



**COUNCIL OF
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NOTE

From: Presidency

To: Permanent Representatives Committee (Part II)

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

I. Introduction

With this paper, the Presidency aims to summarise the work undertaken under the Lithuanian Presidency and the discussions during the JHA informal Ministerial meeting in Athens on 23-24 January 2014, on the future development of the JHA area and launch a discussion in COREPER

with a view to establishing the outlines of the Member States' contribution to the future of the Area of Freedom, Security and Justice. The Presidency also looks forward to the Commission Communication on the matter.

A large majority of Member States' contributions have shown that the future planning and programming document should be much more concise than the previous Stockholm programme, centred on a political and prioritised approach, and that it should avoid taking the form of a detailed implementation program.

In the light of this, COREPER will be invited, at its meeting of 13 February, to: i) discuss the issues that constitute a consensus calling for more concrete plans; ii) reflect on the remaining divergent approaches and possible ways to settle them; iii) explore some of the (new) proposals made to increase the level of ambition of the JHA cooperation.

A similar discussion will be held at COREPER on 19 February and will focus on Home Affairs issues.

II. A substantial consensus exists on many issues

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

The legislative progress made over the past years, largely considered to be a thrust forward in the construction of the AFSJ, is viewed by most Member States as leaving a clear need for consolidation and a better focus on the implementation of already existing instruments. In this regard, some contributions underlined the need for a more exhaustive assessment of the initiatives already undertaken, of which the methodology, the frequency and the players involved remain to be discussed.

2) Regarding future initiatives, this qualitative approach requires more impact assessments, from both an operational and a financial point of view, as well as the emergence of an

evidence-based evaluation process. A systematic review of the progress in the AFSJ at mid-term intervals has frequently been mentioned, a review that some suggested could be carried out under the provisions laid down in Article 70 TFEU.

It is widely considered that the timeframe of the planning and programming period needs to be synchronised with the Multiannual Financial Framework, for coherence and consistency reasons. In this regard, a certain need for malleability and adaptability to possible developments has frequently been mentioned, for which several methods and timeframes could be envisaged.

3) Mutual recognition, cornerstone of the AFSJ, is a concrete improvement for our citizens and marked by the gradual elimination of both civil exequatur procedures and criminal justice obstacles. It is felt that the broader notion of mutual trust that the AFSJ aims to create requires the strengthening of related dimensions such as greater knowledge of each other's Justice system. E-Justice implementation could serve such an objective, as well as continuing to be an important element in improving the efficient and cost-proportionate functioning of Justice in Member States. Practitioners' training in the field of Justice, as a means of building a common culture, has been set as a priority by a significant number of Member States, with both the European Judicial Network and Eurojust quoted as possible key players for its implementation. Another long-term approach has been suggested with an initiative to set up a European Training Centre.

4) It has frequently been underlined that the link between the internal and external aspects of Justice policies is a transversal issue to be promoted. Benefits expected from this approach are twofold: in a short-term perspective, it would allow for more flexibility to react to emergency situations - notably by enhancing the respective roles of the Commission and the EEAS; in the long run, the promotion of the Rule of Law as a core component of the EU's external action could progressively root out some of the external threats.

The EU should further enhance the consistency and effectiveness of its activities in international Justice fora such as the Hague Conference on private international law.

COREPER is invited to confirm these elements of consensus and broach the possible concrete measures that they entail.

II. Some issues are approached in different ways by the Member States

1) Although all Member States agree on the necessity to focus on the quality of the legislation, differences are noticeable in the accepted means to achieve its consolidation. Some Member States' contributions focus on a more effective cooperation between national authorities in order to solve everyday implementation issues (e.g. the development of soft-law solutions such as practical handbooks), whereas others display more willingness to address the very consistency of the legislative corpus, especially in the field of civil justice. In the latter regard, the notion of codification has emerged as a solution to eliminate current inconsistencies and conflicting rules (or interpretations) of the JHA acquis that have been adopted over a long period. During this process of codification, inadequate instruments could also be (partially) repealed.

2) The further process of approximation in material criminal law is the subject of substantial debate: its necessity for the near future is questioned by a majority of Member States, unless formally assessed and shown to be necessary. Concerning criminal procedural aspects, however, others advocated measures to establish common standards, such as evidence collection and recognition. Some see the implementation of the roadmap for procedural guarantees as a priority in order to foster judicial cooperation, without excluding further development in the future, whereas in the eyes of some Member States, such a deepening would encroach upon national boundaries.

3) In the context of a wide consensus regarding the process of EU adhesion to ECHR, a number of Member States have insisted on discussions on the outcome of and the key players involved in the assessment of Fundamental Rights within the EU. Some Member States view the EC Justice Scoreboard as a too narrow approach. Several contributions call for Member States' involvement in the evaluation process, with Article 70 TFEU being mentioned as a possible legal basis. Others, such as the FRA or the OECD, have also been cited as possible contributors to that evaluation.

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

III. Proposals have been made regarding a higher level of ambition in some concrete (new) fields

The following proposals have been made by more than one Member State as possible ways to heighten the level of ambition in the AFSJ.

- 1) A concentration on the confiscation of crime proceeds has been mentioned several times as a possible way to deepen the JHA area. Suggestions have also been made to evaluate the possibility of using these proceeds for victim-oriented initiatives, so as to render EU action more visible to citizens. Further support for the enforcement of victims' rights, beyond the current roadmap, has been suggested, for example by the creation of a network for sharing best practices.
- 2) Hate crimes, as underlined by the December Council Conclusions, could constitute an area in which legislative enhancement could be considered. Given its relationship with areas of concern like radicalisation, fundamental rights and internet-linked offences, hate crimes could be considered to be a high-visibility transversal issue in the coming Strategic Guidelines.
- 3) Penitentiary systems have been referred to as being a field where room exists for critical improvements, inter alia from the point of view of the transfer of detainees or information exchange.

It remains, however, to be assessed whether the current legal basis gives sufficient ground to undertake work in the area of hate crimes and detention conditions.

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