

Contribution of the Netherlands to the Public Consultation by DG Home Affairs of the European Commission titled 'A debate on the future of Home Affairs policies: *An open and safe Europe – what next?*'

20 January 2014

The Netherlands contribution to this consultation is a compilation of papers that have already been shared by the Netherlands with all Member States and the European Commission as part of the Council's preparatory process of the post- Stockholm Programme.

The multiannual Justice and Home Affairs (JHA) programmes of Tampere, the Hague and Stockholm demonstrated the value of a strategic approach and a long term vision for future JHA cooperation. As a result, they have stimulated a balanced development of the JHA area. Now the Stockholm Programme is coming to an end, the Netherlands agrees with the Commission that a new strategic vision is needed to give long-term guidance to the EU's JHA policies beyond 2014.

1. Contribution of the Netherlands to the JHA-Council discussion of 5/6 December 2013 on the future development of the JHA cooperation

The Netherlands contribution has to be considered as a **supplement to the common guiding principles**, which recently have been **presented by Estonia, Finland, Germany, Hungary, Slovenia, Sweden, the United Kingdom and the Netherlands**. Furthermore, this contribution has to be considered in addition to the paper on the political priorities for the future development of the JHA area in the field of asylum, migration, visa and borders, as presented by Austria, Belgium, Denmark, Sweden and the Netherlands and supported by France and Germany.

As set out in the joint position regarding the common guiding principles , it is essential that the future JHA policy framework:

- is based on actual **needs** and **evaluation of the effectiveness of existing measures**;
- gives priority to **quality, consolidation and implementation**;
- is **effective, cost efficient** and supports **growth**;
- makes good use of the available **resources**;
- is based on the respect for European **values** and **fundamental rights**, and
- strengthens the coherence between the **internal and external dimension**.

Cooperation in a number of JHA fields is very valuable, and it is important to take this cooperation forward, depending on the social and economic context and needs in practice. **Subject to the** aforementioned **guiding principles**, special emphasis has to be put on the **following topics** in the process leading to the adoption of a new programme.

I. Justice:

Eliminating gaps in cooperation in criminal matters

The EU should focus on finding and eliminating any gaps that may exist in cooperation in criminal matters, thus strengthening cooperation in the interest of successful prosecutions in cross-border cases of serious crimes. Law on criminal procedures and substantive criminal law are primarily a matter for the Member States. The principle of mutual recognition is the cornerstone of judicial cooperation in the EU. It is essential to strengthen the system of mutual recognition by enhancing mutual trust. Special focus should be placed on the implementation of the road-map on procedural rights. In addition, it must be ensured that the existing instruments of mutual recognition work in practice and that they are evaluated as a whole. Regarding criminal procedures, new legislation at EU level should only be considered when practical experience shows that EU-level rules are

needed. Every measure should be of good quality and user-friendly, and their effective enforcement should be ensured.

Approximation of definitions of criminal offences and sanctions in the Member States is merely justified when it comes to serious crime with a cross-border dimension. Common principles that steer the EU criminal law policy should be agreed upon. Such principles should include subsidiarity, proportionality, respecting the individual Member States' penal systems as regard the determination of the levels of sanctions, article 83 TFEU as exclusive legal basis for substantive criminal law, and should entail that it is not justified to enact EU legislation regarding minimum sanctions.

Implementation of instruments for victims

In recent years, two EU directives and an EU regulation have been adopted for the support and protection of victims, which have to be implemented by the Member States in 2015. For the trust of victims in the authorities in general and the criminal justice system in particular, it is of the utmost importance that what has been agreed is implemented. The Netherlands' objective is therefore to ensure that the legislation is properly implemented and respected. Promoting information exchange and sharing knowledge and best practices stimulates and strengthens cooperation in implementing legislation. Closer cooperation between Member States at different levels is necessary in order to improve the support, protection and compensation offered to victims in cross-border cases.

Room for administrative enforcement

In many cases, sanctions carried out under administrative law represent a good alternative to enforcement by means of criminal law. However, because of the differences in enforcement systems between Member States, cross-border enforcement of sanctions administered via the administrative route may in some cases cause problems. This is an area where comprehensive analysis could be useful in order to share best practices and knowledge, as well as to ensure consistency of EU legislation in all policy fields. The question is whether there may be a need for (more) cross-border cooperation in this field.

Effective instruments for settling cross-border disputes

Civil law is an area where enhancing the knowledge of the existing instruments among the legal practitioners should be at the center of attention. Focus should also be on measures that are based on the actual needs of citizens, consumers and SMEs. The aim is to simplify and facilitate cross-border activities and enhance access to justice. The process of abolishing unnecessary intermediate measures, such as exequatur, should continue where appropriate, when revising existing instruments.

Several instruments concerning the civil procedure have been created in the EU. However, the practical application of these instruments would be facilitated and enhanced, if they were mutually consistent and based on similar solutions that steer the practical work. EU instruments concerning cross-border civil procedure should be made more explicit and more uniform.

All action in this policy area must respect the legal basis that limits EU action to cross-border matters. It is also necessary to ensure that possible EU instruments do not overlap and complicate the legal framework already set by more global solutions, adopted for instance in the Hague Conference on Private International Law.

Rule of law

Our European community of values requires constant upkeep. The Netherlands, together with other Member States, has continuously worked to establish an additional mechanism that would

make it possible to examine developments concerning the rule of law in a broad sense in the Member States and to discuss such matters in a dialogue between Member States.

The Commission will issue a communication on a rule-of-law mechanism. According to the Commission, the mechanism will be based on the principle that Member States are treated equally and that national sovereignty is not constrained.^[1] The Netherlands is looking forward to receiving the Commission's proposals and will continue to play an active and constructive role in the discussion. In addition, several Member States, including the Netherlands, and the EU Fundamental Rights Agency (FRA) are working on a project that involves identifying data and monitoring procedures that already exist for a number of rule-of-law themes. As one of the countries spearheading this project, the Netherlands supports these developments, emphasizes their importance and their continuous future development. Next to stressing the importance of these developments, the Netherlands strives to prevent any increase of administrative burden or unnecessary institutional duplication due to new initiatives or mechanisms.

II. Home affairs

A comprehensive approach of cyber security

Cyberspace has economic and social advantages, but also provides opportunities for criminal and harmful state sponsored activities. Therefore, a comprehensive approach which includes the various relevant aspects (security, freedom, justice and social-economic development) is needed, alongside strong public-private partnerships. Member States should share expertise and ensure Computer Emergency Response capacities as well as develop and implement standards. The EU can play a stimulating role in cyber crisis management within the European Union based on capabilities in the Member States and in research and development. Furthermore, international cooperation regarding prevention, investigation and prosecution of cybercrime needs to be enhanced. The establishment of the Europol Cybercrime Centre (EC3) is vital in enabling Member States to quickly and effectively exchange information between law enforcement authorities to fight cybercrime.

Attention has also to be drawn to the broader problem of the use of the internet for criminal purposes. The use of the internet as an instrument for facilitating criminal activities is universally present. Europol and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) indicated last January that the internet is facilitating illicit drug trafficking, human trafficking and many other criminal activities.¹ The increasing use of the internet for criminal purposes therefore necessitates a structural, cross-border approach. Encouraging international cooperation in specific investigation activities as well as in intelligence sharing is crucial.

Fight against organized crime

The EU, Member States, and their authorities must be well positioned to combat organized crime effectively. The EU Serious and Organized Crime Threat Assessment provides an adequate threat analysis and should continue to be used as a leading source of information and prioritization. It is vital for the success of this instrument that the European Commission and the Member States support the implementation of the EU policy cycle and subsequently the execution of the EMPACT (European Multidisciplinary Platforms against Criminal Threats) projects. In the fight against organized crime financial investigations and the confiscation of criminal assets should be a priority. Focus should also be on fight against corruption. Operational and legal problems hindering effective cooperation between Member States on this approach should be assessed and solved.

Law enforcement and criminal law on their own do not provide enough scope to combat organized crime. Strengthening the administrative approach against organized crime is crucial in this respect.

^[1] State of the Union, European Commission President José Manuel Barroso, 11 September 2013.

¹ Europol and EMCDDA, *EU Drug Markets report | a strategic analysis (2013)*, pp. 118-119.

Cooperation and exchange of information between, for example tax authorities, administrative and licensing authorities and law enforcement authorities, shall make it possible to fight the criminal (activities) in the most effective way.

Enhancement of the quality of information exchange

Effective and secure cross border exchange of information is a precondition to achieve the goals of internal security in the European Union. To that end it might be useful to explore the possibility of introducing a single point of operational contact (SPOC). To ensure a high quality of information exchange between law enforcement authorities, the potential of the existing instruments, such as the Prüm decisions, should be fully utilized and implemented by all Member States. The operational consequences of the use of the various instruments for information exchange, for instance the follow up after a "hit", should be taken into account.

Where possible a uniform European IT architecture should be developed in particular concerning biometric data. In order to enhance the information exchange between Member States, Member States and the European Commission jointly should further explore, in the framework of the Information Management Strategy, how the information from the various systems in the Member States can be used in a standardized format and on an automated and interoperable basis, taking into account data protection and fundamental rights.

Reliability of forensic processes and quality of evidence

With a view to effective law enforcement and combating crime, it is important that certain essential processes are reliable and comparable in all Member States. This also holds for the collection, processing, and use of forensic data. Applying common forensic-scientific (minimum) quality standards will increase mutual trust and thereby contribute to police and judicial cooperation between Member States. It is therefore important to implement the Council Conclusions of 13-14 December 2011 for the creation of a European Forensic Science Area in 2020.²

Prevention and resilience in civil protection

Prevention and resilience are key in the area of civil protection. These national responsibilities are aimed at decreasing probability, impact and costs of disasters. As a basis, a good insight in and a comparison of national risk-assessments is essential. The EU can merge national assessments and act as an information broker for Member States with comparable risks. These Member States can cooperate to reduce these risks and create a more resilient society (government, civilians as well as critical infrastructure). Meanwhile, the UN Hyogo Framework for Action, EU and NATO-priorities have to be taken into account and the doubling of priorities has to be prevented.

The following paragraphs should be read as supplement to the paper on the political priorities for the future development of the JHA area in the field of asylum, migration, visa and borders, as presented by Austria, Belgium, Denmark, Sweden and the Netherlands and supported by France and Germany.

Consolidating the common asylum policy and intensifying EU return policy .

Further convergence of asylum policy and practices in member states should be pursued thereby creating a genuinely European system in which asylum seekers are assured of the same treatment with the same outcome in all Member States. This will include further study, for example through pilot projects, of forms of joint processing in the EU.

While further strengthening the common European asylum system (CEAS), a study should be conducted to the long term cost-effectiveness of the current CEAS compared to other alternatives.

² Council Conclusions on the vision for European Forensic Science 2020 including the creation of a European Forensic Science Area and the development of forensic science infrastructure in Europe, doc. no. 17537/11.

The Netherlands is of the opinion that asylum seekers should as much as possible be accommodated and receive protection in the region of origin.

An effective return policy is also essential if asylum policy is to function properly. This will require a greater effort on the part of the EU. The Netherlands advocates that cooperation with countries of origin, including in non-JHA areas, is dependent in part on cooperation in respect of return. To achieve this, an integrated, whole-of-government approach to policymaking is necessary at both national and EU level.

Management of traveller flows at the external borders and monitoring intra-EU secondary migration flows

The traveller flows at the EU's external borders must be managed in a modern and effective manner. The entry of those who bring benefit to the EU should be facilitated in order for the EU to remain an attractive destination by modernising and aligning border and visa procedures for low-risk travellers. This way the EU enhances its attractiveness, reduce administrative burden and at the same time a more targeted approach to enhance security and tackle illegal immigration can be achieved. This will also be its aim in respect of the establishment of a European Registered Traveller Programme (RTP) and a European Entry/Exit System (EES) as part of the Smart Borders package. These systems should be designed in such a way that they can be used not only for border checks but also for monitoring purposes, carrying out returns and combating crime.

Owing to the absence of controls at the internal borders it is necessary for the sake of effective monitoring to obtain more information about intra-EU secondary migration flows. This requires closer cooperation and the exchange of information between the different agencies, organisations and services at national, regional and EU level. The Netherlands also wishes to achieve greater uniformity in monitoring and enforcement in the EU, more intelligence-driven action and better use of the existing ICT- and registration systems so that Member States can anticipate these secondary migration flows more efficiently and effectively.

Safeguarding the right to free movement of persons by preventing fraud and abuse of this right

The free movement of persons in the EU is one of the key achievements of European integration. In order to maintain popular support for the right to free movement, we need to address possible negative effects thereof. This requires, besides national measures, more cooperation on EU-level. This EU-cooperation should include the fight against abuse and fraud of the right to free movement, the prevention of exploitation of mobile EU citizens and the prevention of displacement of national labour supply by unfair competition on working conditions.

Generic integration policy for both third-country nationals and EU citizens

Migrants themselves are primarily responsible for their integration into society, although at the same time integration requires a mutual effort in which the receiving society allows migrants some latitude, accepts them as equals and gives them equal opportunities. No specific integration policy should be pursued, instead the subject of integration should receive attention within generic policy fields such as security, education and employment. To be able to implement this policy effectively, the relevant EU rules have to be amended.

Identity

Weaknesses in the mechanisms for the creation, registration, use and verification of people's identities can have far-reaching consequences. Identity fraud and identity chain management for example touch upon the quality of information exchange for the purpose of the investigation and prosecution of criminal offenses, border management, (illegal) migration, the provision of services online, and the issuing and verification of breeder- and identity documents. The Netherlands therefore advocates cooperation at EU level in order to prevent and combat identity fraud and

enhance the quality of identity management, for example by means of the exchange of information and expertise.

III. The external dimension of JHA

A better coherence between internal and external actions in the JHA area is needed. Strengthened coordination between various actors, EU Member States, EU institutions and agencies, would provide a more effective approach of the common challenges and result in better resource- and cost-effectiveness. The external dimension of JHA policies and actions has significant possibilities for providing a more effective environment for economic growth in the EU and its partners, building on openness, cooperation and stability. The Union must intensify its efforts in multilateral, international cooperation.

Operational cooperation with third countries in terms of internal security should be developed by strengthening further activities aimed at combating organised and transnational crime, notably by agreeing on common strategic objectives and priorities for practical cooperation.

2. Austria, Belgium, Denmark, the Netherlands, Sweden - Political priorities for the future development of the JHA area in the field of asylum, migration, visa and borders

29 November 2013

General Remarks

The future asylum and migration policy should provide a comprehensive and coherent strategy (a 'whole of Government/EU approach') covering all relevant policy areas, including their external dimensions.

Solidarity, together with protection and prevention, are key elements in the further achievement of our shared goals. To ensure this in practice - which is based on mutual trust - Member States should take full responsibility for implementation of the asylum, borders, visas and migration *acquis*, resulting in a functional migration and asylum system and effective border controls.

The focus of future asylum and migration policy should be on full implementation, consolidation and evaluation of existing legislation and policies ("less legislation, more consolidation"). New legislative proposals should be presented only after a thorough evaluation (including systematic impact assessments and cost-benefit analysis) of the existing and proposed EU legislation. Ensure that Member States can effectively use EU funding to complement such efforts, while implementing their nationally-determined policy priorities.

A new level of practical cooperation is essential to achieve this goal, enabling the EU to retain the flexibility needed to cope with rapidly changing realities.

Asylum

The full and inclusive application of the 1951 Geneva Convention should continue to be the basis for the approach of the EU and Member States.

Member States shall ensure, as applicable, the effective transposition and coherent implementation of the EU asylum *acquis*, including the newly adopted CEAS package. The Commission is invited to pursue its role as guardian of the Treaties, also through capacity building efforts using EU funding. The objective of the CEAS should remain that similar asylum cases are treated alike and result in the same outcome, including receiving the same standard of reception, throughout the EU.

In this context, practical cooperation through EASO should be further developed in order to: better contribute to the coherent and cost effective implementation of applicable legislation: convergence of policy and practice in Member States; and increase cooperation and information exchange between national asylum services. The 'early warning system' should be used as a tool for strategic discussions and planning within the EU in order to better prepare for challenges and unforeseen events (including via contingency planning). Member States' practical experience of the current *acquis* should provide the basis for assessing the need for any further legislative proposals; where possible, improvements should be sought on the basis of the existing instruments.

Regional Development and Protection Programs (RDPP) should be further developed, as appropriate, to demonstrate solidarity with regions of transit and origin through building their protection and re-integration capacity.

The EU and Member States should continue efforts to resettle refugees on a voluntary basis. Taking into consideration the specific situation in each Member State, the Asylum and Migration Fund, should encourage and support Member States to start, maintain or increase a resettlement programme.

Visas and Borders

Openness and growth must be balanced with security and the ability to tackle illegal immigration. The EU visa policy should not only address issue of security but also contribute to enhance the attractiveness of the EU. For mobility to be expanded further, the EU's visa and borders policy must be credible and its migration and asylum systems robust enough to respond to future challenges.

The EU visa policy should continue to be primarily a tool for migration management. Visa facilitation agreements, or a more extensive use of the possibilities laid down in the Visa Code, could be considered where liberalization is not yet a realistic option. Negotiations on visa and readmission agreements should be advanced in parallel. The EU must ensure that rights and responsibilities go hand in hand, especially when it comes to cooperation regarding readmission, for all future visa liberalization and facilitation agreements. Appropriate mechanisms should be built into all agreements to ensure the ability for the Council to withdraw a mandate, or the EU to revoke an agreement.

In order to ensure that visa processing is consistent and reliable (similar visa applications result in the same outcome), priority must be given to better local cooperation. An expanded use of external service providers, combined with use of representation agreements, should be considered an alternative to common visa application centers. In addition to a country risk assessment, Member States should equally make an individual risk assessment in the processing of visa applications.

Integrated border management systems - which make use of modern technology - are important tools for future challenges. In this respect, swift progress should be made in the negotiations, followed by the implementation of the 'Smart Borders Package'. For the EU to become an even more attractive destination for low-risk travelers, the concept of an EU-ESTA could be considered.

While respecting its mandate, Frontex should play a more central role by increasing its operational capability and its joint operations, especially with regards cooperation with third countries (in particular countries of transit and origin). Frontex should be able to play a central role also in monitoring secondary movements in order to assure integrity and mutual trust within the Schengen area. In order to take forward this challenging agenda, joint Frontex-Member State operations need to be simpler to conduct and emphasis should be placed on strengthening the coordination role of Frontex.

Migratory Pressures

Cooperation with countries of origin and transit to foster legal mobility and tackle illegal immigration must be intensified, including the combating of organized immigration crime, trafficking in human beings and development policies aiming tackling the root causes of migration, as recently illustrated in the Mediterranean. This includes better use of all the tools under the GAMM, which should be developed as the overall EU strategic framework for external migration cooperation, with a focus on priority countries (including agreed country-specific strategies). A joined up policy approach foreseeing effective coordination and cooperation structures is required in negotiations with third countries (e.g. trade, development and other relevant policy areas), to ensure that partnership, including a "more for more" approach, on migration is sufficiently prioritized and built into third country and regional dialogues.

Future EU migration and asylum policy should include a renewed focus on returns, and those with no right to remain on the EU's territory must return - or be returned - in order to protect the integrity of asylum and migration management within the EU.

Increased voluntary return should be our priority, complemented when appropriate by re-integration activities. Robust forced return policies must also be implemented since they are crucial to the success of voluntary returns. As technology develops, and the EU gains a clearer

picture of the internal movements, we must also stand ready to tackle the problem of the overstayer population. In order to be able to increase returns, the EU will need a strategic approach to prioritizing countries (including country-specific strategies), with enhanced political dialogues with key third countries to secure and implement the necessary returns agreements and ensure that re-documentation of individuals can be undertaken swiftly.

EU readmission agreements are an important tool in the fight against irregular migration. Possible future agreements must be focused on priority countries, and existing agreements must be fully implemented. Where negotiations have stalled, there must be a renewed emphasis on conclusion, and the Council must also be able to revoke mandates.

The freedom of movement for EU citizens and their family members is one of the central achievements of European Union. This principle should continue to be safeguarded, including the rights and responsibilities that it entails. Fraud and abuse of free movement by third country nationals, including through marriages of convenience and document fraud, must be effectively addressed through practical action, in order to safeguard this principle. Challenges arising in the implementation of the relevant EU *acquis* should be addressed and guidelines reviewed. Increasing the security of identity and travel documents, as well as on the issuing process, must be a focus. The EU should develop a strategy to support the Member States to implement the measures against abuse which are available under the free movement directive.

3. The future development of the EU's Justice and Home Affairs (JHA) policies

18 November 2013

Estonia, Finland, Germany, Hungary, the Netherlands, Slovenia, Sweden and the United Kingdom attach great value to European cooperation in the area of freedom, security and justice. The multiannual programmes of Tampere, the Hague and Stockholm have demonstrated the value of a strategic approach and a long-term vision for future JHA cooperation. In addition, the multi-annual programmes adopted by the European Council have supported the unity of the EU as well as comprehensive development of the JHA area as a whole.

As the Stockholm Programme is coming to an end, a new strategic vision is needed to give long-term guidance to future JHA policies towards 2020. This would also support the coherence between this policy area and the EU budgetary framework. We need a new Agenda for Freedom, Security and Justice.

On the basis of article 68 TFEU the European Council shall define the strategic guidelines for the legislative and operational planning within the area of freedom, security and justice. The European Council intends to discuss the strategic guidelines in June 2014. It is essential that the JHA Council plays a leading role in the preparatory process of a new JHA policy framework, as well as in the next phase; the elaboration of the guidelines and the implementation of the future objectives. In addition, an effective follow-up mechanism should be agreed upon that closely monitors the implementation of the agreed objectives. The high-level senior committees (notably CATS & COSI) must play a central role in this regard.

The preparation of the future policy framework should be conducted in a transparent way. EU institutions, Member States, civil society, citizens and practitioners should be closely involved in the process. A transparent and open preparation of the new policy framework will also facilitate its implementation. It is important that all EU institutions are committed to promote the objectives set out in the policy framework.

In order to contribute to the preparation of a new JHA policy framework we - the JHA Ministers of the aforementioned Member States - have prepared this common position on what in our view are the guiding principles for future JHA cooperation.

In our opinion a substantive discussion at the JHA Council in December is of the utmost importance. In order to contribute to the discussion on European Council level in June 2014 as well as to the preparatory process of the Commission, we intend to further develop, deepen and express our goals and priorities in the field of security and justice together with other Member States in the period between December and June 2014.

The future JHA policy framework:

Is based on actual needs and evaluation...

The way the follow-up to the Stockholm Programme is designed should take into account new realities and be anchored in the current economic and social context. JHA cooperation can only evolve and succeed by means of a thorough step-by-step process involving the major stakeholders. JHA cooperation should serve the interests of all citizens, businesses and authorities involved and should therefore be based on their actual needs. New actions should build on the existing framework and be based on evidence and practical needs. EU measures must always be based on thorough impact assessments, including an ex-ante cost-benefit analysis which meets the needs of the Member States. In each case we have to consider on which level the solution has to be sought: national, EU, regional, - or even multilateral/global. Implementation costs and organizational consequences for the government services have to be taken into consideration in every stage.

Gives priority to quality, consolidation and implementation...

A large quantity of legislation has been introduced since the beginning of the JHA cooperation. In order to ensure that actual benefits are yielded from this legislation, more emphasis has to be put on consolidation and on the efficient implementation and effectiveness of the existing instruments into national legislation, as well as their use in practice. This is even more important in view of the ending of the five-year transitional period on 30 November 2014, as set out in the Protocol No. 36 to the Treaty of Lisbon. As a result, the restrictions on the scope of powers of the Commission and the jurisdiction of the European Court of Justice concerning police and judicial cooperation will be removed - and the provisions of the Treaty of Lisbon enter fully into effect.

At the same time, the quality of legislation needs to be improved. Legal acts ought to be user-friendly, taking into account the needs of Member States' authorities and legal practitioners. There should be stronger "better regulation" principles built into each proposal including robust and independent impact assessments scrutinized by the Council. In the drafting phase of new legislation more attention should be paid to analyzing existing legislation with the aim of consolidating where possible.

It is essential that we exchange experiences and good practices in order to improve cooperation between law enforcement agencies and deepen mutual understanding of different legal and judicial cultures in the EU. It is also essential to step up training on EU-related issues and make it accessible to all professionals involved regarding the implementation and application of EU law in this policy area.

Is effective, cost efficient and supports growth...

In order to uphold and strengthen citizens' trust, the EU has to ensure the effectiveness, proportionality and cost-efficiency of every measure it takes. It is necessary to provide insight on the (financial and organizational) impact of new proposals in an early stage as well as at the end of the legislative procedure, evaluating both the implementation and the effects on the issue at hand as well as the efficiency of used resources. Successful operational cooperation between Member

States, such as joint investigation teams, should be communicated at EU level in order to promote best practices.

For impact assessments and evaluations alike, there is a need for evidence based policies. New technologies should be used to improve access to information of Member States' legal systems and to contribute to the smooth and democratic functioning of the area of freedom, security and justice.

Makes good use of the resources...

The EU agencies have a central role in implementing and realizing the benefits for citizens of the policies in the field of Justice and Home Affairs. It is important to ensure that the EU agencies have sufficient funding - within the current budgetary agreements - and operating conditions, necessary to carry out their duties in accordance with their current mandate. Furthermore, it is important to enhance the cooperation between the agencies in line with their respective mandates.

Is based on the respect for European values and fundamental rights...

The Union is based on common values and respect for fundamental rights. They must be safeguarded by all Member States, EU institutions as well as the EU agencies. The Union should reinforce its commitment to the European values by finalizing its accession to the European Convention on Human Rights. Continuous attention must be given to the position of vulnerable groups in society.

Continuous attention is also needed to give effect to the rights of victims. Promoting information exchange and sharing knowledge and best practices are important. Cooperation between Member States in cross border cases should be supported. For instance, we should consider setting up a European virtual network of authorities responsible for victim policy to explore best practices.

Strengthens the coherence between the internal and external dimension...

A better coherence between internal and external actions in the JHA area is needed. Strengthened coordination between various actors, EU Member States, EU institutions and agencies, would provide a more effective approach of the common challenges and result in better resource- and cost-effectiveness. The external dimension of JHA policies and actions has significant possibilities for providing a more effective environment for economic growth in the EU and its partners, building on openness, cooperation and stability. The Union must intensify its efforts in multilateral, international cooperation within the framework of its competence.

Operational cooperation with third countries in terms of internal security should be developed by strengthening further activities aimed at combating organised and transnational crime, notably by agreeing on common strategic objectives and priorities for practical collaboration. The external dimension of JHA should also be fully reflected in development programmes to ensure capacity building in police and justice as a precondition for growth and stability.

4. Guiding principles of the Netherlands regarding the implementation of the Council conclusions for the realisation of a European Forensic Science Area by 2020

Position paper, May 2013

The Netherlands consider the Council conclusions for the realisation of a European Forensic Science Area by 2020 as an important step towards improving the cross-border exchange of forensic information and, in doing so, towards strengthening police and judicial cooperation in criminal matters within the European Union on the basis of the principle of mutual recognition. Common quality management standards for forensic activities contribute to serving justice and to the efficiency of the judicial chain. After all, by achieving an EU-wide quality level, member states and police and judicial authorities and services can rely on the equivalence of each others forensic process and data. This promotes the exchange of the information generated and the cross-border use of the forensic evidence in criminal proceedings.

The vast majority of the results of forensics are not exchanged internationally, but are used in the respective national criminal justice systems. It is nonetheless of great value to ensure that forensic science is of a certain quality throughout the entire European Union.

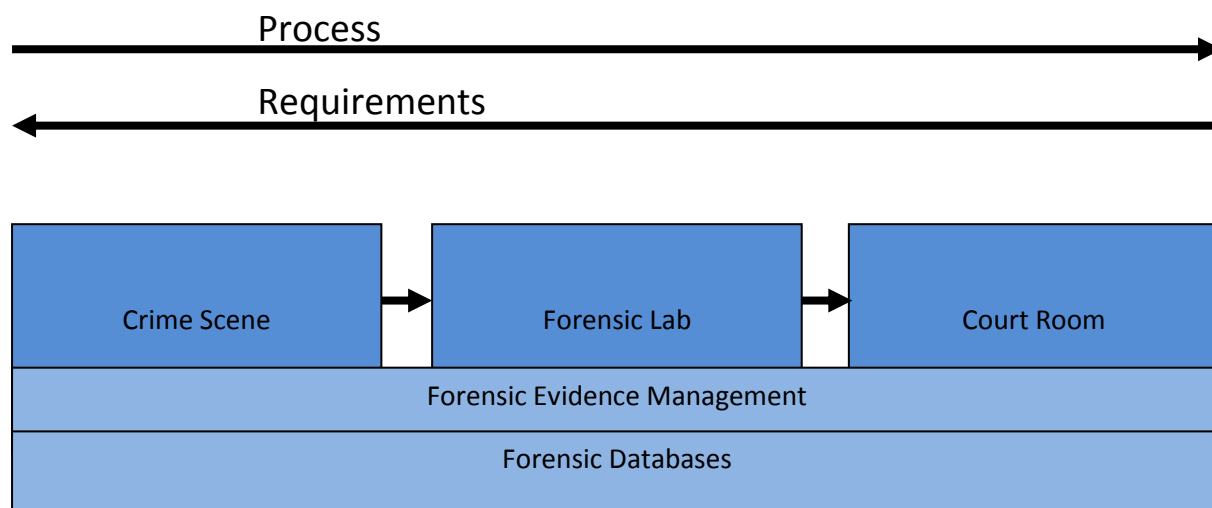
Therefore, the Netherlands attaches considerable importance to the effectuation of the Council conclusions for the realisation of a European Forensic Science Area and, in doing so, to the creation of a solid Action Plan for the implementation of the vision as set out in the annex to the conclusions. This is even more important because forensic analysis and forensic experts play an increasingly important role in criminal procedures due to swift developments in the field of forensic science, for example in the field of DNA.

With regard to the implementation of the above-mentioned vision, the Netherlands would like to draw attention to the following initial ideas or guiding principles, in order to ultimately achieve a broad and uniform quality system for forensic processes and opinions on EU level.

A broad scope: quality at every stage

Each stage of the forensic process, from the collection of traces at the crime scene, the processing and analysis of traces, the interpretation and preparation of the expert opinion, up to the use in court, is crucial for the criminal investigation and the establishment of proof, individually as well as in relation to each other. When traces of evidence are destroyed, lost, become contaminated or are improperly secured, they lose their evidential value and consequently directly jeopardize the serving of justice. When wrong or unvalidated and unverified methods or procedures are used, the results are unreliable. And when the competences of personnel do not meet certain requirements, activities are carried out and conclusions are drawn that could harm the quality of the information provided.

Therefore, a common quality system with a broad scope must be pursued that integrally guarantees the quality of the forensic process. This means that the quality requirements must relate to each stage of the forensic process. The personnel carrying out the work should also be subjected to quality requirements, that, where designated, are specifically tailored to the relevant stage of the working process.



Improvement in quality on the basis of a growth model

In order to implement the quality system as well as possible (meaning adequate, feasible, and cost-efficient), the Netherlands proposes a step-by-step approach via a growth model of forensic areas of expertise. Where needed, the step-by-step approach should provide the national authorities with the necessary room to implement the planned quality system, as far as content and time are concerned.

The growth model implies that, in accordance with framework decision 2009/905/JBZ, initially the areas of DNA and fingerprints will be addressed and thus be subjected to certain clear forensic quality requirements. The quality system can subsequently be extended with the areas arms and ammunition and drugs. Evidently, to that end the experiences will be used that have been gained previously in the areas of DNA and dactyloscopic data.

The aforementioned areas of expertise within the growth model have been selected on the basis of four criteria:

1. The existing EU-wide obligation of accreditation of certain areas of expertise: respectively DNA in 2013 and fingerprints in 2015;
2. The significance of the area of expertise on the basis of the quantity of forensic examinations requested or applied;
3. The existing quality level in the EU on the basis of areas that already have been accredited;
4. The existence of a database regarding a certain area of expertise that is eligible for cross-border exchange or querying .

Uniform minimum quality standards

Standardisation of forensic activities

A part of the quality system is the minimum standardisation of forensic activities. According to the Netherlands forensic-technical activities performed in laboratories in the context of criminal law should be carried out exclusively by accredited forensic laboratories, regardless of the size or nature (public or private) of the laboratory. This is in line with what is prescribed in the Council's Framework Decision 2009/905/JBZ dated 30 November 2009 (PbEU L 322) for all providers of forensic services in the area of DNA and fingerprints, from the laboratory up to and including the expert opinion.

In addition, the examination of the crime scene should in future be carried out on the basis of common minimum quality standards. These standards must leave enough room for specific procedures at the national level.

Quality assurance

The capstone of the quality system is adequate and objective quality assurance for every stage of the forensic process, on the basis of an internationally recognized visitation system. For the activities in laboratories and ultimately, as a future objective, for activities at the crime scene, the Netherlands believes that quality should be assured on the basis of internationally recognised, uniform minimum standards in the field of quality management. For that purpose, the accreditation standards ISO 17020 and/or 17025 can be used in principle and, in addition, European (CEN) implementation standards that apply specifically to forensic science.

An important precondition in that respect is that those standards contain general, yet guiding elements for activities, which can be elaborated specifically for each stage or organisation. The standards must give room for national working methods and enable flexibility. After all, it is important that the organization of the quality system is set up in such a manner that it provides qualitative added value, is facilitating and workable for the practitioners, the forensic investigators, the users of the forensic reports, and does not create unnecessary barriers. It is however not necessary for the working and analytical methods to be identical. More importantly, the methods should be valid. This means that they must meet general criteria (the method must be reliable, robust, and reproducible). At the same time, the chain of custody should be assured in every stage of the forensic process. After all, the fact that the chain is not continuous can raise questions, such as whether the object analyzed by a forensic service provider or shown in court is indeed the object that was secured at the crime scene, or whether contamination has occurred in the chain. Therefore the stages of the forensic process must, where necessary, also be considered in conjunction.

If the standardisation results in a decision to accredit, the respective national accreditation bodies, designated on the basis of regulation (EC) 765/2008, are responsible for granting and renewing accreditation pursuant to the existing laws and regulations. An EU-wide established pool of examiners active within the national accreditation bodies and of varying composition could perform tests, to, on the one hand, facilitate the implementation of the new forensic standards and to exchange knowledge, and, on the other hand, to guarantee the implementation of the minimum level and, in doing so, guaranteeing the mutual trust and the desired degree of uniformity.

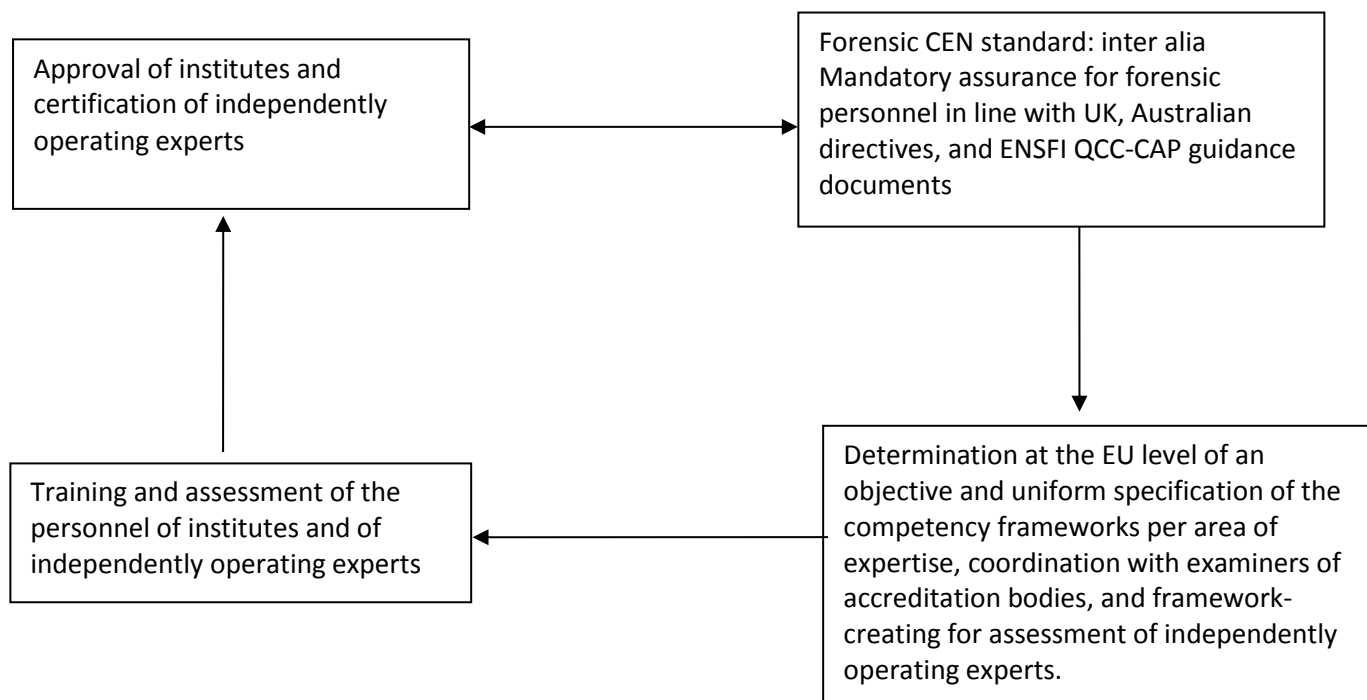
Competences of forensic personnel

Another part of the quality system is the assurance of the competences of forensic personnel working at laboratories, within the police or private forensic service providers. To that end the Netherlands believes that the education of forensic investigators firstly should meet certain basic requirements. For the education of individual forensic investigators training institutes (laboratories as well as universities or other providers) should make use of shared and objective basic criteria for forensic knowledge, expertise and experience, that are scientifically up-to-date, and these institutes should be approved on the basis of an international visitation system. In addition to theory, forensic training programs should also entail training in practice, as far as subject matter as well as forensic-legal elements are concerned. The training programs should use a system of supervision/mentoring with periodic evaluations. In addition, the completion of the training programme should be based on an independent examination, that, for example, can be achieved by participation of an external expert in the review committee (Guidance document QCC-CAP-006).

Furthermore, continuous professional education for active forensic personnel should be organized by the employer or by themselves, by means of extra training or refresher courses that are up-to-date with (scientific) developments.

Finally, the Netherlands pleads for assurance through (periodic re-)certification of forensic personnel by a competent independent body, making use of shared objective minimum criteria for knowledge, expertise, and experience that have been laid down EU-wide.

It stands to reason to include the desired assurance of the competences of forensic investigators in a European forensic (CEN) standard, using what has already been developed in the member states as well as ENSFI QCC-CAP guidance documents.



Forensic knowledge of judicial authorities

The ruling on evidence is the most important ruling in the criminal procedure. In court, the question whether the suspect has committed the crime that he is charged with by the public prosecutor is assessed through an adversarial process, of information gathering and analysis of facts and circumstances.

Being leader of the criminal investigation and 'accountable in court,' the public prosecutor must be able to interpret the findings of forensic experts in the legal context of the criminal procedure³. The public prosecutor must have sufficient forensic knowledge to be able to formulate his investigative question in such a manner that the forensic laboratory knows what is expected as far as analysis is concerned.

Also judges are increasingly faced with forensic-technical evidence that has to be included in their ruling. This development demands judges to have sufficient basic knowledge to properly assess, analyse and appreciate the findings of the experts. At the same time, that kind of knowledge enables them to communicate substantively with the expert about the expert opinion and to ask critical questions about the expert's expertise.

Since forensics and forensic experts play an increasing role in the judiciary system, the Netherlands pleads for an EU-wide implementation of training programmes in which obtaining

³ We realise that in the Netherlands the public prosecutor is the formal leader of the criminal investigation, while this can be a different authority in other countries. These differences will have to be taken into account.

general knowledge of forensic science and scientific methods and knowledge to understand and critically assess expert opinions are important components.

Specific points of interest

Proficiency tests and collaborative exercises

Proficiency tests are an essential component of a quality system. These tests offer laboratories the possibility of comparing themselves to other laboratories. However, the EU currently has no broad system of proficiency tests (PT) and collaborative exercises (CE) for forensic laboratories. The Netherlands therefore pleads for initiatives to develop such a system. The objectives in that context should be: a) to develop PTs of a higher level, to increase the added value of the tests and b) to develop PTs for a larger number of disciplines and methods. A survey of the need and availability within the EU could provide clarity about the current situation and the desired situation. And finally, c) to make PTs available at a higher frequency, so that assessment occurs more regularly via this avenue.

It should be borne in mind that commercial aspects will play a role in the set-up of such a PT/CE system.

Common manuals

Forensic personal must use best practice manuals (hereinafter referred to as BPMs) that are specific to the areas of expertise. BPMs should not have binding force, but must offer room to deviate, with good reason, from what is stated in the BPMs. In other words, when developing common BPMs at EU level, a balance must be found between, on the one hand, the level of detail of specific process descriptions so that these are not open to multiple interpretations and, on the other hand, the room left for differences in working methods and legal context existing between forensic service providers of the member states. In addition, in the development of common BPMs the resources available to member states and forensic service providers to operate in accordance with the BPMs must be taken into account.

Common BPMs can be developed for each area of expertise in the forensic process by means of exchange by forensic service providers and other organizations of working methods, procedures, and protocols. Comparing existing national BPMs brings similarities and differences to the surface. The similarities will then constitute the starting point for the common BPMs at EU level.

A periodic reassessment at the EU level will have to assure that the BPMs remain up-to-date with relevant scientific developments.

Forensic databases

Crime does not stop at national borders, yet, the forensic databases of the member states are often nationally oriented. The Netherlands believes that the process of forensic intelligence and the linking of (various parts of) forensic information for the benefit of the criminal investigation and procedure, can be organized more efficiently in the fight against cross-border crime, in the sense that information becomes available more swiftly, without too much red tape, and taking into account the rights of victims, suspects, accused, and convicted persons. By efficiently organizing links between the databases of the member states, the criminal investigation can be fed with more (relevant) information, which can increase the success of the investigation and ultimately the criminal procedure. In that respect, the Netherlands uses the Prüm Convention, transposed into the Council Decisions 2008/615/JBZ and 2008/616/JBZ of 23 June 2008 (Pb EU L 210), as a key example.

Regarding the exchange between databases, the technical and process- challenges namely reside in the design of a process that contributes to swift investigations, and in the selection of forms of data that can effectively be used by other countries.