures and timely response** of different forces to protect people and property.
49. The opinion was stated that in creating **a future mechanism of civil protection** on the EU level it will be necessary to find a balance between two guiding principles. The national responsibility, which imposes each Member State to take appropriate measure for its own safety and protection by implementing appropriate operational and preventive measures, and the EU solidarity principle, which will enable a country at risk to get appropriate help from other Member States.
50. One idea presented was to establish a "toolbox" of equipment and staff to voluntarily offer them in crisis for the benefit of any Member State. Further thought was given to the question of developing efficient coordination and information networks in order to provide a timely preparation and deployment of staff, to the interoperability of communication systems of technical equipment (helicopters for lifesaving, fire planes and adequate training of members of civil protection). It was also said that further reflection could be given to the coordinating role of the existing Monitoring and Information Centre which could become a real central coordination point.

## **Conclusion**

51. The Group will continue its discussions at its meeting during the Slovenian Presidency (with the border management, police cooperation, asylum and possible new structures in the work of the Council will be on the agenda). In July 2008, the Group will submit a **final report** to Ministers of Home Affairs at the informal session under the French Presidency, thus providing Member States and the Commission with a source of ideas for a next multi-annual strategy to establish an area of freedom, security and justice.