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NOTE

from: General Secretariat of the Council
to: Coreper/Council

Subject: Fourth Implementation Report of the "Strategy for the External Dimension of JHA: Global Freedom, Security and Justice" by the Council Secretariat (JAIEX working party) - Period of Reference: January 2010 - June 2011

INTRODUCTION

In December 2005, the Council adopted a Strategy for the External Dimension of JHA: Global Freedom, Security and Justice¹ (hereafter referred to as "the JHA-Relex Strategy"), which can be seen as one of the practical expressions of the broader European Security Strategy (ESS) of 2003. The JHA-Relex Strategy sets thematic priorities, clarifies underlying principles, reviews mechanisms and tools, and presents EU structures and processes that are involved in the field of JHA-Relex policies.

This report presents the fourth evaluation of the implementation of the JHA-Relex Strategy by the Council Secretariat.

¹ 14366/3/05 REV 3 JAI 417 RELEX 628.

In the following, the Council Secretariat will:

- Highlight briefly some of the **important activities** that have been undertaken by the Presidencies (ES, BE and HU), in close cooperation with the Commission, and currently with the EEAS, over the last 18 months in some of the most relevant geographical regions (United States, Russia, the Western Balkans, Southern Neighbourhood and the Eastern Partnership countries).
- Direct attention to **topics and regions, which deserve more attention** and enhanced efforts (Part II of the Report), such as
 - methodology of the JAIEX working party and its scope of activity, coordination with other EU policies and actors involved, need for evaluation of current policies,
 - need for capacity building,
 - and a particular focus on the Southern and Eastern Neighbourhood.

While focusing on the aforementioned countries and geographical areas, it is recognized that many important efforts have also been made in Afghanistan or Pakistan, Central and Latin America, West Africa or India, *inter alia*.

However, it would go beyond the scope of this report to mention all of these important activities in more detail.

In addition, the progress report focuses mainly on events that have taken place at Ministerial or senior level and between experts, rather than on the numerous Cooperation Councils and Committees, in particular JLS-subcommittee meetings where the Commission and the EEAS were the main actors or on meetings with other organizations such as the Council of Europe or Interpol. It should also be noted that the European Parliament has shown a growing interest in several aspects of JHA-Relex policies.

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PART I : REPORT ON ACTIVITIES

The growing importance of global threats, inter alia terrorism, cybercrime and trafficking in human beings calls for closer cooperation with our external partners. Indeed, a response which is coordinated with third countries can contribute significantly to combating these threats. The external dimension of JHA policies is therefore essential for the internal security of the EU Member States while ensuring safe travel for its citizens.

1. UNITED STATES

During the last 18 months, EU-US cooperation has developed on the basis of the Washington Declaration adopted in October 2009. At three EU-US JHA Ministerial meetings, the political guidelines were given for activities such as the ones listed below:

1.1. *Objectives*

In November 2010, the EU-US summit in Lisbon recognized **the area of Justice and Home Affairs, in all its components (mobility, security and justice) as one of the priority areas for transatlantic cooperation**. In the joint statement, partners emphasized the necessity of deepened cooperation in these fields, reiterating the absolute necessity of respecting fundamental human rights and freedoms and highlighting crucial issues, inter alia cybersecurity, data protection and the combat against financing of terrorism as well as the fight against violent extremism.

1.2. *Data protection and information exchange*

Following the results of **the High Level Contact Group on information sharing and privacy and personal data protection**, which agreed upon 12 data protection principles in 2009, work is ongoing with a view to concluding an EU-US data protection umbrella agreement. This agreement, to which the European Parliament (EP) will have to give its consent, needs to respect fundamental rights e.g. those stated in the legally binding Charter of Fundamental Rights and in Article 16 TFEU regarding the protection of personal data.

1.3. *Terrorism*

Following the Toledo Joint Statement of January 2010, an **EU-US and Member States' Declaration on counter-terrorism** was adopted in June 2010, stressing the importance of this issue for both partners. It focused on the prevention of violent extremism, in line with the EU internal security strategy. Cargo security also became an area of increased cooperation with the US following several incidents.

Special attention is paid to the aviation security, as the current **PNR agreement** between the US and the EU is being revised. Negotiations are ongoing and several difficult issues such as the data retention period and the right to judicial redress must be negotiated. The European Parliament will also have to give its consent.

After its initial rejection by the EP, a second version of **Terrorist Finance Trafficking Program** agreement was adopted in July 2010. It aims at identifying and investigating suspicious movements of funds.

1.4. Migration and Border Management

As envisaged in the Washington Statement, an **EU-US platform for cooperation on Migration and Refugee issues** was set up in 2010 and a positive assessment of the work carried out so far has already been made by the EU and the US. This platform addresses all migration relevant issues, including illegal and legal migration, international protection matters, as well as migration and development policy issues.

The **Visa Waiver Program (VWP)** was extended to Greece; however four Member States have still not yet been granted visa-free travel.

Since January 2009, international travellers wishing to travel to the US under the VWP have to submit a request on the **Electronic System for Travel Authorization (ESTA)**. Since 8 September 2010, this request is no longer for free and European citizens have to pay \$14 like other travellers under the VWP.

1.5. Fight against organised crime, including cybercrime and cybersecurity

The fight against organised crime, in particular cybercrime and drug trafficking, is also a priority. The Lisbon statement called for the creation of an **EU-US working group on cybersecurity** and cybercrime, with a particular focus on public-private partnership, cyber incident management, raising awareness and cybercrime.

1.6. *Law enforcement and cooperation in criminal and civil law matters*

The **Mutual Legal Assistance (MLA) and Extradition Agreements** entered into force in February 2010. Some problems remain, for instance with regard to central banking registers and "de minimis" cases. Cooperation between relevant US agencies and Europol and Eurojust has been reinforced and should be further enhanced.

Efforts to deepen cooperation between **the EU and the US in criminal and civil law matters**, notably within the framework of the Hague Conference, should be strengthened.

2. RUSSIAN FEDERATION

Three meetings of the Permanent Partnership Council on Freedom, Security and Justice were held in Kazan (May 2010), Brussels (December 2010) and St. Petersburg (May 2011). During these meetings, **assessments of the implementation of the road map for a Common Space of Freedom, Security and Justice were conducted**. At the same time, negotiations on a new EU-Russia partnership agreement, launched after the Nice Summit in 2008, continue.

2.1. *Migration, visa policy and border cooperation*

In line with the Joint Statement adopted at the PPC in St. Petersburg in May 2011, **a Dialogue on Migration** has been established and the first meeting was held in Moscow on 27 June 2011. The Dialogue will address all the migration and migration related issues, except visas and readmission (which are dealt with in dedicated joint committees established under the EU-Russia readmission agreement and visa facilitation agreement).

Regarding the visa dialogue, in line with the conclusions of the 2010 PPC held in Brussels, **the EU and Russia are jointly elaborating a list of common steps** at the senior officials' level. The implementation of these common steps would open up the possibility for entering into negotiations on a EU-Russia visa waiver agreement.

It should also be noted that negotiations to amend **the visa facilitation agreement** have been opened. They will be based on the suggestions of the EU-Russia Joint Visa Facilitation Committee.

The readmission agreement entered a new phase with the implementation on 1 June 2010 of the clause covering the readmission of third-country nationals and stateless persons. However, all the bilateral agreements between Russia and Member States have not yet been finalised.

The importance of continued **cooperation between Frontex and the Russian Border Guard Service** has been underscored several times, in particular in the Baltic Sea area and in relation to Afghanistan and Central Asia.

2.2. *Fight against organised crime, including cybercrime*

On several occasions Russia and the EU stated the importance of jointly addressing the global problem of drugs. Negotiations on a **draft Russia-EU agreement on drug precursors** have nearly been concluded. **Cooperation between Russia and Europol** is crucial for fighting organised crime. To this end, negotiations on an operational agreement between them have been launched and a third round of negotiations will be held in July 2011. For both abovementioned agreements, discussions are on-going with a view to reflecting in the texts the compliance with data protection requirements.

Joint efforts to fight terrorism have been pursued. A **dialogue between Russia and the EU** will be pursued in the future in line with the priorities discussed during the visit of the Counter-Terrorism Coordinator in Moscow in February 2011.

2.3. *Judicial cooperation in criminal and civil law matters*

A first meeting of the **Russia-Eurojust Working Group** took place in the first semester of 2011 with a view to solving practical problems relating to cooperation in criminal matters. It is consistent with the ongoing negotiations on a Russia-Eurojust agreement, the last round of which took place in March 2011. Another one is planned before the end of the year.

Any agreement should guarantee an **adequate level of protection of personal data**. Russia should update its level of protection, inter alia by depositing the instruments of ratification of the 1981 data protection convention with the Council of Europe and by guaranteeing the independence of the Data Protection Supervisory Authority. A conference on data protection took place in 2010.

Regarding **civil and commercial matters**, cooperation should be strengthened within the Hague Convention framework. An expert meeting on these issues will be held in Brussels in 2011.

3. WESTERN BALKANS

The Stabilisation and Association Process with the countries of the region continues. Croatia and the former Yugoslav Republic of Macedonia had already been granted the status of candidate countries. Montenegro obtained that status in December 2010. The Commission will soon publish its opinion on Serbia's application for membership.

One Ministerial meeting between the EU and Western Balkan countries has been held in the last 18 months: in November 2010 in Brussels.

3.1. Visa policy and border management

In December 2009, citizens from Serbia, Montenegro and the former Yugoslav Republic of Macedonia were granted **visa-free travel into the Schengen area**. Bosnia and Herzegovina and Albania also fulfilled the required conditions and their citizens have been granted **visa-free regimes** since December 2010.

Since then, waves of unfounded asylum requests coming from these countries have been recorded. In parallel, a monitoring mechanism has been set up, coordinated by the Commission in close cooperation with Europol and Frontex, which provides regular reports on the situation.

The Readmission agreements which have been concluded with the abovementioned countries have entered into force and are carefully monitored by the Joint Readmission Committee.

Frontex is cooperating with Western Balkan countries both organisationally (training) and operationally.

3.2. Law enforcement and judicial cooperation in criminal law matters

Cooperation with Europol has been enhanced and the Southeast European Cooperation Initiative Center (SECI) is expected to decide shortly if it wishes to host a liaison officer from Europol in order to reinforce this cooperation.

Eurojust has deepened its cooperation with the countries of the region. It works with a network of contact points, either prosecutors or judges, and has been able, thanks to formal agreements, to host liaison magistrates from Croatia and the former Yugoslav Republic of Macedonia in The Hague. Negotiations with other countries are either ongoing or in an initial phase. Almost all EU Member States have cases pending with Eurojust, relating to at least one of the Western Balkan countries, most of them relating to property theft, drugs and fraud.

Extradition agreements have been signed between some Western Balkan countries which include a provision for the extradition of own nationals. The EU has called for extension of these agreements so as to create a “**Balkan Arrest Warrant**”.

It is worth mentioning the efforts of PCC-SEE cooperation, which is based on the Vienna Police Convention and aims at establishing police cooperation in the region based on the EU model.

3.3. *Fight against organised crime and corruption*

Regarding the fight against organised crime, **the ILECU project** focusing on the establishment of coordination points for police cooperation with the Western Balkan countries continues to be a priority.

Despite the efforts made in recent years, the number of victims of **trafficking in human beings** has increased. Several measures have been taken by Western Balkan countries, *inter alia* through the PCC-SEE and SECI. A regional approach needs to be further developed.

Concerning the **fight against financial crime, money laundering and corruption**, there is still a lack of capacities and resources to tackle the problem efficiently, although the Western Balkan countries have ratified the relevant conventions of the Council of Europe.

4. EASTERN PARTNERSHIP

Officially launched at the Prague Summit in 2009, the Eastern Partnership is of particular interest for the European Union.

Discussions are held on mobility and security issues, as well as on law enforcement matters. The EU will focus both on security and mobility and consider the use of specific tools, such as Mobility Partnerships, as developed in the framework in the implementation of the Global Approach to Migration . It will continue the ongoing process of visa liberalisation/ facilitation with these countries, in line with progress on reaching the requested standards.

5. SOUTHERN NEIGHBOURHOOD

The Council has continuously monitored the situation in the Southern Neighbourhood, including migratory developments. Progress has already been made on taking forward the short term measures identified in the Council conclusions of 11 April 2011 on the management of migration from the Southern Neighbourhood; the Council called for an intensification of the efforts to take forward those measures. The Council also welcomed the Commission Communication on a dialogue for migration, mobility and security with the Southern Mediterranean as an important contribution to the development of the medium and long term strategy.

PART II : AREAS FOR ATTENTION

The increasing number of issues related to the external aspects of the area of freedom, security and justice and **the growing importance of horizontal issues** clearly plead for policy discussions on these matters. Originally created as an ad hoc group and then transformed into an official working group, the **JAIEX WG is undoubtedly the adequate forum** for such discussions.

In particular, the use of the JAIEX when preparing various meetings involving third country partners should be continued and optimized. **It can indeed have effective added value in improving coordination** between stakeholders, such as the Commission, the Council, the EEAS, the Member States, the different Council Working parties and the Counter-terrorism coordinator, as parties involved in the JHA field or the Relex fora.

Strengthening the ties between the JAIEX and relevant agencies such as e.g. Europol, Eurojust, Frontex, CEPOL as well as the recently created EASO should also be a priority.

1. JAIEX METHODOLOGY

JAIEX recently started an evaluation of its own working methods.

In order to come up with satisfactory and timely answers, **JAIEX needs to be more reactive** and to ensure its capacity to react to proposals, either by establishing "**Brussels-based**" **meetings or at the least a group of Brussels-based contact points**, in case of necessity (e.g. a situation of crisis, urgent files). This would give the JAIEX delegates an opportunity **to discuss important matters** within a few days, instead of having to wait for their monthly meeting, and **to cooperate more easily with other working groups**, such as COEST or COWEB which meets twice a week.

An increased reactivity by JAIEX seems necessary because joint meetings between JHA Counsellors and geographical working groups have not proved very successful. In some cases the JHA track was not in a position to discuss the substance of the matters, certainly not in time. In other cases, such as JHA subcommittees, the JAIEX group was either not involved at all beforehand or there was no line to take.

A list of contact points in Brussels (max. two per delegation) would also facilitate the easy distribution of restricted documents.

As **JAIEX needs to increase its strategic role**, the procedure for setting the agenda and the working methods should be further developed. JAIEX should be a group for discussion and exchanges rather than a group in which delegations only present their positions. Lively exchanges of views between delegates should be stimulated.

Written overviews of relevant matters could be distributed during (or even before) meetings. They could be the basis of such exchanges.

The documents which can be circulated by the JAIEX WG should no longer be limited to the extensive minutes of the meetings, but **should also include a record of decisions** taken which could, for example, follow this format: :

Topic	Main Conclusions	Action(s) to be taken and person(s) responsible	Deadline	Other

This record of decisions should be produced within two working days at the latest, and then transmitted to stakeholders.

If it considers it appropriate, JAIEX should also be given the capacity to adopt written opinions and recommendations, under the authority of Coreper.

2. JAIEX TOPICS

Three points deserve to be raised :

- Regarding meetings, and especially **conferences at a Ministerial level** with third countries, **JAIEX should be more involved, even in setting the agenda**. The current functioning, which in some cases only gives the JAIEX the opportunity to comment on the line to be taken, is not enough.
- **Questionnaires on key issues should be set up**, distributed and filled in by Member States. Their results would be used to amend the JAIEX agenda if needed. They could for example be divided into four parts:

- * Which topic(s) do you consider as a priority/priorities for the JAIEX WG?
- * In your country's view, what should be done on this issue?
- * On which geographical area(s) should JAIEX focus?
- * Do you consider that some matters still being discussed at the JAIEX WG are no longer relevant?

The last part pleads for an **evaluation system**: on a regular basis, an analysis of the content and the results of the actions carried out in the JHA-Relex field in general and by the JAIEX WG in particular on targeted issues should be carried out. According to these results, the topic(s) might be considered as “no longer relevant”, “closed”, “in progress” or should be discussed again within the group.

- Concerning the particular issues that should be discussed during JAIEX meetings, **some time should be allowed for Member States which wish to discuss a specific point**. This could be motivated by the fact that their country is particularly interested in this issue or because it has, inter alia, hosted an international meeting on this matter.

It would thus be interesting to create a list on which each Member State could place matters that they consider as essential. At each meeting, **two Member States will set out their views** and what they can share with other delegations (best practices, risk assessments, etc.). Debates on the subject could then take place.

3. COORDINATION WITH OTHER EU POLICIES (INTER ALIA CFSP AND CSDP) AND AGENCIES, INSTITUTIONS AND THE EEAS

Potential overlaps clearly exist between the EU Common Foreign and Security Policy (CFSP), the European Common Security and Defence Policy (CSDP) and the external dimension of the area of freedom, security and justice and it is therefore necessary to strengthen ties.

With regard to CSDP and with a view to enhancing cooperation, **joint meetings with a shared agenda** could be held when preparing a new CFSP operation, or when reflecting on the best way to carry out concerted targeted actions, as suggested in the draft **joint paper on strengthening ties between CSDP and JHA actors - proposals for a way ahead**.

Proposals made in the **Presidency note 10715/11** for closer cooperation and coordination in the field of EU security, inter alia informal meetings (one per quarter) with all relevant actors concerned by internal and external security, with no decision-making powers, should be carefully studied.

Where appropriate, **contact persons should be designated in the JHA services** to coordinate exchanges with the CSDP services. This would improve the quality of the JHA response. It is also important that this mechanism could be used as a relay point for Member States.

It could be useful **for JHA experts to give training to people who will be sent to third countries for CSDP operations on the particular dimension of law enforcement** and reestablishment of the rule of law in failed countries/countries in reconstruction.

Exchanges between the EU agencies, the EEAS and the EU Institutions should be encouraged.

4. EVALUATION OF CURRENT POLICIES

In the field of JHA, there is a clear need for more evaluation of the efficiency of projects or actions related to the establishment of the area of freedom, security and justice.

Even if tangible results on these issues are difficult to identify (Is it possible to measure the effects of judicial cooperation consisting in training lawyers or judges?), efforts need to be made with a view to enhancing efficiency and relevance.

New financial perspectives will be negotiated and implemented by 2013. This clearly pleads for the implementation of an **evaluation process relying on:**

- **Optimal adequacy between the real needs** in the field of Justice and Home Affairs **and the projects undertaken.** Sustainability of the projects and their medium and long term development should be carefully considered.

- **Regular assessments** of the way the resources are used and evaluations of the relevance of priorities, and possibilities of adjustment if necessary.

- After a defined period of time (for example one or two years), a wider review could be carried out and the desirability of continuing the evaluated projects thoroughly studied. Given the expertise of the European Court of Auditors in this field, the potential involvement of some of its experts in this evaluation process should be considered.

5. BUILDING CAPABILITIES

This issue combines two main ideas :

- Member States should increase their capabilities, in order to improve their resilience, inter alia, to potential terrorist attacks or natural disasters.
- Member States should support their external partners in their efforts to build capabilities.

Indeed, considering all the increasing threats, e.g. terrorism, cyberattacks, nuclear incidents or natural disasters, Member States should take the necessary measures to improve their resilience. This could be done for example through the development of technical expertise, especially regarding cybercrime but also by the identification of critical infrastructures which require increased protection.

Enhanced cooperation between Member States should be promoted as all the threats mentioned can affect every country. For example, it would be necessary to identify and improve reference scenarios for nuclear incidents and the specified means for responding to them.

The process carried out in connection with terrorism, namely a peer review of Member States' capabilities for responding to terrorist incidents, could be extended to other fields during the next 18 months and Member States should also take advantage of existing structures or mechanisms including the Civil Protection Mechanism and the Joint Situation Centre.

It is crucial to assist third countries (especially North African countries in connection with recent events) in building capabilities to ensure the rule of law. To this end, the European Union should continue and intensify its action in this field by sending judicial and police experts and by having regular reviews of the progress made by third countries.

Cooperation by Member States in providing financial, technical and human resources is essential.

6. SOUTHERN AND EASTERN NEIGHBOURHOOD

Special emphasis should be laid on these two areas which are of great importance to the European Union.

The next 18 months should be used to enhance the cooperation with these areas, notably by moving forward towards the conclusion of new agreements, e.g. the association agreements with Ukraine and with the countries included in the *Partnership for Democracy and Shared Prosperity*.

As already mentioned, special attention should be paid to law enforcement in these regions, especially in North Africa, **because many States are currently going through a democratic process, or might do so in the short term**, and that could entail major constitutional and political changes. Important changes of the judicial system could also take place.

Migratory aspects, namely facilitation of mobility and the conclusion and implementation of readmission agreements, as well as the reinforcement of the capacities in the area of border management, should be considered as a key issue for the upcoming Trio, especially regarding the increasing migratory pressure stemming from some countries.

The appropriate association of relevant EU agencies, notably FRONTEX, which should be empowered by its new regulation, and the EASO, which is expected to develop its capacities also in the area of the external dimension of asylum, **will a key factor for success**.