



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 26 June 2009

11413/09

LIMITE

**JAIEX 47
RELEX 609
ASIM 70
CATS 72
JUSTCIV 161**

NOTE

from : UK delegation

to : Article 36 Committee/ Strategic Committee on Immigration, Frontiers and
Asylum/Civil Law Committee

Subject : Contribution by the UK delegation on the Strategy for the External Dimension of
Justice and Home Affairs

Introduction

1. The fact that the JHA Council is about to negotiate the next five year work programme for JHA, provides an opportunity to ensure that Justice and Home Affairs priorities form part of the EU's external relations strategy. We need to ensure that JAIEX fulfils its potential in establishing and driving forward delivery of the JHA external relations priorities. This paper and its annex offer a basis for discussions about:
 - i. The role of JAIEX and how it might be more proactive in setting the external relations agenda; and
 - ii. The priorities for JHA external relations.

By setting out our thinking in this way, we intend to provoke substantive debate with a view to conclusions from JAIEX influencing the content of the Stockholm programme and delivering EU priorities for external relations in the future.

The Role of JAIEX

2. JAIEX was created on a time limited trial basis, until the end of December 09. If it is to continue beyond its trial period we need to ensure that it brings added value to the EU external relations and JHA agendas by proactively identifying priorities for action and opportunities to deliver those. Whilst it is useful for the group to receive feedback from meetings between the EU and third countries, it needs to be feeding into the discussions in advance. One way forward might be to schedule a series of agenda items whereby this Group consider a number of thematic areas, such as those Annex A, for discussion. Another option may be to develop a practice of consultations with JAIEX on incoming bi- and multilateral meetings in order to detect best possible ways of handling difficult issues.

The priorities for JHA external relations

3. With the negotiation of the post-Hague JHA work programme, the EU now has an opportunity to set out its JHA External Relations priorities for the next five years. The remainder of this paper and the Annex sets out what the UK considers these priorities should be and how they should be approached.
4. In determining the future external priorities in the JHA field, attention should be paid to the following key principles, which build on those already set out in the Trio Presidency Work Programme in July 2008 (document 11249/08). To be effective, our work in this area must seek to:
 - i. **enhance or contribute to EU objectives in thematic or geographical priority areas** to ensure that the EU is harnessing its resources effectively and exerting maximum influence where it can make the most difference.
 - ii. **focus on where the EU can add value** through its collective leverage above and beyond what individual Member States or other non-EU actors can achieve. There are many areas where the EU provides a valuable multiplier effect, and where it can be more effective than individual initiatives. Equally, there are areas where EU support for Member States to undertake bilateral initiatives is more appropriate.

- iii. ensure that decisions on priority areas are **based on evidence** in terms of their contribution to strategic or geographic priorities, **deliverable** and **specific** to the needs of third countries.
 - iv. demonstrate clearly how **strategic priorities will be translated into operational objectives**, taking into account existing instruments for promoting co-operation in third countries (Partnership and Co-operation Agreements; Stability Instruments etc).
 - v. improve **internal coherence and co-ordination**, both between external and internal elements of JHA work and also the link between JHA external priorities and wider EU external objectives (CFSP; ESDP etc).
5. The UK suggests a number of activities that could contribute to ensuring these principles are followed. To help determine priority countries, a speedy but thorough piece of **research** to determine countries' comparative levels of security, access to justice and links with the EU should be commissioned. This research could be modelled on the OCTA.EU missions in third countries may be able to contribute by providing feedback on the activities of non-EU international donors and providers of assistance in third countries.
 6. To ensure that our goal of improved **internal coherence and co-ordination** of JHA RELEX matters in Brussels is sustained in the long term, consideration could be given to appointing an EU External Relations Co-ordinator with oversight of all EU JHA external relations work. We welcome discussion on this, including on whether others see the appointment as necessary and if so what the detailed arrangements for taking forward the appointment should be. In addition, Commission Delegations in third countries must have effective oversight of all ongoing JHA external relations work in order to provide feedback on the extent to which EU objectives in each country are being achieved.
 7. Finally, to enable Member States to make **maximum use of the EU budgets** already available for external relations work, a comprehensive and user friendly report should be produced on the funding streams available for this type of work.
 8. Bearing in mind the above principles, the UK proposes the following priority areas:

- I. Immigration and asylum:** greater EU engagement with source and transit countries to improve capacity to better manage flows of legal and illegal migrants and asylum seekers;
- II. Public Protection:** reducing harm to the EU through engaging with third countries to tackle organised crime, drugs, trafficking in people, and focusing the EU's counter-terrorism action primarily on PREVENT. PREVENT is the UK's strategy to stop people becoming terrorists or supporting terrorism. It is based on a better understanding of the causes of radicalisation, to each of which it aims to provide a coherent response.
- III. Information exchange:** EU frameworks that allow personal information to flow securely, efficiently and with adequate data protection standards between the EU and third countries;
- IV. Justice:** EU action in third countries to promote the rule of law and human rights, to help build security and stability and to enhance opportunities for EU business.

Strategy for the External Dimension of Justice and Home Affairs

The reach and breadth of the issues covered demonstrates how the EU must reach out to the wider world and help the international community to find global solutions to what are global challenges. Our work on JHA should be seen in the context of EU engagement and cooperation with the global community in other key areas including defence, economic reform, tackling poverty and international development.

The EU must look beyond its own borders to achieve its goal of a European area of Freedom, Security and Justice. In our increasingly interconnected world, delivering on key challenges such as counter-terrorism, illegal immigration, organised crime, corruption and drugs requires the EU to take an outward-looking and holistic approach. The EU also has a key role to play in promoting its founding values of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law beyond its borders and providing practical expertise and support for capacity-building projects on issues such as judicial reform and law enforcement to help create the conditions for peace and stability in third countries that are critical to our future global security and prosperity.

I. Immigration and asylum

The EU also has a clear role to play in co-ordinated action to reduce flows of illegal migrants coming into its territory, in particular by strengthening cooperation with and investing resources in transit and origin countries. EU activity and funding for migration should:

- i. Build on and implement the Global Approach to Migration, using collective EU leverage to secure strong practical cooperation with source, transit and destination countries in Africa, Asia, European Neighbourhood countries and the Mediterranean on migration issues, to identify transit routes and on returns and readmission and disrupt illegal flows of migrants arriving in the EU.

- ii. Work on modernisation and strengthening of border controls in third countries could include enhanced data sharing where appropriate. This would help to tackle immigration crime and disrupt people trafficking and people smuggling networks. Finance for capacity building projects would assist better management of migration flows. Priority areas include African Migrationary Routes and source countries including those in the Horn of Africa, Ukraine, Russia and the Western Balkans.
- iii. Secure better co-operation with third countries on returns and readmission and extending the range of agreements, either at EU level or bilaterally with EU support. This should include EU funding for Assisted Voluntary Return (AVR) schemes, with a focus on Ethiopia, Turkey, and North Africa.
- iv. Prepare for accession of candidate countries, especially Turkey. The EU should provide funding and technical assistance to support strengthening of Turkish border controls and asylum procedures.
- v. Develop Regional Protection Programmes, in particular by creating a separate funding stream to raise their profile and ensure the use of EU funds is transparent. The findings of the reviews of existing Programmes will be important in ensuring that RPPs are focussed on where they add most value.
- vi. Strengthen the links between migration and development: through sustainable development aid in line with country priorities to help tackle poverty and promote economic growth, including addressing conflict and bad governance (which may help address and minimise push factors in source countries) and through harnessing the development benefits of migration e.g. through remittances and diaspora networks.
- vii. Continue to enable Member States to take the lead on EU Cooperation Platforms with third countries. The work begun by the UK on the EU Co-operation Platform in Ethiopia, which eighteen other Members States have now joined, is just one example of the value of this approach.

II. Public Protection

The EU must deliver a co-ordinated effort in third countries to help reduce the security threat posed to the EU from outside its borders. Globalisation can be exploited by terrorists and organised criminals operating both nationally and internationally, so the EU must ensure that the external dimension is mainstreamed in all aspects of its work on security and public protection. In this area, prevention is the key priority: the EU must work to promote its shared values of liberty and democracy in third countries that pose a security threat and further the spread of an anti-terrorism global consensus. Priority areas for EU action should include:

- i. Embedding the PREVENT agenda in all work with third countries threatened by terrorism. Measures to address the causes of violent extremism should be progressively mainstreamed across all geographic EU funding programmes in counter terrorism priority countries, complementing existing objectives such as poverty reduction.
- ii. Exploring the scope for enhancing mutual assistance in emergencies within and outside the EU, based on existing assets of Member States and within the current framework of the EU Civil Protection Mechanism: the consequences of terrorist attacks, or other man-made and natural disasters, require the generic emergency management methods of civil protection.
- iii. Encouraging compatible data sharing frameworks with third countries (both legislation and practice) to enable effective criminal intelligence work, while continuing to keep national security outside the scope of EU competence (see paragraph 8 on information exchange).
- iv. Providing support to the UN's global counter-terrorism assistance programmes overseas, which assist third countries in implementing relevant UN Security Council Resolutions and Conventions and Protocols on counter-terrorism and the UN Global Strategy on counter-terrorism.

Within the **counter terrorism** sphere, we see three top priority regions:

- i. **Pakistan:** the EU is already engaged in Pakistan, e.g. Solana's visit and Commission development funding, which helps address some of the grievances that can fuel extremism. In the longer term, there should be a greater EU role in supporting stability in Pakistan through development funding through a focus on good governance, education and rule of law.
- ii. **North Africa and Sahel region:** the EU has focused particularly on Morocco and Algeria with a coordinated programme of assistance but to date it has had limited results with some resistance from local authorities who prefer a bilateral approach to an EU approach. The Sahel region is also increasingly a priority for the EU because of the increasing AQM (Al Qa 'ida in the Islamic Maghreb) threat and there is already wide support for using Stability Instrument to provide technical assistance in the region. The EU has also kept regional engagement through initiatives like Euromed and the Union of the Mediterranean. The EU should continue to work with North African states to reduce the threat from terrorism.
- iii. **Horn of Africa and Yemen:** to date there has been little EU engagement on CT in the region. However, there is a need to focus EU effort, due to the increasing AQ threat to EU interests in and from Yemen and the Horn of Africa. EU support given to the AU Policing Mission in Somalia is a good start in the right direction. The EU should also continue to engage with Yemen on CT following the recent EU-Yemen COTER Troika in May 2009.

On **organised crime and corruption**, we welcomed the recent draft Council conclusions "Setting out the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA" as set out in paper 8301/09. We believe that EU external work in this field should focus on the following areas, which complement internal JHA priorities:

- i. Ongoing work in combating human trafficking, firearms smuggling and money laundering: identifying and disrupting organised crime routes, particularly in the Western Balkans, Eastern Europe and North Africa.

- ii. Encouraging police and customs co-operation and the promotion of intelligence led models in pre-accession countries, ensuring that lessons learned from the EU enlargement process are transferred to the Stabilisation and Association Process and neighbourhood policy.
- iii. Combating and disrupting drug production and trafficking through increased EU support and assistance to the Caribbean region, Jamaica, Afghanistan, West Africa and South America (specifically Colombia & Venezuela) towards their counter-narcotics efforts, and development assistance to reduce incentive to produce. We need to ensure that that greater efforts are made to bring those responsible for these crimes to justice, particularly in the field of money-laundering.
- iv. Improving co-ordination between EU law enforcement agencies (such as Europol) and non-EU law enforcement agencies (such as Interpol) to provide a larger intelligence picture, avoid duplication and ensure a more accurate prioritisation of work and human targets.

III. Information Exchange

The movement and use of information underpins and facilitates our objectives in other areas. It is fundamental to the achievement of significant benefits for EU citizens and businesses, including more effective and efficient action to combat terrorism and crime; increasing public protection particularly for children and vulnerable adults; quicker and safer travel and immigration procedures; and better functioning of global markets. This work must also be safeguarded by clear data protection standards. Priorities in work with third countries on information and data exchange should include:

- i. Negotiation of a binding EU-US agreement on data protection in the field of law enforcement, through the EU-US High Level Contact Group (HLCG). We should then extend the approach of the HLCG to other US sectors and other priority third countries.
- ii. Work with third countries to raise standards in the issuing of all travel documents and increase biometric checking across Member State and EU boundaries to improve identity management and security.
- iii. In the short term, focusing on different sectors for different countries according to need: for example, data protection for law enforcement and immigration purposes in Pakistan or for commercial and business purposes in emerging markets such as Brazil, Russia, India and China.

- iv. In the longer term, developing more efficient EU legal frameworks surrounding the transfer of data to non-EEA countries and (depending on how such frameworks develop) work to secure more ‘across the board’ adequacy judgements for third countries.
- v. Information exchange to enable effective work on organised crime and counter terrorism.

IV. Justice

EU external work in the field of justice should focus on helping third countries in both our neighbourhood region and the wider world to build the right conditions to become stable, peaceful and prosperous states, in particular by offering practical support for the fundamental democratic reforms needed to help newer and emerging democracies to tackle problems such as poor governance, corruption and inequality that can fuel instability and extremism. EU work on civil justice should continue to focus on providing practical benefits for citizens, cutting red tape and making it easier for EU citizens to work and do business with countries across the world.

Priority EU action and co-operation with the Council of Europe to help promote respect for human rights in third countries should include:

- i. Continued EU action to persuade Russia to ratify Protocol 14 to the European Convention on Human Rights, in the expectation that the process of EU accession to the ECHR will be facilitated if and when the Lisbon Treaty comes into force.
- ii. We hope that provisional application of certain provisions of Protocol 14 under the consensus agreement and Protocol 14 bis will help to improve European Court of Human Rights efficiency, but stress that the ultimate goal should be for Russia to ratify Protocol 14
- iii. Action at European level to promote dialogue and co-operation with key third country partners in order to develop work programmes to raise the level of protection of human rights in those countries.
- iv. Work to raise procedural and prison standards in third countries to facilitate the extradition of suspects and repatriation of prisoners.
- v. Practical co-operation and synergy (in order to avoid duplication) between the Council of Europe, OSCE and the European Union Agency for Fundamental Rights especially in respect of Turkey, Croatia, European Neighbourhood countries and the Western Balkans.

Sustained and co-ordinated action at European level to strengthen **respect for the rule of law** and improve access to justice for citizens in third countries should include:

- i. Supporting and promoting the development in third countries of independent police, judiciary and prosecution services, effective judicial training, legal aid systems, effective regulation of legal services and effective programmes to tackle re-offending.
- ii. Promoting respect for the rule of law through exchange programmes for law students, the police, practitioners and members of the judiciary.
- iii. Making EU funding and expertise available to encourage and support research by third countries into best practice in the Justice sphere, for example establishing a European repository for information.

Continued action at European level in the civil and commercial justice sphere to promote international judicial and administrative co-operation, focusing on where practical benefits can be provided to EU citizens in their daily lives, such as the Hague Conference on Private International Law which helps to protect families and children and make it easier for consumers to buy goods from around the world.

Areas to focus on should include:

- i. Continued European action to encourage third countries, particularly Russia, and African and Middle Eastern members of the Hague Conference, to ratify certain Hague Conventions.
- ii. EU support for the development in third countries of effective institutions and judicial systems to contribute to a more effective and stable investment environment.
- iii. Providing funding for further work with third countries on the protection of children (through the Hague convention and other instruments).