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**NOTE**

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From: Presidency

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To: Permanent Representatives Committee (Part II)

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Subject: Further discussions on the future development of Justice and Home Affairs, in particular Home Affairs.

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**I. Introduction**

The aim of this paper, to be read in conjunction with document 6199/14<sup>1</sup> sent to COREPER on 13 February, is twofold - the Presidency sets out to summarise the work undertaken under the

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<sup>1</sup> Further discussions on the future development of Justice and Home Affairs, in particular Justice matters.

Lithuanian Presidency and the discussions at the JHA informal ministerial meeting in Athens on 23 and 24 January 2014 on the future development of JHA and to initiate a debate in COREPER outlining the Member States' contribution to the future of the Area of Freedom, Security and Justice (AFSJ). The Presidency also looks forward to the Commission's Communication on the matter.

A large majority of Member States' contributions indicate that the future planning and programming document should be more concise than the previous Stockholm programme, not take the form of a detailed implementation programme but should be centred on a political and prioritised approach.

**Against this background, at its meeting of 19 February, COREPER will be invited to focus specifically on Home Affairs and to: i) discuss the issues on which there is consensus and call for more concrete plans; ii) reflect on the remaining diverging approaches and possible ways to settle them; iii) explore some of the (new) proposals made to the level of ambition of JHA cooperation.**

## **II. A substantial consensus exists on many issues**

1) Some cross-cutting issues are quoted here in the same form as for the 13 February COREPER meeting on Justice.

The citizen-centred approach which characterises the Stockholm Programme has a clear consensus and would remain a useful approach for the future of the Area of Freedom, Security and Justice.

The field of Home Affairs has seen many developments, both legislative and operational, and many Member States are now calling for a consolidation phase so as to draw lessons from the past and to evolve accordingly.

It is widely considered that the time frame of the planning and programming period (5 years up until now) needs to be synchronised with the Multiannual Financial Framework (7 years), for reasons of coherence and consistency. In this regard, a certain need for flexibility and adaptability to possible developments has frequently been mentioned, for which several methods and time frames could be envisaged. The alignment issue is also raised with regard to specific programmes such as the EU Serious and Organised Crime policy cycle (4 years).

Regarding future initiatives, this qualitative approach requires adequate impact assessments, from both an operational, financial point and other points of view, as well as the emergence of an evidence-based evaluation process. The implementation and assessment does not always apply to all policy areas. The use of Article 70 TFEU has been mentioned in this context as a possible relevant tool. A systematic review of the progress in the AFSJ at mid-term intervals has frequently been mentioned.

2) The second phase of construction of the Common European Asylum System is widely seen as a key achievement. The legislative groundwork has been done and a consensus exists on enforcing it in the field. Some Member States have pointed out that the enforcement requires i) the correct and timely implementation of related legislative acts, under the prime responsibility of Member States themselves ii) a convergence in the actual practices on the ground with a view to a uniform asylum status. Others have underlined that the principle of solidarity must underpin implementation of the CEAS. EASO is seen by a majority of Member States as playing an important operational role in this regard, the extent of which remains to be determined.

3) The EU policy cycle on Serious and Organised Crime is considered as an important achievement by a large majority of Member States, with priorities such as drugs and trafficking in human beings, cybercrime or illegal immigration. Some contributions identify the methodology adopted, notably the coherence between its strategic and operational aspects and the agencies/Member States cooperation set-up, as an example for other areas. Many Member States support a thorough implementation of the policy cycle and underline the benefits of closer cooperation between national authorities and with EU agencies. This cooperation is also widely considered as relying on the common training of practitioners - CEPOL is cited as an important player.

4) Operational cooperation, especially in the field of law enforcement and border management, depends heavily on data exchange and management, which has been identified as a key challenge for the future by a large number of Member States. The implementation and consolidation of the Prüm decisions, the "Swedish initiative" and the Information Management Strategy are consistently quoted as priorities, as well as the Smart Borders package. Some Member States' reflections are devoted to the progressive set-up of a wider information exchange framework with eu-LISA and EUROPOL as prominent players, bearing in mind cost efficiency and the full respect of fundamental rights. From a more general point of view, the present and future implications of IT developments are consistently pinpointed as key aspects to be taken into consideration in all AFSJ policies.

5) It has frequently been underlined that the link between the internal and external aspects of Home Affairs policies should be reinforced by applying a consistent and coherent approach to these questions. As raised in several contributions, external policies – on: mobility, security, international protection, regional protection programmes, humanitarian and development cooperation and assistance, capacity building for safe third countries and transit countries, addressing push factors in countries of origin, resettlement–cannot be separated from internal issues and should thus be a core component of the EU's foreign policy; the Global Approach on Migration and Mobility is a good example. The “more for more” approach based on an incentive/conditionality for negotiations, is highlighted by many Member States (which refer to issues such as readmission agreements, operational and security cooperation). It is clear from the contributions that these objectives of coherence and consistency should be obtained by enhancing the complementarity between the roles of the Commission, the EEAS and the Member States. The modalities of this enhanced complementarity, such as a better sharing of information and expertise, a better-defined division of responsibilities and an effective use of human and financial resources, available both at national and EU level, need to be clarified.

**COREPER is invited to confirm these elements of consensus and identify the concrete measures they entail.**

### **III. Some issues are approached in different ways by the Member States**

1) The concept of solidarity relating to the entire range of asylum, migration and border management, enshrined in the Treaties, has been the subject of many reflections from the Member States. Whether associated with the notion of “burden sharing”, or considered inseparable from individual responsibility and mutual trust, questions have frequently been raised about its actual content, prompting some Member States to ask for a clarification and the development of its practical implications, as well as its implementation. In the field of asylum, a number of contributions request an effective and assessed implementation of the current legislation before considering any burden-sharing mechanism, insisting notably on national prerogatives as far as protection-granting is concerned and on the voluntary aspects of relocation. Others, especially in the context of an asymmetric geographical pressure and intermittent international crises, call for a more integrated and criteria-based ( ex. GDP per capita burden) approach concerning asylum applicants and beneficiaries of international protection, but also the allocation of rejected asylum applicants and those who cannot be returned to their home countries for technical reasons, possibly through an appropriate mechanism.

A more consensual position, appearing in several contributions, mentions the development of the Dublin Regulation's Early Warning System and an EU-contingency plan for emergencies, as well as joint application processing (commencing, possibly, through a relevant pilot project), in line with the Commission's 2011 feasibility study.

Mutual recognition of national decisions on international protection and its implications has also been identified as a subject to be debated.

2) In the area of border management other contributions related solidarity to the need of developing a common understanding in the operational field mainly through the encouragement of participation of M-S, the application of best practices and the resolution of arising problems.

3) The themes of legal and illegal migration, visa policy and migrant integration have featured highly in the contributions of Member States, were addressed in a diverse manner, reflecting both the intricacy of these issues and different priorities among the Member States.

Some contributions refer to the necessity of both an EU and national level approach in the process of matching labour-market needs and migration policies, taking into account the relevant division of competences, while others, more numerous, insist on sole domestic factors in this regard, justified inter-alia by the specificities of the national labour market.

A codification in this legislative sector is favourably envisaged by a number of Member States, provided that the proper implementation of existing rules is assessed, and necessary possible amendments in view of effectiveness will be identified.

A majority of Member States have raised the issue of the credibility of migration policies that relies on a stricter enforcement of the fight against illegal migration, including an effective return policy in all its dimensions. Apart from better law enforcement cooperation, with the involvement of the EU agencies, one of the main tools regularly mentioned for tackling this issue lies in the readmission agreements network with third countries. The main counterpart for these agreements, visa facilitation policy, is assessed differently by the Member States when it comes to its possible extension, review and possible revocation, as well as geographical prioritisation.

An additional dimension of the visa policy mentioned by the Member States pertains to mobility management and attractiveness, particularly from economic attractiveness. In this regard, a number of contributions plead for a shift from the sole country-risk approach to an individual-risk approach in visa application treatment. This entails targeted facilitations for bona fide travellers, that could take the form of an EU-ESTA system, a possibility that some other Member States deem possible only after careful and thorough evaluation.

Finally, some Member States advocate more harmonised practices in visa application treatment. Apart from a more controlled Visa Code implementation, different possibilities have been raised by the Member States: EU-level training for personnel concerned, enhanced consular cooperation and common visa application centres, with external service providers and representation agreement being seen by some as an alternative to those centres.

The implementation of some of these measures would involve the Schengen Associated Countries.

**COREPER is invited to discuss these issues and verify if a compromise can be found on these matters.**

#### **IV. Proposals have been made regarding a higher level of ambition in some specific (new) fields**

The following proposals have been made by some Member States as possible ways to heighten the level of ambition in the AFSJ:

1) The field of integration, already mentioned, has also been the subject of further reflections by Member States, notably because of the cross-cutting issues at hand. In this regard, a debate on the European values that underpin the integration process has been evoked. Striking the right balance between maintaining EU values and embracing diversity has also been pointed out. A step forward in the process of best practice exchange, and evaluation of these practices on agreed criteria has been mentioned. Labour-oriented training, increase EU funding, has also been mentioned, Focus should be placed, as well, on the interlinking between migration and integration policies.

2) A focus on cyber security has appeared in many contributions, in relation to different subjects of concern, ranging from intellectual property to child exploitation. Several Member States call for closer cooperation with the private sector on this subject, for example on cloud security issues. The role of the European Centre for Cybercrime (EC3) has been underlined and a proposal for creating Centres of Excellence, associating public, private and academic resources has been made.

3) Corruption is cited several times as a field where new initiatives are needed. Given the complexity that it entails, improved cooperation ( legal and operational) among the relevant national authorities is deemed necessary, as well as enforcing new analytical tools so as to keep pace with new corruption trends. The root causes of corruption could also be addressed by a uniform framework for ensuring integrity and ethics within the relevant authorities

4) The rapid emergence of new types of threats, especially in the field of terrorism e.g. the issue of foreign fighters, is demonstrated in several contributions as illustrating the need for further intelligence and law enforcement cooperation. The cross-cutting theme of radicalisation fosters the interest of a majority of Member States, and proposals are made in various fields as training, experience feedback or methodology (with the EU policy cycle as a possible model). Given the relevance of this theme for the future, its connections with other emerging concerns - like internet-related offences - and the significance it bears in relation to fundamental EU values, radicalisation could be the focus for future developments in the area of freedom, security and justice.

**COREPER is invited to reflect on these proposals and explore whether there is substantial support for these (new) directions.**