

First meeting of the Future Group

Eltville (Germany), 20 and 21 May 2007

Report

Sunday 20 May 2007: Warm-up session

Introduction

The works of the Group were opened and the conclusions of the informal JHA Council in Dresden were recalled. At this meeting Ministers generally consented to the intention of the German Presidency, supported by the Commission, to set up an Advisory High-Level Group at ministerial level to prepare the policy orientations for post-The Hague Programme.

The Group will not be responsible for drafting any multi-annual Programme, this task being left to the Commission and to the Council, but for creating a favourable environment with the aim of streamlining the work of the Council, where it is more and more difficult to find the opportunity for informal, fireplace-like discussions among Ministers on political themes. It was stressed that the Group gives upcoming presidencies and the Commission the chance to communicate in an open and informal way before concrete proposals and drafts are produced.

The Group will not draw any conclusions at the end of its meetings. The outcome of the Group's debates will feed into the preparation of a **final report**. The Group's report should be short and concentrate on future political priorities. If the Group cannot agree on certain points, the report could also contain different policy options.

It was underlined that the Group would not address issues of **primary law or decision-making** that might somehow affect the current negotiations undertaken by the German Presidency on the future of the European Constitution.

The Group will work on a confidential basis, under the Chatham House rules, but **transparency** of its work will be ensured by sharing information, e.g. in informal dinner of Ministers, informal Council meetings and documents to the other members of the JHA Council.

The questions in the preparatory document were referred to as a way to structure the warm up discussion, concerning future objectives and priorities of European Home Affairs, its simplification and the necessity to find the right balance between mobility, security and privacy.

The importance attached to the **simplification of home affairs policies** was highlighted. The purpose is to have more transparency about which level is acting in which cases, in order to



render the political accountability for action more transparent for the citizen. It is important to ensure the citizen understands the **concrete added value** of EU action and EU home affairs policy.

Presentation of Vice President Frattini

VP Frattini expressed his enthusiasm for the excellent opportunity provided by the Group for launching and testing ambitious ideas for the future of EU Home Affairs policies. He also shared the need for more intimate and friendly discussions between Ministers on ambitious political objectives, sometimes difficult in the more and more cumbersome protocol of the Council.

He thanked the Sherpas for the preparatory work which should allow Ministers to have a fruitful discussion.

While not neglecting the visible shortfalls of the current decision making, VP Frattini focussed his remarks on ambitious ideas and a long-term vision.

He announced that, by the end of June of this year, the Commission would publish the **Scoreboard 2006**, which would take stock of The Hague Programme's implementation. Given the confidential nature of the Group's works, he allowed himself to circulate a non-paper that outlined the main elements of the future Scoreboard. VP Frattini pointed out that the level of achievement in 2006 was lower if compared with the results obtained in 2005 (only 53% of measures have been achieved). Progress has been mainly made in the first pillar, while third pillar initiatives have been confronted with the problems related to the current decision-making process.

He identified four key problems which have so far obstructed further progress in JHA area:

1) Poor national implementation and problems flowing from the pillar structure of decision making.

Co-decision procedure has proved generally positive (data retention, Schengen border code, SIS II, RABITS, Regulation on statistical data on migration and asylum, mutual information system), while there have been many shortfalls in the third pillar, where "alternative decision-making" procedures have to be found. Firm public commitments on working together are not followed by agreements reached in the Council. Quality of the final products sometime is very poor, due to endless negotiations full of "constructive ambiguities" flowing from the substantial power of veto.

2) Lack of competence of the European Court of Justice



There is no uniform application across Europe or same judicial scrutiny of JHA legislation, which brings lack of uniformity in the national implementation of legislation.

3) **Insufficient communication to and with the EU citizens**

Practical results affecting citizens should be much better presented and explained in layman's terms to the public. No proper ways of communicating achievements have been established. Citizens should know what we are doing, how and why. Routine press conferences following Council meeting do not help while constant and accurate information on concrete results should be ensured.

4) **Financing**

JHA Ministers have now more resources at its disposal for the period 2007-2013 and they can direct these resources towards long-term, ambitious projects, capable of providing real, long-term, visible European added value to national and European policies in JHA area. No more fragmented financing in small projects. Ministries should be more proactive in looking for resources and leading the future spending, in particular in the area of external dimension of JLS policies where more resources should be available. The thematic programme on migration and asylum is a shining example of the fact that more financial resources are needed to promote JLS policies outside EU borders.

VP Frattini then moved on to identify (1) the **future** (general and structural) **challenges** and (2) **upcoming priorities**.

Overarching future challenge is the **further development of new technologies and their link to financing at EU level**, including in the area of security research and structural funds. Databases and new technologies will play a central role in further developing JLS policies in the areas of border management, migration, fight against organised crime and global terrorism. Main objective should be the full interoperability of information systems and the improvement of security research.

Enhanced use of technological developments will also provide satisfactory solutions to the important issue of how to ensure more security for citizens and at the same time more protection of their right to privacy. A public-private dialogue should be further encouraged and in this respect the Commission will be forerunner by soon setting up a European Security Research and Innovation Forum (ESRIF) with the participation of all stakeholders.

Finding a **new balance between the right to security and the protection of fundamental rights** is another main challenge for policy-makers. There is a need to overcome the traditional dogma of seeing collective security and individual freedom as two opposed concepts which exclude each other. Individual rights can only flourish in an atmosphere of collective security.



Another structural challenge is **improving decision-making in JHA area**. This Group is not intended to address this issue, which is being dealt in the larger context of the future of Europe, but it is clear that the Group will have to be alert and ready to react to any decisions to be possibly taken by the incoming IGC. The Groups should also study how to link useful regional cooperation undertaken at regional level within the EU framework, so as to avoid any incoherent initiative which could be inconsistent with the collective action.

Finally, VP Frattini highlighted the urgent need to **strengthen the external dimension of JHA policies**. External factors increasingly threaten the EU's internal security and the EU should be ready to respond to the increasingly blurred boundaries between external and internal security. We have to ensure **better access to funds** available and reinforce the resources at disposal of the EU and Member States. EC can better coordinate action including by better supporting Member States initiatives in Third Countries. Security is leverage in relationships with Third Countries and should be better exploited in our strategic partnerships.

In terms of **upcoming priorities** in the different policy fields, VP Frattini mentioned the following areas:

- Police cooperation (role of EUROPOL and the need to ensure new powers for a more performing practical cooperation, the wider use of phone tapping and CCTV),
- Global approach to migration (E-borders and legal migration),
- Asylum (work to be launched on the basis of the incoming Commission green paper),
- Enlargement and new European Neighbourhood Policy (with particular emphasis on Western Balkans and Black Sea) and
- Terrorism (definition of terrorism as a basis for a future multilateral legal initiative, for which German Presidency and Commission have successfully started talks with US and Russian partners).

Presentation of Minister Frieden

Minister Frieden thanked Minister Schäuble for the invitation to address the Group in his quality of longest serving Minister in the JHA Council. He articulated his intervention in three parts:

- 1) Main events since 1998 (date of his first appointment as Justice Minister),
- 2) Long-term objectives and ambitions of Home Affairs policies, and
- 3) Methods and instruments to achieve those objectives.

Under point 1) Minister Frieden mentioned the following events:

- The **Kosovo War** in 1999, when for the first time the EU acknowledged the urgent need to put in place a common policy on refugees protection and asylum,



- The **tragic events of 9/11**, when the EU was indirectly faced to the challenges of global terrorism and gave a convincing reply (e.g. the adoption of the European Arrest Warrant being the best example) and sincere support to the US partner, and
- The **enlargement** of the EU in May 2004, which made subsequently clear that the current functioning of the Council proceedings needed to be modified by improving the decision-making, in particular in those areas where the rule of unanimity still persists.

The Group should give itself a very ambitious set of long-term objectives by identifying in 2020/2030 the target date for full implementation of its projects, given the current slow pace caused by the existing decision-making.

Minister Frieden envisaged the creation of a real "**Single Market of Security**". There is a clear need for "**thinking more European**", convincing the policy-makers and the public opinion that the EU is an added value, while Member States should "**pool their own sovereignty**" and not fearing the EU. Efforts should be made, in particular in an EU at 27, to reinforce the action aimed at building further the **mutual trust** between police officers and courts of the Member States. In the area of police cooperation, for example, cross-border action should be the rule and not the exception.

He shared VP's assessment that **better communication** is essential, not only to the citizens but also to the National Parliaments, which should be more involved in decision making while respecting each institutional structure at national level.

In terms of methods and instruments (point 3), he believes that the Ministers of the Interior should give themselves a "**EU Internal Security policy**" by defining the operational priorities of its action every two years, through an Action Plan which will identify the level of necessary action (EU, national or local), including the external dimension of the measure to be taken.

EUROPOL should be better used by the national relevant authorities. It should become in the long run a real **European Criminal Police**, provided with a common investigative structure, and competent for the fight against drugs, trafficking in human beings and internet-related crimes, for example, which could be considered as "trans-national crimes". Furthermore, recent events like the Tsunami in SE-Asia had demonstrated that the EU needs a Joint Crisis Management Centre, a role which could be taken up by EUROPOL.

In the medium-term, **multinational police offices** could be considered for more effective regional police cooperation, to be coordinated at EU level. EU-model for bilateral and/or multilateral agreements on police cooperation, such as the one in force between BENELUX Countries, could also be developed.

The **principle of availability** should be fully implemented, being the incorporation of the Prüm Treaty just a first step. It is unfortunate that such an essential principle, for which all



Member States expressed full support, had not been appropriately followed-up. In the medium-term, European police databases should be created following the setting up of a comprehensive EU legislation on protection of personal data.

A **European Border Police** should be created in the long run. Multinational teams should be put in place so as to run EU inspections at the borders, with a view to further enhancing mutual trust and increasing solidarity.

CEPOL should be transformed into a real **European Police Academy** financed by the EU, with common curricula for Member States' police officers.

European Refugee and Asylum Offices should also be considered while all Member States have fully implemented the EU legislation based on common standards.

In his closing remarks, Minister Frieden pointed out that, in his view, these ambitious objectives could be probably better followed up through **pilot projects** run by a small group of Member States and/or by assigning to forerunner Member State(s) **particular missions** in order to strengthen sense of ownership and promote progress. These missions could be financially supported by the EU.

Debate

The debate was opened by stressing that justice issues are not addressed by the Group.

A lively and frank brain-storming between all participants followed the warm-up presentations.

The need for further measures aiming at building **trust in each others legal systems** was emphasized. National Parliaments had to be involved more closely in the development of the JHA area. It was noted that there is a need for improved **practical police cooperation**, such as during the 2006 World Cup in Germany. **Information exchange** between national competent authorities should be further improved, something that would require a global approach to technical and other questions. It was also reiterated that the post-Hague Programme should further address the **management of funds in the JHA area**.

Participants noted that the experience with the growing Iraqi refugee crisis showed the importance of European solidarity and cooperation in the field of **asylum**. It was considered that problems would not be solved by a European Asylum Agency, but by adopting common standards and procedures. It was also stressed that the EU action at **external borders** should become more "intelligence-lead" and the Union should make full use of the new technologies.

Prüm was praised as a good example for showing how a pragmatic approach can go hand in hand with ambitious ideas. The need for a **real vision for the future** was emphasized, as citizens are not interested in pillars but in clear answers for their security and quality of life. **Crisis management** will be another area where the Union will have to build up new



capabilities. As to regional cooperation, in particular with its neighbouring countries, the central role one Member State could play in “exporting” EU experience and in establishing a close trust-based operational cooperation.

One participant warned about the need to focus on practical cooperation through a true partnership approach more than envisaging unrealistic projects. Evaluation of The Hague Programme should come first before planning any future multi-annual programme.

Emphasis was placed on the need to respect the programme established by the European Council on global approach to migration. The EU should fully exploit the new technologies in security matters and adjust itself to the "digital era". The Group should therefore also concentrate its work on issues such cyber-crime and information exchange. Finally, the call for the establishment of a **European Crisis response mechanism** was also echoed. Crisis management should become a priority at EU level.

The need for the EU to be ambitious and to deliver its remaining commitments within the framework of The Hague Programme was stressed. Practical cooperation should be the focus more than new legislation. Since the tragic events of 9/11 the Union moved "from if to how to ensure a global partnership on security matters". Participants also echoed the need to involve more national Parliaments to avoid them being "anxious" about what the Union is doing. **Security as a human right** was considered as being fundamental in the discussions.

One participant considered the debate on decision-making as essential, agreeing with Minister Frieden on "pooling sovereignty" at EU level. Communication of results is another priority. The possibility to convene an annual meeting of Ministers of the Interior was mentioned. This meeting would analyse the situation on security issues at EU level based on an “Annual report on European Security” covering two main areas, (1) opinion of the European citizens on security issues and their main concerns, and (2) statistics on criminal facts, illegal immigration figures, most serious crimes committed, etc.

Monday 21 May: Plenary session

1. Formal constitution of the group
2. Adoption of “terms of reference” and draft “time-table”
3. Adoption of the paper working method



On the next day the meeting was opened with a discussion on the timetable of the Group's works and in particular on the time of adoption of the final report. It was decided that the report will be finalised and presented under the French Presidency (second half of 2008), possibly at the Informal JHA Council. An interim report may be presented under the Slovenian Presidency at the Informal JHA Council in January 2008.

There was consensus among the members about the need ensure **full transparency** of the Group's works with the other EU Member States, who should be invited to contribute to the works. Members of the Group also committed to keep informed other Member States via direct contacts with certain partners, some through existing groups at regional level (Salzburg, Visby, Benelux, etc.) or in the informal Minister's dinner, and to create, as previously suggested, a "network of discussions."

Following a suggestion to that effect, the Group also acknowledged the need to keep the **European Parliament** constantly informed. The idea to organise a **public hearing** in the EP in the first half of 2008 was voiced, and the Group was reminded that the President of the EP LIBE committee had been invited to join.

It was pointed out that the Group could also make use of modern technology for its working methods (video-conferences) as well as establishing a website/chat-room which would enable citizens to contribute to the work of the Group. Participants supported the idea of trying out new techniques that could simplify the Group's work, but also expressed scepticism about the capacity of the Secretariat of the Group in terms of resources.

In terms of working methods of the Group, it was decided that the co-Chairs will take into account the guidelines described into the policy paper presented by Germany, in particular as far as the concrete added value of a specific project is concerned. The Group will not discuss primary law and avoid touching institutional issues and the existing division of competencies under the Treaties. It was stressed that membership to the Group was *ad personam* and therefore Group members were implored to attend the meetings themselves, the success of the Group also depending on personal bonds between the Ministers.

The documents "**terms of reference**" and "**working method of the Group**" were endorsed by the Group. The **timetable** will be completed in due course. The Group also adopted its **logo**.

4. Modernising European Border and visa management: orientation debate

Participants discussed this topic on the basis of the two input papers prepared by the co-chairs.

It was pointed out that the need for protecting the EU external borders is a condition for the democratic legitimating of the lifting of internal border controls. External border controls are a core element of the internal security of Europe and a precondition for any legal migration policy. EU border management has to react to growing illegal migration, to organised crime and international terrorism as well as to new technical procedures.

Although it has to be seen how FRONTEX is developing given its new responsibilities, it was underlined that the Group should focus its work by giving **clear strategic goals** to FRONTEX for its future work. Evaluation of FRONTEX to be done by the Commission before the end of the year is instrumental to this.

The following **scenarios** for a possible **future role** of FRONTEX were described:

- a. all responsibilities of border control passed to FRONTEX and, in the long run, to an European Border Guard;
- b. Member States on a voluntary basis to pass to FRONTEX border control's responsibilities under their jurisdiction;
- c. Further developing the role of RABITs by assigning additional police forces to FRONTEX for a limited period of time (2 years) (option RABITs Plus).

There was general consensus among members that the **Integrated Border Management** is the right approach. Protection of EU external borders must be done in parallel with an integrated policy of control of access to EU territory in order to strengthen internal security and better manage migratory flows, in close **cooperation with third countries**.

The Group was unanimous in agreeing that **FRONTEX** has to play a critical role in achieving this ambitious goal.

Additionally, it was made clear that border management is just an **element of the global approach to migration**. He underlined that FRONTEX will be one of Commission's most important policy instruments and called upon the Group not to shy away from expanding its mandate to achieve future goals, including by being transformed in the long run into an **European Border Guard**. The current planning which granted FRONTEX 190 people by 2011 was said to lack ambition and was considered insufficient to meet future challenges.

The growing importance of **co-operation with third countries** was recalled, alluding to the Sub-Sahara project at the border of Libya and Niger/Chad. A possibility for achieving more coherence in controls at European external borders would be the creation of a **European Border Inspector Certificate** and the deployment of permanent **European Reinforcement Teams** in difficult border-crossing points and areas. RABITs cannot be seen as a solution but only a first step. FRONTEX could also play a more pro-active role in coordinating European returns. FRONTEX should also be more involved in the European Surveillance System, including by establishing regional branches.



One participant emphasised that they would continue to strongly support FRONTEX and would agree with an overhauled evaluation mechanism, but considered that Member States have to retain the main competences in this field. A European Border Guard would not be more efficient than the existing border police units of Member States.

One participant reminded that migratory pressure would not decrease in the coming years. The views expressed by VP Frattini were shared, and it was suggested that new structures would be needed in order to enhance work in the area joint risk analysis. The Commission was invited to consider presenting a paper on “low risk travellers”.

Even if security is a national responsibility, participants were reminded that some Member States have already transferred part of their sovereign powers to the EU when entering Schengen. Partial loss of sovereignty should therefore not worry Member States when common security is at stake. Border control policies are closely linked to the common fight against **terrorism and organised crime**. In this context the rise of Al Qaeda in the Maghreb region was mentioned, as was the need to take a close look at security issues linked to migration.

Several Group members were in favour of strengthening FRONTEX by harmonising **standards and training**. They stressed that FRONTEX is still a young agency and that it should not be overloaded with new duties and responsibilities. Step-by-step is the right approach. The lack of transparency in FRONTEX activities and decision-making was also highlighted. Evaluation of FRONTEX to be done by the Commission is an important step from which reflection on the future role of FRONTEX can be started.

Scepticism as to the feasibility of a true European force for border protection was expressed, given that national authorities have a more expert knowledge of local particularities. Participants also expressed their reservations about cooperation with FRONTEX on visa questions as proposed by the Commission. But FRONTEX could play a greater role in the area of common return flights and could be given responsibilities in areas where efficient border control does not depend on regional knowledge. Its capacities to react in cases of emergency should be strengthened. It should also play a key role in evaluating border controls.

Support for VP Frattini's views as to the creation of the European Border Guard was expressed. The strengthening of FRONTEX is the real priority.

The issue of **further development of the Schengen System** was then addressed. The system dates back to the days of the Cold War and needs to be amended in order to reflect the changed situation in Europe, taking into account the situation on the new external borders of the Union. In terms of synergies, an examination of how far certain parts of the border controls and customs could be merged was suggested. To ameliorate the visa-issuing procedures, we could develop different, more target-oriented methods for cases with migration on the one hand and cases with security risks on the other. We should also examine

the possibility to link the national registers on third-country nationals staying in Member States and combine it with hit/no hit access regulations. The migration risks could be reduced by introducing an automated border control system e.g. for bona-fide travellers and EU citizens, in order to be able to concentrate border control resources on high risk travellers.

It was also pointed out that **ethnic minorities** in border regions (Hungarians in Ukraine and Serbia, Slovaks and poles in Ukraine, Romanians in Moldova) would benefit from new *bona-fide* travel regulations facilitating travel to the EU in order to maintain personal and cultural ties. In the context of visa policy, the decision whether to abolish visa obligations for third states should be combined with demanding progress at fulfilling Schengen-relevant conditions in return. This approach could be helpful vis-à-vis third states with an access perspective or vis-à-vis neighbouring countries, as it would encourage the development of more secure structures at an early stage and accelerate cooperation with EU member states.

It was highlighted that borders and visas policies should not be treated separately, but as a harmonious parts of a **global approach**. The elements of the **"e-border" concept** were presented as outlined in the Commission paper, which will be based on the following future Commission initiatives:

- the creation of an integrated surveillance system for maritime as well as land borders,
- the feasibility study for an "entry/exit" control system,
- the registered travellers programme,
- the evaluation of the FRONTEX Agency,
- the feasibility study of the European Border Guards' System, and
- the new Schengen evaluation mechanism.

Additionally, these elements will be complemented by the **finalisation of SIS II and VIS** and the creation of Common Visa Application Centres in third countries. The guidelines for the new concept would facilitate the entry of *bona fide* visitors to the Union while enhancing security.

The so-called **"four-tier access control model"** could provide, inter alia, for a more targeted approach by assessing individual migratory and security risks of travellers and would aim at integrating checks and controls carried out for different purposes, *i.e.* related to persons, goods, veterinary and phyto-sanitary, pollution, terrorism and organised crime. This new approach could allow for a customer-friendly one-stop-shop approach at the physical EU-border.

There was consensus among Group's members on the approach proposed. Several participants particularly welcomed the paper and highlighted that the **new technologies** would play a central role in border management.

It was underlined that encouraging the "bona fide travellers" and combining this approach with the use of modern technologies is the way forward but at the same time a huge challenge. A lot of efforts will have to be made to appropriately communicate this reality. The need to take a closer look at the balance between security and freedom was highlighted and the Group will consider this issue more closely in one of its future meetings.

It was pointed out to the group that EU should not lag behind the US and other third countries such as Australia on E.T.A, while at the same time developing appropriate standards for protection of personal data.

Finally, the issue of **enhanced cooperation with third countries** was briefly raised, by underlining that this is essential to prevent illegal migration. The possibility of agreements with third states were mentioned e.g. on joint maritime surveillance, on deployment of document advisers, or on pre-border checks to be carried out in third countries under an anticipatory strategy. FRONTEX could do more in terms of advanced control in travel documents at the point of departure of illegal migrants and in the autonomous organisation of return flights to third countries. Concerning the introduction of forgery-proof travel documents, we should also think of financial or technical support for third countries.

In this context the agreement reached in the Tripoli Conference in 2006 on global approach, including legal and illegal migration was mentioned. The concept of "**security partnerships with third countries**", which would include identification of illegal migrants, should be better explored.

It was considered that FRONTEX should be more active in the area of return and that action against **illegal workers** is an opportunity for the credibility of EU in this area.

Identification of illegal migrants was highlighted as a crucial subject in relations with third countries. Control of migration is also beneficial to the fight against terrorism and organised crime. The possibility of establishing a **permanent** operational group of immigration officers was mentioned. Such a group would be expected to carry out operations in countries of origin and European borders at any time

In the concluding remarks made, Minister Schäuble thanked all participants for the frankness and value of the discussions. Sherpas were invited to provide follow-up describing main outcomes of the meeting and further steps, while avoiding duplication. He committed to inform other Ministers not present at Eltville would also be informed, possibly in the margins of the next JHA Council on 12/13 June 2007

Next meeting

The next meeting will take place in Brussels on 25 June 2007 and will focus on the increasing blurriness between **internal and external security**. A request for a discussion of the issue of



terrorism in Europe was made; possibly by inviting an expert (A high-level official sent from the UK national authorities was suggested.)