

27 August 2009

EUROPEAN PARLIAMENT: HMG BRIEFING FOR UK MEMBERS

COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT - AN AREA OF FREEDOM, SECURITY AND JUSTICE SERVING THE CITIZEN ('STOCKHOLM PROGRAMME')

EP Reference: COM(2009)262 Council Reference 11060/09

Legislative Procedure: Consultation

Rapporteur: Juan Fernando Lopez Aguilar (ES S&D)

EP Committee Responsible: Civil Liberties, Justice & Home Affairs (LIBE)

EP Committees with Enhanced Cooperation:

- Legal Affairs (JURI)
- Constitutional Affairs (AFCO)

EP Committees giving an Opinion:

- Women's Rights & Gender Equality (FEMM)
- Petitions (PETI)
- Employment & Social Affairs (EMPL)

Overall Justice and Home Affairs policy in England, Wales and Northern Ireland is a shared responsibility between the Home Secretary, the Secretary of State for Justice and the Attorney General. The Cabinet Secretary for Justice is responsible for Scotland.

I. HMG's view

General

In the ten years since the Amsterdam Treaty and Tampere, cooperation between Member States facilitated by EU level action has demonstrably increased security, freedom and justice. The Government welcomes the Commission's communication on the Stockholm programme as a further development of that work focussed on the citizen. The next five years should be focussed on full implementation of the acquis, proper evaluation of our achievements and the identification of the full range of tools that are at the Union's disposal – Member State cooperation and action, strong Union agencies, financial support, action outside the EU's borders and where proven necessary legislation.

Promoting citizens' rights: a Europe of rights

- The Government welcomes the Commission's strong emphasis on promotion of citizens' rights, particularly the measures proposed to ensure a strategic approach to how we use data and the measures to ensure that freedom of movement rights are not subject to abuse.

Making life easier: a Europe of justice

- **Mutual recognition:** The Government agrees with the Commission that mutual recognition should continue to be the cornerstone of co-operation in both civil and criminal justice.

- **A core of common standards:** The UK agrees that minimum standards in civil procedural matters for cross-border cases should be considered further. However, we do not accept that there is any need for a general alignment of substantive criminal law.

Protecting citizens: a Europe that protects

- **Child protection:** The UK particularly welcomes the measures proposed to enhance child protection. This should be a priority for the next Commission.
- **European Evidence Warrant:** Further work is needed on an instrument that will demonstrably add real value to mutual legal assistance
- **Criminal procedural standards:** The UK supports the proposed 'roadmap', which will ensure that progress is made in areas where there is an identified and demonstrable need for change. We would like to see this approach enshrined in the Stockholm Programme.
- **Terrorism:** The UK welcomes the recognition of the need for continued co-operation on counter-terrorism. But co-operation must be set in the context of the international terrorist threat to Europe and the need for a broad response across all four strands of the EU CT Strategy.
- **Organised crime:** The UK seeks the creation of a comprehensive EU Organised Crime Strategy in order to improve the operational response to the serious organised crimes committed across the EU.

Promoting a more integrated society for the citizen: a Europe of solidarity

- **Implementation of the Migration Pact:** The UK strongly agrees with the Commission that the Stockholm Programme should reflect the priorities set out in the Migration Pact.
- **Asylum:** The UK has reservations about: the proposal to expand the role of the European Asylum Support Office in 2013; the mutual recognition of decisions to grant protection; the concept of issuing humanitarian visas at an EU level; and a coordinated mechanism for internal relocation within the EU. The Union should move towards a common asylum system in which fast and fair decisions are taken on claims, so that refugees are protected and those seeking to abuse the system removed; and remove incentives to make false claims.

External relations

- The UK takes the view that the final text of the Stockholm programme should include a specific section dealing with external relations in Justice and Home Affairs, if it is to properly reflect the full range of challenges and opportunities facing EU citizens.

Better regulation

- The UK believes the new programme must be built on principles of better regulation. These values should be expressed in the document itself.
- The UK believes that if we are to deliver on the Communication's focus on the citizen at the heart of JHA co-operation, we need collectively to make a very significant effort to research and understand the needs of those citizens and take action on the basis of those needs.
- The UK welcomes the Commission's focus on implementation and evaluation. We must understand the impact of EU legislation before pursuing further activity. Furthermore, full and proper impact assessments need to be completed, to include consideration of practical measures. Legislation should only be pursued where it will add value and where there is a realistic chance of agreement. We

should of course, however, continue to legislate where there is a proven need, and envisage the European Parliament's involvement in shaping action plans and proposals stemming from the programme.

The headline priorities for the UK government are outlined below. We look forward to working with the Presidency, the European Parliament and other Member States over the autumn in order to ensure that these issues are given high priority in the final text of the draft Council Conclusions.

We want an EU where:

(1) Children are safe. We need to build on public protection successes like the child alert mechanism and the Europol alert database, and develop proportionate measures to enable the exchange and use of information on those convicted of crimes against children. We also need to increase co-operation between law enforcement and the private sector to tackle online child abuse. There were approximately 2,000-3,000 established domains recorded each year worldwide that offer access to child abuse images by payment of subscription (CEOP strategic review 07-08).

(2) We exchange data sensibly, between ourselves and with third countries, to protect the public and to strengthen our borders. This is not as an end in itself, but is about facilitating movement and protecting citizens. We need to look beyond the silos of police, justice and immigration to ensure that we have a true JHA approach to the use of data, underpinned by a strong data protection regime, founded on the principles of proportionality, necessity and transparency. Sharing data can, and does, make people's lives easier, but not enough has been done to communicate this effectively.

(3) Justice knows no borders. Every citizen must have confidence that, wherever they are in the EU, judicial decisions made in their favour in a civil court can be enforced, criminals will face justice and all defendants will receive a fair trial.

- **Mutual recognition (3.1).** Subject to appropriate safeguards for parties we support the abolition of exequatur in the area of civil judicial cooperation, but are strongly opposed to creating an automatic link with the harmonisation of conflict of law rules. On the criminal side, we support the extension of mutual recognition to disqualifications, such as disqualification of certain sex offenders from working with children.
- **A core of common standards (3,3.3):** We agree that minimum standards in cross-border civil procedural matters should be considered further. However, we do not accept that there is any need for a general alignment of substantive criminal law.
- **Criminal procedural rights:** We support the proposed action plan approach (4.2.2), which will ensure that progress is made in areas where there is an identified and demonstrable need for change. Within this, work on the quality of interpretation available to defendants is an important start. We would like to see this 'roadmap' approach enshrined in the Stockholm Programme. Wholesale duplication of existing law is unnecessary.
- **Ensuring access to justice:** The Commission suggests that existing measures on legal aid need to be intensified (3.4.1). The UK has the most generous system of legal aid, in terms of cost, in Europe, and we could not therefore contemplate any measure that extended our current obligations.

With regard to civil law we do not believe there is any need to change or go further than the existing Directive.

- **Supporting economic activity** (3.4.2): We support the introduction of cross-border procedures for the enforcement of civil judgments, including the Commission's suggestions for the attachment of bank accounts and the transparency of debtors' assets. However we do not support the introduction of a 28th system of contract law. The creation of guidelines which act as a source of reference for Community lawmakers in the field of contact law when drafting or reviewing legislation, should be allowed to come to fruition and assessed before further work is taken forward in this area.

(4) Legitimate travel is facilitated and illegal immigration reduced. We need to facilitate legitimate travel alongside reducing illegal immigration through the use of technology and the sharing of data, information and law enforcement intelligence. Free movement rights should be assured for European citizens, but abuse of those rights must be curtailed. We need to counter illegal immigration, people trafficking and abuse of our asylum systems through strong border controls and by using the EU's weight to secure quick returns for those who aren't entitled to stay. Development of the capabilities of Frontex will be crucial to this aim.

(5) We remain vigilant against terrorism so that people can go about their lives freely and with confidence. According to a Eurobarometer poll last year, 53% of European citizens considered terrorism to be the most serious problem facing the world as a whole, and 72% saw added value in action taken at EU level. We agree with the Commission on the need for practical co-operation to be prioritised on preventing radicalisation. We also want to improve and extend the range of common tools to disrupt terrorist networks and set common standards to reduce Member States' vulnerability to attack.

(6) We tackle organised crime (4.3.1) through a new EU serious organised crime strategy - targeting gangs who trade on the trafficking of people, guns and drugs, confiscating profits illicitly gained, and working with European organisations on the EU border.

(7) We reach beyond our borders, so that we can tackle global challenges by engaging and co-operating practically with third countries. As noted above, the Government believes that the Stockholm Programme should include a separate chapter on external relations. The Commission has instead chosen to refer to external relationships under several chapter headings, as and when they are relevant to the subject. The Government believes that work on JHA matters in external relations should be conducted in a more coherent and strategic way to get maximum value, and a separate section would emphasise this point. We will therefore try to ensure that the final text, to be agreed in December, includes ambitious language on external relations.

II. European Parliament consideration.

- The LIBE Committee held their first exchange of views on the Stockholm Programme on 22 July.
- There will be a presentation by the Commission and an exchange of views with the EP Legal Service on the Stockholm Programme at the LIBE Committee meeting on 2 September. LIBE will vote on the draft report at an extraordinary meeting on 12 November.
- Other Committee timetables are still in the preparatory phase.

III. Background/ Views of others

The current five-year work programme for the European Union in the Justice and Home Affairs area, known as the Hague Programme, comes to an end in 2010. This Communication sets out what the Commission considers to be the priorities for Justice and Home Affairs for the next five years, as a contribution to further discussion within the Council, led by the Presidency.

Due to the wide ranging nature of this Communication, the Government position has been prepared over a period of time in consultation across Whitehall, associated agencies, the devolved administrations and relevant stakeholders. The current UK position therefore reflects a wide range of UK priorities, bringing them together so that there is a focused and relevant vision which aims to deliver tangible benefits for UK citizens. We are developing vision papers on each of the UK's top priorities, and will be happy to share those with you in due course.

The Commission's paper aims to engage citizens, as well as Member States, NGOs and international partners. Addressing their needs and concerns is important, and all future EU JHA work, including any specific proposals, will be gauged on the four key priority themes identified by the Commission.. These are: Promoting citizens' rights — a Europe of rights; Making life easier — a Europe of justice;

- Protecting citizens — a Europe that protects;

Promoting a more integrated society for the citizen Our analysis indicates that Member States broadly welcome the Communication, and are willing to come to the table to discuss their own priorities. The Government has also been active in engaging with key partners and stakeholders outside of the UK to ensure that our priorities are practical and deliver real benefits to citizens.

IV. Timetable

The Communication was first discussed by Ministers at the informal meeting of JHA Ministers in Stockholm on 16-17 July 2009. Negotiations on detail of the work programme, which will take the form of European Council Conclusions, will begin in earnest in the autumn, to be agreed at the November JHA Council and then at the December European Council. The Council will then agree the Action Plan under the Spanish Presidency in early 2010.

V. Official Contact Points for Further Information:

- Laura Coleman, Home Office. Tel + 44 (0) 208 7035 0648
laura.coleman14@homeoffice.gsi.gov.uk
- Sophie Coulombeau, Ministry of Justice. Tel +44 (0) 203 334 5331
sophie.coulombeau@justice.gsi.gov.uk
- Grace Knott, EP Liaison Officer JHA, UKREP. Tel + 32 (0) 2282 8915
Grace.Knott@fco.gov.uk