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**NOTE**

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<b>From:</b>	Presidency
<b>To:</b>	Delegations
<b>Subject:</b>	Letter from the LT Presidency to the incoming EL Presidency on the future development of the JHA area

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*In order to continue the preparation of the Council's contribution to the future development of the JHA area in a coordinated manner, the LT Presidency hereby transmits to the incoming EL presidency a summary of the preliminary considerations by MS on the future development of the JHA area. We also add to this summary a compilation of MS comments.*

In its 27-28 June 2013 conclusions, the European Council mandated the future Presidencies to start discussions on the future strategic guidelines in the area of freedom, security and justice with a view to its June 2014 meeting. The Commission was invited to present appropriate contributions to this process. The Lithuanian Presidency, being the first to take office after the conclusions were adopted, initiated the discussions by holding a ministerial debate on 18-19 July 2013 at the informal ministerial meeting in Vilnius. The debate continued in four horizontal preparatory bodies, i.e. SCIFA, COSI, CATS and the Working Party on Civil Law Matters (General Questions) as well as with written contributions as annexed to this note, leading to the final discussion during the Lithuanian Presidency at the JHA Council on 4-5 December 2013.

This note reproduces the preliminary considerations set out by the Member States regarding the **horizontal principles** for constructing the post-2014 guidelines as set out in the Presidency note of 2 December and possible **sectoral priorities** as reflected in the Member States contributions submitted to the Presidency and General Secretariat of the Council. These priorities should not be seen as definite but rather could form the legacy of the discussions under the Lithuanian Presidency and serve as input for the further debate and notably for the future Commission Communication on the post-Stockholm period.

### **Suggestions for the horizontal principles of the post-2014 guidelines**

#### *Focus on quality of action*

The future guidelines should be aimed at consolidating the progress achieved and should take the form of a short, strategic and result-oriented **political framework** of action allowing for a swift reaction to developments, challenges and crises occurring in and outside Europe.

Emphasis should be laid on **user-friendliness** and **proper implementation of existing initiatives and legal acts**. Particular emphasis should be given to the way the existing legislation is applied and enforced in different Member States so that it is equally effective throughout the EU. The **quality of legislation** needs to be improved, where necessary by means of consolidation and evidence-based evaluation.

Although the future guidelines should not become a catalogue of new legislative initiatives, **any remaining gaps in legislation** should be identified and remedied in a coherent way. New legislative steps should be preceded by a detailed impact assessment including an ex-ante cost-benefit analysis, evaluating implementation costs. In the drafting phase of new legislation, attention should be paid to analysing existing legislation with the aim of consolidating where possible.

#### *Time to pool resources*

In the wake of the economic crisis, Member States are pleading for more efficient use of available resources. From this perspective they see that **synchronising policy and financial cycles** would be beneficial and would make it possible to achieve better planning and implementation. In order to strengthen citizens' trust, the EU has to ensure the effectiveness, proportionality and cost-efficiency of its policies.

When speaking of current deficiencies and future opportunities, many of them mention the importance of **practical cooperation (including further development of operational cooperation)** between the Member States. Practical cooperation between the Member States and the Commission and use of the **agencies** and their practical know-how are also seen as essential.

Sharing best practices and information exchange should make it possible to increase **mutual trust and understanding of different legal and judicial cultures**, which is essential in JHA cooperation. National and EU-level training and exchange of experts may be beneficial in this regard.

#### *Synergies with other policy areas*

The guidelines should take into account the current economic and social context. Member States stressed the need to seek **synergies between JHA and other relevant policy areas** (economic policy, education, social policy, development, etc.) so that the use of non-JHA instruments could further contribute to achieving the JHA goals. By exploring these cross-cutting issues, the EU could become more flexible in adapting swiftly to changing situations. It was pointed out that successful **crisis management** requires a horizontal, and not merely a sectoral, approach and that the EU's crisis management mechanisms should be improved. Similarly, synergies with other actors (e.g. the private sector) should be sought.

Many Member States emphasise the need **to communicate effectively** with regard to freedom, security and justice issues. This should increase trust and public support within the EU and improve its ability to act.

Work should be continued on developing the **use of information and communications technologies** at European level. Technological development should alleviate and contribute to the functioning of the area of freedom, security and justice, while at the same time guaranteeing and respecting privacy and fundamental rights.

#### *Greater coherence between the internal and external dimension*

Many Member States noted the importance of **coherence between the internal and external dimensions of the area of freedom, security and justice**. Internal policy priorities should be properly reflected in external policy and relations with third countries.

**Greater coordination** between various actors, EU Member States and EU institutions and agencies and wider use of bilateral and multilateral instruments would make it possible to tackle common challenges more effectively.

#### **Possible sectoral priorities**

In the field of **migration**, there is a general understanding that legal migration should serve as a tool to promote economic growth and reflect labour market needs while illegal migration should be crushed. For this purpose, effective return and readmission policy is essential. Member States advocate for a stronger link between overall cooperation with countries of origin and transit and their efforts in return and the use of development policies to address the root causes of migration.

Member States further emphasize the importance of implementation of existing readmission agreements and focus on priority countries. Many underline the need for increased cooperation with countries of origin and transit as well as building and strengthening protection and reintegration capacity (close to) there. Efficiency of already existing bilateral and regional cooperation initiatives ought to be strengthened.

The views with regard to the possible codification of EU acquis on legal migration diverged. The importance of improved exchange of information on national migration regulations was mentioned (e.g. in issuing residence permits or on regularisation of non-removable returnees).

Successful practical implementation of newly adopted Common European **Asylum** System package is essential. Member States also quote the need to find an effective module on how to manage migration and asylum pressure, including the development of a mechanism for early warning, preparedness and crisis management as provided for in the recast Dublin Regulation. Request for more solidarity in this respect was mentioned by a number of Member States. An essential condition is ensuring an equal treatment (and improved reception conditions) of migrants/asylum seekers throughout the EU and further approximation of practices, so that identical cases end in the same outcome in all the EU. Prevention of the abuses of asylum procedures was also mentioned. Some also referred to further exploring the possibilities for joint processing of asylum applications.

**Integration** should be a continuous process and should not cease with granting of legal residence. Further cooperation, attention to immigrants and the host society as well as regular follow-up and evaluation mechanism based on agreed indicators were some of the ideas raised.

With regard to **visa** policy, compulsory link between visa facilitation and readmission was emphasised, including appropriate mechanisms in all visa facilitation and liberalisation agreements to withdraw a mandate or revoke an agreement. Some Member States underlined the importance of appropriate *ex-ante* impact assessment of visa liberalisation to the relations with the countries concerned, related migration risks and ways to mitigate them.

The importance of better local consular cooperation for consistent and reliable visa processing was emphasised, since this ensures that similar visa applications result in the same outcome. Enhancement of cooperation and coordination between Member States could also take place through common visa application centres, expansion of representation agreements and use of external service providers. A group of Member States also mentioned that the concept of an EU –ESTA could be considered.

Legislative basis for the **border management** has seen substantial development over the last decennia. Modernisation (digitalisation) of the border management systems continues to be seen as a priority for the next term by many countries and also largely as a prerequisite for visa liberalisation. In the wake of recent events, some Member States also highlighted the need to get extra attention to the situation at sea (maritime policy issues) as well as exporting good border management to the EU neighbourhood. They also mention the need to have integrated approach to law enforcement and border management tools (databases) to be able to track the suspects and carry out returns, while safeguarding freedom of movement and fundamental rights. Practical implementation of the Schengen governance package was mentioned as one of the factors of safe Schengen area.

**Terrorism** (including its financing) **and fight against radicalisation** are also high on the agenda. Member States call for comprehensive and effective approach as well as the need for faster reaction from the EU level to the phenomenon of foreign fighters.

Member States highlight the need to ensure the **cyber security** (including online child abuse, fraud attacks on information systems and cloud security) and e-crime prevention in the EU. One of the ways to step up efforts in this regard is cooperation between private and public sectors, at the same time engaging with the third countries. Attention should be also drawn to the broader problem of the increasing use of internet for criminal purposes which needs a structural, cross-border approach. Growing citizens concern in relation to the protection of privacy was also highlighted.

**Fight against organised crime** and its infiltration into legal economy is one of the concerns frequently encountered by the Member States. Identifying new forms of criminality, financial investigations, confiscation of assets obtained in illegal manner, identification of alternative ways to combat it (e.g. via administrative measures) and intensified work with the countries of origin are some examples of multidisciplinary, inter-agency recipes proposed to tackle this problem. Some also suggest exploring the possibility to create a single contact point of operational contact at national level, enhancing interoperability and having standardised format to exchange information from various systems as ways to facilitate cooperation.

Importance of strategic and operational commitment of relevant actors in the EU Policy Cycle for organised and serious international crime was mentioned by a number of Member States. Similarly, an issue of requirements for evidence in cross-border cases as well as minimum quality standards for and recognition of equivalence of forensic activities (as stated in the Council conclusions for the creation of a European Forensic Science Area were quoted) were quoted.

Bearing in mind that **European PNR** (including intra-EU flights) has to be considered as an extremely important tool in combatting terrorism and organised crime, successful finalisation of both legislative and technical implementation processes shall be seen as one of the key elements of next policy cycle, including convincing the European Parliament of this approach.

Coordinated approach to tackling fraud involving **identity documents and the use of a false identity** were also mentioned.

Fight against **human, drugs and firearms trafficking, corruption and international fraud, infringement of intellectual property rights as well as environmental crime** have also been listed. It goes without saying that many of these types of crime can be better addressed with practical cooperation of the Member States and between the Member States and the EU agencies. Challenges posed by cross-border crime against personal property and counterfeiting of currencies were also mentioned as well as the need to fight tax evasion and money laundering. All these measures reduce opportunities for shadow economy and other criminal activity and hence contribute to economic growth.

Comparison of national risk assessments and due consideration of international risks in the field of **civil protection** are important. Member States cooperation in prevention and threat assessment can reduce these risks and change the nature of approach to disasters from reactive to pro-active.

**Mutual recognition must continue to be the cornerstone of judicial cooperation.**

Prerequisites for mutual recognition must be strengthened and impediments removed. A number of Member States believe that in order to enhance judicial cooperation by way of mutual recognition, strengthening mutual trust at all stages of criminal proceedings has to be one of the key objectives for the cooperation also in future. On a more concrete level, for example, completion the Road Map on Procedural Rights and a specific focus in the strategic guidelines on the rights and needs of victims of all forms of crime, the fulfilment of the minimum requirements for a fair trial have been pointed out as the priorities for the upcoming period. The initiatives of setting-up of a European Public Prosecutor and the reform on Eurojust should be further pursued. In future, it is of utmost importance to ensure the high quality, usability and effective implementation of the EU instruments in this area.

**Focus of judicial cooperation in criminal matters should be shifted towards the international dimension.**

The Union must increasingly invest in multilateral, international cooperation. Within limits of its competences, the EU must actively and constructively work for the goal of getting as many neighbouring countries and strategic partners of the EU as possible to accede to the conventions of the Council of Europe.

**Common principles are needed on EU criminal law policy, focusing on cross-border serious crime.**

The EU criminal law policy should focus on mutual recognition. Approximation of definitions of criminal offences and sanctions in the Member States is justified mainly when it comes to serious crime with a cross-border dimension and should come into play as *ultima ratio*.

The importance of examining further elements of minimum procedural rights for accused and suspect persons, and to assess whether further issues need to be addressed, was underlined.

The competence of the EU in the field of judicial cooperation in civil matters is designed to cover cross-border cases. **Civil law cooperation should focus on solving practical cross-border problems of EU citizens and businesses.** Some Member States emphasise that EU instruments concerning cross-border civil procedure should be made clearer and more uniform. The aim is to simplify and facilitate cross-border activities and enhance access to justice. An efficient recognition and enforcement of judgements is of great importance in the civil judicial cooperation. The process of abolishing unnecessary intermediate measures, such as exequatur, should continue where appropriate, when revising existing instruments. The extension of the use of the principle of mutual recognition of judgements to new fields should also be explored. The harmonization of rules of applicable law should continue where it is necessary from a citizen's perspective. Additionally, the cooperation with international organisations, such as the Hague Conference of Private International Law, and its instruments shall not be missed out. Also the process of creating effective tools for judicial co-operation in cross-border cases is essential. In that regard, the forthcoming review of the Regulation on the Service of documents in civil and commercial matters has an important role to play.

**In the area of family law a need for swift procedures has been specified.** More can be done to abolish the exequatur while maintaining necessary safeguards, to make further use of the principle of mutual recognition and to increase the understanding of the different legal systems in this field. The Member States' different substantive family law is based on long traditions and important cultural perceptions and must be respected. For this reason, and to be able to move forward at European level, focus should also in the future be on finding solutions to cross-border issues that can hamper cooperation, such as rules on jurisdiction, applicable law, recognition and enforcement. The upcoming review of the Brussels II bis regulation in this context would be welcomed.

**Justice for growth.** The financial crisis has highlighted the need for the EU to contribute to the development of a healthy and competitive European business climate. A number of Member States put emphasis on developing policies which will help rebuild confidence among citizens and contribute to economic growth. In this context, the interests of European citizens and businesses should continue to be central to the agenda for the coming years.

Accordingly, the on-going revision of the Insolvency regulation as well as the review of the Small claims regulation have been in principle welcomed.

### Fundamental rights

**The area of freedom, security and justice must be the area in which fundamental rights are guaranteed.** Some Member States referred to a need to continue promoting respect for the common values recognised in Article 2 of TEU, such as democracy, the rule of law and fundamental rights. Many Member States want the accession to the European Convention of Human Rights to be realised as soon as possible, which will contribute to coherence of fundamental rights protection in Europe. A number of Member States also called for better coherence between internal and external dimension of human rights policy.

Fundamental rights policy should be evidence based. The expertise of the EU Agency for Fundamental Rights (FRA) should be used to its full potential. One way to do this, could be to expand the competence of the FRA so that it also covers the police and judicial cooperation.

There is a strong need for further development of a legal framework on data protection. The Union must continue to respond to technological developments and address the necessity for increased exchange of personal data whilst ensuring the utmost respect for the protection of privacy. The technological developments not only present new challenges to the protection of personal data, but also offer new possibilities and should alleviate and contribute to the functioning of the area of freedom, security and justice.

More attention should be paid to the protection of fundamental rights of vulnerable people. The rise in hate crimes, especially internet based, is a worrying trend. Some Member States consider that combating hate crime should form another specific priority for EU action in the next strategic guidelines.

In light of the adoption of the Strategy on European e-Justice 2014-2018 by the Council, all efforts should be put for the preparation and implementation of the corresponding Action Plan.

### **Conclusion**

Due to its limited volume, this note does not pretend to offer an all-inclusive overview of the Member States' contributions but rather serve as an interim account of the discussions on the future of the JHA area held during the six months of the Lithuanian Presidency, highlighting some of the ideas and approaches raised which could be further elaborated (alongside many others) in the months to come. It is evident that the precondition for the area of freedom, security and justice to be effective is the synergy between all actors involved, especially the Member States who are responsible for the implementation of the EU legislation in the national systems.

The Presidency believes that this note alongside its annexes can contribute in further building a common approach to the future of the JHA area and in facilitating the reflection of Member States' views in the future Commission Communication due in March 2014.

**THE FUTURE DEVELOPMENT OF THE JHA AREA**  
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## **Contribution from Austria (AT)**

*(Translation coming soon)*

### **Die zukünftige Entwicklung im JI-Bereich („Post-Stockholm Programm“)**

#### **Erste Stellungnahme des Bundesministeriums für Inneres zum Dokument Nr. 14898/13**

Beim vorliegenden Papier handelt es sich um eine erste Stellungnahme für die Beratungen im Rat und seinen vorbereitenden Gremien (CATS, COSI, JUSTCIV und SCIFA) zur zukünftigen Entwicklung im JI-Bereich. Das Bundesministerium für Inneres der Republik Österreich behält sich die Vorlage weiterer Stellungnahmen vor, insbesondere nach Vorliegen des Beitrags der Europäischen Kommission zum „Post-Stockholm Prozess“ im Sinne der Schlussfolgerungen des Europäischen Rates vom 27./28. Juni 2013. Für die unter den dritten Teil des AEUV, Titel V, Kapitel 2, fallenden Bereiche darf ergänzend auf die gemeinsam mit den zuständigen Ministern von Belgien, Dänemark, Niederlande und Schweden ausgearbeiteten Prioritäten hingewiesen werden. Ferner darf auf die gemeinsame Stellungnahme des Forum Salzburgs verwiesen werden.

#### **I. Einleitende Bemerkungen**

- (1) Zwanzig Jahre nach Inkrafttreten des Vertrags von Maastricht besteht weiter die Notwendigkeit für eine engere Zusammenarbeit und besser funktionierende Integration im Politikbereich „Raum der Freiheit, der Sicherheit und des Rechts“. Einer engeren Zusammenarbeit der EU-Mitgliedstaaten kommt dabei eine besondere Bedeutung bei der Verwirklichung einer immer engeren Union der Völker Europas im Sinne von Artikel 1 EUV zu, in der die Entscheidungen möglichst offen und möglichst bürgernah getroffen werden.
- (2) Bereits die drei bisherigen JI-Mehrjahresprogramme (Tampere, Den Haag und Stockholm) haben einen wichtigen Beitrag zur Integration im Bereich Justiz und Inneres geleistet. Österreich befürwortet daher die Erarbeitung eines Nachfolgeprogramms für das Stockholmer Programm, wobei dieses einerseits auf wesentliche Leitlinien und andererseits auf wenige neue inhaltliche Prioritäten konzentriert sein sollte.

- (3) Im Sinne einer kohärenten Politikplanung sollte die zukünftige Programmplanung zeitlich mit dem Mehrjährigen Finanzrahmen der EU von 2014-2020 einhergehen, wobei eine Halbzeitüberprüfung dem Europäischen Rat die Möglichkeit geben sollte, notwendige Anpassungen vorzunehmen. Neue Inhalte und Prioritäten des künftigen Mehrjahresprogramms müssen sich auch in einem entsprechend angepassten Mehrjährigen Finanzrahmen widerspiegeln.
- (4) Der Europäische Rat hat im Juni 2013 festgelegt, dass er auf seiner Tagung im Juni 2014 (im Einklang mit Artikel 68 AEUV) über die Festlegung strategischer Leitlinien für die gesetzgeberische und operative Programmplanung im Raum der Freiheit, der Sicherheit und des Rechts beraten wird. Zur Vorbereitung dieser Tagung ersuchte der Europäische Rat die künftigen Vorsitze, einen Reflexionsprozess im Rat einzuleiten. Die Kommission wurde ersucht, geeignete Beiträge zu diesem Prozess vorzulegen.
- (5) Artikel 68 AEUV normiert die bereits durch die Mehrjahresprogramme von Tampere, Den Haag und Stockholm ausgeübte Kompetenz der Staats- und Regierungschefs der Mitgliedstaaten der Europäischen Union, die gesetzgeberische und operative Programmplanung festzulegen. Unterstützt wurde der Europäische Rat in der Vergangenheit durch den JI-Rat und seine vorbereitenden Gremien. Dies muss bei der Erarbeitung der strategischen Leitlinien des Europäischen Rats für Juni 2014 bedacht werden. Dem Rat sowie insbesondere auch den Ausschüssen CATS, COSI, JUSTCIV und SCIFA ist daher eine entsprechende Rolle bei der Vorbereitung der gesetzgeberischen und operativen Programmplanung zuzumessen.
- (6) Das nächste Mehrjahresprogramm soll zudem die Strategie der inneren Sicherheit der Europäischen Union und das darin vorgesehene Europäische Sicherheitsmodell mitberücksichtigen. Ein sicheres Europa kann nur mittels einer umfassenden, aktiven Sicherheitspolitik, die sich mit den Ursachen von Unsicherheit und nicht nur ihren Auswirkungen beschäftigt und die politischen, wirtschaftlichen sowie sozialen Sektoren einbezieht, gewährleistet werden. Dieses Sicherheitsmodell muss sich ebenso auf die Grundsätze und Werte der Union stützen, nämlich die Achtung der Menschenrechte und Grundfreiheiten, Rechtsstaatlichkeit, Demokratie, Dialog, Toleranz, Transparenz und Solidarität.

## II. Allgemeine Prinzipien und Leitlinien

- (1) Eine große Herausforderung ist nach wie vor die Verbesserung des Umsetzungsstandes von EU-Rechtsakten in den Mitgliedstaaten. In diesem Zusammenhang ist eine Phase der tiefgreifenden Konsolidierung der bisherigen Errungenschaften auf europäischer Ebene erforderlich. Erst nach einer ausreichend langen Phase der praktischen Anwendung sollte nach einer eingehenden Evaluierung der Bedarf nach Änderungen bestehender Rechtsakte oder nach neuen Bestimmungen geprüft werden. Insbesondere sollte damit auch eine Problemanalyse verbunden sein, um auszumachen, welche Bedenken und Probleme in der praktischen Arbeit bestehen. In der täglichen Praxis und nicht in politischen Programmen muss sich der gemeinsame Raum der Freiheit, der Sicherheit und des Rechts bewähren!
- (2) Ganz wesentlich scheint weiterhin das Bemühen um eine qualitativ hochwertige Rechtsetzung, die gründliche Bedarfsanalysen und Folgenabschätzungen voraussetzt. Darüber hinaus muss die Einhaltung der Grundsätze der Verhältnismäßigkeit und Subsidiarität sowie eine stärkere Kohärenz der Rechtsakte entsprechend sichergestellt werden. Hochwertige legislative Qualität setzt auch gründliche Beratungen auf Expertenebene voraus. Zur Förderung der Kohärenz der Rechtsetzung sollten Instrumente überlegt werden, die im Rechtssetzungsprozess einen höheren Normenstandard gewährleisten können. In diesem Rahmen sollte beispielsweise auf Querverbindungen zwischen den einzelnen sekundärrechtlichen Instrumenten und auf eine einheitliche Terminologie und Systematik geachtet sowie auch sichergestellt werden, dass es einen Gleichklang der Definitionen, der Rechtssprache und der Regelungstechnik gibt.
- (3) Um einem hohen legislativen Qualitätsanspruch gerecht zu werden, wäre es auch dringend geboten, bereits bei den Verhandlungen zu Rechtsakten klare Bestimmungen und Regelungen mit der Annahme zu schaffen, um damit Auslegungsschwierigkeiten in den Mitgliedstaaten zu verhindern.

- (4) Der Wirksamkeit des bislang geschaffenen Rechtsbestandes ist in der Praxis, zB durch akkurate, aktuelle, leicht zugängliche Informationsaufbereitung, durch Informationsaustausch über Schwierigkeiten in der Praxis etc. verstärktes Augenmerk zu widmen. Es gibt zunehmend Probleme bei der Umsetzung und praktischen Anwendung verabschiedeter Rechtsakte. Zudem ist es dringend erforderlich, dass in der Praxis auftretende Schwierigkeiten in Anwendung der verschiedenen Rechtsinstrumente weiterhin regelmäßig auf EU-Ebene (zB in einer Ratsarbeitsgruppe) diskutiert und effiziente Maßnahmen zur Abhilfe bei verschiedenen Problemen gemeinsam ergriffen werden
- (5) Wünschenswert wäre schließlich eine Abstimmung der Aktivitäten der EK mit dem Mehrjahresprogramm des Rates. Der Sinn eines solchen Programmes geht nämlich verloren, wenn die EK weitgehend losgelöst davon agiert.
- (6) Die Förderung europäischer Werte und Grundrechte - die von allen Mitgliedstaaten bewahrt werden müssen - ist von essentieller Bedeutung. Das Stockholm Programm legt bereits fest, dass die Union auf gemeinsamen Werten und der Achtung der Grundrechte basieren und „ein Europa auf dem Fundament der Grundrechte“ gefördert werden soll. Die bessere Bewusstmachung der Bedeutung der Grundrechte und Werte der EU für ein gutes, sicheres Zusammenleben und der Schutz der EU-Grundrechte und Werte sollte bei der Entwicklung des nächsten Mehrjahresprogramms im Vordergrund stehen. Das erfordern die kulturell immer vielfältigeren Gesellschaften in Europa. Diese bedeuten einen Mehrwert, wenn es gemeinsame, von allen akzeptierte Werte und Grundrechte gibt.
- (7) Gemeinsame Werte sind bereits in einer Vielzahl von EU-Texten verankert. Allerdings besteht noch Handlungsbedarf hinsichtlich der Verbreitung und des Informationsaustausches über gemeinsame Werte, insbesondere in der Bevölkerung. Aus diesem Grund sollten, neben den bereits bestehenden Rechtsinstrumenten, „soft law“-Instrumente eingeführt werden. Das Verständnis für die Grundrechte und Werte der EU sollte nicht nur für EU-Bürger Voraussetzung sein, sondern ebenso für Menschen, die EU-Bürger werden möchten bzw sich zumindest temporär in der EU aufhalten wollen. Aus diesem Grund möchte Österreich, zusammen mit der EU-Agentur für Grundrechte (FRA), der Europäischen Kommission und allen Mitgliedstaaten ein Handbuch der Grundrechte und Werte der EU erarbeiten, welches zukünftig beispielsweise im Schulunterricht verwendet werden soll.

- (8) Auch wenn es um Beziehungen mit Drittstaaten geht, gehören Grund- und Menschenrechte auf die Agenda aller EU-Akteure (Staats- und Regierungschefs, Innen- und Justizminister etc). Dafür sollte ein Gesamtkonzept für eine EU-Strategie zum Thema Grund- und Menschenrechte im Bereich Drittstaatsbeziehungen entwickelt werden. Ebenso auf die Agenda aller Akteure sollte die Bekämpfung der Jugendarbeitslosigkeit und Arbeitslosigkeit im Allgemeinen gesetzt werden. Hier müssen die Union und die Mitgliedstaaten alle erforderlichen Anstrengungen unternehmen. Im Allgemeinen ist auch die Zusammenarbeit zwischen EU und Europarat, gerade im Lichte des Beitritts der Union zur Europäischen Menschenrechtskonvention, zu intensivieren und die EU-Agentur für Grundrechte für Angelegenheiten des Raums der Freiheit, der Sicherheit und des Rechts stärker einzubeziehen und zu nützen.
- (9) Auch der Außendimension des JI-Bereichs muss verstärkt Aufmerksamkeit gewidmet werden. Es sollen nicht nur die internen Beziehungen zwischen den verschiedenen Akteuren, den EU-MS, den EU Institutionen und Agenturen gestärkt werden, die Union muss darüber hinaus ihre Bemühungen auch bei multilateraler und internationaler Kooperation intensivieren. Für die künftigen Arbeiten sollte darauf geachtet werden, dass in den JI-Außenbeziehungen eine kohärente Politik betrieben wird und die Union nach außen als Einheit bei Verhandlungen - etwa auch gegenüber internationalen Organisationen - auftritt. Dazu scheint es erforderlich, dass innerhalb der Union eine Verstärkung der Kommunikation stattfindet, um die Informationsflüsse zwischen dem JI-Bereich und anderen Bereichen zu fördern. Neben inhaltlichen Schwerpunkten sollte sich die Union auch hinsichtlich der geographischen Aktivitäten im JI-Bereich Prioritäten setzen, weil es auf Grund der begrenzten Kapazitäten nicht möglich sein wird, die Kooperation mit allen Regionen/Drittstaaten mit derselben Intensität zu betreiben. Von besonderer Vorrangigkeit für Österreich sind die Staaten des westlichen Balkans.

## **Contribution from Belgium (BE)**

POST STOCKHOLM – Contribution of Belgium

### **HORIZONTAL ASPECTS**

**Involvement of the institutions:** during the definition of the strategic guidelines, as provided for in article 68 TFEU, the European Council is entitled to expect a balanced participation of the different institutions and stakeholders within the Union. The Council, the Commission and the European Parliament should also be involved in the realization of the guidelines. A dialogue on the programme to be adopted should also be conducted with the new Commission and the new European Parliament.

**The Council itself should play a more strategic and politic role in the implementation of the programme.** The Council sessions should be used to identify the difficulties in the JHA field and to engage political debates on the possible solutions. Ministers should also have the opportunity to discuss similar national issues that confront them.

In the JHA field, importance should be attached to the **contacts with the applicant countries, the countries bordering the EU and the other countries**. In the framework of the Union's external policy, issues in the field of JHA are often marginalized, for instance in comparison with economic issues or the international policy in general. It is important that the JHA actors be involved in the planning of the CSDP missions as early as possible.

### **Principles and guidelines**

**Effectiveness:** the EU should attach importance to the transposition and implementation of the acquis. Importance of the mechanisms for assessing and monitoring the instruments. Emphasis should be given to training and exchange of good practices in order to ensure the effective implementation of the instruments and the compatibility between the measures taken in the different Member States.

In order to ensure the **efficacy** of the instruments, the added value of the instruments adopted must also be assessed. It is not only a matter of transposition and implementation. It should also be ascertained whether the instrument actually works in practice, whether the initial objective has been achieved and whether some difficulties arise.

**Need for pragmatism and efficiency:** taking into account the Member States' limited financial resources. The objectives must be realistic and take into account the means available in the Member States as well as the differences between the systems in order to avoid putting at risk national situations, which work efficiently. The impact of the instruments on the budget of the Member States must be taken into greater account.

Whenever possible, it is appropriate to match up the policy planning with the **cycles of financing framework**, or to at least ensure consistency between both of them.

**Vision for the future:** if significant efforts are needed to ensure an optimal implementation and to assess the numerous instruments adopted, the new programme must also deal with the next steps and be based on the use of the possibilities offered and objectives set by the Treaty of Lisbon.

## **JUSTICE**

### **Criminal Justice**

This field is fast growing and all possibilities of the Treaty should be used to enhance its development focused along the following three lines:

#### **(1) Strengthening of cooperation:**

- **Mutual recognition:** importance of implementing and **completing the existing legal framework.**

There is a lack of an instrument which would permit **denunciation** of the facts and the transfer of proceedings to another Member State. There is also a lack of an instrument which would permit the **transfer of a detained person**, so that the latter can attend his/her **trial** in another Member State.

It would be interesting to collect the Member States' **useful case law** on certain specific issues concerning the implementation of the European instruments of mutual recognition. The question of the languages used should be examined.

- **Cooperation**

An issue of particular interest is to develop **information exchanges** concerning **detained persons** (background, prison management, file under consideration) between Member States as well as information exchanges concerning post-detention follow-up.

(2) **Approximation** of the substantive laws and regulations concerning penalties and the enforcement of sentences, in order to improve mutual recognition. The whole field of sentence enforcement should be further developed. Even in the absence of a direct legal basis, such measures can enhance mutual confidence between Member States and, thus, contribute to facilitate mutual recognition of judicial decisions.

(3) Development of **actors** : importance of the development of **Eurojust** and importance of the creation of a **European Public Prosecutor's Office (EPPO)**.

## Civil Justice

**Parental abductions:** need to improve the enforcement of the Brussels IIbis Regulation (which refers to the Hague Convention of 1980) within the context of the protection of the human rights by the ECHR. Need to create synergies between the above-mentioned Regulation and the European Convention on Human Rights to prevent the enforcement of the Regulation from being defeated by the enforcement of the Convention.

The instruments developed within other bodies (Council of Europe, Hague Conference on international private law...) must also be taken into account and a certain degree of **compatibility** must be ensured **between the European and international instruments**. Each time, it will be necessary to determine whether minimal rules must be imposed at European level or whether the established institutional framework is sufficient.

Concerning the **external competences**, a good cooperation with the other international institutions is required.

To develop the **knowledge of the European tools**. Numerous mechanisms have been put in place. It is important to ensure good visibility to and a sound understanding of these mechanisms, for the citizens and practitioners.

### Fundamental rights

Development of a **legal framework on data protection**, which ensures a consistent and efficient protection of personal data.

To focus the efforts leading to the **EU's accession to the ECHR** and to the establishment of the necessary rules and mechanisms.

To intensify the **efforts in the fight against racism**, including racism circulated through the internet.

## SECURITY

### Protection against crime

Striving for the complete implementation of the current **policy cycle for fighting serious and organized crime (2014-2017)**. A further reinforcement of this cycle by means of an increased input from the different actors, in this case the Member States, Europol and the Commission, through effective financing and by pursuing a methodological sophistication of the instrument. Launching a new policy cycle as of 2018, on the basis of Europol's threat analysis geared towards the future and taking into account the results of the current cycle.

**Financial investigations and the seizure and confiscation of criminal assets** should be a horizontal priority in the fight against organized and serious crime. Focus should also be on intensifying the cooperation with third countries in this respect.

As regards **trafficking of firearms**, a legislative instrument approximating the rules regarding deactivation of components is necessary, in order to avoid making it possible to assemble a fully functioning weapon by using components.

The fight against **trafficking in human beings** needs additional efforts, in particular through measures aiming at reducing the demand.

The **European Crime Prevention Network (EUCPN)** must keep on being developed to become a fully fledged expertise centre which gathers and diffuses the available expertise, initiates the necessary training initiatives and designs innovative prevention strategies.

The **administrative approach** and the **cooperation between administrative authorities** within the Union have to be stepped up. We must examine which are the obstacles that keep the administrative information, which can be crucial in the struggle against crime, from being exchanged between the Member States' authorities and, on the basis of this, take the necessary legislative and other measures to remedy this situation. We also have to see in which sectors it is possible and desirable to harmonize the administrative approach between the Member States.

There shall have to be a coordinated approach to tackle **fraud involving identity documents and the use of a false identity.**

### **Fighting terrorism and radicalisation**

The fight against terrorism and radicalization requires going further in the development of a **comprehensive and effective EU approach.**

The phenomenon of **foreign fighters** in Syria has highlighted the need for **faster reaction from the EU level** when such a threat emerges. Immediate reaction from Europol is for instance required. It also highlighted the importance of the work carried out by the EU Counterterrorism Coordinator to provide impetus and a coordinated approach to all EU components.

An **integrated approach to law enforcement and border management tools** (SIS, PNR, API, Smart Borders,...) are necessary in order to be able to track the whereabouts of suspects, while safeguarding freedom of movement.

Furthermore, the **operational cooperation and the exchange of information and intelligence** between the Member States' law enforcement services, with Europol and with non-EU key countries has to be intensified. Therefore, a common methodology is to be developed based on the policy cycle for the fight against serious and organized crime.

A **new EU strategy against radicalization is crucial.** It should give priority to concrete projects (such as developing libraries, tool boxes, train the trainers,...) and to supporting Member States in their efforts, including at local level. The focus should be on deepening the knowledge regarding radicalization, delivering efficient communication and counter-narratives and providing training and support for initiatives at local level.

The EU must engage into a **dialogue with the Internet industry and with third states**, in particular the US, to limit the presence of illegal radical contents on the Internet and in new social media. Pooling resources together at Europol is crucial to ensure targeted monitoring of dangerous websites and social media.

### **Exchange and management of law enforcement information**

The first priority consists in **fully taking advantage of all the opportunities which have been created these past years** within the Union for gathering, analyzing and exchanging information, at technical as well as at legal and organizational level.

At the same time, it is essential to keep a long-term vision for the management of law enforcement information and to prepare for the next steps.

**Mutual access to national databases needs in particular to be further developed.** While the priority here is to make full use of the Prüm Decision, preparatory work must start during the period covered by the new 5-year program for other types of data. A concrete objective would be, with adequate limitations and safeguards, to enable law enforcement authorities to know through remote data search whether or not a person is known in another Member State at law enforcement level.

Furthermore, efforts also have to be made to **improve the interoperability** of the different information and communication systems, for example by developing common standards and uniform formats, and to step up the **security of the common information systems**. As far as the latter is concerned, an important part is reserved for the EU-Lisa Agency.

The Member States are to keep up striving to make **Europol** evolve into the “platform of first choice” within Europe for the exchange and analysis of information. In the light of this, it is also important that cooperating with other European agencies, such as Eurojust and Frontex, as well as with third countries should be intensified.

### **Comprehensive and effective Union disaster management**

**The new instrument regarding the EU’s civil protection mechanism ought to be implemented rapidly.** The idea is to come quickly to an ambitious “pre-engagement” of the national capacities for a mobilization in case of crisis.

A cross-sector vision needs to be developed with regard to emergency planning so that the various risks – whether they are natural disasters, industrial hazards or risks resulting from criminal forms of behaviour such as terrorism – can be dealt with coherently and according to an unambiguous perspective. New regulations with regard to risk control and to drawing up emergency plans also have to stem from an integrated approach to the four stages of the “risk cycle” (analysis, prevention, preparation for and management of disasters). Other regulations relevant to crisis management, such as sounding the alarm and working conditions for first-aid workers, have to be tested according to the sector’s needs.

In addition to the national hazards, it is also important to take into account the **international risks** (Iceland volcano eruption affecting aviation, solar eruption, satellites returning,...) which the Commission should be looking into, at international level, with the specific competent bodies.

Furthermore, the Commission ought to ensure an active follow-up in the matter of **NRBC risks**.

## **ASYLUM, MIGRATION AND BORDERS**

### **Main strategic priorities**

The Secretary of State responsible for asylum and migration, together with six colleagues, has submitted a non paper on common priorities. This non paper was sent to the Commission and the Presidency of the Council of the European Union.

In addition to this common contribution, Belgium also recommends particular attention should be paid to the following priorities.

**Cooperation with third countries** : third countries are essential partners in ensuring efficient migration management. This cooperation should take different forms depending on particular interests of Member States and the needs of the partner countries.

**Asylum** : building on the evaluation of the second phase of the Common European Asylum System, possibilities of putting in place a framework for the transfer of protection of beneficiaries of international protection should be explored.

On the same line, once Member States reach more convergence in asylum decisions, we should explore ways of developing a system for mutual recognition of these decisions. More approximation between subsidiary protection and refugee status should also be envisaged. Subject to the examination of the legal and practical consequences, the Union should seek accession to the Geneva Convention and its 1967 protocol.

**Visa liberalisation Policy** : the evaluation/decision mechanism should be improved to take into account, systematically, all aspects in the relations with a third country and the migratory risk.

In this regard, the evaluation process towards visa liberalisation should take into account the situation concerning the respect for fundamental rights and rights of minorities as well as the socio-economic situation in the third countries concerned.

Harmonisation in practice is also a key issue. The establishment of **common application centres** should be encouraged (through simplification of rules and modalities regarding their establishment and Financial support) to intensify the local consular cooperation and ensure more convergence in the implementation of the visa code.

**Legislative framework on asylum and migration** : several instruments have already been adopted and we should give priority to their implementation and evaluation, without nevertheless excluding, in a longer term perspective, to consider their codification in order to clarify and to rationalise/simplify these instruments. Ensuring full respect of fundamental rights in the migration policy of the European Union is crucial, in particular in the framework of readmission agreements.

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## Contribution from Bulgaria (BG)



Republic of Bulgaria

Ministry of Interior

Ref.: Written contribution  
to the GSC and the Presidency

### Bulgarian proposals to the future development of the JHA area after 2014 in the field of the home affairs

Bulgaria is convinced in the added value of the future document containing and developing strategic guidelines on legislative and operational planning. This document could be seen as common strategic framework and matrix on synchronization and practical implementation of the priorities set out in the JHA strategic documents. The main aim of the document should be the consolidation of the achieved results and the practical aspects of the cooperation in order to respond to the expectations for more security. It should be also enough flexible in order to address the new challenges.

Bulgaria is on the opinion that the effectiveness of the next multiannual strategic document could be increased by binding it with the MFF in order to provide better financing for the practical implementation of the measures and initiatives envisaged. For an effective and efficient implementation of the new programme, a coordination of sectoral strategies and initiatives (ISS, Strategy on eradication of THB, Anti-drugs Strategy, Strategy on Cybersecurity and IMS) is needed, as far as their objectives and time frames are concerned, so as to avoid overlapping of efforts and guaranteeing continuation and interoperability in their implementation.



In the period after 2014, Bulgaria puts a special emphasis on the following strategic priorities in the fields of asylum, migration, border management and internal security:

In the field of the **asylum** we underline the importance of establishing an effective system on genuine practical solidarity not only regarding the persons seeking international protection but also regarding the Member States most affected by the migration flows. The principle of solidarity and burden sharing between the Member States must be preserved as a major concept. Solidarity has been more often invoked lately and it has become clear that a comprehensive definition of this principle is needed.

Wider use of the relocation as an effective and fair solidarity instrument will allow overcoming of the disproportional burden on the asylum systems. Member States should be encouraged to relocate more refugees from the “frontline” countries imposed of the most serious migration pressure.

The practical implementation of the Common European Asylum System is very important in medium term. Special emphasis should be put on the development of a common European integration policy. EASO should continue to support the affected Member States and to contribute to the strengthening of the capacity of the Member States asylum systems.



In the field of **migration** Bulgaria is on the opinion that the efforts should be focused on the successful countering the illegal migration. We expect that the joint efforts of the Member States and the EC will finally result in concluding of Readmission agreement with Turkey as a key third country of transit regarding the illegal migration.

The cooperation with the countries of origin should be enhanced in order to encourage the return policy and to conclude readmission agreements.

In the field of **border management** and security we support the wider use of innovative tools for border control and surveillance. Thus, of most importance is the effective implementation of the existing instruments, including EUROSUR, Schengen governance, SIS, VIS, as well as the Smart Borders Package.

We expect the eu-LISA to have more responsibilities in relation with the implementation of the Smart Borders Package. It is important for us, these modern instruments for border management to be established in a cost effective way while the efficiency of the currently used similar data bases for automated border control is kept.

Bulgaria considers that the establishment of the EU Smart borders will contribute to the EU security, especially if they are actively used by the law enforcement authorities.

The second strategic priority in the field of migration should be the effective management of the legal migration. The vision should be such construed so as to reflect the issue of enhanced mobility in a globalised world. A clear distinction should be made between the measures against illegal migration and the right of free movement of people. The legitimate intra-community movement of EU citizens should be seen as tool for stimulating economic growth, while in the same time tackling the possible frauds and abuse with efficient and proportionate measures.



In the field of the **internal security** Bulgaria considers that an effective and coordinated fight against serious and organized crime should be carried on the basis of the 9 crime priority areas in the EU approved by the Council for the period 2014-2017. These priorities will remain high on the JHA agenda in the post-2014, also regarding the external dimension. In short and middle-term perspective the focus should be put on the fight against illegal migration by disrupting the OCG's involved in trafficking and smuggling of human beings. Special attention should be also put on the crime prevention issues.

Effective combating of organized crime requires a high level of police education and training. The role of the European Police College (CEPOL), located in Hungary, should be maintained and further enhanced.

Optimal usage of the information exchange in the field of the police cooperation is necessary. The set up base for information exchange via SIS and the Europol and Interpol channels should be regularly upgraded in order to ensure up-to-date IT level. In the same time the Prum Decisions, the Swedish initiative and the IMS should be fully applied by all Member States.

The role of Europol should be further enhanced in the context of the implementation of the new legal framework of the Agency.



Bulgaria is on the opinion that a special emphasis should be put on the **external dimension** of home affairs sector.

We expect, EU to continue its support to Turkey and Western Balkans in the process of adjusting to the EU acquis and thus contributing to the stability in the region. Dialogue on certain key issues should be enhanced, such as prevention of illegal migration, including border management, fight against trafficking in human beings, smuggling of persons and drug trafficking. Special attention should be put on continuing the negotiations between EU and Turkey on signing of Readmission agreement.

The Member States should focus their efforts on the cooperation with the countries from the Middle East, North and West Africa. We highlight the importance of capacity building as regards prevention of illegal migration (esp. Syria), human trafficking, terrorism, radicalisation and recruitment.

## **Contribution from Cyprus (CY)**

### **Position of the Republic of Cyprus regarding the future of the JHA area**

1. Before referring to our future priorities, we would mention as a general position that particular emphasis must be placed on the full and effective application and evaluation of existing laws and decisions. We have ascertained that quite a few important tools that we have in our hands are not being used as fully as they should be. Therefore, before drafting new legislation, we should focus on improving and consolidating existing instruments and also on strengthening their cohesion. Our replies to the Presidency's questions are set out in detail below:

#### **A. HOME AFFAIRS ISSUES:**

##### **1. Security issues:**

###### **Basic priorities for the post-2014 period:**

The implementation of the new policy cycle for international and organised crime should guide our efforts in the field of security to meet the challenges we face today.

An equally important challenge is human trafficking, also in the light of recent events concerning the abduction of children. The latest developments have shown the weakness of our authorities in curbing such phenomena, a fact which must shock us into devising policies which will fully eradicate this heinous crime.

Particular emphasis should also be placed on the application of the cyber security strategy. We are all aware that the Internet is the biggest motor for today's economy, but at the same time we recognise how vulnerable and lucrative this sector is, with the result that it becomes an easy target for criminals.

Another important challenge is dealing with terrorism, and especially radicalisation and recruitment. The most recent attacks have demonstrated that EU citizens are at as much risk on European territory as in third countries. New actions could therefore be devised, ensuring continuity with the EU's existing work in this area.

### **Horizontal priorities:**

In relation to the establishment of horizontal priorities, we consider it necessary to strengthen the law enforcement authorities through continuing education and exchange of best practices. At the same time, emphasis should be placed on improving the exchange of information, so that qualitative information is provided on the basis of the principle of reciprocity and proportionality.

Action should also be taken directly to strengthen the protection of privacy in order, on the one hand, to allow law enforcement authorities to transmit data across borders, both at the level of the Member States' authorities but also with third countries, and, on the other hand, to ensure the protection of our citizens' personal data.

Internal security should be brought into line with the external dimension as crime does not recognise borders. A holistic approach is therefore needed to deal with it, involving neighbouring countries but also our strategic allies.

### **Guiding principles for the establishment of priorities:**

Finally, we consider that our future decisions and actions should be driven by the further protection of citizens from the threats of organised crime and terrorism and the defence of the Union's financial interests.

## **2. Asylum/Immigration issues:**

### **Basic priorities for the post-2014 period:**

With regard to asylum, we consider it of fundamental importance to transpose the legislation making up the Common European Asylum System into national law, but also to apply it effectively. The aim should be to ensure a uniform level of provision of international protection which will also deter secondary movements. This will contribute to building confidence between Member States and will facilitate the adoption of more effective measures for reallocating responsibilities.

As regards migration issues, priority should be given to the effective application of the relevant legislative instruments which constitute a comprehensive migration policy. In addition, emphasis should be given to intensifying cooperation with third countries, but also with international organisations, in the efforts to deal with illegal migration. The signing and effective application of the readmission agreements with third countries, especially with those countries with a European perspective, such as Turkey, is a key step in this direction.

Following the recent tragedy at Lampedusa, we feel it is important to reinforce cooperation with third countries with the aim of establishing possibilities with regard to the management of their external borders and the granting of international protection.

**Horizontal priorities:**

As regards the establishment of horizontal priorities, a common and effective policy of returns in cooperation with FRONTEX should be reinforced, with full respect for human rights. We consider that emphasis should be placed on the conclusion of development agreements with third countries, in the framework of which conditionality will play a central role.

**Guiding principles for the establishment of priorities:**

We consider that the principles of reciprocity and solidarity form the corner-stone in policy-making in the area of asylum and migration and the core of cooperation between the Member States.

**B. JUSTICE ISSUES:**

**Main priorities for the post-2014 period:**

A major priority in the area of civil law is the full implementation of the mutual recognition of judgments.

As far as the criminal dimension is concerned, one of the primary goals must be to conclude the negotiations on the EU's accession to the European Convention on Human Rights, thereby strengthening the rights of citizens at European level.

In addition, today's economic situation calls for the promotion of measures to develop both justice and economic development. In these fields, it is vital to put forward legal instruments on personal data protection. These instruments must take into account modernisation and needs of the digital market, but also our citizens' concerns, by strengthening in particular the protection of their personal data.

### **Horizontal priorities:**

As for fixing horizontal priorities, the European Union should increase its international presence in the area of civil law by playing a more active role in the Hague Conference on Private International Law, by pushing, in particular, for the widest possible accession to key agreements. We also believe that stepping up cooperation with third countries is of fundamental importance. Moreover, it is necessary to increase efforts to achieve effective implementation of the bilateral and multilateral agreements and to seek further opportunities for cooperation with these countries.

In the framework of the Neighbourhood Policy which we, the EU, are implementing, emphasis must be placed on programmes to raise the level of justice in the countries concerned so that they evolve into States based on the rule of law.

A highly important area which covers both criminal and civil law is the exploration of ways and means of ensuring that justice is administered more swiftly and more effectively through the promotion of e-Justice.

### **Guiding principles for the establishment of priorities:**

It is our belief that all decisions on the future must be taken in accordance with today's challenges and must respond to our citizens' concerns. Clearly, however, the fundamental principles of subsidiarity and proportionality, as laid down in the Treaty, must be taken into consideration when fixing priorities.

2. As a general line and in connection with the second part of the third question, the Republic of Cyprus, bearing in mind the current economic situation, agrees with the proposal to align policy planning and financial framework cycles, since the two aspects are interrelated. This move would ensure better programming and a more targeted use of the available resources in precisely those programmes earmarked as Union priorities.

## **2nd Contribution from Cyprus (CY)**

Please find below an additional input on behalf of Cyprus as regards visa issues.

- Regarding Visa issues, we consider important the enhancement of cooperation and coordination among MS, especially through the setting up of common visa application centres, the expansion of the representation agreements and the expanded use of external service providers. This will contribute to the representation of those MS with no presence in third countries and to the more efficient use of the limited financial and human resources.

## Contribution from the Czech Republic (CZ)

### CZECH CONTRIBUTION TO THE DISCUSSION

#### ON THE FUTURE DEVELOPMENT OF THE JUSTICE AND HOME AFFAIRS AREA

December, 2013

Over the almost fifteen years which have passed since the European Council Conclusions adopted in Tampere, the building of a common Area of Freedom, Security and Justice has advanced significantly. The achievements of the Tampere, Hague and Stockholm Programme demonstrate the importance of a strategic approach and a long-term vision in the JHA policy. On the basis of article 68 TFEU the European Council shall define the strategic guidelines for the legislative planning within the area of freedom, security and justice. The leading role of Member States within the preparatory process of a new multi-annual programme is highly important. Therefore, an in-depth debate within the JHA Council and its strategic committees and working bodies should be held before the adoption of this strategic framework by the European Council.

The Czech Republic supports the common position of Estonia, Finland, Germany, Hungary, the Netherlands, Slovenia, Sweden and the United Kingdom that was presented in advance of the December JHA Council meeting. The Czech Republic agrees with the guiding principles for future JHA cooperation stated in this common position.

#### General principles

Since the beginning of the JHA cooperation within the EU a large number of legislation has been discussed and adopted in order to constitute the Area of Freedom, Security and Justice. The new multi-annual programme should emphasize careful and effective **implementation, consolidation** and **equal interpretation** of already adopted legal instruments. Instead of new ambitious legislative initiatives the Czech Republic prefers consolidation and overall streamlining of existing instruments. If we would consider new legislative activities, the Union should mainly focus on codification. In the coming years, the primary goal of the EU should be deepening of mutual **cooperation at operational level**.

The strategic planning should be based on **practical experiences** from Hague and Stockholm Programme's implementation. The future plan should insist on **the best practices of the Member States and EU Agencies**. In contrast with the current programme, the new multi-annual guidelines should set **more realistic vision**. In the light of the ever changing environment, we must prepare a programme which will be **flexible enough to respond** to unpredicted challenges and threats. The Union should also take into account the current economic and social environment.

In the course of implementation of a new multi-annual strategic framework, the Union should build on the **evaluation system** in order to carefully and constantly evaluate performance of the tasks and goals in the JHA area. The evaluation system shall take into consideration also practical experience with functioning of the EU instruments. Moreover, **a mid-term review** of implementation of the multi-annual programme would allow us to assess a progress achieved and to adjust this strategic framework to rapidly changing circumstances.

In general, the importance of the **external dimension** of the Home Affairs and Justice policy is growing rapidly. Therefore, the post-Stockholm programme should deepen **synergy between the internal and external security**. The external dimension is essential to address the key challenges we face in building open and secure Europe. It is also necessary to further work on coherence of the external dimension of JHA with all other aspects of EU foreign policy.

Up to now our cooperation at European level has been run by different multi-annual cycles – the Stockholm Programme, The EU Policy Cycle on serious and organised crime or the Multiannual Financial Framework. It would be more effective to **align policy planning and financial framework cycles**.

Last but not least, the current strategic discussion should also take into account ending of the five-year transitional period in the area of the police and justice cooperation in criminal matters on 30 November 2014, as laid down in the Protocol No. 36 to the Lisbon Treaty. This will bring important **institutional changes** in the JHA policies.

## **Priorities for future JHA cooperation**

### **Asylum and migration policy**

In general the Czech Republic supports fostering practical cooperation in the area of asylum. It is important to emphasize the implementation of existing measures and their harmonised interpretation unlike the adoption of new legislative initiatives. In this regard, the Czech Republic supports stabilization of European Asylum Support Office, proper implementation of Common European Asylum System and its effective interconnection with the Asylum and Migration Fund. The Czech Republic considers the Dublin regulation to be the key pillar of Common European Asylum System. We oppose possible intention to revise this legislation. The assessment of asylum claims shall be kept in competence of respective Member States.

The Czech Republic emphasizes the need of further implementation of irregular migration road map ("*EU Action on migratory Pressures – A Strategic Response*"). We do not support any proposals on establishment of integrated rules at EU level for regularization. The EU should strive for strengthening of fight against smuggling, trafficking in human being and organised crime related to irregular migration. The Czech Republic supports active EU foreign policy preventing migration influx. The cooperation with third countries represents one of the most effective ways in order to tackle the root causes of irregular migration. It is also necessary to put more emphasis on the use of legal migration possibilities. In this context, the EU should strive to avoid misuse of international protection. The role of Europol should be strengthened in relation to using data on intra-Schengen transfers.

The Czech Republic supports the effective use of voluntary and forced returns.

In the post-Stockholm period we should pay attention on practical implementation of existing legislative in the field of legal migration as well. Eventually, the Czech Republic would accept the idea of immigration code as a comprehensive summary of existing instruments.

In the field of integration the Czech Republic supports further strengthening of cooperation. The accent should be put on integration at local and regional level. Both immigrants and majority society should be more informed, including information related to departure or integration measures for newly incoming immigrants.

## **Border management**

Concerning border management, the Czech Republic considers the implementation of newly-adopted instruments and legislation (e.g. EUROSUR, Schengen governance, SIS, VIS) essential as well as the proper implementation and consolidation of existing tools in general. With a view of more modern and efficient border management we have to focus on further progress in negotiation of Smart Border Package which would speed-up, facilitate and reinforce border check procedures for third country nationals travelling to the EU.

As a prerequisite for successful border management it is necessary to effectively utilize operational capacity of FRONTEX without further enhancement of its mandate. As far as the proposal to create common European System of Border Guards is concerned, we consider the current level of delegation of competences and operational activities in border management to EU organization sufficient.

## **Schengen**

Free movement of persons within the Schengen Area is perceived by EU citizens as one of the key achievements of the European integration. The Czech Republic supports in a long term Schengen project and finding solution of issues that could possibly jeopardize its functioning.

The European Union should continue to fulfil the tasks related to the Schengen enlargement.

## **Visa policy**

The next multi-annual programme is a good opportunity for further implementation of the common visa policy. Even though many goals were met in the framework of the Stockholm programme, there are still some challenges to be faced.

Part of the process towards further harmonisation of a common visa policy should be the determination of priorities and procedures related to visa facilitation or even visa liberalisation for certain third countries. Any measure towards visa facilitation or liberalisation should be preceded by evaluations of the security situation and irregular migration to the EU from the side of the countries or regions concerned.

Eventually, any alleviation in visa regime should be compensated by other measures ensuring the security inside the Union currently provided by means of visa. Thus the selection of country/region for future visa facilitation/liberalisation agreements should be based on the EU external policy and reflect the regional coherence, overall political situation as regards security, public order, stability, rule of law, good governance, human rights and democracy. There is still a need for a balanced approach – the link between the negotiations of visa facilitation agreements and readmission agreements. Our main goal should be also to implement a comprehensive and coherent approach on processes of visa facilitation and liberalisation. For the future, the European Union should also concentrate its efforts not only to new agreements on visa facilitation but also to revise the content of the existing agreements while identifying possible gaps and reflecting the practical experiences (from their implementation).

The major emphasis should be also placed on the Visa Information System which was launched in 2011. Finalisation of the roll-out of this system is crucial instrument for smooth and effective implementation of the common visa policy. The fundamental moment will be the completion of the roll-out process when the VIS will be operational at the consulates all over the world. Even though there are many regions which have been connected to the VIS system already, such as Northern and Southern Africa, Southern America, the region of Persian Gulf and Middle East there are some other regions, such as China, Russia, Caribbean region, countries of Eastern Partnership and Northern America which are still waiting for the VIS roll-out. At the same time, VIS should be effectively interconnected with other instruments, such as SIS, in particular for the purposes of elaborating statistical forecasts of the future development.

### **Internal Security**

The main basis for the cooperation in the area of internal security is created by the goals of Multi-annual Strategic Plans (MASPs) that have been set for all the nine priority areas of the EU in the fight against organised and serious international crime in terms of the implementation of the EU Policy Cycle 2014–2017. Beyond MASPs it is necessary to add further activities such as legislative tasks of the JHA area, counter-terrorism objectives, tasks related to the Schengen enlargement and to the introduction of the new information systems in the JHA area. For every MASP a specific Operational Action Plan should have been set with particular objectives including measures how to fulfil these goals.

Therefore, MASPs could be used as a basis for the preparation of a new multi-annual programme in the area of internal security.

**Concrete internal security priorities:**

- **Anti-drug policy**

With respect to the fact, that there are new synthetic drugs constantly emerging, it would be meaningful to create a union-wide effectual list of harmful substances, which would be regularly and promptly updated in order to withdraw incongruities in national laws dealing with prohibited substances and in order to facilitate union-wide effective cooperation in sanctioning their distribution. When it comes to sanctioning methamphetamine (“pervitin” in Czech), the Czech Republic prefers to class pharmaceuticals containing pseudoephedrine among regulated pharmaceuticals and increase regulation of red phosphor as an auxiliary substance for drug production. Cooperation with third countries will remain an important aspect of the EU strategy and policy. In this area, we should focus above all on illegal production and distribution of synthetic drugs and its precursors with emphasis on incursion of these substances from East and Southeast into the EU.

- **Organised Crime**

There is a need of intensive practical cooperation between law enforcement authorities in the fight against organised crime. The Czech Republic would like in particular to establish a common capacity for interpreting and translating some specific relevant languages from outside of the EU to enhance the capacities of the law enforcement authorities investigating foreign organised groups. Sharing of those capacities would enable more effective use of these capacities and at the same time it would remove one important obstacle to the proactive police approach against the cross-border crime linked to the nationals of third countries.

- **Crisis Management and Security**

The European Union should focus on the solution of crisis situations in third countries (this is also related to the issue of security reforms in third countries) and crisis management and internal security of Member States.

- **Cybercrime**

Cybercrime is currently a very important and increasing challenge. Therefore, it is necessary to respond to the new trends and perils in this context. The European Union should especially focus on cloud security, smart mobile devices security and new forms of cybercrime.

## **Civil Protection**

In the light of increased number of natural and man – made disasters, there is a strong need for enhancing the cooperation in the field of prevention, preparedness and response to all kinds of emergencies. New legislative initiatives at EU level, especially Union Civil Protection Mechanism, has raised need to test on regular daily basis new procedures and tools for solving emergencies. Further evaluation of new system could lead to development of further enhancement of EU member states joint approach. Also several Council Conclusions adopted recently could serve as a good basis for improvements in this area.

Recent emergencies have also shown increased vulnerability of critical infrastructure. Therefore EU has decided to create a new approach to critical infrastructure protection. At this moment four European critical infrastructures are being examined and the results could be used for further enhancement of critical infrastructure protection at national and international level.

## **Civil justice**

In the area of civil justice the Czech Republic would like to primarily finish discussions about proposals that are already on the table (proposal for a Regulation amending Council Regulation (EC) No 1346/2000 on insolvency proceedings, proposal for a Regulation creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters, proposal for a Regulation on promoting the free movement of citizens and businesses by simplifying the acceptance of certain public documents in the European Union which has a great potential to facilitate the life of many EU citizens). Then, it would be beneficial to evaluate the functioning of the key regulation in the area of family law – Brussels II bis – and possibly prepare its revision. Further, successful completion of projects on interconnection of company and insolvency registers would significantly contribute to more transparency in the EU. To achieve this goal it seems preferable to use the already existing technical solutions derived from private initiatives (mainly from the European Business Register project).

Generally, we support most of the projects facilitating judicial cooperation mainly covered by the e-Justice programmes, including the adoption of the Strategy on European e-Justice for the period 2014-2018 which will determine further developments in this area.

## **Criminal justice**

The potential for advancement in the area of criminal justice is especially in such measures which could significantly facilitate the application of mutual recognition principle between the Member States in practice.

The measures below have been identified by existing practice as very needful for the real enhancement of judicial cooperation in criminal matters in the EU.

We would welcome considering introduction of minimum rules obtaining evidence between the Member States. Specifically it could concern alignment of at least some conditions for authorization of procedural acts. For example:

- cross-border surveillance – an analysis on conditions for its authorisation in the Member States could be undertaken at the EU level in order to consider setting up minimal criteria for the authorisation of cross-border surveillance to enable the use of the record as evidence in criminal proceedings.
- With regard to some types of procedural acts it would be useful to make a list of the crime types, where in course of investigation and prosecution the use of listed coercive measures can be authorised in Member States (for example in cases of organised crime incl. tax crime it is possible to authorise space interception or telecommunication interception under the condition for example of 5 years threshold). Further considerations could be given to possible future alignment of some procedural conditions for authorisation of some procedural acts, for example in case of interception (where the limits for authorisation in Member States vary very much; in one member State it is 1 year of maximum term of imprisonment for the criminal offence in question, whereas in other 8 years).

Besides, we believe that interconnection of national databases of prosecuted persons (or similar databases) would mean a real contribution for practice with the aim to facilitate the judicial cooperation between the competent national authorities in the frame of criminal proceedings. Establishment of such a screening at the EU level would bring an extraordinary benefit in finding interconnections between the cases and in prevention of double prosecution of the same person for the same act. Such a database could be based on hit – no hit system due to its very sensitive content to find out whether a person is prosecuted by a certain authority in other Member State for the same criminal act or activities.

Further there is a certain insufficiency related to interconnection of criminal registers, namely as regards acquitting judgements or other decisions of judges and state prosecutors on termination of criminal prosecution and which have the weight of *res iudicata* and also in the sense of Art. 54 of Schengen Implementing Agreement may constitute an obstacle in criminal prosecution in other Member State. Therefore it would be useful to determine which decisions of judges or state prosecutors could be regarded as *res iudicata* in the Member States. Afterwards, a way of screening of those decisions at the EU level could be considered (for example by way of extending the ECRIS).

In the area of harmonization of criminal acts (Art. 83/2 TFEU) and sanctions we put emphasis on cautious progress with regard to adherence to principle of subsidiarity and proportionality conscious of the fact that the criminal law should come into play as *ultima ratio*.

### **External dimension**

The Czech Republic considers external relations both with neighbouring countries and strategic partners as an area of high importance. The European Union should devote its efforts to develop this area of cooperation even after 2014 period. Regarding priorities in the area of **asylum and migration** policies we see as important to link external dimension to above mentioned policies of asylum and migration. The EU should continue strengthening cooperation with third countries in managing migration flows which will be based on real needs and in-depth analysis of current migration situation and will bring mutual benefits.

**Conditionality** should be one of the most important principles in cooperation with the third countries in this area. When it comes to political dialogues on the topic of migration and mobility as well as to practical migration processes, such as Prague process, these are sufficient. The main goal in cooperation with the third states in the area of asylum and migration is the progress, such as greater engagement of FRONTEX and EASO, implementation of particular projects within Prague process etc. The EU should, however, avoid duplicity in its activities and try to ensure greater connection to internal policies.

Concerning political framework of **Global Approach to Migration and Mobility**, which represents a coherent policy approach based on the principles of genuine partnership dealing with migration challenges, the EU should prefer evaluation of current tools rather than creating new ones. Moreover, the Global Approach to Migration and Mobility should further deepen its comprehensiveness. Generally, we should support mobility partnerships and one of the main tasks of the EU is to ensure sustainability of the outputs of projects implemented within partnerships for mobility.

In the area of **security and fight against criminality** the EUs task is to pay attention especially to illegal production and distribution of synthetic drugs and its precursors. Another area of our interest is the issue of solving crisis situations in third states, including issue of reforming security and judicial systems in these countries. Last, but not least, the EU should deepen cooperation with third states in the area of prevention and fight against cyber-criminality.

In the area of **civil justice** cooperation the EU shall continue to support cooperation in the framework of multilateral instruments (Hague Conventions), not only by motivating the partners to accede to these instruments but also by supporting practical cooperation on their basis. Also the cooperation with international organisations, such as the Hague Conference of Private International Law which is an important organisation in the area of civil law, shall not be missed out. Following the current development within the Hague Conference it is important for the EU to strive for strengthening its member position.

In the external relations of the EU in **criminal judicial cooperation** the Czech Republic perceives as important to support and develop relations especially with Eastern partnership countries. Effective judicial cooperation in criminal matters under the adherence to fundamental human rights contributes also the development of further strategic partnership between the EU and Eastern partnership countries.

Concerning the **geographical priorities**, the EU should continue putting the key emphasis on the regions neighbouring the EU, especially the states of Western Balkan and Eastern Partnership. Furthermore, the cooperation with our strategic partners such as US and Russia should not be of the less importance. Currently, due to the consequences of the so called Arab Spring and Syrian crisis, certain attention should be dedicated also to Northern African and Middle Eastern regions.

## **Discussion paper on fundamental rights**

### **Preliminary statement (drawn up under the auspices of the Federal Foreign Office)**

Safeguarding human rights is one of the fundamental values upon which the European Union is based. The Charter of Fundamental Rights of the European Union forms part of the Union's primary law. Therefore, effective implementation of the Charter is of major significance. The Federal Government shares the Commission's opinion that any further development of EU justice policy must be strictly tied to the obligation to promote and comply with the rights under the Charter. The Federal Government welcomes the fact that the Commission undertakes a detailed assessment of all its proposals with regard to their impact on fundamental rights. In this context, we also welcome the Commission's consideration of a renewed inter-institutional commitment.

In order to improve the protection of fundamental rights of EU citizens, the Federal Government considers the European Union's accession to the European Convention on Human Rights a primary goal and advocates swift completion of the accession process.

The Federal Government emphasises the Commission's statement that the Charter of Fundamental Rights of the European Union complements the national systems for protecting fundamental rights, but does not replace them. Article 51 of the Charter clearly states that the Charter is addressed to the Member States “only when they are implementing Union law”. Thanks to the domestic system of fundamental rights under the German Basic Law (*Grundgesetz*) and the Charter of Fundamental Rights of the European Union, Germany provides complete protection of fundamental rights in respect of both German sovereign acts and Union acts. Moreover, all Member States of the European Union are also Member States of the Council of Europe and bound by the European Convention on Human Rights and the case law of the ECHR. Therefore, the Federal Government does not see any reason to amend Article 51 of the Charter of Fundamental Rights of the European Union.

Most importantly, it must be borne in mind that the Member States must provide for sufficient judicial protection in order to guarantee basic rights. Any further measures should be assessed in accordance with their necessity in the individual Member States; to the extent that this is appropriate in individual Member States, strengthening specialised institutions or authorities in order to enforce the fundamental rights under the Charter also appears worthy of support.

## **Discussion paper on the rule of law**

### **Preliminary statement (drawn up under the auspices of the Federal Foreign Office)**

The Federal Government shares the opinion expressed in the discussion paper that the European Union's fundamental values, enshrined in the treaties, of a common effort among Union institutions and citizens must be constantly reaffirmed and further strengthened.

It welcomes the announcement the Commission President made in his state of the Union address on 12 September that he would present a communication on creating the framework conditions needed in order to do this. In the view of the Federal Government, protecting these fundamental European values is a matter of paramount importance in the process of European integration. Therefore, the debate on this matter, which has already begun in the General Affairs Council and the justice branch of the Justice and Home Affairs Council, should be continued in due course.

The Federal Government also shares the Commission's view that, at EU level, the existing range of legal instruments is not sufficient for protecting the fundamental values enshrined in Article 2 TEU. Despite the important instrument of infringement proceedings and the mechanism under Article 7 TEU, there is a gap that must be closed, whereby the competencies of the Union and the Member States must be respected.

We support the Commission's view that any new instruments must address situations that entail structural and systematic threats to the EU's fundamental values and for which there are no other means of correction at the domestic or European level. However, we think that we should not limit ourselves to threats to the rule of law. Rather, we should turn our attention to all the fundamental values enshrined in Article 2 TEU.

A central requirement for improved protection of fundamental values at EU level would legitimate such protection both internally and externally. In the view of the Federal Government, the following principles should therefore be applied:

- New possibilities for improving the protection of fundamental values must be applicable, without any distinctions, to all Member States.
- Recognised expertise must be integrated into the assessment of whether there is a systematic threat to fundamental values. Cooperation between the Commission and the Council of Europe and the different organs of the Council of Europe should be sought in particular. The Commission should use its exchange with the Council of

Europe, in accordance with the objectives set, to identify and consider potential for complementary approaches.

- The decision on whether to launch procedures to protect the fundamental values enshrined in Article 2 TEU cannot be made on the basis of individual criteria (a "scoreboard"), but requires an overall assessment of all relevant circumstances and prognoses regarding further developments in the Member State in question. An assessment could also be made of the extent to which the so-called "pilot proceedings" introduced by the Commission and the Member States in the area of treaty infringements could provide some guidance in this respect.
- The Council must also take ownership in the process of improving the protection of fundamental values.

The Federal Government shares the Commission's assessment that the existing treaties leave room for effective further development of the protection of fundamental values at EU level. This potential must be used without disturbing the institutional balance. Improved protection of fundamental values via a political mechanism should primarily be based on a partnership approach and leave room for a (trust-oriented) structured dialogue with the Member State concerned, in which the Council and the Member States should also be involved. The proceedings should raise and institutionalise pressure on the Member State concerned to explain and justify its actions.

However, for the Federal Government, introducing new proceedings that include the possibility of issuing sanctions is out of the question.

In the Federal Government's opinion, a treaty change to develop a more far-reaching rule of law mechanism is currently out of the question as well.

## **Discussion paper criminal law**

### **Preliminary observations:**

On question 1 of COM discussion paper 2 ("What further development of criminal law at EU level is needed?"), the Federal Government states its position as follows:

The Commission has correctly described the **progress made in the area of substantive criminal law**. Thus, the EU acquis provides common definitions of, and sanctions for, serious and/or cross-border crimes such as currency counterfeiting, terrorist offences, racism

and xenophobia, child exploitation, cybercrime, and trafficking in human beings. From the German perspective, the discussion of the post-Stockholm process should serve less to identify new needs for action regarding certain issues of individual areas of criminal law (some of which have already been listed in COM Discussion Paper 2), and instead should be a forum for fundamentally addressing the criteria for the EU to take action under criminal law. The essential criterion has already been defined as the principle of subsidiarity, but in the view taken by the Federal Government, a discussion would be sensible of how this principle is understood and what scope it is accorded. The same applies to the interpretation of the term “indispensability” of provisions of criminal law for the effective implementation of Union policies. From the German perspective, this term reflects the principle of “last resort” of criminal law, while a number of Member States understand it solely to mean that such measures must comply with the principle of proportionality. A desirable outcome of such discussion process would be the establishment of specific criteria on which consensus may be obtained for the EU to take action in the field of criminal law.

Discussion Paper 2 lists another criterion for the EU to take action in the field of criminal law under III 3, which is to ensure that EU criminal law policy is connected to the **actual developments in crime**. This approach is to be welcomed, in principle (the key word being: evidence-based criminal policy). However, it does give rise to concerns insofar as it seems to serve exclusively the purpose of justifying further action at the EU level, and in fact to even consider expanding the list of crimes currently set out in Art. 83 (1) TFEU. At this juncture, it should be asked which development the authors of the Discussion Paper are referring to specifically, and which basis in fact is given for the corresponding conclusions. In Germany, for example, the general assumption has been for some time now that criminal activities are tending to decline rather than increase; also, there are no empirical insights available that would suggest that Art. 83 (1) TFEU would need to be expanded. It may be a sensible objective for the near future to promote the insights available regarding the factual development of criminal activities at the European level. This applies all the more so as the Federal Constitutional Court (*Bundesverfassungsgericht*) has taken a critical stance as concerns the further communitisation of criminal (procedural) law (*Entscheidungen des Bundesverfassungsgerichts* (BVerfGE, Rulings of the Federal Constitutional Court) 123, p. 267, citation on p. 406 et seqq.), stating that the competencies transferred pursuant to Art. 82 et seqq. should be exercised only within reason.

Likewise, the question of how COM views the **relationship of convictions for felonies and administrative sanctions** and in which direction it would strive to achieve developments should be included in the discussion. Thus, efforts were noticeable in the legislative acts of the recent past to limit the opportunities of Member States to stipulate measures under criminal law, as opposed to administrative sanctions, for violations of a regulation or of statutory measures transposing directives into national law. The reason cited therefor was the concern – which, from the German perspective, based as it is on the principle of the means of last resort, is not one that can be logically followed – that measures under criminal law instituted by the Member States are not as effective as sanctions entailing administrative fines that have been established by a legal act of the European Union.

In this context, efforts should be pursued to appropriately involve the criminal law committees of the European Union also where criminal law provisions are concerned that have been made in the **legal instruments of other policy areas** in order to prevent an excessive subdivision of criminal law into sub-areas.

Another aspect meriting discussion, as it will be of considerable practical relevance in the future, concerns the future **fragmentation of the legal framework** in the area of criminal law at the European level. Based on the provisions made in Protocols No. 21 and 22 on the TEU and the TFEU, legal acts in the area of Title V of the TFEU do not apply, or only with considerable limitations, to DNK, IRL, and GBR. In some instances, the protocols do stipulate how a situation is to be dealt with in which certain provisions do not apply to one or several of the Member States listed (on this, cf. Art. 4a Prot. 21 or – as concerns the Schengen acquis for DNK Art. 4 Prot. 22); however, these provisions are very general in nature and the question will need to be addressed of what they mean specifically; additionally, a general discussion is called for on how the Member States and COM, in cooperation with the European Parliament if needed, intend to ensure a common (as far as possible) space of freedom, security, and justice, since a common legal framework is one of the most significant achievements of the European Union and represents a cornerstone particularly, but not exclusively, in the field of cooperation in criminal matters.

By contrast, the individual examples listed in the Discussion Paper as potential, future measures of the EU do pose some problems.

Thus, the Discussion Paper “EU Criminal Law” proposes at III.1. (page 3) to create **victim funds** composed of confiscated criminal assets (such assets being “declared forfeited” in German legal parlance). In principle, any initiative serving to strengthen the safeguards accorded to victims are to be welcomed. However, there are concerns as regards any requirements stipulating how incriminated assets are to be used and for what purpose. According to the understanding given in Germany, it is initially the victims who have access to the proceeds of a crime. Any confiscation of assets (and thus: transfer of title to the state) is not an option under German law if and insofar as the victims have a claim to such assets. However, the German law enforcement authorities have the option of securing, on a temporary basis, the assets in favour of the victims in order to assist the latter in enforcing their claims. By contrast, the proposed confiscation of assets for subsequent transfer into a victim fund, which means that victims would be compensated for their damages only thereafter, would not strengthen the victims’ position; proceeding in this way in fact would weaken them and would draw out the proceedings, and thus would work to their detriment. Inasmuch as it is intended to entitle victims to governmental benefits and support, the budgets must include sufficient funds in order to meet these entitlements. It is questionable that this can be assured if a victim fund depends on confiscated assets, which may be subject to considerable fluctuations. Accordingly, it should be left to the discretion of the Member States to have assets that have been declared forfeited accrue to their general state budgets and to allocate, independently of these proceeds, funds in their budgets for purposes of compensating victims. In Germany, assets that have been declared forfeited for the most part will be made available to the budgets of the federal *Länder* – which, in all likelihood, will vehemently oppose any requirements being imposed on them as regards the designation of such funds for a specific purpose. Germany, together with a large majority of the Member States, has voiced its objection to the binding requirements concerning the designation of confiscated assets for a specific purpose as demanded by the European Parliament in the (trilogue) negotiations currently underway on the directive on the freezing and confiscation of proceeds of crime and has indicated that, at any rate, the harmonisation competency granted by Art. 83 TFEU (“definition of criminal offences and sanctions”) does not create a legal basis therefor.

On question 2 of the Commission Discussion Paper (“What initiatives at EU level would best strengthen mutual trust between Member States?”), the Federal Government states its position as follows:

**Mutual trust** is the foundation for the space of freedom, security, and justice to function. In order to allow the Member States to trust each other in the exceptionally sensitive field of criminal justice, a minimum of shared standards for the protection of the rights of the parties affected by criminal proceedings (accused parties, defendants, convicted parties, witnesses, victims) is required; where these standards do not exist or are recognisably not met, this will undermine the very foundations of said common space. Initially, this will be independent of whether the standards are not complied with for legal reasons or on grounds of fact. Likewise, the violations need not be “systemic;” instead, a number of individual cases that is greater than negligible suffices to lastingly destroy trust in the legal order of another Member State.

The Federal Government welcomes the fact that in the past years, significant progress has been made in the area of the **rights of persons accused of a crime**, and expects the roadmap the Council resolved on 30 November 2009 for the strengthening of the procedural rights of persons suspected or accused of a crime in criminal proceedings to be followed. The minimum standards provided for therein intend to safeguard the legal position of accused persons in all stages of criminal proceedings, as is demanded at III 1 of the Discussion Paper. Inasmuch as the roadmap has already been put into concrete terms by legislative acts at the EU level (Directives 2010/64/EU and 2012/13/EU), the Act on the Strengthening of Procedural Rights of Accused Parties in Criminal Proceedings (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren*) of 6 July 2013 (promulgated in *Bundesgesetzblatt* (BGBl, Federal Law Gazette) I p. 1938) has already transposed “measures A and B” into national law. In the course of the comprehensive review of the need to implement said law, no gaps were determined where the system in place for the accused’s rights of defence is concerned, neither at the national level nor at the European level.

Inasmuch as the Discussion Paper addresses pending legislative measures at the EU level, reference is made to the Commission's plans for a "**procedural law package**" that is to be published on 27 November 2013. As far as the Federal Government is currently aware, said package is to consist of a total of five instruments, particularly directives on legal aid for the costs of the proceedings generated by rendition procedures in accordance with the Framework Decision on the European Arrest Warrant, on the protection of underage accused persons requiring particular protection, and on the presumption of innocence. It is assumed that these measures will cover the need for legislative action determined by COM as regards the procedural rights of accused persons.

Inasmuch as the Discussion Paper addresses the enhancement of **victims' rights**, Directive 2012/29/EU of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Directive on Victim Protection) has created a current and comprehensive instrument at the European level. The directive, which is to be transposed into national law by 16 November 2015, comprehensively covers the areas of protection for victims set out in the Discussion Paper insofar as they concern measures taken in criminal proceedings. Neither at the national level nor at the European level are any gaps recognisable in the system of victims' rights, for example as regards the access mentioned in the Discussion Paper that victims have to lawyers, in particular with a view to the warranties made in the Directive on Victim Protection.

The testing of **alternative forms of conflict resolution outside of court**, which the Discussion Paper expressly addresses, by way of mediation and "restorative justice" procedures, is also a concern of national procedural criminal law. In these fields, intensive work has been done to review certain aspects – also with a view to the provisions set out in the Directive on Victim Protection in this regard – particularly in the area of responsibility of the *Länder*. In this context, the safeguards against secondary victimisation play a decisive role, which represent the guiding principle of the corresponding provisions made in the Directive on Victim Protection. Thus, further legislative action at the European level in the field of victims' rights does not seem called for at present.

In assessing whether or not the required rights of affected parties are safeguarded, the **rulings handed down by the courts of the European Union and by the European Court of Human Rights** are of central importance. Should one of these courts come to the conclusion that fundamental rights of the persons affected have not been respected, this must be understood as a grave indication that the design of the space of freedom, security, and justice must be monitored as regards its ability to ensure close and trusting cooperation and that it may require adjustments.

In the most recent past, the judgments handed down by the European Court of Human Rights on issues of the **execution of prison sentences** in individual Member States gave rise to doubts as to whether the required (minimum) standards are adhered to in said Member States.

Where the rendition of prisoners pursuant to the European Arrest Warrant or the Council's Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union is concerned, the Member States must be able to rely on the fact that the detention conditions as given in the state to which the prisoner is being surrendered correspond to the minimum standards under international law as set out in Art. 3 of the European Convention on Human Rights. Likewise, a pre-requisite for assisting with proceedings in another country by way of legal assistance is that the sentence handed down in that country will not result in the convicted person's human rights being violated in the course of the prison sentence being executed.

On this, the Commission has stated in its report to the European Parliament and the Council of 11 April 2011 (COM(2011) 175 final, p. 7): "A number of judgments of the European Court of Human Rights have highlighted deficiencies in some prisons within the EU. (...) It is clear that the Council Framework Decision on the EAW (...) does not mandate surrender where an executing judicial authority is satisfied, taking into account all the circumstances of the case, that such surrender would result in a breach of a requested person's fundamental rights arising from unacceptable detention conditions."

It is doubtful whether the detention conditions in the sense of Art. 3 of the Convention are sufficient throughout the European Union, as the Court has determined most recently in a judgment handed down at the beginning of this year. In a similar vein, the Committee of the European Council on the Prevention of Torture has determined deficiencies, in inspecting the detention conditions in several Member States of the European Union, where the material and staffing resources of the penal institutions are concerned. Accordingly, it should be discussed how it can be assured, as a matter of fact and not only as a matter of law, that the fundamental rights of the parties affected are respected, so as to not jeopardise the criminal law cooperation within the European Union.

Already following its analysis of the replies given to the Green Paper on the Deprivation of Liberty, the Commission has addressed various measures in an informal paper; in essence, they entail an evaluation of the execution of prison sentences and the improved cooperation of the Member States on the basis of the existing set of instruments: improved cooperation between the European Union and the European Council, development of networks for the administrations of penal institutions and court administrative services in order to exchange best practises in the execution of sentences, “soft measures” serving to encourage the Member States to improve their execution standards, regular meetings of the National Preventive Mechanisms Against Torture, organisation of round table discussions attended by high-ranking participants to review the detention conditions, measures serving to disseminate the recommendations of the European Council, the development of guidelines for prison staff, and the improvement of the exchange on best practises via EuroPris.

Prior to creating binding minimum standards in the European Union for the execution of prison sentences, the COM proposals should be implemented. Thus far, all that has been instituted is EuroPris – an NGO in which only the administrations of penal institutions in the European Member States and Regions may become a member. While the exchange of information that has been initiated in this forum on matters of executing prison sentences is to be welcomed, it should be transferred to a more suitable format and should take place in a structured manner in accordance with determined guidelines.

One way of achieving this objective might be to have the Commission institute a group of experts in which all Member States have the opportunity to exchange their views, in sessions chaired by the Commission, on the essential and, from the perspective of the Member States, especially pressing problems entailed by the execution of prison sentences, and on opportunities for improvement, and in which experts – such as on prison medical services – could take part along with EuroPris. Accordingly, the Federal Government would request that the Commission review whether or not such a group of experts might be instituted and to swiftly implement the further opportunities COM has addressed for implementing the results of the Green Paper on the Deprivation of Liberty.

Moreover, it would seem necessary to **improve the financial support granted** to the enforcement systems by the European Union. In this regard, it would be very helpful if convicted offenders serving their sentences were to be accorded the same consideration by the European Union in granting its subsidies as are other groups on the fringe of society.

The committee suitable for reviewing the execution of prison sentences in the Member States might be the Working Group of the Council of the EU “General Matters and Evaluation” (GENVAL). This was established by the Joint Action of 1997 (97/827/JHA) and has the task of “establishing a mechanism for peer evaluation of the application and implementation at national level of Union and other international acts and instruments in criminal matters, of the resulting legislation and practices at national level.” If issues of the execution of prison sentences are regarded as an annex to the existing instruments of criminal law (such as, particularly, the European Arrest Warrant), it might be sensible to deploy GENVAL, an evaluation committee that already exists, for an investigation of the execution of prison sentences. However, the plans for the next round of evaluation have already progressed too far to allow inclusion therein. Thus, the evaluation of the execution of prison sentences could be performed in the round after the next one, which will be initiated, in all likelihood, in early or mid-2016.

## Discussion paper civil law

### Preliminary observations:

The Federal Government shares the Commission's view that progress in the field of European civil law has significantly facilitated cross-border activities for citizens and businesses. However, the legal environment should be consolidated further, particularly in the area of **consumer law**: The legal instruments available in this field (Consumer Rights Directive, Directive concerning the Distance Marketing of Consumer Financial Services, Consumer Loan Directive, Timeshare Directive, Services Directive; at present, an amendment to the Directive on Package Travel is being negotiated) all stipulate (pre-) contractual information obligations that differ from one directive to the next. On the one hand, this results in significant administrative costs and regulatory irritants for the economic sector. On the other hand, the sheer scope of information obligations on the part of consumers precisely does not improve consumer protection. On the contrary, there is the risk that important information is lost (so-called information overload). Standardising and simplifying the information obligations at the European level – and also across Directorates General – is a matter that should urgently be addressed.

The Federal Government agrees only in part with the Commission's assessment regarding **deficits in civil law**:

The Commission has rightly identified the deficits where the standardisation of the provisions concerning applicable law (**conflict of laws**) is concerned. The rules concerning the conflict of laws warrant that the same law is applied, in all EU Member States, to a matter governed by civil law, independently of where the legal dispute is pursued. The application of one and the same law to one and the same set of facts and circumstances in all EU Member States is a matter of fairness.

Now that significant progress has been achieved in standardising the rules concerning the conflict of laws (Rome I Regulation, Rome II Regulation, Rome III Regulation, Succession Regulation, Maintenance Regulation), this path should be pursued further (e.g. for marriages and the laws governing the family name). It has become clear in practice that the harmonisation of substantive civil law, such as family law, is subject to significantly greater constraints.

The Federal Government does not as critical a view as the Commission does of **uncertainties as to which courts have jurisdiction** in other Member States, **unjustified obstacles in enforcing judgments** in other Member States, and **problems encountered by governmental authorities in their cooperation** in civil law and commercial matters. The European Judicial Network is available for swiftly and effectively dealing with uncertainties regarding the legal situation in other Member States and thus also for addressing the question of which court will have jurisdiction for a given case. While it is correct that, fundamentally, **direct communication between courts** would be desirable in some partial areas suited for this purpose, this would nonetheless require a solid legal framework – which, at present, does not exist as of yet (it should be noted, though, that, as part of the revisions being made to the insolvency statute, work to achieve this is underway).

The call to ensuring that civil law should keep up with **technological developments** is one that the Federal Government can agree to. The Federal Government welcomes the Commission’s focus on contracts regarding **digital content**. However, the matter of Cloud Computing specifically is characterised also by **intellectual property aspects**, for which the Directorate General Internal Market and Services is responsible. In this context, it should be noted that the Commission (DG Internal Market and Services) has already announced, in its Communication on Content in the Digital Single Market COM(2012) 789 of 18 December 2012 (attached), that – notwithstanding any other, further political measures that may also include legislative reform – it intends to launch a structured dialogue with stakeholders on the matter of Cloud Computing, *inter alia* in the intention of developing practical and industry-oriented solutions by the end of 2013. This dialogue has commenced, and is ongoing, under the heading of “Licenses for Europe” and is also intended to specifically address innovative licensing processes and technical solutions. In this way, the lawful cross-border access to content and services from the Cloud is to be simplified. The Commission will present the results of this structured dialogue on 13 November in Brussels.

This step-by-step approach by the DG Internal Market and Services (giving preference to a discussion of license-based solutions before any potential legislative measures) is sensible and appropriate. It bears noting that, from the perspective of intellectual property rights, it would seem more urgent to provide for issues of lump-sum remuneration in the context of Cloud Computing, if anything needs to be provided for at all, than to make stipulations regarding the structure and design of contractual terms (as the paper on civil law would have it). This is the case all the more so as the laws governing contracts on intellectual property rights – and thus, the licensing of copyrights in general – have not been harmonised throughout the European Union for good reason, and also because the German Copyright Act (UrhG) does not make any stipulations as regards the design and structure of licenses (leaving aside the entitlement of authors to reasonable remuneration). Against this backdrop, it should be ensured that the copyright issues connected to Cloud Computing continue to be moderated (on an exclusive basis) by the DG Internal Market and Services and that the corresponding deliberations on further procedure be held (likewise on an exclusive basis) in the Council Working Party on Intellectual Property (Copyright).

The Commission's suggestion to pursue **optional approaches** in future requires further review; the Federal Government regards this concept with some reticence. At any rate where usual civil-law practice is concerned, the role of optional EU instruments generally is a subservient one, and is not in the least comparable to the traditional methods used to harmonise the laws of the Member States or to achieve mutual recognition. On the contrary, the practical impact of optional EU instruments thus far is restricted to the field of **special branches of civil law** (e.g. *Societas Europea*, Community trademark). Outside of such special branches of civil law, the legislative method of using optional EU instruments, at any rate those that are instruments of substantive law, has been suggested only in the Draft Regulation for a Common European Sales Law. However, this proposed regulation is highly disputed, and not only where its substantive provisions on sales law are concerned – the debate focuses in particular on those areas that concern the general suitability of using optional EU instruments to overcome national divergences impeding the smooth functioning of the single market: a heated dispute has arisen on the question of which statutory basis would be the correct one for an instrument that does not serve to harmonise the traditional laws of the Member States, and instead creates an additional, partial legal order within those traditional laws.

Furthermore, the option so created: the ability to choose between different partial legal orders within the laws of a Member State, gives rise to significant issues in international private law and as concerns the relationship to the Rome I Regulation. Accordingly, the Federal Government at present cannot support the Commission's statement as to optional instruments being suited – in the same manner as the methods of harmonising the laws of the Member States, or as mutual recognition – as a means of stipulating ways to overcome obstacles preventing the smooth functioning of the single market in the general area of EU civil law.

This also applies to **insurance contract law**: On 17 January 2013, the Commission has formed an expert group for a European insurance contract law (OJ EU C 16/6 of 19 January 2013). The Expert Group is to submit its report to the Commission by the end of 2013. Thus far, the Member States have not been involved in these deliberations. It is to be assumed that a uniform law may make it easier for insurance companies to offer their services throughout the entire European Union. However, arguing from the perspective of a consumer, the answer to the question of whether or not he or she will conclude a contract will depend to a larger degree on aspects such as price, language, and proximity of the party offering the policy (representative nearby?) than on the question of which law will be applicable.

The single set of insurance contract law rules is introduced as a subject of discussion that is of the utmost significance for insurance contract law. Whether or not a uniform European insurance contract law will have the consequences that the Commission is hoping for remains to be seen (also in light of the fact that, consumers already have the opportunity at present to conclude insurance contracts online, with any insurer they wish, wherever they may be located within the EU).

The general approach taken by the Commission: that **full mutual trust** must be “achieved” between Member States in the field of civil procedural law, meets with the Federal Government's consent. In this context, the Federal Government shares the Commission's view as to the European regulation on the service of documents needing to be revised and updated in a few instances to correspond to technical progress. Another aspect meriting consideration would be the institution of minimum standards for the **cross-border service of documents**.

Likewise, the Federal Government agrees with the Commission's suggestion to include minimum standards in the **Brussels IIa Regulation** on how a child is to be heard.

In principle, the statements on the desirability of codifying EU civil procedural law likewise find the Federal Government's consent. In the meantime, a significant number of legal instruments governed by procedural law exist for judicial cooperation in civil matters, which provide for different solutions regarding individual issues. This complicates the work done using these legal instruments. Thus, it is anything but felicitous if the scope of application ("cross-border implications") must be discussed every single time the Commission makes a proposal, or if service rules need to be debated. Accordingly, greater coherence should be sought and, in the medium term, a revision of EU civil procedural law should be strived for.

The Federal Government shares the view taken by the Commission that an **effective enforcement** of judgments must be ensured and that creditors must be placed in a position to execute the legal title awarded to them. As a first step, the Commission has presented a proposal on 27 July 2011 for a **Regulation Creating a European Account Preservation Order**. The proposal has the objective of facilitating the recovery of claims abroad by making it simpler and more efficient for creditors in cross-border cases to temporarily seize ("freeze") bank accounts in the EU. Such an order is to be enforceable in other EU Member States without any interim proceedings ("exequatur"). The Federal Government has endorsed the Commission's proposal in principle. Any improvement of the cross-border enforcement of claims within the EU will also serve to improve the legal status enjoyed by German creditors. The proposal is currently being discussed in various committees in Brussels. However, the two years of negotiations have brought to light significant divergences in the enforcement systems of some of the individual Member States.

Moreover, the Commission has published, on 6 March 2008, a **Green Paper on improving the efficiency of the enforcement of judgments in the European Union (transparency of debtor's assets)**. However, the Commission has not yet published any specific proposal for a regulation. The Federal Government has submitted its observations on this matter and welcomes the intention pursued by the Green Paper: to improve the situation of creditors enforcing private claims.

However, the principles of subsidiarity and proportionality, anchored in Community law, must be taken into account. In particular, the differences in national enforcement systems – which have their roots in the respective legal tradition of the Member State – must be considered. In this context, a particular focus should be placed on balancing the conflicting interests of the creditor – transparency of the debtor’s assets – against those of the debtor – protecting the right to informational self-determination, a right protected by constitutional law in Germany.

In this context, it should also be noted that on 12 December 2012, the European Union ratified Regulation (EC) no. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 351 of 20 December 2012, p. 1, referred to hereinbelow as **Brussels Ia Regulation**). The regulation is to apply from 10 January 2015. In this way, the procedure by which a court decision is declared enforceable will no longer be required, which thus far preceded any enforcement of foreign legal titles.

Thus, from the perspective of the Federal Government, the objective to design the **enforcement** of court decisions in the European Union more efficiently merits support. In light of the different enforcement regimes in place in the Member States, it will **not** be possible, however, to achieve **full harmonisation**, so that if anything, certain minimum standards would have to be established for cross-border cases in partial areas of the law. The general recommendation is that practical experience with the procedures should first be gained once the exequatur process has been abolished by the Brussels Ia Regulation and the European account preservation order has been introduced. Currently, the Federal Government sees no need for any initiatives to be launched at the EU level that would go above and beyond the matters addressed in the Green Paper of 6 March 2008.

As regards **insolvency law**, it is conceded that a certain harmonisation of substantive insolvency statutes may fundamentally be desirable in order to improve the efficiency of cross-border insolvency proceedings in the European Union. Nonetheless, it should be noted that any harmonisation efforts will be subject to considerable restrictions, in light of the overlap given between the national insolvency law regimes and every single one of the fields of law bearing any relevance to commercial law (these being, *inter alia*, the laws governing loan collateral, commercial law and corporate law, labour law, social law, tax law), and that this situation will continue for as long as these areas of the law have not been harmonised among themselves, or only insufficiently so. Accordingly, the pre-requisite for any intended approximation of laws is a careful analysis of the commonalities shared by the national insolvency laws and especially of those aspects in which they are distinct. Only on the basis of such a comparative analysis will it be possible to identify substantive areas that stand to benefit from harmonisation, and in which the corresponding efforts will be successful. In this regard, the care exercised in preparing the Commission's proposal for a regulation amending the European Regulation on Insolvency Proceedings, which was based on a study by the universities of Heidelberg and Vienna, has set a new standard as it has created a reliable basis for a structured discussion of the regulatory issues addressed in said dossier. It may be advisable to base further harmonisation efforts on comparable studies.

Another factor illustrating the need for an in-depth study identifying potential areas for harmonisation is the fact that neither the Commission Communication of December 2012 nor the present consultation document seem to be directed at establishing a systematically complete approach to identifying needs for harmonisation. Accordingly, the documents made available thus far do not yet sufficiently indicate any need to further approximate the national insolvency statutes under the existing laws in Europe. While it cannot be disputed that a standardisation of the laws governing insolvency holds out the promise of efficiency gains, it must be considered that the provisions under substantive law made in the European Regulation on Insolvency Proceedings, in the version to be achieved by the amending regulation, already entail significant progress. Thus, the planned European register of insolvency proceedings is likely to reduce uncertainties for creditors to a significant degree.

Under the heading “Ensuring the effectiveness of European civil law,” the Commission refers to the **Justice Scoreboard**. Like the Commission, the Federal Government also takes the fundamental view that prompt and reliable court decisions are not only an indispensable prerequisite for the functioning of any civil law regime – they are, furthermore, the determining factor for a Member State’s attractiveness as a location for business and industry. In this context, the Federal Government would point out that it is exclusively incumbent upon the Member States to organise and structure their judicial systems. The Federal Government understands the communication on the EU Justice Scoreboard as a non-binding instrument serving purposes of self-reflection that, as a field of action for the Commission, is covered (solely) in this configuration by the legal bases of the TFEU. The fact that the judiciary is an important factor for the economic attractiveness of a Member State does not make it a part of economic policy in terms of the laws governing the competencies of different bodies. Accordingly, the Federal Government welcomes the Commission’s intention to pursue a fundamental debate on the scope and design of the Justice Scoreboard at the meeting of the Justice and Home Affairs Council in December of 2013.

**Family law** affects every Member State’s identity in a very special way. Therefore, the Federal Government does not regard the **passerelle** in Art. 81 (3) TFEU to be suited for levelling out the different values accorded to different concepts in the Member States’ legal orders, and in fact, the Federal Government is not convinced that this is something to be strived for. **Enhanced cooperation** should remain a means of last resort as it would lead to further fragmentation of the European legal environment.

In the view taken by the Federal Government, the **external dimension** of cooperation in the field of civil procedural law merits further development. The objective must be to ensure that the European Union’s standards can be enforced effectively at the international level. Accordingly, the EU should be able to speak with one voice, quickly and in keeping with its competencies, in international fora. Any differences as to competencies should not mean that neither the EU nor the Member States are allowed to make statements at the international level; rather, pragmatic solutions should be sought for achieving the shared objective in the near future.

Also where the field of civil judicial cooperation is concerned, a **structured dialogue** should be sought **by the European Union and its Member States with neighbouring states and major third states**. This would mean, first and foremost, that the EU and its Member States would have to develop a strategy on how to act in existing multilateral fora such as UNCITRAL, the Hague Conference, or the Council of Europe, while determining on the other hand where additional bilateral or multilateral treaties should be negotiated.

In **preparing for international conferences** attended by the European Commission in addition to the Member States, or in their stead, it should be assured that the Member States are sufficiently informed, and specifically in the run-up to such conferences.

At present, the Federal Government cannot agree to **harmonising the rules** providing for the **recognition and enforcement of judgments handed down in third states**. This is a subject currently being addressed, with the involvement of the European Union, in the work done by the Hague Conference on Private International Law on a treaty that is to apply world-wide. Only if a failure of this initiative were to become apparent would it be conceivable to insert a European level – which, incidentally, was refused when revisions to the Brussels Ia Regulation were being negotiated.

**Moreover, the Federal Government wishes to highlight the following aspects for guidelines that might be addressed in the context of the post-Stockholm process in the field of civil law:**

Where provisions specifically of civil procedural law are concerned, it should be ensured that the **European Union's competencies are restricted to cases with cross-border implications**.

Where suitable, it may be sensible to **determine minimum standards**, as was the case, for example, for the regulation creating a European enforcement order. These minimum standards are conceivable, for example, for the Brussels IIa Regulation and also in the field of the service of documents. However, these minimum standards must be prepared carefully and should be based specifically on comparative analyses of the laws concerned.

A major aspect of the efforts at consolidation is to be seen in the continued and preferential pursuit of the project to create a **Common Frame of Reference**. In this regard, the 2009 Draft Common Frame of Reference would have to be discussed comprehensively and would have to be enhanced, as needed, by further areas of special branches of the law of obligations, in which there is a need to consolidate and systematically enhance existing European legal acts of private law (such as the financed purchase of consumer goods, or aspects of contracts of sale where the reservation of title is concerned).

This might be flanked by an **inter-institutional agreement** being reached by **the Council, the European Commission, and the European Parliament** to take into account the provisions of the Common Frame of Reference in revising European Community private law and in issuing new legal acts (toolbox).

In this context, the systematic coverage, under aspects of civil law, of the areas of **financial services**, in addition to **consumer protection law**, should be considered. Generally, it can be said that for the most part, the European legal acts are monoliths that are not in any way tied to one another, and that do not refer in any uniform way to any shared basis of a comprehensive legal system of private law. This issue is aggravated by a continually accelerating legislative activity of the European Union, for example in the field of payment services: As early as in 2013, the Commission proposed to modify the Payment Services Directive of 2007 by submitting a revised version of the directive, while also issuing an amending legal act in the form of a directive on payment accounts. However, none of these legal acts sufficiently clears up the understanding of the legal relationships under private law of the parties involved, which must, however, serve as a basis informing such relationships.

In particular, the need for a more comprehensive Common Frame of Reference has not ceased to exist by the current proposal for a regulation on Common European Sales Law: on the contrary, the negotiations for this proposed directive have shown that thus far, no shared definitions of terms can be assumed to be given at the level of EU private law, and that even where EU legal acts are discussed that concern a broader scope of matters to be provided for by private law, fringe areas remain that are not covered, while other matters are not addressed. The further pursuit of the project of creating a Common Frame of Reference should enable a discussion also of the results obtained thus far by jurisprudence in the area of consolidating the *acquis* of private law, which extends beyond the limited areas of sales law.

Furthermore, the Federal Government suggests that data be obtained on the matter of whether or not it is necessary in the medium term, in order to overcome obstacles impeding the proper functioning of the single market, to approximate the **laws governing construction agreements** as given in the Member States. Thus far, the European Union has dealt only marginally with the laws governing construction contracts. In other words, while the Services Directive, which is broad in scope, does cover construction agreements, there are no special provisions in the laws of the European Union regarding this type of contract. There are indications that increasingly, construction agreements are being concluded on a cross-border basis. However, there are no exact figures available as of yet that would stand up to challenge. Accordingly, the suggestion is to establish how many construction firms are already active on a cross-border basis, and how many are interested in such cross-border activities, but feel that the different requirements made under the laws of the other states prevent them from pursuing those activities. Depending on the outcome of this survey, an initiative for the approximation of the laws governing construction agreements in the Member States may result.

Additionally, civil law must keep up with societal and demographic developments: as a horizontal aspect, the focus might be placed on whether an **aging populace** will require adjustments to be made to the law, for example in consumer law (is the existing concept of the average consumer still in keeping with the times in all aspects?).

In implementing its policies, the European Commission should focus more strongly than thus far on **transparency**. In the “legislative process,” this will mean that it will no longer suffice for the Commission to first discuss a Green Paper on a project, to then – after some years have passed – invite the Member States and other parties to an information event on this same project lasting all of one day, and to subsequently present the proposed regulation some months later. In addition to the representatives of interest groups located in Brussels, the Commission should also involve the Member States in this internal process of drafting a proposal for a provision as part of a well-ordered procedure.

## **Contribution from Denmark (DK)**

### **Contribution from Denmark to the Presidency and the General Secretariat of the Council on the future development of the JHA area**

#### **A) Which main strategic priorities would you like to highlight for the post-2014 period?**

The focus of a new strategic program should be on the *implementation and consolidation* of existing legislation. Thus, a large number of legal acts have been adopted throughout the years, and it is important to focus on the implementation of these acts. Furthermore, the *practical cooperation* between member states should be strengthened. In this light it is important that a smooth and efficient cooperation is ensured.

As regards the priorities in the field of asylum, migration, visa and borders Denmark refers to the attached non-paper which was sent to the Presidency on behalf of the Ministers responsible for asylum, migration and border matters of Austria, Belgium, the Netherlands, Sweden and Denmark on 29 November 2013.

#### **B) Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?**

Please see above and attached paper.

#### **C) What principles could be useful in constructing the post-2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?**

Please see above and attached paper.

## Contribution from Greece (EL)



HELLENIC REPUBLIC

MINISTRY OF FOREIGN AFFAIRS

C GENERAL DIRECTORATE OF EUROPEAN AFFAIRS

C4 DIRECTORATE OF JUSTICE, HOME AFFAIRS – SCHENGEN

Athens 2 December, 2013

### FUTURE DEVELOPMENT OF THE JHA AREA

**a) WHICH MAIN STRATEGIC PRIORITIES WOULD YOU LIKE TO HIGHLIGHT FOR THE POST-2014 PERIOD UNDER THE MANDATE OF YOUR COMMITTEE/ WORKING GROUP?**

**1. SCIFA-Greece's strategic priorities for the post -2014 periods are mainly four:**

- *The definition of short term targets and the building of a long term strategy in the fields of Asylum, migration and borders, which will include all the relevant European institutions and Organizations (E. Commission, EEAS, Frontex, EASO, Europol), for a coordinated cooperation and the horizontal and effective management of the phenomenon of mixed migratory flows.*
- *Further development of the external dimension, cooperation with third countries on the basis of the principle of positive conditionality –more for more- and the return and readmission policies, enhancement of Frontex role, fighting of trafficking networks preventive policy, promotion of migration and development, EU mobility partnership).*

- *The consolidation of the common asylum policy. It is essential to create a permanent mechanism for relocation of mixed migratory flows (asylum seekers etc), as well as returnees, among M-S, which will be based on quotas on the basis of population of the M-S, its ability to integrate immigrants, its GDP and its area. It is considered necessary the EU participation with means and technology, to the reinforcement of the MS efforts to safeguard the external borders.*
- *Effective coordination of the efforts for maritime surveillance with the use of modern technology and larger number of staff and equipment from non-frontier states in close cooperation with Frontex.*

### **ASYLUM (Asylum Service)**

In addition to the issues arising in relation to achieving uniform application of these instruments by Member States, of major importance is the promotion of solidarity as a fundamental principle that should govern policy which ultimately can lead to more equitable sharing of efforts between Member States. In this light, we consider as particularly useful to include in the agenda of the Greek Presidency the asylum policy in the light of considering the following actions based on the principle of solidarity:

*(1) Further explore the feasibility study recently published by the European Commission for the joint processing of requests for international protection made in the territory of Member States. We consider it worthwhile to explore further the legal and practical implications of establishing a mechanism for the joint processing of asylum applications between EU Member States, and to further examine the four possible scenarios that values this study about what may constitute a mechanism of joint processing of asylum claims, and whether he will be an ad hoc tool in a crisis of asylum systems or permanent practice in the field of asylum.*

*(2) Expand the practice of internal relocation of beneficiaries of international protection between Member States (relocation). In this respect, internal resettlement has already been piloted (Eurema Project, Phase I - II) and has been evaluated for its effects.*

*(3) In response to the crisis in Syria and the disproportionate pressures on Member States at the external borders of the EU, we should consider further consideration of the establishment of appropriate mechanisms that can be mobilized in case of crisis and massive influx of foreign nationals. Our view is that these should be sought beyond the statutory early warning and preparedness mechanism provided by article 33 of the new Regulation 604/2013 (recast of the Dublin Regulation).*

*(4) In addition to the above, and in practical application of the principle of solidarity in the field of external relations of the European Union, we consider of great importance the continued support to the practice of relocation (resettlement), the strengthening of regional programs for international protection (RPPs), and their connection with similar programs providing development assistance. The European support should not be exhausted in improving the structures of recognition, but to take into account the particular needs of local populations and beneficiaries of international protection*

## **ILLEGAL MIGRATION - EXTERNAL BORDERS**

The EU-level strategic priorities in the post- Stockholm period, especially in the field of illegal immigration should contain:

- i. **Actions and measures in third countries of transit / origin** , using all the structures there being no EU (European Asylum Support Office-EASO, Frontex, European External Action Service-EEAS, Europol).*
- ii. **Consolidation of the principles of joint responsibility (responsibility sharing), of solidarity and the fair distribution of burdens (burden sharing).** In our view we should start a genuine political dialogue within the EU, so that the other member-states would understand and recognize the efforts and results achieved by the countries especially burdened to limit and contain the impact of the phenomenon in their borders. In the same vein, the EU should come up with specific objectives relating to the matter, as there is considerable variation between different organs of the Union, in terms of adequately addressing the situation. The formation of a unified strategy and the promotion of the*

concept that the external borders of the member states are common are particularly critical. In this direction, the increase in assistance to the member states of the first line is compelling on an economic level, but also at the level of participation in mixed operations "Poseidon" type in frontier areas, so that a sense of common European external borders can be fostered and develop a real sense of solidarity with the m-s hosting of mixed flows. Similarly, a balance must be sought between safeguarding the borders and respecting the human rights of people entering in various ways and for various reasons into the Union.

iii. **Strengthening operational cooperation between law enforcement authorities of EU member states.** In mixed European operations with the involvement of FRONTEX we should not ignore the importance of parameters such as the extent of shoreline supervision, the abundance of islands - rocks, maritime traffic, the degree of difficulty of maritime surveillance in relation to the weather, the proximity to the coast third countries, etc. Accordingly, we should, in our view, have as a constant objective to improve operational cooperation of member states the EU, both financially (by providing more funds) and operational level (placing efficient operational means and detachable officers trained in the field operations).

iv. **Effort to transform illegal immigration to a controllable phenomenon.** It is particularly important to take measures and any initiative at European (or national) level to encourage immigration through legal, controlled channels and not illegally.

v. It is very important also to emphasize the concern at EU level for **organizing awareness campaigns** – for prospective migrants in third countries about the risks involved in the illegal journey, especially by sea, and the ways they are exploited by the organized trafficking networks. Particular attention should be given to unaccompanied minors, who several times are trying to enter the EU illegally, and thus become victims of human trafficking.

It is necessary to develop shared responsibility at EU level, which is not only a function of operational measures and practices but as well as administrative-legal measures and initiatives.

Therefore, given the operational burden of Mediterranean m-s in functioning as gateways of illegal immigrants, but also the overall burden resulting from the Dublin Convention II for asylum seekers, as well as relevant legislation for applicants for international protection, the establishment of European offices examining asylum claims - international protection should be considered in the territory of different M-S (not only the Mediterranean), based

on a geographical distribution that will be decided according to specific criteria (eg geographical location of M-S, total population, proportion with operational administrative burden on law enforcement in the M-S, etc.) and / or in third countries as contemplated elsewhere in this text.

**Procedures and actions carried on the first entry country can be carried out in the last third country.** The excessive burden of member first entry with the duty to manage (also non- beneficiaries of international protection) all illegal aliens who seek to enter in the entire European geographical area, can lead to uneven distribution of the relative weight. We believe that the relative necessity of good management conducted in the territory of third countries neighboring the European area, would help both to easier /fairer distribution (in m-s) of beneficiaries of protection and also it would act as a discouraging factor (push factor), on the attempts for entry into the territory for other illegal aliens. In other words, we need to use the full range of structures / features and any other possible action, so that countries can act as filters of pre-border control .

This will result in the alleviation of the burden of Mediterranean Member States (Greece, Italy, Spain, Malta, Cyprus and now Bulgaria) and of some other member states (eg Germany, Sweden), which are overloaded by requests, but also it will result in the carrying out more effectively the prescribed procedures related to these issues in a few months. In this case, it should also be considered to increase the number of countries receiving or the capacity of existing host sites, where these immigrants would stay until the examination of their claims.

**In order for the extra effort to not become a factor of attraction (pull factor) for prospective immigrants** we must first decide that immigrants who do not qualify for their stay in the EU, should proceed for their return to their home countries and secondly, make stricter the legal framework at EU level, providing for even harsher penalties for traffickers - members of organized trafficking networks, particularly in cases of relapse and for those involved in serious incidents of tragedies or loss of human life, as also against migrants, who in any way jeopardize the lives of other immigrants in the same transport means.

## FULL IMPLEMENTATION OF THE BORDERS CODE

In the surveillance of the common external borders our focus will be on strengthening the implementation of the Schengen Borders Code, which refers to both guarding and surveillance of external borders as well as to controls at authorized points of entry and exit, taking into account the geo - strategic challenges of the Union and the technical and financial capability to find solutions.

Parallel to the previous objective, on the first level we should emphasize the establishment and systematic operation of the mechanism of identification (screening) of the citizenship of illegal immigrants and persons or groups of persons belonging to the category of vulnerable groups in need of international protection, and a second level to make our actions fully compatible with both Directive 2005/85/EC "*on minimum standards on procedures in Member States for granting and withdrawing refugee status*", and the Directive 2008/115/EC "*on common standards and procedures in Member States for returning illegally staying third -country nationals*". Related to this we should mention how important we consider to strengthen the role of FRONTEX at operational level, in accordance with its mandate.

Alongside these we should also incorporate issues of human rights concerns as updated, so that all operations at external borders should be compatible both with the Schengen Borders Code and the relevant provisions of international and European conventions on human rights. The post -Stockholm strategy should address these challenges.

The success of the Union on the issue of the proper management of mixed migration flows (*which means both third country nationals eligible for international protection and third-country nationals entering the Schengen without authorization*) should necessarily be based on the full utilization of the Schengen Borders Code

We should include in the strategic guidelines the review of the way border control is carried out with the help of new technologies, to facilitate trustworthy travelers and of people travelling for pleasure, taking into account their security and protection from terrorist threats.

A basic concern should be to regain confidence by European citizens, to the institutional organs of the EU, as well as to the other bodies which are dealing with specific issues of internal security.

We support also the harmonization of the policy planning with the financial framework cycle, in terms of planning / infrastructure as well as operational costs.

### LEGAL MIGRATION

#### **1. Key priorities for the post- 2014 programming period JHA estimated to be as follows in the area of Legal Migration.**

*(a) Developing policies and instruments that will meet the needs of national markets of member states. EU policies should ensure the interconnection of the available workforce with its skills to the labour market needs («labour matching»), taking into account both the general fiscal/economic conditions of each M- S , and its integration- accession terms in the labor market.*

*(b) The second strategic priority in the field of legal migration, but directly related to the first, will be the development of flexible admission systems of workforce (Third Country Nationals, TCN ), which interface with the needs of member states. One of the main instruments to the above direction could be, moreover, provided for already by the Stockholm Programme, the codification of the EU acquis on legal immigration and the effectiveness of the legislative instruments (Directives).*

**2. Referring now to the issues of social integration of immigrants, as key priorities for the period after the Stockholm Programme, could be:**

**D). Integration / Reintegration in the labour market** where policy intervention could lie in:

- (a) Recognition of skills and educational qualifications / professional qualifications of nationals of third countries in collaboration with the relevant Education / Training authorities*
- (b) Analysis of the needs of the national labour market in various sectors and positions which cannot be filled by the domestic workforce in collaboration with the Employment Agency,*
- (c) Establishing mechanisms to equilibrate supply and demand in these areas in collaboration with the Ministry of Employment and the Employment Agencies,*
- (d) Professional orientation of third country nationals and professional training for filling vacancies in partnership with the European Social Fund and*
- (e) Promotion of micro-entrepreneurship in collaboration with the European Social Fund, the Chamber of Commerce and the Private Sector (banks).*

**II). Cultural integration of immigrants at national and local levels with corresponding actions** (local M-S language courses and citizenship, targeted terminology courses for professionals / workers, targeted courses for immigrant parents, intercultural education and mediation in different areas and creating Centres of Integration and Cultural Intermediation).

**III). Combating racism, xenophobia,** by word and acts of hatred against diversity with related activities such as:

- (a) Information campaigns to sensitize civil society on issues of racism and xenophobia,*
- (b) Targeted awareness for people working in the Media on the same issues,*
- (c) Organization of roundtables on issues of xenophobia and racism at the local level (municipalities, neighborhoods) with involvement of immigrants and natives,*
- (d) Collection and publication of incidents of xenophobia and racism from both immigrant population and native and*
- (e) Theatrical street performances (events) on racism and xenophobia with audience participation in different roles (such as the Museum of racism in S. Africa).*

**IV). Measures for cohesion policy on integration**, cooperation and support mechanisms for the exchange of good practices with action measures that focus on:

- (a) *Mainstreaming integration in all policy areas in collaboration with competent Ministries,*
- (b) *Organisation of meetings and conferences for the exchange of good practices and participation in the Network of National Contact Points on integration (EU) with the same objective,*
- (c) *Development of indicators for inclusion/integration after the establishment of the New Regulation on the Asylum and Migration Fund,*
- (d) Continuous consultation with organizations of civil society and migrant associations as well as the Councils for Immigrant Integration for formulation of policy and measures of integration.

**3. Strategic priorities for the elections to the European Parliament** after the 2014 period. As to the issues of EU elections, the guidelines which could move the Union after the Stockholm period include:

*a) review of the institutional framework (the 1976 Act) governing the election of members of Parliament, towards the confirmation of the values and principles underpinning European integration, so this (institutional framework) to respond to data highlighted by the prevailing socio-political trends within the European area.*

*b) strengthening citizen participation in EP elections , through searching and locating alternative initiatives, since the constantly shrinking participation in them is not due to administrative barriers, but possibly to a lack of targeted actions for comprehensive information to citizens regarding their rights. Perhaps the wider area of education could be exploited in shaping and strengthening the European identity of citizens of the EU. Further, it is necessary to provide firm financial assistance to Member States in conducting elections, with a view to accurately inform EU citizens to exercise their political rights, arising from the status of European citizenship.*

*(c) highlight the active role of European political parties (EPP) to the strengthening and consolidation of the European identity of citizens. The actions and initiatives to be undertaken by the EU, Member States, the EPP and the national political parties should aim to better inform citizens of the Union regarding that institution, and in empowerment of EPPs in the everyday life and the running of the European reality. In the context of advancing European integration, it will be also needed to consider that the above proposal, amending Act of 1976, should be connected to the institution of EPP in order to form the corresponding institutional osmosis.*

#### **4. Strategic priorities concerning the Organization of Fundamental Rights (FRA) in the post-2014 period.**

The Organization of the founding Regulation 2007 and the Agency recommends EU, succeeding the European Monitoring Centre on Racism and Xenophobia has the task of providing information and data on fundamental rights in order to contribute to greater knowledge and wider awareness of the of respect fundamental rights issues in the EU, leading to ensuring full respect for fundamental rights.

Having already covered by its action the first multiannual framework and reaching the second current Multiannual Framework, 2013 - 201 , the work and the activities of the Agency is assessed as generally positive in the coverage of the mentioned objective. This has taken place to such an extent that it has enriched the scope of the thematic areas by the inclusion of new themes such as inclusion of Roma and judicial cooperation , other than criminal cases , of course, continuing to address the original areas of the Observatory, racism and xenophobia . More specifically, based on the Multi Annual Agency Programme which has finally developed for the period 2013 - 2017, the thematic areas of the Agency are the following:

- Access to justice*
- Victims of crime, including their compensation*
- Information society, respect of privacy and data protection*
- Integration of Roma*
- Judicial cooperation, except in penal cases*
- Children's rights*

*-Discrimination on the basis of sex, race, national or social origin, birth characteristics, language, religion, property, birth, age or sexual orientation*

*-Immigration and integration of migrants, visas and border control, asylum.*

*-Racism, xenophobia and intolerance*

As evident from the above points, these thematic units are projected in the priorities of the 18 month programme of the current Trio of Presidencies of the Council of the EU, while at the same time they pose a challenge for Europe of the 28 M-S. The evolution of the Agency testifies to its effort, on the one hand to be sensitive in matters arising in the modern reality of the EU and to work towards creating sensitivities for these issues, on the other hand, it testifies to the fact that it is not a static Agency but an organism which evolves through time.

The follow-up to the Stockholm programme in the Europe of the 28 m-s after 2014 needs the participation of the Agency which after its evaluation in 2012 and the relevant draft conclusions which were examined in the working group FREMP (to be adopted in the next Council of 5-6 December 2013) is considered an indispensable organization in the EU and for M-S for achieving the goals which arise from its mandate.

We would like also to point out to the importance which should be given to the meaning of European citizenship (report on European Citizenship of May 2013), in combination to the European citizen and his/her rights which have been promoted during this last year (2013) (including the right of free circulation and residence in member states, the right of voting and be voted in the elections for the European Parliament and the European Ombudsman, the right of diplomatic protection in member states of the Union, the right of initiative of European citizens). We consider therefore that the European citizenship with the rights ascribed to its citizens, and the European Citizen, in general, will be the centre of political actions in the EU in the period after the Stockholm programme.

## **2. COSI - Operational cooperation in safeguarding security**

We have to address existing threats and new challenging threats which are emerging in the field of security. We have made significant progress in the implementation to-date of the "Stockholm Programme" and the Lisbon Treaty has given the privilege and mandate to COSI to undertake a major project in the field of operational security and to counter threats from various forms of serious and organized crime. The implementation of the "EU policy

cycle," added the necessary methodology and improved the design and operational approach to tackling crime.

- Henceforth, it is necessary, first and foremost, to utilize our new operational opportunities and invest in joint operational planning and approaches to address common threats. The involvement and commitment of member states to the improvement of cooperation between European security agencies is an issue crucial in order to block the spread of cross-border crime.

- Our goal should be to restore the relationship between European citizens and the institutions and therefore the full contribution of society to deal with crime. At a time of doubt and economic uncertainty it is evident that forms of crime proliferate and corruption broadens the magnitude. Crime which is facilitated by the use of technology (cyber crime) is an imponderable factor which must be urgently addressed, with the aim of safeguarding security in cyberspace, with common approaches and programmes because of the essentially global nature of the phenomenon.

- Another important area where it is worth to invest is training, as organized crime is increasingly using new methods to avoid legal barriers and practices that are known with time. We need innovation and enhancement of defence mechanisms with new guidelines that will enhance the operation and our legal framework, where required.

- Finally, it is necessary to develop the interactivity of operational efficiency with the application of criminal law rules, particularly in relation to new forms of crime or illegal activities which take a legal mantle.

### **3a. ARTICLE 36 COMMITTEE- Justice**

Despite significant achievements in the area of freedom, security and justice and considering the existing socio-economic conditions, we believe that Europe still faces several challenges which must be addressed in a comprehensive manner, with the aim of improving coherence and consistency of EU law. Furthermore, common approaches in the guidelines, such as **safeguarding the principles of necessity, proportionality and subsidiarity**, would greatly aid in defining strategic objectives for the coming years. The combined application of these guidelines principles should be the basis for any further promotion of our policies in the field of justice. **In view of the above, our strategic priorities should be:**

- ***Developing policies which will help rebuild confidence among citizens and contribute to economic growth.*** In this context, the interests of European citizens and businesses should continue to be central to the agenda for the coming years. We have the opportunity, through a new agenda to strengthen our strategy in these areas, aiming to ***justice for growth***, so as the most appropriate weight should be accorded to the contribution of administration of justice in the economic growth of Member States, but also of the European Union, as well as to justice in the service of citizens.
- ***Strengthening the external dimension of EU in the area of freedom, security and justice.*** In this context it is appropriate to ensure a uniform policy in the field of external relations, the conclusion of agreements with third countries to develop cooperation with them on matters of strategic importance, and the close cooperation of the EU Member States and with neighbouring countries.
- ***Strengthening the existing coherent policy of defending individual rights and freedoms,*** through further strengthening of procedural safeguards, under the administration of justice, to ensure a balance between maintaining a high level of safety of citizens and the protection of procedural rights of suspected or accused persons, a particularly important parameter for ensuring the right to a fair trial.  
*Additionally, we believe that further legislative action in policy areas should take place after having fully evaluated the existing legal framework and in case deficiencies are found in some areas.*

Further action should be decided based on the needs of citizens and businesses, making full use of existing know-how. A new horizontal AGENDA in the form of strategic direction, following the achievements made so far, will contribute to improving the coherence of policy areas and strengthen the desired expectations in the area of EU. In this context, it is appropriate to exploit all the opportunities offered by the Treaty of Lisbon for the European area of freedom, security and justice, to the benefit of citizens of the EU

**Important issues in the coming years, are is in our opinion:**

- *The recovery of European citizens' confidence in the institutions and markets, through the **reliable administration of justice, particularly as to the time and cost required**. At the same time, further enhanced cooperation and harmonization needs to take place at the level of substantive and procedural criminal law, in the context of tackling organized crime and further, the wider and closer cooperation between judicial authorities, to ensure human rights and fundamental principles, which constitute the *acquis* of the legal culture in the EU, which must be fully guaranteed.*
- ***Maintaining and further developing, on civil rights, the balance of procedural rights of victims, suspects and defendants.***
- ***The integration of policies relating to the external dimension of the EU in the area of freedom, security and justice.** In a globalized age, where people goods, information, services and capital move freely, clearly the need arises for redefining the objectives in this area.*

**3b. ARTICLE 36 COMMITTEE- Home Affairs-Police Cooperation**

We are in favour of a flexible and comprehensive set of strategic guidelines. In the first stage we favour the completion of outstanding legislative initiatives in JHA and in parallel for the increased international cooperation to curb intra-national organized crime. New initiatives can be undertaken to combat new forms of crime, corruption, drug trafficking via the internet, limiting cybercrime in all its forms etc. The principles of solidarity, co-responsibility, proportionality and conditionality should govern relevant actions.

New operational possibilities and investment in new operational approaches should be utilized for facing common threats. Participation and commitment by M-S and improvement of cooperation with existing European Agencies in JHA are decisive to curb the spread of translational crime.

In any case, the strategic priorities, which will persist after the completion of the Stockholm Programme, we could include:

Regaining the confidence of European citizens both in the EU institutions also in the different bodies involved in the subjects covered by internal security. At this point we believe it becomes necessary to explain to the citizens of the EU the development of security policy.

Promote cooperation between all of the above operators in internal affairs and the harmonization of these is a further strategic priority.

The fight against corruption and the general economic crime.

Strengthening cooperation between Asset Recovery Offices and confiscation of the proceeds of crime.

The cooperation of public and private sector in fighting breach/ infringement of rights of intellectual property. To undertake specific actions for fighting theft of metal objects of value that take place to the detriment of companies involved in energy and the rising crime which need vigilance of the mechanisms for fighting it.

Using modern technology for tracking new forms of criminal activity and facing it, such as cybercrime, should occupy member states in the future.

Undertaking actions to fight drug trafficking via the internet.

Special attention should be placed on cooperation with third countries in matters of strategic importance, for facing organized transnational crime.

The main innovation of the Stockholm programme has been the establishment of the European Policy Cycle for the Serious and Organized Crime, which developed via the COSI working party of the Council. It is necessary therefore to:

Encourage m-s for participating fully in the procedures of the Policy Cycles in a strategic and operational sense.

Harmonization of the European Cycle in its internal actions.

Continuous care for uncovering new forms of criminal activity and by extension of taking proper action for dealing with it.

The appraisal of the selected strategy, ie the establishment of policy cycles for the serious forms of criminal activity, as they have been demonstrated by m-s and have been recorded in the SOCTA report of EUROPOL, in order to develop a new strategy of the Union, for the period after 2017, after the second cycle ends.

As for **principles in Home Affairs/Police** we could mention the following: The mutual trust between states is a prerequisite for any project underway at EU level. The principle of proportionality and necessity should be seriously considered for further action at EU level, also Cohesion and Subsidiarity. Protection of European values and respect for legal traditions. Prefer Qualitative versus quantitative legislation. In any case, beyond any measures undertaken in the post-2014 period in the area of justice and home affairs, we should strike a balance between freedom and security, without going against each other, focusing on humans and the value of the human condition with respect to the concepts of fundamental human rights.

**B) WHICH OTHER HORIZONTAL ISSUES WOULD YOU LIKE TO HIGHLIGHT FOR THE POST-2014 PERIOD, INCLUDING (IF RELEVANT) THE EXTERNAL ACTION?**

Migration cannot be managed by the EU alone. Finding ways to address the challenges and make the most of the benefits brought by migration requires dialogue and partnerships with non-EU countries. The Global Approach for Migration and Mobility is since 2005 the EU's framework for dialogue and cooperation with non-EU countries of origin, transit and destination. Dialogue and cooperation with non-EU countries in the context of the Global Approach is based on the identification of common interests and challenges. It has evolved into focusing on four main goals:

- a) improving and better organizing legal migration and facilitated mobility,*
- b) avoiding or reducing illegal migration in an efficient way, while safeguarding respect for human rights,*
- c) strengthening the synergies between migration and growth, and*
- d) strengthening international protection systems and external dimension of asylum.*

The rights and dignity of migrants have been regarded as essential cross-cutting dimensions of this policy framework. In particular, we believe that the EU should find a balance between, on one hand, the effective implementation of the Schengen Border Code and, on the other, the respect of human rights and the international obligations by the MS.

Since **mobility** is a term broader than migration, it is necessary to link the external dimension of migration with interrelated policies such as: **visa policies** (facilitation agreements and national policies of EU member states on long term stay, revision of the Visa Code), strategic partnerships, EU competitiveness and a common migration policy, capable of contributing to the implementation of the Europe 2020 agenda.

#### **HORIZONTAL ISSUES-HOME AFFAIRS POLICE**

The fight against corruption by the selective authorities (controlling bank accounts, testimony, seizure , withholding travel documents, use of technolog , the cross-checking of information, complaints of corruption, information processing , information of complainants about the outcome of their complaints, informing the competent authorities involved on it, noting public opinion etc )

The goal of creating a comprehensive system for obtaining evidence in cross-border cases.

The joint training and the creation of a common culture through exchange of experiences and best practices.

The need to improve interoperability between public - private partnerships to tackle cybercrime.

The Encouragement of competent authorities of member states to use the tool of joint investigation teams to the greatest possible extent.

The promotion of standards and best practices for European cooperation in law enforcement in third countries.

In the field of crime prevention to examine the role of EUCPN and the need of an observatory, as foreseen in the Stockholm Programme and the added value of this for m-s.

As to the strategy adopted for organized crime, we may need to include new forms of criminality beyond the types identified in the existing Penal System ( eg drug trafficking and other drugs, counterfeit products through internet, theft of metal items etc.).

Regarding the issues of human trafficking promote new agreements with the countries of origin of victims (ex. African countries).

To be able to review the list of third countries whose nationals are subject or not subject to a visa requirement, taking into account the presumption of risk criteria such as illegal immigration, public order and safety.

Considering that countries with a view to accession to the EU should be facilitated in the transfer of the EU acquis, we believe that law enforcement authorities could contribute through their expertise and general training on topics addressing organized crime, particularly for countries of the Western Balkans, in order to realize the European perspective.

### **External dimension and actions in the field of legal migration in the period after Stockholm.**

The main priority in relation to matters concerning the external dimension of migration, we believe should be on further strengthening cooperation with third countries of origin and transit of migratory flows on the basis of the principle of conditionality ). This principle is based on the bi-pole of providing development (or other) assistance to third countries in exchange for cooperation on the issues of illegal immigration (curbing migratory flows from the cooperation third country to the EU).

Consequently, in this context, any cooperation or funding or other assistance to third countries will be subject to effective cooperation of the third country in the field of readmission. The above development assistance can be part of the **Global Approach to Migration and Mobility** that is the relevant strategic framework of the EU. The application of these tools of the Global Approach to a third country (both facilitating legal migration and mobility of citizens towards the EU, as well as development assistance), requires seamless cooperation of this country to the EU preventing and combating illegal immigration (mainly under the cooperation on readmission).

The guidelines for the next programming period on the issues of immigration should have a tangible reference, beyond the principle of conditionality mentioned above, on the principle of "solidarity", as provided for in the Treaty of Lisbon. Specifically, in the next reporting period this principle should be translated into tangible means and enforcement mechanisms, with a view to ultimately develop a mechanism to ensure fair sharing of the burdens which M- S undertake from migration pressures.

Finally, the debate on the future prospects of the JHA could also focus on the provision of a feedback process and ongoing monitoring of the implementation of the strategic guidelines of the competent Council Working Groups in collaboration with the European Commission

As to the right of EU citizens and their family members **to move freely within the EU** it is crucial in our opinion to reflect on it, since it is one of the fundamental rights of the EU on which is based also the concept of European Citizenship. Statistical analysis presented by the Commission demonstrate that there is no abuse of this right and that the free movement of EU citizens and members of their families and the ability to live, work and study anywhere in the EU is one of the most precious rights that guarantee the EU citizens, the first European Treaty of Rome in 1957.

**C) WHAT PRINCIPLES COULD BE USEFUL IN CONSTRUCTING THE POST 2014 GUIDELINES? WOULD IT BE REASONABLE TO ALIGN POLICY PLANNING AND FINANCIAL FRAMEWORK CYCLES ?**

We believe that these new post Stockholm European guidelines should be governed by the principles of solidarity, fair burden sharing, co-responsibility, proportionality and “more for more” (positive conditionality) and their practical application, especially for those Member States adversely affected in various areas.

Furthermore, it is necessary to align EU’s policy planning with the next financial framework (2014-2020) in order to address the great challenges in EU migration policies and to obtain a more effective implementation of the strategic guidelines (Post Stockholm).

**JAIEX -FUTURE DEVELOPMENT OF THE JHA AREA EXTERNAL DIMENSION**

**A) Which thematic priorities should be highlighted for the post -2014 period in the external dimension of justice and home affairs sector?**

The external dimension is crucial for the successful implementation of the objectives of this Programme and should be fully coherent with all others aspects of Union Foreign policy. External relations are important for internal security. The EU’s Global Approach to Migration and Mobility provides a strategic framework for the external dimension of migration.

Migration and mobility are embedded in the broader political, economic, social and security context. A broad understanding of security means that irregular migration also needs to be considered in connection with organized crime and lack of rule and justice, feeding on corruption and inadequate regulation.

The EU should continue to give priority to transfers of skills, capacity and resources to its partners in order to prevent and reduce trafficking, smuggling and irregular migration and to strengthening integrated border management. Additionally, the multi-annual policy cycle ensures that intelligence-led approach guides the efforts aimed at tackling the major criminal threats facing the EU. Crime areas as illegal migration, human trafficking, fraud, drugs, cybercrime, counterterrorism should remain priority areas on the JHA agenda external relations.

Support mobility partnerships and in this context further promote the signature of readmission agreements with third countries and in particular countries of origin and transit, as well as visa facilitation agreements.

In parallel, reinforcement of the third countries capabilities in the sectors of rule of law and human rights, good governance, fight against corruption, security and stability and create a safe and solid environment for business, trade and investment.

Also the external dimension of Civil Law issues has proven over the years to be an important priority area. International cooperation can protect and facilitate the interests of our citizens and business.

Promotion of the “more for more” or positive conditionality principle should prevail across the whole scope of these relations.

**B) Should strategic partnerships be reflected in the post-2014 period –are there any new partner countries emerging in this context? Which thematic areas it concerns?**

Close cooperation is needed with neighbouring countries, countries with a MS perspective, countries of origin and transit, the strategic partners, with International Organizations and through regional cooperation. Greece gives great importance, in particular, to the reinforcement of relations with the countries of the Western Balkans, Turkey, the South Mediterranean, the Middle East, Pakistan, Afghanistan, Bangladesh, the Black sea Region, North and Central Africa.

## **2nd Contribution from Greece (EL)**

**SUBJECT: Working Party on Civil Law Matters (General Questions) - Presentation of views on the strategic guidelines in the area of Justice and Home Affairs (Council working document: 14898/13 JAI 901)**

Further to the above working document, and in connection with the three questions it contains on the future development of the Justice and Home Affairs area, we would inform you as follows:

Re the first question:

Taking into account the intense pace of the proceedings within the Council of the EU's working parties over recent years, which have resulted in the adoption of a large number of acts in the field of civil law in particular, it is in our view advisable to aim not so much to adopt new legislative measures, but rather to evaluate, simplify and improve the existing legislative tools. In this way, it is possible to achieve legal certainty and to simplify the relevant procedures for administering justice with respect for human beings and for the fundamental values of the national legal orders of the Member States.

Re the second question:

In our view it is particularly important to develop the European Union's external relations by placing emphasis on the implementation of both the multilateral and bilateral legal instruments in which the Union participates as an entity, by ensuring the Union's cooperation with third countries and by enhancing its role in various international formations, such as the Hague Conference on International Private Law, and the Lugano Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

Re the third question:

An endeavour to look into and coordinate the alignment of multiannual policy with the financial framework would be particularly worthwhile, in order to avoid a major disparity between policy drafting and the relevant financial programming resources.

## Contribution from Spain (ES)

### Spain's contribution to the debate on the future development of the Area of Freedom, Security and Justice

#### ➤ General Issues

- Spain considers that strategic programmes, such as those of Tampere, The Hague and Stockholm, have been essential to guarantee an adequate consolidation and optimal development of the Area of Freedom, Security and Justice. Therefore, **we support the adoption of a fourth strategic programme** that will guarantee the continuity of a framework which, during its nearly fifteen years of being in force, has proved its usefulness, especially in providing coherence to the important initiatives implemented.
- **Article 68 of the TFEU sets forth a very clear mandate for the Member States** to define, through the European Council, the “strategic guidelines for legislative and operational planning within the area of freedom, security and justice”.
- It would be desirable to move towards **harmonising the cycles of multiannual financial frameworks with policy planning programmes**, because the former should serve to finance the policies and strategies defined in the latter.
- The future action of the EU must stress the **importance of enhancing the quality of the implementation and consolidation of the *acquis***, but not precluding the possibility of its review, based on experience and the evolution of needs. Therefore, new legislative initiatives should only be launched once it has been verified that they are truly and strictly necessary.
- As a general rule, new initiatives should not only be accompanied by an economic study, but also by the **corresponding financial programme for their implementation**, which would cover—even if only partially—the expenses that they will entail for the Member States.

- Now that the system of **free movement of EU citizens** and their family members has become consolidated, Spain supports strengthening its legitimate use, which should be guaranteed, while at the same time strengthening the mechanisms to combat abuse and fraud (two phenomena that undermine this system).

➤ **Borders, Asylum, Immigration and Visas**

- The European Union's commitment to the content of the **European Union Charter of Fundamental Rights** must continue to prevail in immigration policies.
- Spain is in favour of an **admission policy** dependent on the capacity of labour markets, and especially focused on facilitating the arrival and establishment of talent and capital as an element boosting economic competitiveness at the international level.
- Efforts for the reception of asylum-seekers must be combined with **solidarity towards the Member States that are exposed to high levels of irregular immigration pressure**, so that they may provide humanitarian assistance to these immigrants. This solidarity must be expressed without prejudice to continuing efforts towards **integration policies to accept economic immigrants who are in a regular situation**.
- We support intensifying the **fight against trafficking in human beings** and against **irregular immigration**, promoting solidarity with the Member States that are most exposed to migratory pressure.
- Spain favours increasing the support for Member States exposed to high pressure due to **economic migration** in their efforts towards both legal and irregular migrants which are in a **situation of particular vulnerability**.

- Spain advocates the establishment of **effective return and readmission policies**, including both voluntary and forced return.
- For Spain, it is of vital importance to **strengthen cooperation with the countries of origin and transit** and to carry out prevention activities in order to foresee and prevent phenomena occurring at the EU's external borders. We consider it especially relevant for Europe to fund bilateral actions promoted by Member States with third States in this regard—border control, prevention of irregular immigration, etc.
- There is a need to strengthen the link between **migration and development**, and forging closer ties between foreign policy, migration policy and development policy.
- The **Common European Asylum System (CEAS) must become consolidated**, and the corresponding agreements be implemented. It is important to promote mechanisms for practical cooperation through the European Asylum Support Office (EASO).

#### ➤ **Judicial Cooperation**

- Spain considers it necessary to reflect on how to **maximise what has already been done**, analysing, in particular, the principal problems arising from the implementation of the different instruments approved, in particular those that are most important for civil and criminal judicial cooperation.
- New initiatives should contribute to favouring the **economic recovery of the EU** in an adequate and stable legal environment.

- Facilitating access to justice and streamlining cross-border procedures in the EU is an objective which should continue to be emphasised, and the best way to do that would be by maximising the new information and communication systems.
- There should be a regulatory framework governing **e-justice**. One of the aspects that such a framework should address is establishing a series of technological conditions that every legislative proposal should meet. Moreover, that regulatory framework should also envisage the need to accompany each legislative proposal with a study of its technological implications and solutions, mentioning possible alternatives, which should be in line with the previously-established conditions.
- In coming years, EU action in the field of Criminal Law will be influenced—without detriment to continuing with the roadmap of procedural safeguards—by the establishment of the European Public Prosecutor's Office, which will lead to significant changes in the Member States adhering to enhanced cooperation.
- **Regarding Civil Law**, an analysis of the problems that the approved texts pose for legal practitioners should be carried out, in order to thus correct the regulatory loopholes and deficiencies they may contain; one of those loopholes is the lack of common regulations on evidence in foreign Law in the framework of civil and commercial judicial proceedings.
- The process for the **accession of the EU to the European Convention on Human Rights** must conclude as soon as possible with precise and coherent internal rules.
- Notwithstanding the fact that the reform of the regulatory framework on **data protection** must be finalised, special attention must be paid to the protection of rights in the information society, on the basis of a balanced guidance, in accordance with the need to forge structures that are more competitive and favour technological development.

➤ **Police Cooperation**

- The **counterterrorism efforts** must be strengthened with measures to address the new challenges, such as those posed by independent cells, by *lone wolves*, and by foreign fighters. Moreover, a special effort must be made to combat radicalism and **the financing of terrorism**. Lastly, the possibility of using systems such as smart borders from the very outset in combating terrorism must be guaranteed.

In addition, in the field of counterterrorism, Spain also attaches great importance to the urgent implementation of the **TFTS** (Terrorist Finance Tracking System), to enable the European-wide sharing of information about financial assets in the area of counterterrorism.

- In the fight against **organised crime**, priority efforts should focus on guaranteeing the consolidation and adequate implementation of the measures reached during the previous programmes, and on optimising the use of the existing evaluation mechanisms, so as to detect with greater precision any aspects that could be improved, and carry out an adequate monitoring of the innovations.

As regards types of crimes, the fight against drug trafficking networks, paying particular attention to the countries of origin and the routes through which the substances are introduced into Europe, and to fraud, must remain a priority within the forthcoming strategic programme.

- Optimising the **use of databases by security forces**. On the one hand, a better use of systems already in existence, and on the other, developing and rapidly approving the EU Passenger Name Record (PNR) and the regulations on smart borders, to achieve greater effectiveness in combating terrorism and organised crime.

- Spain considers that particular attention should be paid to **cyberspace**, in all its facets (cybercrime, cyber security, the use of the Internet both as a facilitator of crimes and as a means to investigate).

It is necessary to advance resolutely in public-private partnerships, so as to facilitate cooperation with service providers.

Developing current regulations concerning *over-the-top* services (WhatsApp and the like), while fully protecting citizens' fundamental rights.

In addition to this, the European Union must support smooth cooperation among the different competent authorities in order to bolster the possibilities of success of investigations involving elements such as cloud computing.

Finally, specific mention should be made of the need to intensify the fight against child pornography.

➤ **External Dimension**

- Spain reasserts the **crucial importance of the external dimension in creating a genuine AFSJ in the EU**, and considers that this has not received enough attention to date. From now on, both the thematic priorities and the strategic relations should be designed bearing closely in mind the external perspective, in an increasingly globalised world in which we will only be able to address challenges through cooperation, agreement and close collaboration with third States and with the growing number of new actors in international society.

- **Thematic Priorities**

Regarding the **management of migratory flows** in their two dimensions, legal and irregular, Spain advocates cooperation with the States of origin and of transit, prioritising a preventive and multidisciplinary approach in order to intensify the two-way link between migration and development, and full respect for fundamental rights. We defend the Global Approach to Migration and Mobility, which we are implementing, as well as the launching of new instruments in line with the mobility partnerships, which must be provided with the appropriate EU funding. In this context, we advocate the opening up of channels on the path of what is known as the Rabat Process, which, to date, has had very positive results and has proven its effectiveness.

The **linkage between development assistance and foreign policy instruments, and migration**, must be strengthened.

In the **area of justice**, we believe that supporting the reform and modernisation of the judicial system is an essential requirement for consolidating the rule of law and for institutional capacity-building, which are crucial in order to achieve significant advances in the democratisation processes that are ongoing in many of the world's countries.

Spain advocates strengthening cooperation with third countries in **counterterrorism, drugs, and organised crime**. The planning of these actions must take into account, from the very outset, the external dimension.

- **Strategic Priorities**

Spain considers that the Southern Neighbourhood of the Mediterranean requires priority attention. It is a region suffering great migratory pressure, an area of simultaneous confluence of migrants and refugees from many of the world's economically least developed and politically most unstable regions. The countries responsible for the EU's southern border cannot face this challenge alone, much less now that a number of countries on the southern Mediterranean are in the midst of complex political transitions, with uncertain outcomes. It is equally essential to highlight the importance of cooperation with this region, in particular with the countries in the Sahel, given their relevance from the point of view of security (terrorism, drugs, organised crime) and justice (judicial cooperation and strengthening of fundamental rights).

Other areas where Spain considers that the EU should pay priority attention are Latin America and West Africa.

28 November 2013

## **Contribution from Finland (FI)**

### **THE FUTURE OF THE EU JUSTICE AND HOME AFFAIRS AREA; FINNISH VIEWS**

*The implementation of the Stockholm Programme for Justice and Home Affairs (2010–2014) ends in December 2014, and the European Council is to discuss new strategic guidelines for the development of the European area of freedom, security and justice in June 2014.*

*Ever since the Tampere Programme was adopted in 1999, multi-annual programmes have provided a comprehensive framework for the development of JHA matters. This is a policy field with direct influence on the lives of our citizens and on the operations of our businesses. This is also a policy field where Member States have a particular interest to give guidance to the future of integration, as reflected in the Treaty (Article 68). For these reasons Finland, together with a group of Member States, signed a letter in the Hague on 18 November 2013, calling for a new strategic vision and close involvement of the JHA Council in the preparation of the new policy framework. We need strategic guidelines that are built on the following guiding principles: on the future of JHA that focus on the quality of legislation and on effective implementation of existing legislation.*

*Recent events in Lampedusa, current issues related to cyber security and the growing concern of our citizens in relation to the protection of privacy are examples that underline the need to ensure that the EU is prepared to answer unforeseeable challenges and equipped for the future. Also the economic situation has to be taken into account in the making of the new guidelines. Solid basis is needed for future JHA policies.*

*In the area of Justice, Finland calls for a strong commitment to mutual recognition as the cornerstone of judicial cooperation also in the future. Common principles are needed for EU criminal law policy, focusing on cross-border serious crime. Regarding civil law cooperation, we must focus on solving practical cross-border problems of EU citizens and businesses, while fully respecting the Treaty, on one hand, and increasingly investing in multilateral, international cooperation, on the other.*

*In the area of Home Affairs, Finland calls for developing cooperation between the authorities, ensuring resources and operation of agencies, and strengthening the external dimension of internal security. We also call for more focus on maritime policy.*

*On a more specific level, when developing the EU Home Affairs agenda, the EU should pay particular attention to administrative measures to combat organised crime and put more emphasis on fight against cybercrime (including terrorism). In addition, we call for more effective return and readmission policy. Finland also underlines the importance of the Smart Borders package.*

*Finally, Finland considers the European Union to be a community of shared values. It is crucial to guarantee and follow-up the fulfillment of fundamental rights in the EU.*

*As a contribution to the discussions on the future of JHA, this paper presents the Finnish views on the abovementioned matters.*

## **I THE FUTURE OF THE EU JUSTICE AND HOME AFFAIRS AREA; FINNISH VIEWS**

### ***The JHA sector needs strategic guidelines for the future***

We appreciate the fact that the multiannual programmes of Tampere, the Hague and Stockholm form a continuum that has for the past 15 years provided a comprehensive framework for the development of the area of freedom, security and justice in the EU. A long-term strategy is needed also after year 2014. The next strategy could cover the forthcoming financial framework period. Human rights, democratic institutions and the rule of law must form the foundation for integration also in the future.

Finland considers the unity of the Union to be the primary objective of the JHA sector also in the future. The previous multiannual programmes have provided a possibility for the Member States to establish a common view on the direction of integration in this policy area.

It is important to bear in mind that the strategic guidelines following the Stockholm Programme will govern the cooperation in the JHA sector in a new situation, where the restrictions on the scope of jurisdiction of the Commission and the European Court of Justice concerning police and judicial cooperation are removed and the Treaty of Lisbon enters fully into force in this respect.

The European Council is to discuss the strategic guidelines for the area of freedom, security and justice in June 2014. Excessive details should be avoided in the future guidelines in order to ensure a possibility to flexibly react to new, unforeseeable challenges. We see it essential that the JHA Council can, if need be, concretise the guidelines, the manner of implementing them and the schedule for the implementation. This can be done for example by setting up a multiannual programme or action plan.

It is evident that the future guidelines have to be prepared in an open and broad-based cooperation between EU institutions, Member States and civil society. It is important that the Commission, the Council and the European Parliament are committed to promote the set objectives. The implementation of the guidelines should be effectively monitored. Regular follow-up reports are needed.

***Focus must be kept on the quality and implementation of legislation***

The planning of the future guidelines should be based on the completion of the Stockholm Programme, the effective enforcement of the decisions made and the extensive assessment of the effectiveness and functionality of the enacted instruments. This requires a comprehensive assessment of how far the process of creating an area of freedom, security and justice has advanced, how the existing EU legislation works in practice and what kind of new challenges may require EU-level measures in the years to come. We urge the Commission to prepare a thorough assessment on these matters in order to facilitate the preparation of the new guidelines.

It is vastly important to pay special attention to the implementation of the existing EU instruments in the Member States. The implementation must be monitored closely.

*Economic situation has to be taken into account in the making of the new guidelines*

Strengthening the European area of freedom, security and justice supports for its part the economic growth in the EU. It is important that the Europe 2020 strategy and the future guidelines for the JHA sector support each other and build a consistent entity. Focus should be on solving concrete problems hindering cross-border functions related to the everyday life and business life, for example by making cross-border dispute resolution more effective and by facilitating free movement of persons. In order to improve stability, growth and employment in Europe, special attention must also be paid to the effective implementation of the legislation concerning legal immigration.

The financial crisis has clearly brought out somewhat neglected phenomena that call for more robust EU-level attention. We put emphasis on the EU making its anti-corruption measures more effective. The Commission must report on the corruption situation every two years, and the Council shall ensure that the results are monitored. The EU anti-corruption mechanism provides a new tool for monitoring the corruption situation in the Union and for intervening in it. We must make full use of it.

The general economic situation also has implications for internal security. The threats posed by the recession on the Member States' internal security concern a variety of different policy areas. For this reason, the threats need to be combated as a joint effort across sectoral borders — strengthening cooperation between law enforcement authorities alone will not be enough. Through action of the Member States and on EU-level, economic growth can be promoted by reducing the opportunities for the shadow economy and other criminal activity. In addition, it is necessary that effective preventive measures be taken to tackle the use of tax havens and money laundering which undermine economic growth.

## II THE FUTURE OF THE EU JUSTICE POLICY; FINNISH VIEWS

### *Mutual recognition is the cornerstone of judicial cooperation also in future*

Mutual recognition of decisions and judgments must continue to be the cornerstone of judicial cooperation. Prerequisites for mutual recognition must be strengthened and impediments removed. Impediments may result for example from defective implementation of mutual recognition instruments in certain Member States. In future, it is of utmost importance to ensure the high quality, usability and effective implementation of the EU instruments in this area. We encourage the Commission to initiate a comprehensive assessment of the mutual recognition instruments so that it is possible to assess which of the instruments function well, how extensively the instruments have been implemented and which may potentially be unnecessary. At the same time, it should be assessed whether the legislation should be consolidated or amended and whether there are any potential gaps in legislation that require further measures.

We believe that in order to enhance judicial cooperation by way of mutual recognition, trust between the Member States must be strengthened. Strengthening mutual trust has to be one of the key objectives for the cooperation also in future. On a more concrete level, a key priority is to complete the Road Map on Procedural Rights. Fulfilment of the minimum requirements for a fair trial strengthens the position of an individual especially in cross-border situations. Attention should also be paid to prison conditions by carrying on the work that was started by the Green Paper of 2011.

### *Common principles are needed on EU criminal law policy, focusing on cross-border serious crime*

Finland believes that the EU criminal law policy should focus on mutual recognition. Approximation of definitions of criminal offences and sanctions in the Member States is justified mainly when it comes to serious crime with a cross-border dimension. Added value brought by EU legislation is most evident in these cross-border cases; here we see the most concrete impact on the risk of getting caught and on the interests to solve the crime.

We attach high priority for the future JHA guidelines to encompass common principles that steer the EU criminal law policy. In our view, such principles include:

- Criminal law being enacted at EU level only when it is absolutely necessary in relation to the interests to be protected, and only when all other measures have proved to be insufficient.
- In the determination of the levels of sanctions, the internal consistency of the individual Member States' penal systems is to be respected. We firmly believe that it is not justified to enact EU-level legislation on minimum sanctions.
- The JHA Council is to be generally responsible for determining the definitions of criminal offences and sanctions also in respect of those criminal law provisions that are included in the legislation in other EU policy areas.
- Article 83 TFEU has to be used as the legal basis whenever substantive criminal law is enacted in the EU, as it was specifically created to be the legal basis in this field in the Lisbon Treaty.

***Civil law cooperation should focus on solving practical cross-border problems of EU citizens and businesses***

The competence of the EU in the field of judicial cooperation in civil matters is restricted to cover only cross-border cases by the Treaty, and harmonisation of legislation concerning national judicial procedures in the Member States is not needed. This applies also to national insolvency laws. Having said this, we do emphasise the importance of cooperation that is based on the principle of mutual recognition as well as improvement of the consistency of the current civil procedure instruments. The support provided by the European Judicial Network should also be utilised to full extent.

Several instruments concerning the civil procedure have been created in the EU. It would, however, facilitate and enhance the practical application of these instruments, were they mutually consistent and based on similar solutions that steer the practical work. EU instruments concerning cross-border civil procedure should be made clearer and more uniform. The functionality of all these instruments should be assessed as a whole.

### ***Focus of judicial cooperation should be shifted towards the international dimension***

The Union must increasingly invest in multilateral, international cooperation. Within limits of its competences, the EU must actively and constructively work for the goal of getting as many neighbouring countries and strategic partners of the EU as possible to accede to the conventions of the Hague Conference on Private International Law and of the Council of Europe. This strategic goal is important to bear in mind, despite the pending discussions on the division of competences. On the other hand, the credibility of the EU is enhanced if the instruments of international law that the Union has negotiated are implemented in all Member States without delay. EU legislation that overlaps with international commitments must be avoided. On this basis, a strategy for the judicial cooperation in international relations must be developed for the EU.

### ***Protection of personal data must be guaranteed***

Protection of privacy is a growing concern of our citizens. It should be noted that under Article 16 TFEU, everyone has the right to the protection of personal data. Respect for this right must be duly taken into account also in relation to the external relations of the EU.

Further EU action is needed on the question of transferring Passenger Name Record (PNR) data to third countries. We consider it important that the EU has a consistent and comprehensive approach to PNR data transfers to third countries and that the transfers are conducted in accordance with the international agreements concluded between the EU and the third countries. The EU should aim at establishing internationally applicable norms for the transfers and use of PNR data.

## ***Respect of fundamental rights must be guaranteed in the EU***

European integration is founded on a common value base which is not to be compromised. There is a need to further enhance the common values recognised in Article 2 of TEU, such as democracy, the rule of law and fundamental rights. Strengthening the respect of the common values in the EU would ensure the effectiveness of EU law, increase mutual trust and reinforce the credibility of EU's human rights policy. To this end more effective procedures should be established to monitor compliance with the common values; such a method could aim at contributing to an annual debate on the respect of fundamental rights and the rule of law in the European Union. Our views are expressed more closely in our paper distributed in the *Assises de la Justice*.

The EU is, under the Lisbon Treaty, required to accede to the European Convention of Human Rights. Finland wants to see the accession to be realised as soon and as extensively as possible.

The entry into force of the Treaty of Lisbon also requires that the EU Agency for Fundamental Rights (FRA) be strengthened. In order to do this, the competence of the FRA has to be clarified so that it covers the police and judicial cooperation of the Union and meets the requirements of the Lisbon Treaty. Furthermore, the research data collected by the Agency must be utilised in the EU more than at present, and the Agency's expertise taken into full use also in the legislative work within the EU. It is only logical that the FRA be consulted in connection with legislative projects that are linked to the fundamental rights, and the Agency guaranteed a right to issue statements on its own initiative without the institutions' express request to do so. It would be justified to have the FRA participate also in the assessment of the adherence (Article 7 TEU) to the values which the Union is founded on.

We have to be ready to admit that the EU has still a lot to do when it comes to the prevention of discrimination. Victims of discrimination should be guaranteed equal minimum protection irrespective of the discrimination ground. Our aim is also to establish a uniform policy for the Union when it comes to guaranteeing the rights of sexual and gender minorities.

## ***Open, efficient and independent EU administration must be promoted***

We emphasise that after the entry into force of the Treaty of Lisbon, the right to good administration is a fundamental right of citizens. Today there are some core elements of good administration that are merely regulated through soft law or unilateral commitments given by the institutions. We believe that all core elements relating to the exercise of fundamental rights need to be laid down by law. The future Article 298 TFEU Regulation should provide for standards of minimum quality and procedural guarantees that would be horizontally applicable to all Union administration. Our views are expressed more closely in our paper distributed in the *Assises de la Justice*.

### **III THE FUTURE OF THE EU HOME AFFAIRS POLICY; FINNISH VIEWS**

#### **1. Horizontal priorities**

##### ***Implementation of legislation and other EU initiatives should be ensured***

The primary focus should be placed on the efficient implementation and monitoring of adopted EU legislation and initiatives. The Member States should make efforts to ensure a uniform application of EU legislation and other instruments, and the Commission should take a stronger role in monitoring their implementation.

In the coming years, it is essential to ensure effective implementation of the second-phase legislation on the Common European Asylum System, the Schengen Governance package, and legislation concerning the European border surveillance system (EUROSUR). Steps should be taken to promote further approximation of practices by intensifying the operational cooperation between Member States with the support of European Asylum Support Office.

EU legislation on legal migration is likely to be completed during the Stockholm Programme. Finland considers that there is no particular need for new EU legislation once the directives that are currently being discussed are adopted. To improve European stability, growth and employment, it is necessary that effort is made to ensure effective implementation of common legislation.

Cooperation in managing migratory pressures in the EU is guided by the roadmap *EU Action on Migratory Pressures*. Implementation of this document will play a key part in combating illegal immigration in the coming years.

Under the leadership of the Commission, action should be taken to draft recommendations, or a handbook, concerning Integrated Border Management (IBM). This would promote uniform implementation of the IBM not only in the EU, but also in applicant countries and in countries in which the EU finances projects associated with the IBM.

Implementation of the EU Information Management Strategy needs to continue, but it could be done in a more effective and focused way. The Commission could for example take a more active role in taking the matter forward.

Finland supports the comprehensive reinforcement of the EU's disaster response capacity. The decision concerning the EU's new Civil Protection Mechanism should be implemented in the Member States so as to ensure international capacities to provide assistance, and improve prevention and preparedness for all types of disasters.

### ***Cooperation between the authorities should be developed***

Cooperation between Member States' authorities should be developed further, on practical and concrete terms.

In spring 2013, the Commission released the first *Guidelines for the cooperation between Border Guards – Customs administrations working at the external borders*. The Member States should promote cooperation between these authorities in accordance with the proposed guidelines and engage in an active exchange of best practices. It is important that recommendations be drafted, under the leadership of the Commission, concerning cooperation between all authorities both at national (including police, border, coast guard, customs, visa, immigration and asylum authorities) and at EU-level (inter-agency cooperation).

Decisions made by one country — for example in issuing residence permits — may have repercussions elsewhere in the Schengen area. Member States may, within the scope of their national legislation, grant residence permits on humanitarian grounds or regularise large number of immigrants. Measures could be taken to improve the exchange of information on developments at national level in the area of regularisation/asylum seekers who do not obtain refugee status or subsidiary protection but who cannot be returned.

In improving the exchange of information between law enforcement authorities of the Member States, and between the Member States and the agencies, as necessary, particular attention should be paid to the opportunities that automation offers in terms of implementing the principle of availability. It should also be possible to employ new instruments, if an operative need for them exists, while respecting fundamental rights and guaranteeing data protection.

The priorities which focus on tackling organised crime, endorsed by the Council, should remain a key instrument that guides action by EU institutions, agencies and the Member States.

### ***Resources and operation of agencies should be ensured***

In Finland's view, the agencies have a central role in terms of maintaining EU internal security and in implementing and deepening the associated policies. This is why it is particularly important to ensure that the agencies have the operating conditions necessary to carry out their duties in accordance with the current mandates.

### ***External dimension of internal security should be strengthened***

The EU Internal Security Strategy includes a section on the external dimension of internal security, but so far progress on it has been slow. The external dimension of internal security should be given a considerably greater role in the upcoming guidelines. The guidelines should emphasise the EU's external dimension as a necessary element in the area of internal security. Key priorities of internal security should be aligned with EU external relations policy. Cooperation with third countries essential in terms of internal security should be developed by agreeing on common strategic objectives and priorities for practical collaboration.

### ***Maritime policy should be more in the focus***

Development of cross-administrative activities and efficient inter-agency cooperation in the maritime domain requires more cost-efficient use of maritime surveillance and executive means, in particular. The EU needs a well-functioning information sharing environment to support surveillance measures. This will allow cost-effective action to be taken to improve maritime safety, fight against crime and protection of the maritime environment. The potential offered by EUROSUR, for instance, in terms of using transnational surveillance resources should be made full use of, also in joint maritime operations coordinated by Frontex. Emphasis should also be placed on cooperation between European coast guards.

## **Sector-specific priorities**

### ***Administrative approach to organised crime should be strengthened***

New and more efficient ways should be sought to combat organised crime and other forms of serious crime which pose a threat to EU internal security. Therefore, the upcoming guidelines should pay particular attention to "alternative" or "administrative" methods to combat crime. In this regard, action should be taken to improve the exchange of information between law enforcement, judicial and administrative authorities (such as licence authorities) in the Union. At the same time, we should analyse whether or not there is a need to prepare common rules and procedures to ensure effective implementation of administrative decisions (such as prohibition to pursue a business) made by the Member States in the entire EU area.

### ***Fight against cybercrime (including terrorism) should be given a strong emphasis***

Fight against cybercrime should be given a strong emphasis in the strategic guidelines, in the Commission Work Programme and in the implementation of the EU Cyber Security Strategy. The operating conditions of Member States' law enforcement authorities to detect, prevent and investigate criminal activity taking place in information network environments should be drawn closer together at EU level. As regards cybercrime, and cyber terrorism in particular, special attention should be paid to the fact that the Internet and other network platforms have a central part to play in terrorism threats and radicalisation. Due to the global nature of the net, cooperation with the EU and the Council of Europe and the UN, in particular, is of paramount importance. For this reason, cooperation with third countries in the fight against cybercrime should be developed.

### ***More effective return and readmission policy is needed***

A well-functioning asylum system needs a credible return policy. In this regard, further EU-level efforts are needed. The priority is to implement readmission agreements already in force and to complete outstanding mandates. EU's readmission strategy should be further operationalised, including incorporating issues on readmission into a broader and coherent cooperation with third countries.

From Finland's perspective, it is desirable that the EU's readmission agreement network be extended in the post-Stockholm phase to relevant third countries. Negotiations could be launched with one or two new countries of EU interest. Commission's resources to deal with readmission issues should be increased. Frontex should be given a more prominent role in coordinating joint operations and in supporting the operational capacities of Member States in return issues. Human rights standards must be fully respected in the framework of return policy.

***Smart Borders package should be operational before visa free travel is implemented with new countries***

It is important that the information systems included in the Smart Borders package be taken into use before visa liberalisation is implemented with any new large third countries. This will ensure that border control duties (including growth in cross-border traffic) can be managed in a flexible and cost-effective way, while also ensuring internal security. In border checks, the focus should move away from a "country-centric" approach towards a "person-centric" approach.

## **Contribution from France (FR)**

### **Note from the French authorities presenting France's comments on the next multiannual programme in the area of justice and home affairs (JHA)**

**Reference: 14898/13**

On the basis of the mandate given by the European Council in its conclusions of 27 and 28 June 2013, the Presidency of the Council has asked the Member States about their priorities in the framework of the next multiannual programme in the JHA area.

France wishes to give the following replies to the questions put by the Presidency:

#### **I. Regarding the strategic priorities and the cross-cutting priorities to be highlighted in the future post-Stockholm document**

France would like the future programme to reflect a political will adapted to the geopolitical context and its developments.

France wishes to emphasise three strategic priorities:

- to legislate less in order to improve policy implementation;
- to promote the sectoral decompartmentalisation of JHA policies in the European Union;
- to have an efficient policy "evaluation/adaptation" cycle.

#### **I.1: Legislate less in order to improve policy implementation**

The aim is to promote the visibility of the European Union's political action by the systematic and determined implementation of the adopted instruments.

After a period of intensive legislative activity the European Union must now construct real policies that invigorate the area of freedom, security and justice and make it effective and tangible. **Based on the legislative tools adopted** (and supplementing them where the need arises), these policies must, in order to be effective, fully implement existing arrangements, emphasise systematic coordination between national action and European action - the one enhancing the effectiveness of the other - and mobilise the financial programme funds.

Implementation of the acquis means that the emphasis has to be placed on **training, on the the development of practical tools** that enable Union policies to be grounded in reality (agency activities, e-justice etc) and on the enhanced involvement of practitioners.

## **I.2: Promote sectoral decompartmentalisation**

**Synergies between the JHA area and other European Union policies must be strengthened.** There are many examples: migration and development assistance in the context of the global approach, internal security and external relations, security and industrial and research policy, civil justice and consumer protection, data protection and international trade, security and energy policy or transport policy, and so on.

Greater attention must be paid to elements of the area of freedom, security and justice that touch upon the Union's external policy. This continuity will be particularly relevant to the formulation and development of European migration policy, including where border controls are concerned, or for the purpose of strengthening the fundamental link between internal security and the EU's external policy. In this regard all the tools that enable the Union to act more effectively, be they tools specific to area of freedom, security and justice or external policy tools, must be mobilised and synergies between them created.

Practical arrangements (occasional or ongoing) for bringing Council working parties together and improved use of existing working parties (JAIEX, CATS, etc.) could contribute towards that end.

### **I.3: Evaluate and adapt measures and policies as required**

An efficient policy "evaluation/adaptation" cycle will have to be established without duplicating existing processes, in the Union framework or otherwise.

There should in fact be a capability to evaluate certain target policies in order to check firstly whether they can be adapted to the evolving situation, requirements and new risks (qualitative aspects), and secondly whether the objectives have been achieved (with quantitative aspects necessarily based on objective criteria), with a view to being able to carry out remedial measures.

## **II. Sectoral priorities**

### **II.1: In the justice area:**

#### **II.1.1: Ensure the effectiveness of the European judicial area**

France is of the opinion that, for the European judicial area to be credible, the effectiveness of the measures adopted over the years must henceforth be the first priority.

Here the emphasis must be placed on three kinds of action:

- Enhance the training of practitioners

For rights to be effective, legal and judicial professionals must master the legal instruments. An ambitious approach, based on the provisions of Articles 81 and 82 of the Treaty which confer competence on the Union in this area, must henceforth be taken to enhancing professional training as outlined in the Stockholm Programme <sup>1</sup>.

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<sup>1</sup> This ambition is also shared by the European Parliament which adopted three resolutions on the matter in 2010, 2012 and 2013.

France considers it necessary for the provision of European judicial training to be better organised, taking account of specific national circumstances. A discussion involving actors at both national and European levels is essential and must be a priority. The adoption of the new multiannual financial framework must enable the necessary funds to be provided to make training a real priority. Beyond that, thought could be given to the idea of a European training centre for practitioners.

- Strengthen professional networks

Judicial networks covering criminal and civil law are valuable tools in day-to-day judicial cooperation. The experience gained over more than ten years needs to be assessed and, where appropriate, consideration given to the necessary adaptations.

Other professional networks (European Council of Networks for the Judiciary, Network of the Presidents of the Supreme Judicial Courts, Network of the Councils of State and administrative courts, judicial professions networks (lawyers, notaries, bailiffs etc)) also constitute sources of valuable expertise that the EU should support more and on which it should absolutely rely.

- Exploit digital potential to the full

As regards the information provided to practitioners as well as citizens seeking justice, particular attention must be paid to the **e-Justice portal**, which should become the preferred medium for information about European Union law, facilitating secure, paperless exchanges in the near future. The next multiannual programme should provide the opportunity to make the portal permanent and improve its governance using a legal instrument that could give it a real political dimension.

## **II.1.2: Ensure the protection of fundamental rights:**

- Ensure compliance with the fundamental values of the European Union and the rule of law

Recent developments have shown that the protection of the Union's fundamental values within its territory is a priority action.

Convinced of the need not only to reaffirm the values of respect for human dignity, freedom, democracy, equality and the rule of law but also to ensure its effectiveness for the benefit of all the Union's citizens, **France shares with other Member States a willingness to set up, in compliance with the Treaties, a mechanism for providing a political solution to suspected breaches of these values that would link the Member States and the European institutions.**

France might be moved to make proposals in this area.

- Continue and complete the EU's accession to the ECHR and other instruments for protecting and promoting human rights

France welcomes the agreement reached in the negotiations in the Council of Europe and would like to see clear progress made with other elements of this dossier, in particular the internal rules, so as to finalise once and for all the Union's accession to the European Convention on Human Rights as soon as possible.

More generally, the Union must conduct a serious examination of its external competence in the promotion and protection of fundamental rights without agreements being concluded which duplicate other international obligations that already bind the Member States, or subjects being duplicated in Community law without bringing any added value .

- Complete the modernisation of the European legal framework as regards personal data protection

The meeting of the European Council should provide the Union with the opportunity to express its determination to finalise the work under way in the area of personal data protection by acquiring an ambitious legal framework ensuring that the Union has a uniform approach to this subject, both internally and in relation to third States, that is commensurate with the major challenges of digital development.

The external dimension of the European Union's action is important in this regard and must lead to greater protection for the data of European residents when they are transferred outside the European Union.

- Initiate a debate on the tasks of the European Agency for Fundamental Rights

The recent evaluation report by the European Agency for Fundamental Rights and the Council conclusions which are due to be adopted soon have laid the groundwork for a debate on the Agency's tasks. There are activities to be carried out in the future, aimed in particular at bringing police and judicial cooperation within the scope of the Agency's action and enabling Member States and the Union to make optimum use of the Agency's expertise, including, where applicable, within the framework of the Union's external action.

- The quality of Member States' judicial systems: a vital element of mutual trust

France has long held the view that the principle of mutual recognition entails strengthening mutual trust and that in this regard activities aimed at enhancing the quality of the judicial systems may be relevant at European Union level, while respecting the competences of the Member States. It therefore welcomes the fact that this issue is now being discussed. On the other hand, the Commission's current preference for discussing this subject from the viewpoint of the European Semester is unsatisfactory. It is true that a high quality judicial system is a structural element that can promote economic growth and competitiveness.

Nevertheless, the economic angle cannot be the only factor taken into account as regards the quality of judicial systems. That is why France would like to see work extend to the quality of justice on the basis of Article 70 TFEU, which makes it possible on the one hand to set evaluation mechanisms in order to facilitate the development of mutual recognition and, on the other, to associate Member States closely with the process, which is essential in such a sensitive area.

Here too, France wishes to join its partners in continuing this discussion in the coming months.

### **II.1.3: Ensure the effectiveness of the acquis in the area of civil justice**

- Consolidate and codify the legislative acquis

Over the past ten years the European Union has been extremely active in legislative terms. This acquis should now be implemented in full, consolidated and, above all, become part of established practice. The **European acquis** in the area of European private international law needs to be **codified** to make it more intelligible to legal practitioners<sup>2</sup>. The "better legislation" approach must be applied in full to take account of citizen's real needs and to ensure that both they and the legal practitioners take ownership of the existing legislative framework.

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<sup>2</sup> In this regard, for example, Regulation (EC) No 805/2004 of 21 April 2004 creating a European Enforcement Order for uncontested claims, which was justified at a time when there was still one exequatur procedure, even in simplified form, could be usefully abandoned with the entry into force of the new Regulation (EU) No 1215/2012 of December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

- Adapt existing instruments if necessary

A number of legislative acts will need to be revised during the next five years. It will then be important to analyse their operation in practice (including cases where the implementation of the adopted acts may be disappointing) and to make the necessary adjustments and/or revisions<sup>3</sup>.

The revision processes will have to take full account of the digital aspect, which not only involves paperless exchanges but also a high level of personal data protection<sup>4</sup>.

Care should be taken to ensure consistency in this area. Decentralisation must be paramount here. Reinforced consistency between the development of consumer law and the more horizontal area of civil law is therefore to be desired.

Finally, with regard to sectoral instruments in the area of recognition and execution of judgments, European legislation in this sphere would appear now to be exhaustive as a result of the previously emphasised aim of the Stockholm programme.

Even so, it is necessary to continue with European discussion and initiative in areas where the need for regulation in cross-border situations is felt. The question of an instrument on recognition and execution of measures taken in relation to incapacitated adults covered by a protection measure should accordingly be raised.

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<sup>3</sup> For example, the revision of the Rome I, Rome II or Brussels II Regulations will need to be preceded by a careful assessment of their application, to determine how far they will have to be amended or supplemented. In view of the relatively recent entry into force of those regulations (17 December 2009 for Rome I, 11 January 2009 for Rome II), and the necessarily restricted feedback on experience by the Member States, the delivery of the application reports to be sent to the Member States by the Commission (Article 26 of the Rome I Regulation and Article 30 of the Rome II Regulation) is a necessary pre-condition for any initiative on the matter.

<sup>4</sup> In this context, particular attention must be paid to Regulation (EC) No 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

#### II.1.4. Criminal justice

- Implement the acquis

Under the Stockholm programme, eight directives have been adopted and two negotiation processes are about to be concluded. The future programme will need to ensure proper implementation of those instruments. With all due respect to the differing legal traditions of the Member States, it is important to favour the emergence of a common judicial culture allowing a homogeneous application of legislation.

France believes that close attention should be paid in particular to the "victims package" (Directives 2011/93/EU and 2012/29/EU and Regulation (EU) No 606/2013).

All means of allowing ownership of the legislation by the public concerned must be supported. Over and above the training of practitioners and the e-Justice portal referred to above, the importance of the tools in the form of meetings of experts organised by the Commission, drafting of handbooks - such as those produced for the European Arrest Warrant and ECRIS - and the assistance made available by the EJN, must be highlighted.

- Complete on-going work

To ensure that the rights of individuals subjected to criminal proceedings are effective, it is essential that the work envisaged in the Stockholm roadmap should be completed. The future programme should therefore call for rapid adoption of the last three measures proposed as regards **procedural guarantees**, and in particular the directive on legal assistance.

The creation of a European Public Prosecutor's Office should also be a priority aim in that it will enable improved effectiveness in combating fraud against the Union's financial interests. France would like to give a reminder of its strong support for the adoption of this tool, whatever form the discussion may take (enhanced cooperation or not).

Lastly, support should be given to the adoption of the regulation revising Eurojust, which is an important body in the fight against serious cross-border crime and provides a valuable contribution on complex multilateral questions.

- Complete the legislative framework

At the end of the transitional period provided for in Protocol 36 to the Lisbon Treaty, it might be worth considering **a recast of a number of provisions which in some cases are considerably outdated**. France would accordingly favour the tabling of a comprehensive instrument on mutual recognition of civil and criminal decisions on freezing and confiscation measures, and of a proposal revising Framework Decision 2001/500/JHA on money laundering.

France wants the Union's *acquis* to be preserved in any case. The new texts amending and replacing the framework decisions adopted prior to the entry into force of the Lisbon Treaty **must not allow any compromise of the level of rapprochement already achieved**.

The need for effectiveness and efficiency in judicial cooperation now makes it imperative to complete the discussions which have long been ongoing regarding the **European criminal register**. It is indeed paradoxical that while major progress has been made on police cooperation, exchanges between Member States on criminal sentences of which individuals may have been the subject remain very much partial, as sentences passed on non-Union nationals are not exchanged. Similarly, exchanges of information in an administrative framework for the purpose of preventing offences remain very partial.

**Article 83(2) TFEU** now allows criminal law to contribute to ensuring the effective implementation of other EU policies. While France favours the adoption of the proposals on market abuse and the protection of the EU's financial interests, it takes the view that although the future programme must encourage the use of this legal basis, it should do so in a highly targeted manner.

A discussion must be conducted on a case-by-case basis, as criminal law is not always the most appropriate response to dissuade or effectively penalise a breach of Union rules. In any case, in many fields of law, the use of criminal sanctions must remain subsidiary, graduated and proportional (these general principles of criminal law are common to all the Member States of the Union).

## **II.2: On migration, asylum, border management and visa policy**

NB: The contribution below incorporates the key ideas of the non-paper circulated on 29 November 2013 by Austria, Belgium, Denmark, the Netherlands and Sweden, with the drafting of which France and Germany were associated. In addition, it needs to be supplemented by continuation of the discussion at national level.

### **II.2.1: On asylum and international protection**

The implementation of a true common area of protection, sharing of responsibilities and solidarity must be pursued through a consistent **transposition** and **implementation** of the Common European Asylum System (CEAS), the aim of which is to promote equal treatment in the examining of comparable asylum applications.

The **European Asylum Support Office** (EASO), by developing exchanges between the authorities of the Member States and the operational support with which it is able to provide them, must be a key protagonist in this harmonisation of national practices and must be prepared, through the Early Warning System, for a possible massive influx of asylum applications.

Lastly, there should be a full assessment of the implementation of **regional protection programmes** demonstrating European solidarity with non-EU countries having to cope with receiving a large number of refugees, in order to draw lessons from the action taken and to improve the effectiveness of EU assistance, with the aim of consistent and coordinated use of the various instruments for action available to the Union.

## II.2.2: Concerning visas and borders

**European visa policy** needs to strike a careful balance between the desire to highlight the economic attractiveness of the European Union and the need to ensure the Union's security and control of migration flows. The risk analysis leading to visa exemption cannot be restricted to the "country risk" alone, but must at the same time take into account the "individual risk".

On the visa system, the list of countries subject to and exempt from a visa requirement will in future have to be revised more regularly, taking full account of those two imperatives.

**Facilitation agreements** favouring entry for foreign talent, economic actors from countries in expansion and mobility must also be accompanied by the counterpart of guarantees against security and/or migratory risks, depending on the situation. They must continue to be associated with the simultaneous conclusion of readmission agreements (including those for non-EU nationals) in irregular situations. Such agreements are not intended to be seen automatically as an initial phase prior to a liberalisation policy; they should represent a real improvement for *bona fide* travellers. Future agreements should incorporate mechanisms for their revision, suspension, expiry or even revocation.

It is also vital in this area to agree on harmonised practices, and to this end to strengthen and develop **local consular cooperation** in order to ensure safe, consistent and reliable processing of visa applications and prevent "visa shopping" and any sense of arbitrariness; the European Commission and the European External Action Service must be fully associated with this cooperation.

There must be a more multisectoral approach than at present to **integrated border management** so that it is perceived as a whole, both within the competent arms of the EEAS and the Commission and within Council bodies. To refuse to take this complexity into account runs the risk of condemning the European Union to action out of step with real needs in this area.

For the years to come, the implementation of a system of **smart borders**, taking full advantage of the new technologies in order better to meet our needs as regards fluidity and control of external borders, represents a key factor.

**Frontex** must play its part to the full, stepping up its operational activity and its cooperation with the countries of origin and transit in irregular migration flows, as well as with the other competent agencies.

### **II.2.3. On mobility and migration**

The European Union must strive for reinforced cooperation with non-EU countries through the mechanisms of the **Global Approach to Migration and Mobility**. The mobility partnerships form the most complete framework for cooperation with the nearest neighbouring countries.

Those privileged partnerships and the range of different frameworks for dialogue on migration with non-EU countries should be based on an assessment of the subjects of common interest to be given priority treatment and on regular monitoring of progress.

The Union must be careful to promote the reciprocal priorities within the overall approach. Accordingly, **mobility should be favoured** while giving support to combating **illegal immigration**, in particular with the aim of protecting the integrity of the systems of asylum and legal migration within the European Union. So that the Union's different sectoral policies can be developed in a consistent manner, it is of major importance to take into account existing links between migration flows and other aspects of the Union's external action, in particular the **development of non-EU countries**.

### II.3: On security

NB: France has already set out a number of its priorities, in particular as regards methods, through the discussions in COSI. Discussion is continuing at national level and this will feed into coming talks aimed at the next multiannual programme.

- Continue to strengthen operational cooperation between enforcement authorities

Cooperation between the enforcement authorities of the Member States, which has grown in line with the adoption of relevant instruments, must be strengthened in particular by the more systematic use of existing means at European level, most especially with regard to the exchange of data.

- Continue with determination the fight against terrorism and organised crime

The fight against terrorism must remain a priority at European level through better prevention of radicalisation phenomena, exchanges of information making full use of the available means (SIS 2, the Europol information system, PNR, etc.), improved collection of evidence and greater cooperation with non-EU countries.

Cooperation mechanisms must be mobilised in the fight against cross-border organised crime, supported by the next policy cycle, in particular regarding combating cyber-crime, traffic in firearms and illegal immigration.

- Decentralise security policies

In the area of security, decentralisation is vital, since the key factors in internal security must be taken into account in the planning of many other policy areas (external policy, energy, research, transport, etc.). In this connection, the idea of a decentralised internal security strategy, which arose in the context of the Stockholm programme, could be greatly reinvigorated and thought through again.

The European Union's overall approach to security is still imperfect. It is therefore important to devote all necessary attention to partnerships with non-EU countries, recommending that a substantial emphasis should be placed on organised crime and new technology. Criminal organisations are involved in all kinds of profitable trafficking throughout Europe, in particular smuggling of highly-taxed items, most notably on the eastern borders of the Union. These questions are particularly resonant for the Member States in the east of the European Union, which regularly trade with the non-EU countries on their borders. A mixed approach (geographical and thematic) would seem judicious, the more so as it is in line with geopolitical reality and requires the organisation of a multi-disciplinary and practical response which should also be a feature of the future programme.

- Improving the assessment of the threat and synergy between national authorities

Greater synergy between the national authorities in charge of security is indispensable. It could take the form of joint assessments of the threat from police and customs viewpoints, joint action plans, joint police/customs operations or via pooling of Community funds earmarked for the implementation of operational activities.

### **III. Concerning France's position on aligning the political cycle with the budget cycle**

France could accept alignment of the budget cycle (currently seven years) on the political cycle (five years) for the sake of consistency and simplification. Clearly, the financial aspects can contribute to assisting political activities. It is, however, important to ensure that making the two cycles coincide does not have the effect of fixing the period of activity and preventing implementation of political aims which lie outside the time-frame.

## Contribution from Ireland (I E)



AN ROINN DLÍ AGUS CIRT AGUS COMHIONANNAIS  
DEPARTMENT OF JUSTICE AND EQUALITY

Future development of the JHA area

Contribution by Ireland

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The Presidency has invited Member States to submit their views on the future development of the JHA area in the form of a response to three questions set out below.

a) Which main strategic priorities would you like to highlight for the post-2014 period?

The first and most fundamental issue to be considered in respect of the next phase of development of the Justice and Home Affairs area is whether the strategic guidelines to be agreed in 2014 should concentrate more on consolidating the existing JHA legal framework or on developing it further through new measures. While this is a major strategic matter, it is also a question of principle and is horizontal in application; hence the comments in this regard are applicable equally to the two other questions posed by the Presidency.

The legal framework for JHA cooperation that has been developed under the Tampere, Hague and Stockholm Programmes is one of the Union's most notable achievements. We now have a very substantial body of law that has given us the tools and supports necessary for meaningful and productive cooperation across the Justice and Home Affairs spectrum.

Having put this extensive legal framework in place – much of it only in the past five to six years – now is the time to ensure that it beds down successfully and that its implementation is optimal and consistent across all Member States and relevant agencies. To do this, we need specific tools to evaluate the effectiveness of individual measures and of the relevant EU agencies, as well as the levels and standards of application across the Union. We must then put in place the necessary supports to overcome any difficulties that are identified through the evaluation process. All of this, in turn, requires adequate time and space for all concerned – something which a long ‘shopping list’ of further legislative proposals would not permit. Ireland is therefore of the view that evaluation and consolidation should be an important theme of the new strategic guidelines.

At the same time, there are a number of areas which Ireland considers could benefit from further legislative action in the coming years. It is important that the next programme should be sufficiently flexible to allow us to tackle unforeseen threats and challenges. There must be scope for legislative action where an objective evaluation has provided clear evidence that existing measures are not sufficient.

In light of the foregoing, Ireland would propose the following as particular strategic priorities for evaluation and consolidation and/or for further legislative action as appropriate.

### Justice and Fundamental Rights

Ireland is strongly of the view that further co-operation in **confiscating the proceeds of crime** is needed if we wish to create a truly hostile environment throughout the EU for those in possession of illicit gains. Ireland would like to see the adoption of mutual recognition instruments dealing with both criminal and civil forfeiture orders.

The rise in **hate crimes** born of racism, xenophobia, anti-Semitism, homophobia and other extreme forms of intolerance is a worrying trend which requires a systematic method of better protecting core Union values throughout the Member States, including fundamental rights and the rule of law. Ireland considers that this should form another specific priority for EU action in the next strategic guidelines. Detailed proposals for advancing this objective can be found in the non-paper on ‘Enhancing the respect for the rule of law in the EU’ which Ireland and Finland jointly submitted to the recent *Assises de la Justice* conference.

Ireland would also support a specific focus in the strategic guidelines on the rights and needs of **victims** of all forms of crime, including networking and sharing of best practice.

In the area of family law, Ireland believes there could be tangible benefits in an instrument for **mutual recognition of parental responsibility** legally acquired in any given Member State. This would give greater certainty to families who move from one Member State to another – particularly ‘non-traditional families’ in which the child's parents are not married, or where one or both of the parties with parental responsibility is not a biological parent of the child (either in the case of adoption or where certain parental responsibility orders have been made). Consideration should also be given to seeking to effect a uniform approach a uniform approach to issues of parentage having regard to the advances in human assisted reproduction and the best interests of children.

Ireland would also welcome strategies aimed at enhancing mutual trust and understanding between the respective judicial authorities of Member States and facilitating the smoother functioning of EU instruments. In particular, actions to heighten awareness and understanding of relevant EU law among lawyers and judges should be a priority.

## Home Affairs

The JHA Council conclusions of June 2013 adopted a range of priorities for the fight against serious and organised crime between 2014 and 2017, and these should be taken into account when formulating the new strategic guidelines. In particular, **trafficking in human beings**, **drugs** and **firearms** remain perhaps the most prevalent and persistent forms of serious cross-border criminality in the EU and beyond. **Cybercrime** – including online child abuse and fraud attacks on information systems – is a constantly growing threat and every effort must be made to counter the increasingly sophisticated methods by which such crimes are perpetrated. Other areas of growing concern include **counterfeiting** of currencies and of various goods, and **cross-border crimes against personal property and drug smuggling** carried out by mobile organised groups.

Priority should be given to tackling the problems outlined above, in particular to ensuring that the measures already agreed in these areas are implemented as fully and effectively as possible. Having said that, the strategic guidelines should be flexible enough to permit the introduction of new proposals where there is sufficient evidence that further measures are necessary.

More generally, we must ensure that national and EU law enforcement agencies have the tools they need to combat crime in all its forms. This should happen in a co-ordinated fashion, with agencies free to exchange information in a manner that enhances public safety while remaining cognisant and respectful of personal data privacy rights.

### *Migration and Asylum*

In the area of **legal migration** and **visas**, Ireland considers that the new strategic guidelines should focus more on outcomes than on processes. The primary desired outcome is promoting economic growth in the EU. To this end we need to attract skilled workers, entrepreneurs, high quality students, scientists and investors. We also need to attract additional tourists, particularly from emerging and rapidly growing economies.

In Ireland's view, these objectives do not necessitate further legislation but rather can be achieved by utilising existing national and/or EU level instruments – including our visa regimes within and without the Schengen zone – in a manner that is flexible and responsive to the needs of those whom we wish to attract. This includes working closely with employers and other stakeholders, and recognising that the optimum solutions may vary as between Member States and as between sectors of the economy or labour market. Therefore the emphasis should be on practical co-operation, information provision, establishing best practice and perhaps the use of pilot projects.

In the **borders** sphere, Ireland would request that the development of the Smart Borders package be informed by the possibilities of common technologies that could potentially be used in those parts of the EU that are not within the Schengen area, bearing in mind the enhanced information-sharing and practical co-operation that could result.

In the **asylum** area, with a view to developing mutual trust among Member States in the area of international protection, priority should be given to the successful implementation of the mechanism for early warning, preparedness and crisis management as provided for in the recast Dublin Regulation. This includes ensuring the necessary assistance from Member States to the European Asylum Support Office in carrying out its work in this field.

***b) Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?***

Ireland would like to see greater coherence between the internal and external dimensions of the Union's policy in the areas of **fundamental rights** and the **rule of law**. Such policy coherence – and a willingness to deal with real problems that emerge within the Union and to accept that all Member States have room for improvement – is critical to our credibility in the external dimension, not least in discussions with the Eastern Partnership countries and with applicant or potential applicant States. While rule of law issues are of course wider than the remit of the JHA Council, Justice and Interior Ministers have the primary responsibility for issues relating to the protection of fundamental rights and the effective functioning of the police and courts in this context. It is therefore appropriate that the JHA Council play a lead role in ensuring that the necessary coherence exists. Again, Ireland would refer here to its joint non-paper with Finland on enhancing the rule of law in the EU.

Another external action priority should be to tackle **migratory pressures** closer to their source. This entails greater co-operation with third countries through vehicles such the Global Approach to Migration and Mobility, through the negotiation of third country agreements and in other dialogues, and by looking in particular at regional protection programmes. The new strategic guidelines, rather than going into significant levels of detail, should recognise and cross-reference the roadmap for EU Action on Migratory Pressures as a central repository of ongoing actions. Migratory pressures are rapidly changing and the ‘living document’ approach reflects that reality. Human trafficking and people-smuggling are also relevant in this context, as illustrated all too starkly by the recent tragedies in the Mediterranean. Tackling these and other internal security threats emanating from third countries should be a central objective of EU external engagement.

It is also important to ensure that legal migration systems and the principles of free movement are not abused or undermined by third country nationals. This is an area that would benefit from practical co-operation and the pooling of operational experience, for example in tackling abuses such as marriage of convenience.

***c) What principles could be useful in constructing the post-2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?***

Ireland would support aligning the policy and financial cycles.

Set out below are some other general principles that Ireland believes should inform the next strategic guidelines and, in particular, any further legislative proposals that may result.

Future proposals in the field of judicial co-operation in criminal justice matters should accommodate all criminal justice traditions within the EU. In particular, there is a need to recognise and allow for the differences between the civil law system that obtains in many Member States and the common law system that prevails in Ireland and elsewhere.

Caution is also needed as regards further harmonising criminal law procedures and sanctions. While such harmonisation is certainly valuable in some areas, we need to take close account of the views and experiences of practitioners on the ground in each Member State before deciding that common rules are needed in further areas of the criminal law.

Given the continued economic difficulties that the Union will continue to face over the coming years, any proposals arising under the new strategic guidelines – particularly in the Justice area – should be subjected to rigorous cost-benefit analysis with a view to avoiding any excessive financial burdens on Member States or (as far as possible) any provisions likely to adversely affect economic recovery. By the same token, any proposed measures – especially in the areas of civil law and legal migration – should be designed to contribute to the ‘Justice for Growth’ agenda as far as possible.

Finally, Ireland would like to express its general support for the joint paper on the future of JHA which has recently been submitted by Estonia, Finland, Germany, Hungary, the Netherlands, Slovenia, Sweden and the United Kingdom.

## **Contribution from Croatia (HR)**

**JUSTICE**

Following the Discussion Paper on the future development of the JHA area (doc. 14898/13), hereby the Republic of Croatia submits a written contribution on the mentioned questions to the Presidency and the General Secretariat of the Council.

### **THE FUTURE OF THE EU JUSTICE POLICY**

- During the implementation of the Stockholm Programme concrete and measurable progress has undoubtedly been made, however, there is room for further improvement, and I believe that the vision of sustainable future development of the JHA area can only be achieved on the basis of close cooperation between EU, Member States and civil sector.

In the light of the changes and achievements in the field of the judiciary, it should be pointed out the activities undertaken to ensure better functioning of the single market and to stimulate the economic development and investment climate. The mechanism for fighting against organized crime, terrorism and other forms of crime has been strengthened, as well as the legal framework in the area of fundamental rights and freedoms of citizens. A better position of vulnerable persons has been ensured, and the protection of personal data has been improved. In the area of judicial cooperation in criminal and civil matters, the access to justice has been further facilitated, as well as the mutual recognition and enforcement of court decisions.

- The Republic of Croatia highlights following main strategic priorities for the justice area for the post-2014 period:
  - suppression of corruption, as well as the fight against counterfeiting and piracy
  - progress regarding the seizure and confiscation of property and the establishment of a system of mutual recognition of judicial decisions on confiscation of proceeds of crime
  - improvement of the legal framework in the area of insolvency proceedings
  - EU citizenship's rights.

Other horizontal issues which should be highlighted for the post-2014 period are:

- cooperation with third countries, especially with candidate countries for the accession to the EU
  - future development of the mutual trust and legal certainty
  - compliance with the international legal order, in order to create legal certainty in relations with non-EU countries
  - mutual trust between legal practitioners from different national systems
  - coherence between the legal instruments adopted at the European level.
- In the process of determining the guidelines for the post-2014 period, we should try to ensure effective implementation and continuous monitoring of the existing policies and adopted legislative instruments. In this context, it is necessary to evaluate the achievements as well as the shortcomings of the Stockholm programme, putting an emphasis on the elimination of identified deficiencies and continuation of the reforms.

Special attention should be paid to improving and optimising the quality of the EU legislation in this area. As a new Member State, which recently went through a demanding process of adjusting its complete legal system to the EU *acquis*, Croatia is more than aware of how the lack of quality in EU legislation may lead to severe problems in the application as well as in implementation of the EU law. In is our belief that better, simplified regulation and improved quality of legislation contributes directly to adequate protection of citizens and ensures effective judicial protection. Having in mind economic and financial situation in the Member States, the future priorities should also serve to stimulate cross-border business, trade and investment. Economic growth can be promoted by creating more effective measures for combating cross-border crime and corruption.

But above all, the area of freedom, security and justice must be an area in which fundamental rights are protected. This includes the core values set out in the Charter of Fundamental Rights and the European Convention on Human Rights. Therefore Croatia is of an opinion that accession to the European Convention on Human Rights should be finalised.

Reflecting on the period ahead of us, we have to be practical and realistic in perceiving the goals we wish to achieve. While doing so, we should be guided by the principles of the mutual trust and legal certainty. In other words, while considering how to set up the future JHA policy framework, we should keep in mind the importance of the confidence of the citizens not only in the national judicial systems, but also in the judicial authorities of the Union. Equally important is the mutual trust between Member States, especially legal practitioners from different national systems. One of the assumptions of the mentioned trust is a quality and timely training, based on the system that monitors the dynamics of the development of the *acquis* and enables greater accessibility to the training programs as well as an intensified exchange of experiences among the Member States.

In aligning policy planning and financial framework cycles, it is necessary to take into account the financial framework, considering that the final implementation and successful implementation of previously adopted measures are conditioned by it. Also, prior to the adoption of an instrument it is required, except for assessing the effectiveness of the instrument, to evaluate its financial cost and performance.

## HOME AFFAIRS

### **Future Development of the JHA Area - doc. 14898/13**

- a) **Which main strategic priorities would you like to highlight for the post-2014 period under the mandate of your committee/working party?**

In the area of internal security we would like to stress the following priorities:

- Cyber security and fight against cybercrimes;
- Fight against criminal groups engaging in smuggling of narcotics, having in mind the significance, flourishing, diversification and the means they have at their disposal;
- Strengthening of cooperation and exchange of information with third countries in order to identify and fight organized criminal groups that are active on EU territory with cross-border character;

- Fight against organized criminal groups whose activities allow for illegal migrations and the abuse of legal communication channels;
- Adoption of the "Smart Border" package with the aim to contribute towards the realization of sufficiently impermeable borders for all cross-border activities that compromise the security situation and open for any movements that do not violate the security situation;
- Strengthening of EASO (European Asylum Support Office) role in the forthcoming period in the creation of a Common European Asylum System and thus contributing towards the harmonization of procedures of member countries in asylum procedures through staff training of public administration bodies and support mechanisms for member countries, among which is also EASO asylum support team (EASO Asylum Support Team – AST)
- Establish cooperation with neighbouring third countries but also with countries from the broader region in establishing a joint system of border protection with third countries with whom the EU shares common borders, based on the principle of shared responsibility and profit of such common system.
- Because of an increasing number of crisis areas we would like to point out the necessity of fast reactions in crisis areas (prior to arrival into EU member states), especially in connection with vulnerable groups.
- Harmonization of the political cycle with the Multiannual Financial Framework

**b) Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?**

We emphasize our strategic commitment to the cooperation with neighbouring countries that have not yet joined the EU, to assisting them in their approximation to the EU and their acceptance of standards and strengthening of operational cooperation with other EU Member States and EU agencies. The operational cooperation primarily implies the fight against organized and serious crime, prevention of illegal migration through fighting organised criminal groups that support illegal migration and organised criminal groups involved in drug trafficking. In cooperation with Member States, the emphasis is on the implementation of the EU Policy Cycle and combat against forms of crime that are most threatening to the EU Member States.

In the area of legal migration let us point out the importance of labour migration, and in light of the above, the upcoming adoption of the Directive on Seasonal Workers, the Directive on the Transfer of Workers within International Companies and the Directive on the Conditions of Entry and Residence of Third-country Nationals for the Purposes of Research, Studies, Pupil Exchange, Remunerated and Unremunerated Training, Voluntary Service and Au Pairing which would enhance the transparency of the procedure in all Member States. In connection with the legal migration one should emphasize the integration of aliens into the society of an admitting country for the purpose of preventing negative migration-wise events.

c) **What principles could be useful in constructing the post-2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?**

We support the opinion expressed at the informal meeting of Ministers of Justice and Home Affairs of 18 July 2013 that says that the basis for the determining future measures should be the evaluation of past activities. In any case, the issues that still need to be taken into account in the domain of borders are the implementation of joint actions of Member States at the external border, harmonization in the implementation of joint operations of return of irregular migrants and third-country nationals and the prevention of the abuse of the asylum procedure aimed at the extension of illegal stay in the EU.

We would like to emphasize the importance of solidarity among EU MSs given the increased number of asylum seekers. Here we consider that financial assistance can not replace solidarity in terms of other measures, such as moving to other MSs.

The area of internal security is a very dynamic area so that in certain segments, a four-year planning seems too long a period. On the other hand, a multiannual financial planning has its significant advantages. We believe that the expansion of the time frame of the Multiannual Financial Planning from seven to eight years would result in overlapping of one multiannual financial framework with two policy planning cycles, with the possibility that in the event of a significant change of circumstances affecting the policy planning or the financial framework, appropriate corrections would be made in both of them, 4 years afterwards.

A harmonized policy planning within framework cycles of funding is a solution that will absolutely enhance the implementation of planned policy and more efficient use of financial resources so that we support such an approach in building guidelines.

## Contribution from Hungary (HU)

### Position of Hungary

#### on possible priorities concerning the new Multiannual Programme for the Area of Freedom, Security and Justice („post-Stockholm Programme”) in the area of Home Affairs-

This document is submitted in accordance with the request of the Presidency, as set out in doc. 14898/13.

As regards the general principles of the new Programme, Hungary would like to recall the joint letter of the Netherlands, Sweden, Finland, the United Kingdom, Estonia, Slovenia and Hungary, that was signed in The Hague, on 18 November 2013 and sent to the Presidency and the Commission. Hungary, as a member of the Salzburg Forum, also shares the views set out in the relevant joint paper of the Salzburg Forum.

Having said that, Hungary still wishes to outline the following possible national priorities.

First and foremost, Hungary considers **fighting illegal migration**, as a horizontal and cross-cutting priority for the new Programme that is relevant for many aspects of the Home Affairs policies. This should entail the following main points:

- A comprehensive review and based on that, further development of the readmission policy of the EU should take place in order to make it more effective (e.g. mutual recognition of return decisions should be introduced by the respective amendment of the Return Directive; a pan-European database, possibly as a part of the SIS II, should be set up containing all return decisions taken by the MSs, providing access both for migration and law enforcement authorities)
- There should be substantial progress as regards tangible and effective cooperation with countries of transit and origin of the migrants entering the Union illegally. This should be based on the principles of conditionality and „more for more” and carried out in close cooperation with the common foreign and security policy.
- Effective management of external borders (should remain a high priority, making best use of the possibilities offered by modern technology. Work on the Smart Borders Package should continue and be finalised as soon as possible, in particular, as regards the Entry –Exit System, containing biometric features. Frontex must be strengthened and further developed, both in terms of its budget and mandate. In the coming period,

the development of EU policies on external borders management in general must better reflect geographical balance, the changing and volatile nature of increasing migratory flows, as well as the quick shifts of migratory pressure appearing in new areas. There should be measures expressing genuine solidarity towards MSs under particular migratory pressure and in order to improve preparedness for unforeseen situations (contingency planning) and flexible solutions.

- When implementing the CEAS, countering the abuse of the right for asylum should be an important factor to be taken into account.

As regards the **right of free movement**, Hungary supports the strengthening of practical cooperation in order to fight abuses while upholding this fundamental right enjoyed by our citizens without restrictions.

Effective governance of the **Schengen Area**, based on the newly adopted legislation remains a priority. The capacities offered by eu-LISA should be used to the maximum extent in the coming years.

In the field of **asylum**, there is a need for consolidation, focusing on the implementation of adopted European legislation and stepping up practical cooperation. External dimensions of asylum need to be developed, in order to provide international protection in the proximity of crisis areas. Resettlement and relocation programmes should continue on a voluntary basis. EASO should be strengthened in order to support MSs, while leaving the decisions in asylum cases within the competence of MSs.

As regards **legal migration**, this should be channelled into the questions of external relations. Stepping up cooperation with third countries and developing their capacities is of utmost importance. The coherence of the migration policy with other goals (e.g. competitiveness and economic growth) and policies (e.g. employment, education and research, etc.) of the EU should be ensured. Communication on migration towards our citizens and the rest of the world should be improved.

There is a need for the review of the **visa policy** of the EU, in order to find the right balance between the stimulation of economic growth and security aspects. Due consideration should be given to the creation of an EU ESTA system that could serve as an alternative of the visa requirement and enable a shift towards individual risk assessment. Hungary continues to support the improvement of mobility of bona fide travellers, with special focus on the achievement of sustainable visa-free travel for the countries neighbouring the EU. Improvements in practical cooperation (VIS, CACs, etc.) remain an important aspect for the future Programme.

As regards **internal security**, Hungary considers the consolidation of the existing fragmented acquis on police cooperation and law enforcement information exchange as a priority. The EU PNR Directive should be adopted as soon as possible and Directive 2011/82/EU (CBE Directive) should be revised in order to enable mutual recognition and enforcement of fines of road safety related traffic offences, beyond existing provisions on information exchange. Implementation of the policy cycle against serious and organised crime should be continued. We believe that due consideration should be given to alternative methods in the fight against organised crime as well. Hungary puts great emphasis on the development of a European law enforcement culture, and CEPOL should continue to play a decisive role in this. Further progress is needed in order to exploit synergies between internal and external security of the EU.

When it comes to **external relations**, we are of the view that Home Affairs policies and interests should be better fed into the broader context of external actions of the EU. In a geographical approach, we support further improvement of cooperation with the countries of the Western Balkans and Eastern Partnership; just as with certain strategic partners (US, Russia, Canada). In a thematic approach, progress is needed in cooperation as regards the fight against illegal migration, border management, readmission and the implementation of the policy cycle against serious and organised crime. In our point of view common regional platforms with third countries (like the Budapest Process) can be successful tools to tackle these challenges, therefore we support the application of the Global approach to migration and mobility, and would strive to make more efforts (political, financial and human) to achieve the goals of the political declarations.

## Contribution from Italy ( IT)



*Ministry of the Interior  
Justice*

*Ministry of*

### Introduction

In compliance with Art.68 of the TFEU (introduced by the Lisbon Treaty) the European Council will hold a discussion<sup>5</sup> in order to define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice.

Said Art. 68 of the TFEU constitutes the legal basis for the adoption by the European Council<sup>6</sup> of strategic guidelines instead of a five-year programme containing concrete actions to be undertaken in order to achieve the relevant goals<sup>7</sup>.

Moreover, as guidelines do not imply any time limit, the European Council could choose a duration other than a five-year term, for instance a seven-year period, to stress the close link with the next Multi-annual Financial Framework. Since many aspects of the JHA area have already been covered at legislative level, said guidelines should focus on the quality of the EU acquis implementation, as well as on the consolidation of the outcome of the 2009 Stockholm programme.

Europe's credibility derives from its capacity to maintain the commitments undertaken. For this reason in the next future it should concentrate on the stabilization of the progresses achieved, the homogeneous development of the regulatory framework, as well as on the identification of possibly not yet covered areas requiring further efforts.

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<sup>5</sup> It is expected to take place in June 2014.

<sup>6</sup> The guidelines will be adopted by the European Council in Brussels. Therefore, the relevant document should not be identified by the name of the capital city of the country holding the EU Council Presidency.

<sup>7</sup> The programme would be a document adopted by the EU Commission as was the case for the past three programmes, i.e. Tampere (1999), The Hague (2004), Stockholm (2009). As far as the future in the JHA area is concerned, the Commission "is invited to present appropriate contributions to this process" (art.68, TFEU).

In this connection, financial instruments will play a crucial role, allowing resources to be shared, national objectives to be pursued in the framework of a broader European strategy. Available resources should, therefore, be destined to meet the needs of the national systems in a European perspective, without fragmentation of the actions included in the national programmes.

### **General background**

Since the adoption of the Stockholm Programme significant steps forward have been made in the process for the realization of a common area of freedom, security and justice <sup>8</sup>.

In particular, a specific wealth of experiences and know how were acquired in terms of both the positive results achieved in the last years by all the actors involved in the management of the European security, and the considerable volume of EU legislation which contributed to an increased homogeneity between member States.

The EU internal security threats - which today require a common response by member States - were already partly identified in the Stockholm Programme. In particular, considering the strategic objective to dismantle criminal networks, various activities were carried out, instruments developed and initiatives launched which need to be constantly monitored and implemented. However, much has still to be done, in particular as regards the necessary response to the main internal security threats, which evolve continuously due to the changing European political scenarios and economic situations. Account should also be taken of the need to combine said response with an increased protection of the rights guaranteed by the EU Charter of Fundamental Rights.

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<sup>8</sup> As confirmed by the Commission document “Second Report on the status of implementation of the EU security strategy” Brussels, 10.4.2013 COM-2013 179)

Moreover, as far as migration and asylum are concerned, important steps forward were made in view of human trafficking prevention and victims' protection<sup>9</sup> in order to extend the rights granted to international protection beneficiaries (refugee status and subsidiary protection)<sup>10</sup>, to standardize the national procedural rules concerning the issuing of a single residence permit to allow third country nationals to stay and work on the territory of a member State, as well as a common set of rights for third country workers legally staying in a member State<sup>11</sup>.

Other legislative instruments aimed at making the European economic system more attractive concern seasonal work, intra-company transfers of foreign workers, the status of researchers, students, trainees, volunteers and au-pair personnel. These measures are still under negotiation and will be adopted in a very near future.

Finally, in the framework of the Common European Asylum System (CEAS) new legislative instruments have been recently adopted<sup>12</sup> replacing the entire asylum envelope. The reform aims at facilitating and standardizing the access procedures to the protection system in the EU.

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<sup>9</sup> European Parliament and Council Directive 2011/36/EU of 5 April 2011.

<sup>10</sup> European Parliament and Council Directive 2011/51/EU of 11 May 2011 amending Directive 2003/109/EC and extending the scope of the EC permit for long-term residents to beneficiaries of international protection.

<sup>11</sup> European Parliament and Council Directive 2011/98/EU of 13 December 2011.

<sup>12</sup> - Regulation No. 603/2013 of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation EU No. 604/2013 (which entered into force on 19 July 2013 and shall apply from 20 July 2015 in order to allow for the technical preparations necessary to transmit the relevant data to the central system);

- Regulation No. 604/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member State by a third country national or a stateless person ( which entered into force on 19 July 2013 and shall apply to applications for international protection lodged as of first January 2014);

- Directive 2011/95/EU of 13 December 2011 on standards for the qualification of **third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted** (deadline for transposition: 21 December 2013);

-Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (deadline for transposition 20 July 2015);

-Directive 2013/33/EU of 26 June 2013 laying down standards for the reception of applicants for international protection (deadline for transposition 20 July 2015).

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Question a) **Which main strategic priorities would you like to highlight for the post-2014 period under the mandate of your committee/working party?**

As to the political and strategic priorities which are to be included in the new multiannual Programme in order to identify specific actions, stress should be put on the fight against crime **infiltration in the legitimate economy, as well as on mafia-type organized crime**. In this connection, it is considered necessary to develop an innovative and truly “common” strategy between member States aimed at attacking criminal assets, also with the purpose of fully implementing the principle of the mutual recognition of all court decisions of confiscation, whether conviction or non conviction based.

Moreover, member States’ attention on **human trafficking** should not decrease. Said phenomenon still requires a strong commitment in the next years: in fact, it does not only imply a support to be provided to the victims of this hideous crime, but it also contributes to increasing the profits of the international criminal organizations to the detriment of the legal economy.

An important challenge of the future years will be to improve the tools necessary to more effectively counter the alarming phenomenon of **international terrorism** and its **financing sources**, as well as to combat **radicalization and extremism**, in particular the “lone wolves” and microcells.

Europe should also commit itself to more effectively confronting **hate crimes** and **discrimination**, in particular **violence against women**, in line with the recent models promoted by the international community and by some examples of national laws.

A special attention should be given to the **environmental crime** and to the **forgery of food products and goods in general**.

Further priorities to be achieved in the new programme concern the implementation of the initiatives already started within the Stockholm Programme. In particular, the proposal for a new **Europol Regulation** aimed at strengthening the Agency is highlighted, as well as the **negotiation on the solidarity clause and its related implementation**, the setting up, within Europol, of the **European Cybercrime Centre (EC3)**, the implementation of the new **directive on attacks against information systems**, and the rapid adoption of the proposed instruments on **data protection and information exchange**.

The instruments adopted before the Lisbon Treaty in the field of **judicial cooperation in criminal matters** constitute an important EU acquis that , if not replaced by the new Lisbon Treaty instruments, has to be implemented and consolidated also in light of the full **jurisdictional control** by the Court of Justice which will be in force from 1 December 2014 , as under the relevant Protocol No. 36 to the Treaty.

During the possible review of the pre-Lisbon acquis instruments the **highest levels of legislative** approximation have to be **ensured**, as well as in relation to the mutual recognition standards already achieved in the previous instruments (standstill clause).

**With regard to legal migration and economic growth in Europe**, it is crucial to realize far-sighted migratory policies able to combine mobility and Europe's economic and social openness towards third country nationals with clear rules and their strict enforcement. The credibility of national and European policies depends on this, as well as the solidity of the entire system.

In the field of asylum, the full implementation of the related envelope is a priority. The monitoring and constant evaluation of the recently adopted legal instruments should allow for the verification of possible deviations from the objectives established and of the consistency of said instruments with the constantly evolving migration phenomena.

Thanks to a constant monitoring and focus on the collected data, which should form the basis of the political choices, the need to adopt new legislative and/or operational instruments will be assessed.

The full development of the CEAS also depends on the reception capacity of the asylum national systems. The differences in this sector lead to unbalances and asymmetries that could be overcome by a constant mapping of the whole reception system in Europe, coupled with an intra-EU relocation of the beneficiaries of international protection and a thorough contingency planning to face extraordinary migration flows towards member States.

The strength of the asylum system depends also on a consistent return policy. In fact, an abuse of the legal immigration channels which is not effectively countered by member States may turn into a pull factor and, consequently, into an excessive pressure on the national systems. Thus, it could be difficult to regularly manage migration phenomena, with an increase in the feeling of insecurity and negative perception of immigration by national public opinions.

Therefore, in the next years it will be necessary to manage forced repatriations more effectively and promote voluntary (and/or assisted) returns to a greater extent by encouraging practical cooperation between member States. In this connection, an active role by the European Asylum Support Office (EASO) will be vital thanks to the supply of information on the origin countries (COI) in order to enable the adoption of return decisions based on a strong awareness of the possible consequences for the migrants involved.

The **landmark events affecting various African countries** (from Sahel to the South Mediterranean till the Horn of Africa) besides the Middle East (i.e., the recent Syrian crisis) should not be neglected. They call for continuing our efforts to improve the tools available to the European Union in order to cope with possible **massive inflows** (of both mainly economic immigrants and refugees), by guaranteeing adequate support to the most affected States. In this context it is important for the European Union to make further efforts both by adopting **partnership policies with neighboring third countries** and by guaranteeing ad hoc **surveillance, management and rescue mechanisms** in the Mediterranean sea border areas. Because of their characteristics they constitute the Union's external border and, in view of their control, require equipment and tools exceeding the possibilities of the individual member States directly involved due to their geographical position. In this respect, of utmost importance is to consider any form of collaboration against the **criminal organizations** devoted to **exploiting illegal immigration**.

The monitoring and surveillance activities should become integrated, in a perspective of **complementarity and consistency, with the strategic dialogues and cooperation with origin and transit countries** - also through a synergic use of the EU **cooperation and development programmes** - as well as with the activities performed by the civilian crises management missions.

Among the objectives to be achieved mention should be made of the fight against criminal organizations exploiting migrant smuggling, the Regulation establishing the European border surveillance system (EUROSUR) and the implementation of the smart border envelope.

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Question b) **Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?**

In the area of Internal Affairs it appears to be essential to focus efforts on the connection between the relevant policies and the economic development perspectives. **Internet security** in its broadest meaning is closely linked to economic development; however, it constitutes a broadly horizontal issue due to its implications in various criminal sectors. Enhancing the mechanisms to counter **cybercrime**, a phenomenon with cross-cutting repercussions on many criminal sectors, also seems to be necessary in order to make the Internet more secure and reliable.

Moreover, the EU external dimension policies should speak with only one voice on the issues of security which will have to be always included in all external agendas in the dialogues with strategic partners and third countries.

As already highlighted, in the migration sector particular attention should be devoted to the external dimension, partnership and solidarity with third countries also in order, on the one hand, to build/enhance the capacities of the latter and, on the other, to cope with the new challenges, actively cooperate in the management of migration flows, as well as in order to be co-actors in the framework of development policies.

Regional protection programmes should be privileged by allocating significant resources in the consideration that protection opportunities in areas near the origin countries can facilitate the reintegration of displaced people, when permitted by the social and political conditions.

If regional protection programmes are not viable resettlement programmes could allow, on the one hand, for a more effective management of displaced people's flows in terms of organization of national structures and services for their reception and integration in the local socio-economic context and, on the other, for the prevention of the activities of the traffickers' criminal networks.

Moreover, the external activities in the Justice and Home Affairs area and the civilian aspects of the Common Policy of Security and Defense (the so-called "inter-pillar cooperation") should be progressively aligned by outlining new strategies to strengthen judicial cooperation with the main actors in the international scenario as well as with the judicial authorities of the main neighboring countries, starting from the Mediterranean area, also in order to create positive synergies with the other JHA policies.

A particular attention should be paid to the **protection of the EU financial and economic interests**, also by establishing a **European Prosecutor's Office** as provided for by Art. 86 of the TFEU, as well as by countering the activities threatening the development of its main economic initiatives.

All future initiatives should be based on a constant and careful balance between **security** and **individual's rights protection** needs and pursue a balance between law enforcement action and protection of the rights of the subjects involved in criminal proceedings. The *Roadmaps* adopted to protect the rights of defendants and crime victims are a useful guidance; this exercise, after a thorough assessment of the results obtained so far, should be carried on in the future by focusing in particular on the issues still to be dealt with (for example, "preventive detention"), thus achieving improved protection standards compared to those already guaranteed by the ECHR.

Furthermore, it is deemed necessary to update the **peer evaluation mechanism** (still regulated by the 97/827/JHA Common Action of 5 December 1997), without prejudice to the competence of the Commission and the European Parliament, with a view to giving it an added value in a cost-effective/efficient framework.

With regard to horizontal issues, a priority is the training of judges, prosecutors, other judicial officers and law enforcement authorities in order to adjust their training to the increased complexity of judicial and police cooperation tools made available by the EU and other international actors.

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Question c) **What principles could be useful in constructing the post-2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?**

The European action was carried out and should continue to be carried out in the respect of the common values and principles of the rule of law, solidarity and mutual support. The inspiring principle of the whole future European action should remain that of guaranteeing a space of freedom, security and justice, as well as the full recognition of privacy and fundamental rights. Moreover, the economic revival of the European Union is deemed to depend also on the enhancement of the security conditions in certain crucial sectors.

Therefore, while assessing the Stockholm Programme experience as largely positive, the need is recognized to develop new **concise, open and flexible** guidelines that do not hinder the realization of objectives, also other than those expressly envisaged, which may be agreed upon at a later stage. Such a solution would allow priorities and ongoing actions to be better specified, thus affording a more adequate instrument to the changing scenarios.

The drawing up of concrete and concise guidelines that, at the same time, are open and flexible to be adjusted to the varying scenarios is, though ambitious, an achievable objective. Said instrument should not be affected by all the rapid changes (a number of which only apparent) taking place in the society; it should be flexible thanks to mechanisms of subsequent verification, evaluation and integration, in order to adjust the EU action to the structurally significant changes which may occur during the implementation of the strategies identified and which should require rapid interventions, not limited only to face possible emergency situations.

With regard to contents, it would be advisable for the new guidelines to envisage verification of the implementation of the actions already included in the Stockholm Programme, as well as some specific macro priorities and objectives characterizing the future EU action in the area of Justice and Home Affairs, thus foreshadowing the scenarios of the future European Union action.

The availability of adequate financial resources is instrumental to the definition of new European strategic guidelines. In the lack of resources due to the current economic situation it is crucial to achieve a sound consistency between the chosen strategic goals and the planning of the multiannual financial cycles, also considering a certain flexibility for possible adjustments in case of significant changes in the scenario.

Considering that, under art. 68 of the TFEU, the new strategic guidelines should deal with legislative and operational planning it is believed that, based on the experience gained and the considerations already expressed on the occasion of the relevant meetings convened by the EU Commission, it is necessary to submit some issues to be studied in depth within the relevant fora for the purpose of deciding on possible legislative interventions.

Of particular mention is the extension to asylum seekers of the intra-EU relocation measure, as well as the mutual recognition of international protection and of free movement to beneficiaries of protection, including the right to work in any State of the Union.

In fact, the legal basis for relocation is only contained in the regulation establishing the EASO (art. 5, EU Regulation 439/2010) which defines it as an intra-EU transfer on a voluntary basis, implemented as an extraordinary measure for the persons already recognized as beneficiaries of international protection. Therefore, considering that in mixed flows the great majority of migrants are potential international protection beneficiaries, a better and developing definition of the legal basis is necessary, as well as an extended relocation instrument included in the toolbox to support the States affected by a particular migration pressure, as mentioned in the “Conclusions for a genuine and concrete solidarity” approved on 8 March 2012 by the JHA Council.

With regard to refugees’ free movement in the EU it is necessary to envisage a coherent management of secondary flows by promoting the utmost legality and mutual trust between member States and avoiding intra EU areas of illegal migration which might reduce safeguards for international protection beneficiaries and provide room for manoeuvre to criminal networks engaged in trafficking and exploiting activities.

With reference to the operational instruments also mentioned in article 68 of the TFEU the following is of vital importance:

- the setting up of early warning mechanisms (through the EASO support and active role) and of mechanisms for an effective burden sharing to assist the most affected member States;
- a strong reference to the application of the Dublin Regulation discretionary clauses in terms of both an increased solidarity and responsibility and of a broader protection of migrants’ human rights, taking into account the ties of asylum seekers with specific member States, as also indicated by the relevant case-law of the Court of Justice;
- the support to the examination procedure of asylum applications through the EASO coordination, as suggested in the recent study on the joint examination of asylum applications, especially in emergency situations linked to massive inflows of migrants.

## Contribution from Malta (MT)

### Malta's Comments on the Future Development of the Justice and Home Affairs area

#### **1 Introduction**

Malta believes, in view of the current economic uncertainties and limited financial resources, the next Justice and Home Affairs (JHA) programme should be concise and strategic. However, these limitations should not prevent us from thinking ahead and asking ourselves what the legacy of the next JHA programme might be. The issue of illegal immigration has been high on the EU agenda this year and should continue to be a priority in the years ahead. Malta believes that tangible and effective progress in the prevention of illegal immigration would be a highly significant and lasting legacy.

In the coming period, Malta considers that due attention should be given to the transposition and implementation of the current *acquis*. In addition, a thorough evaluation and analysis of all work carried out in the area of JHA should be undertaken, in order to identify which priorities have not been addressed and to make plans for improvements in the future. In this context, it is important for any timeframes to be realistic.

#### **2 Home Affairs**

##### *2.1 Border Management*

A lot has been done in terms of border management and discussions are currently ongoing on the substantial Smart Borders package. It is clearly important for Member States to continue to enhance their border management systems. However, Member States should not be obliged to put in place systems that may go beyond their requirements, particularly when considering the costs. When discussing border management, one has to keep in mind the different characteristics, including geophysical characteristics of the Member States and remember that what may be appropriate, or even necessary, for one Member State, may be difficult, impractical or unnecessary for another.

Malta believes that further cooperation in border management is essential among the Member States. However, it should be emphasised that such cooperation does not necessarily entail the development of further Information Technology (IT) systems and that any such systems should be cost effective and not too ambitious, based on a comprehensive cost-benefit analysis.

## ***2.2 Illegal Migration***

At the same time, the effort to prevent illegal immigration, including through tackling organised criminal networks involved in facilitating illegal immigration and through the expeditious return of illegal immigrants must remain a priority. This requires enhanced cooperation with third countries of origin and transit and since the EU as a whole is stronger and has more leverage than any Member State acting alone, it is important for the necessary measures to be taken at EU level. We already have various tools at our disposal and they should be used, boldly where necessary, such as in the application of the principle of conditionality when it comes to return and readmission.

## ***2.3 Legal Migration***

In the area of migration, it is most important that Member States remain attractive for legal migrants. Admission of various categories of legal migrants has already been regulated and we are in the process of regulating other sectors. It is believed that before any further proposals to harmonise admission for any other categories, we need to examine whether such harmonisation is necessary and desirable.

This is due to the fact that we face different labour market situations and Member States should have the necessary flexibility to address their needs which, at times, may be more effective than harmonisation. Therefore, Member States should remain in charge and retain responsibility for the number of persons they admit to their territory in accordance with their own needs and those of their own labour markets.

This goes hand in hand with the rights granted to legal migrants – a sense of proportionality should be kept so that these migrants do not become a burden on a Member State but a healthy part of its society and labour market. This would clearly be beneficial to both sides.

## ***2.4 Asylum***

The Common European Asylum System (CEAS) is now in place. In the coming years, an assessment of the asylum package will have to be carried out, taking into account the experiences, and particularly the difficulties, that Member States may have had in its implementation.

Some aspects of this Common System may need to be revisited especially to address discrepancies in the asylum situation of the Member States and in order to foster a spirit of solidarity among the Member States. Various options could be considered, but the ultimate aim should be that of ensuring a fair distribution of asylum responsibility across the Member States.

Firstly, responsibility for asylum-applications should be fairly distributed, addressing the fact that at present, the number of asylum-applications lodged in certain Member States is disproportionate. A system to redistribute such applications among the Member States, to ensure that there is a fairer distribution based on relevant factors, such as population, area and GDP should be drawn up. This would not necessarily entail a revision of the Dublin system but it could constitute a flanking measure – a safety valve that is triggered when a certain threshold is reached in terms of the number of asylum-applications compared to the abovementioned factors. In this way, the criteria established in the Dublin Regulation would be maintained, but a corrective mechanism would also exist in order to correct the unintended and undesirable consequences that the Dublin System produces in certain cases.

Second, beneficiaries of international protection should be able to move freely in the EU, and consideration should therefore be given to the mutual recognition of decisions granting international protection. Harmonisation of the relevant rules has now taken place, with the adoption of the legislative instruments forming the CEAS. Once these have been implemented, the next natural step will be to look to mutual recognition. We have established mutual recognition when it comes to various decisions, be they related to the movement of goods, or decisions in the legal and judicial sphere, and now that the rules relating to international protection have been harmonised, it is time to consider applying the principle of mutual recognition in the asylum sphere too.

In the short-term, until mutual recognition can be applied, Malta considers that refugees and beneficiaries of subsidiary protection should, immediately upon receiving protection, be given the possibility to exercise at least some of their rights, such as access to the labour market, in a Member State other than the one that granted them protection.

Furthermore, as a matter of principle, Malta is in favour of the opening up of legal channels for asylum. An effective system whereby asylum applications could be lodged in EU Joint Processing Centres in third countries could result in a reduction of illegal migratory flows into the EU, and in a reduction of consequent loss of life at sea. Clearly, such a solution would have to be implemented in conjunction with other measures, particularly addressing the post-asylum determination phase, and not in isolation.

Malta supports the revamping and scaling up of Regional Protection Programmes in North Africa. In this regard, detailed proposals from the Commission would be welcomed. The setting up of EU Joint Processing Centres, as referred to above, could be incorporated as an element of scaled up Regional Protection Programmes, particularly as an interim measure until local asylum determination systems are in place.

### *2.5 Return and Readmission*

The return of persons who are illegally present in the EU to their country of origin or a country of transit should constitute a priority. The EU needs to enhance its efforts in this regard, perhaps with more involvement of third countries.

In the coming years, emphasis should be placed on the implementation of the principle of conditionality – cooperation in various fields in countries of origin should also depend on cooperation in the area of return policy. The Council Conclusions defining the EU strategy on readmission, adopted by the Justice and Home Affairs Council in June 2011, clearly stated that:

*The principle of conditionality should apply in an appropriate manner, including through the withdrawal of incentives when a third country does not co-operate in the effective implementation of its readmission obligation, without prejudice to existing international legal obligations.*

Despite the fact that more than two and half years have passed since this was agreed, this principle has not yet been operationalised and this should therefore be one of the priorities to be addressed. An objective should be the integration of readmission into the EU's relations with third countries with a clear element of conditionality, thereby providing the incentives as well as the possibility to withdraw them when the readmission obligation is systematically breached.

Another objective for the coming years should be to ensure that the readmission obligation of third countries (especially the African, Caribbean and Pacific (ACP) group of countries under the EU-ACP Partnership Agreement (Cotonou Agreement)) is respected. In particular, it should be ensured that recommendations agreed by the ACP and EU sides in the framework of the EU-ACP Dialogue on Migration and Development, are implemented without further delay. The recommendations on readmission include the setting of timeframes for processing readmission requests and the issuance of travel documents, both elements that should contribute to more effective returns. In this context, the EU should be ready to resist taking work forward on the implementation of recommendations in other areas (such as visas and remittances), until such time as progress is made on those relating to readmission. This would be in line with the principle of concomitance between visa cooperation and readmission, as well as the principle of conditionality. Likewise, the EU should resist any expansion of the Dialogue to other topics until the recommendations already adopted are implemented, or at least until steady progress has been made in their implementation. Proceeding with the dialogue but with no progress in practical terms would be futile. Unless the EU ensures that progress is registered in this regard, it will lose its credibility.

Efforts at the EU level should also be stepped up to ensure that the EU *laissez passer* for third-country nationals is accepted by more countries.

## 2.6 *VISA*

Malta is in favour of the further harmonisation of visa procedures and is ready to support EU policy on this issue. The Proposal for the revision of the Visa Code is expected in the coming months and it should enable more efficient visa processing, addressing the gaps and the difficulties that have been encountered so far. Once this is adopted, it will be necessary to allow time to evaluate its implementation.

## 2.7 *External Relations*

Developments in third countries may have an impact on the EU Member States, especially where immigration and security are concerned. It is important for the EU to foster cooperation with third countries in these areas including by supporting capacity building of certain countries to promote law enforcement and good governance, as well as in relation to migration.

With regard to the latter, in the coming years more use should be made of the instruments of the Global Approach to Migration and Mobility (Mobility Partnerships and Common Agendas on Migration and Mobility), by launching Dialogues with more countries in West and North Africa. These will provide the framework for addressing all dimensions of migration together, and will enable a holistic approach, with measures that link up with each other (for instance the establishment of an asylum system in a country of transit would enable more cooperation with that country in terms of joint border control operations and returns. Such frameworks also enable conditionality to be implemented at least within the area of migration. These instruments should therefore be utilised to the maximum degree.

Malta considers that, given the ongoing trends in relation to illegal immigration along the central Mediterranean route, particular emphasis needs to be placed on Libya, starting immediately and continuing over the next years. A Dialogue on Migration, Mobility and Security should be launched with Libya at the earliest, given that Libya has indicated its willingness to undertake such Dialogue, and a Mobility Partnership should be set up. Libya should be a priority for the coming years.

Information campaigns should be launched, involving the relevant EU delegations, in order to raise awareness of the dangers of illegal migration and to provide information on legal migration channels. The next years should see a systematic implementation of such campaigns across the relevant third countries of origin and transit and a programme for this should be established.

Cooperation with third countries should also cover cooperation with the security agencies in third countries. Whether in the context of Mobility Partnerships or as standalone measures, such cooperation would be to the benefit of all and would cut across different sectors, including trafficking and smuggling of persons as well as goods and so forth.

## *2.8 Terrorism*

The EU needs to continue giving due importance to the fight against terrorism. A strategic priority for the EU in this field should be the continuation of the fight against radicalisation and recruitment and the monitoring of returning foreign fighters.

## *2.9 Organised Crime*

Malta considers that the fight against smuggling of human beings needs to be stepped up. We should also consider ways of targeting the smugglers. We need to have officers on the field; we need to strengthen the procedures for the exchange of information amongst us so that organisers and facilitators can be identified and brought to justice.

Furthermore, a strategic priority is the fight against organised crime on the internet, in particular child pornography. Whilst ensuring that we make best use of the benefits that technology brings with it, we have come to appreciate that this ‘digital revolution’ exposes our society to new vulnerabilities. The effects of cyber crime are real and are being felt by Member States individually and collectively on a daily basis. Cybercrime is a challenging area for law enforcement authorities since this crime and the means used to commit it, have no boundaries whatsoever. So one of our priorities should be combating the use of the internet for criminal purposes.

The fight against cybercrime should not be a concern for law enforcement alone, but for society in general. We need to place more emphasis on the preventative aspects of fighting this crime.

### **3 Justice**

Malta considers the enhancement of EUROJUST as a strategic priority.

In addition, priority should also be given to the negotiations on the creation of a European Investigation Order (EIO) which would replace the existing sporadic legal framework applicable to the gathering and transfer of evidence amongst Member States.

Other areas that should be given consideration for the coming years in the justice area include:

- the pursuit of further judicial training;
- the elaboration of e-training tools; and
- the clarification of the manner in which citizens are to obtain redress at EU level (through, for instance, the creation of a handbook,).

On a general note Malta would like to emphasise that Member States need to take stock of the transposition and implementation of the existing *acquis*. Directives, as we all know, need to be transposed into national legislation, so each Member State has a certain amount of discretion as to how to transpose a Directive into its national legislation. Hence, prior to embarking on the further expansion of the existent *acquis*, it is good idea to take stock of our current situation when it comes to the transposition of already adopted measures, at national level and whether further action on any particular instrument would be required.

It must be noted that a useful core principle for the post-2014 guidelines would be the preference of quality over quantity.

#### **4 Conclusion**

Malta believes that an important principle to keep in mind is that, in many cases, one size does not fit all. Within the EU, some Member States are large and others small, some are islands and others land-locked, some have external borders and other do not. Therefore, what may be applicable in one case, may not be applicable in another. This was typically the case in the adoption of the CEAS – some measures may not have been suitable for countries like Malta which face enormous asylum pressures when compared to other Member States.

This was the case, for example, with the amendment of the Long-Term Residence Directive which has obliged Member States to grant long-term residence permits to persons benefitting from international protection. This, in a way, is related to the principle of proportionality in that what may be suitable and proportionate in one case may not be in another. It is therefore important to ensure that measures are adaptable to each and every Member State.

## Contribution from the Netherlands (NL)

### Contribution of the Netherlands to the discussion on the future development of the JHA cooperation

Following the first exchange of views during the informal meeting of the JHA Council in July, the Member States are invited by the Presidency to send in their respective national contributions. The Netherlands is very grateful for this possibility and would like to seize this opportunity to further express its views on the direction in which we believe JHA policy should develop from 2015 onwards. Maximising added value to citizens, businesses and the implementing organisations is an important starting point.

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 on 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.<sup>[1]</sup> 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 cyber crime 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.<sup>131</sup> 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.

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<sup>13</sup> State of the Union, European Commission President José Manuel Barroso, 11 September 2013. ↑ Europol and EMCDDA, *EU Drug Markets report | a strategic analysis (2013)*, pp. 118-119

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. 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.<sup>14</sup>

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<sup>14</sup> 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.

## **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 Members 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 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. 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.

Operative 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.

## Contribution from Poland (PL)

### FUTURE OF THE EU'S JUSTICE AND HOME AFFAIRS POLICIES POLISH CONTRIBUTION

*This contribution is aimed at tackling values, principles and priorities which should underpin the development of the AFSJ and as such be enshrined in the guidelines for the strategic and operational planning defined by the European Council in line with Art. 68 TFEU for the years 2014 onwards.*

*Poland is convinced that the practice of multiannual programmes in the Area of Freedom, Security and Justice should be continued and thus, with the end of the Stockholm Programme its successor should take over.*

*While the programme should be comprehensively elaborating on actions to be taken in the AFSJ, the guidelines should be of a broad nature, outlining the values, principles and priorities underpinning the progress in EU policy in the AFSJ. Poland would also like to underline the importance of including in the process of discussing the guidelines national parliaments, minding their participation of in the EU policy making process.*

#### **I. GENERAL REMARKS**

The Justice and Home Affairs policies are based on an impressive *acquis*, developed within the framework of Tampere, the Hague and Stockholm programmes. All the three multiannual programmes have been adopted at times of important developments in the EU's architecture and changing legal environments. The current phase of the European integration in the area of freedom, security and justice involves some systemic changes related to the consequences of Protocol N° 36 on transitional provisions, but it is not subject to any fundamental modification. Therefore, the new strategic guidelines could take advantage of the stability reached after the entry into force of the Lisbon Treaty and concentrate on the **consolidation** of what has been achieved so far.

**The quality, clarity, legal certainty and proper implementation** of existing legislation should be a priority in the coming years. The future strategic guidelines must also address the **unfulfilled goals** of the Stockholm Programme. For this purpose, there is a need to make the assessment of the realization of the Stockholm Programme and identify potential gaps to be filled in the coming years. Progressive and sustainable development of the JHA area becomes even more important at times of economic crisis and budgetary constraints. New initiatives should have a **clear added-value** and be based on **practical needs and thorough impact assessment**, including financial implications for the Member State and the EU.

When it comes to the formula of the strategic planning in the JHA area, Article 68 of the Treaty on the functioning of the European Union makes it clear that the strategic guidelines and not a programme will be elaborated. This distinction implies that the European Council's task is not to define concrete actions but rather to advise on the **preferred directions, values and objectives** of the policy field. This approach allows for formulating flexible policy, adaptable to changing environment.

The strategic guidelines should also contain the most important values and principles to be followed by future actions. It would be advisable to take into account the following issues:

- Compliance with the principles of proportionality, subsidiarity and necessity;
- Striking the right balance between the fundamental rights and freedoms and the effectiveness of actions aimed at maintaining a high level of internal security of the EU;
- Enhancing mutual trust;
- Strengthening coherence, coordination and cooperation between all relevant actors, including the inter-agency cooperation;
- Effective implementation and better use of existing instruments, as well as consolidation of the achievements made to date;
- Applying the evidence-based approach;
- Maintaining and developing dialogue with the civil society and raising awareness on the EU policy in the JHA area;
- Strengthening the coherence between the internal and external dimension;
- Adjusting the strategic guidelines to other sectoral strategies;
- Correlation between the added value of new instruments and their financial implications.

## ***II. SECTOR–SPECIFIC ANALYSIS***

### ***1. JUSTICE***

The cooperation of the nations of Europe has been evolving throughout the recent half-century, along with the prevailing political objective. Ensuring peace and stabilization on the continent has not lost its significance. At the same time, the need to meet the challenges of global economic competition and maintain the European social model has emerged. The European Economic Community has evolved into the European Union – specific kind of an international organization.

Common values stemming from the constitutional traditions of the Member States make the foundations of the EU, falling within the scope of the EU principles developed in the European Court of Justice’s decisions. Within the extended range of EU policies, justice system has its special place.

Justice system at the EU level, and above all, at the national level, gives a guarantee of the observance of the fundamental principles of the community and makes a tool for the protection of the rights conferred on individuals by the EU legal instruments as well as by international and domestic legal instruments. The cooperation of the national and European justice systems and gradual approximation of the legal protection systems make the main axis of the European cooperation.

Independent justice system, in terms of axiology, makes an inevitable element of the EU actions and the functioning of its Member States as societies based on the respect for fundamental rights of individuals, freedom and democracy. In this context, the concern to ensure proper functioning of the justice system both in terms of legislation as well as in terms of its practical application, is not only considered one of the crucial EU policies but even a guarantee of the continuance of the EU as a union of democratic nations. It can particularly be observed in the context of judicial recovery at the EU and national level of claims based on treaty-related freedoms, like free movement of persons, capital, etc. The Union is an organization where some of the rights can be granted at the EU level, however measures that ensure them remain national.

In that context, **operation of the justice system as regards ensuring security or civil disputes resolution** may seem an activity of a minor importance, yet it is extremely important to the everyday functioning of enterprises and natural persons. Often the efficiency of the justice system is evaluated on that basis.

The cooperation is effected within 28 different legal systems (not to mention the internal diversity within the legal systems of some of the Member States). That is why the conclusions adopted in 1999 by the European Council in Tampere focused on facilitating the use of European freedoms by way of mutual recognition and enforcement of decisions passed in different Member States. The trust in proper functioning as regards basic safeguards in different legal systems was considered as a key to the success of the programme. The need to cooperate more closely for the purpose of preventing illegal migration, cross-border crime, etc, in the conditions of absence of control on borders between the EU states was no less important for the adoption of the programme.

The *acquis* of almost 15 years is impressive. The EU private international law corpus is almost complete. The majority of elements of control of decisions passed in other states, like *exequatur*, have been abolished. Special European procedures have been established for the purpose of transnational proceedings. New forms of cooperation of practitioners have been established (European networks).

**As regards penal law**, there has been a considerable improvement in the cooperation of the justice system authorities within the framework of cross-border proceedings, by way of introducing the principle of mutual recognition of decisions at all stages of criminal proceedings. Moreover, it was possible to complete most of the plans regarding the improvement in the situation of nationals who are parties to or participants of criminal proceedings. This regards both: schedule regarding procedural rights of suspected and accused persons, as well as of the injured. The introduced instruments have a positive impact on the legal certainty as regards procedural safeguards for the EU citizens, regardless of the Member State they are in. Along with the global attempts at harmonisation, the substantive criminal law norms have been gradually approximated. The Union has created an institutional dimension of cooperation at the European level.

Within the present organisation of the EU, which is based on cooperation of national bodies and European institutions, **the consolidation of the *acquis* seems to be the main challenge within the justice system area.** The effort to codify the existing EU legislation and to remove the discrepancies between the EU legal instruments adopted should be taken. It is particularly important in the context of horizontal measures, like assistance in the taking of evidence, exchange of information or service of documents. The influence of modern technologies should be taken into account here.

The Member States, in their attempts to strengthen the principle of mutual trust, should take efforts in the sphere of comparing the executive procedures and practical aspects of activity of the justice system bodies. It is necessary not only to have training on the European law but also to extend the group of practitioners who indirectly have contact with other legal systems. **Training** not only should cover “abstract” European law but also ensure interactions with the corresponding legal systems of other Member States and confrontation of the practical experiences. **The debate on the assessment of the functioning of the JHA area**, which may be based on the Commission’s legislative initiative under Article 70 TFEU should explain the criteria and methodology of such an assessment, taking account of the loyal cooperation of the EU institutions in that regard. Poland continues to support the systemic approach as regards horizontal aspects of the assessment, like e.g. the collection of statistical data. It believes that the existing international mechanisms, including those of the Council of Europe, of the United Nations etc. should be fully exploited in the first place.

In the predictable future, **the burden of cooperation will continue to rest in the national authorities.** From this perspective, the creation of new EU agencies or attempts to centralize proceedings on the European scale should be approached with caution. It would be more advisable to simplify the principles of cooperation of the national authorities, along with the principle of efficiency.

Poland will act for the improvement of cooperation of the EU institutions **in its external dimension.** Determination of the priorities and treaty-related policy should be defined by the EU Council following the hearing of the European Parliament’s opinion. Its efficient realisation by the European Commission is only possible in close cooperation with the Council.

To answer the questions posed by the Presidency, we would like to state as follows:

**a) Which main strategic priorities would you like to highlight for the post-2014 period under the mandate of your committee/working party?**

Consolidation of the *acquis* in the criminal law area is of crucial importance; the mechanisms of legal assistance should be streamlined – both in terms of legal regulations and their practical application, as well as the supporting role of the structures at the EU level (Eurojust, EJM). More systemic approach should be introduced, where individual EU legal instruments would supplement each other. European dimension should be given to procedural safeguards based on common traditions of the member States. We expect that extending the cooperation of the national courts and ECJ to criminal law will allow the uniformisation of decisions, further contributing to the consolidation of the mutual trust. Reaching for the criminal law instruments, especially for the purpose of realisation of other EU policies, should still be treated as *ultima ratio*.

Consolidation in the field of civil law should lead to the European, coherent set of provisions of private international law within the scope of jurisdictional norms, conflict of law norms and recognition and enforcement of decisions. The assessment of the functioning of specific, transnational European procedures and works on the European contract law will bring a response to the question about the most rational methods of approximating the systems of the Member States.

**b) Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?**

Poland wants to emphasise the importance of:

- training,
- mutual evaluation, which should go beyond the analysis of the implementation of the European measures into the national law,
- cooperation in the development of common IT solutions – both for the purpose of cooperation of domestic authorities and for the purpose of facilitating the access to court.

Regarding the external aspect, it is necessary to consolidate the process of defining, within the EU Council, of guidelines for the EU position towards the external bodies, including the managing of the process of negotiating of international agreements. The coordination of positions in the area that is beyond the exclusive competence of the EU in order to ensure a coherent position of the EU and its Member States is needed.

c) **What principles could be useful in constructing the post-2014 guidelines?  
Would it be reasonable to align policy planning and financial framework  
cycles?**

We support the facilitation consisting in harmonising the cycles of political and financial planning. As regards both dimensions, the Union should preserve certain flexibility, so that it could respond to the changing circumstances – taking into account long-term EU interests.

Guidelines for the post-2014 period should:

- better highlight the need to prove the existence of a practical need to ensure new regulations,
- take into account the requirement of coherent legislation and respect for fundamental rights,
- ensure the proper relation between the advantages of the regulations and the resulting costs to be borne by taxpayers.

## **2. HOME AFFAIRS**

### **a) Internal Security**

The comprehensive EU internal security strategy has been defined, guiding the EU and Member States actions in this area. Nevertheless, the evolving nature of the internal security threats in the EU and the fact that serious and organized crime is an increasingly dynamic and complex phenomenon implies that the future policy in the field of home affairs should be **flexible** but also build on the achievements which have been made so far. **An evidence-based approach** should continue to apply with the important role of the EU Serious and Organised Crime Threat Assessment that provides an adequate threat analysis. Further development of statistical tools could also be useful in this context.

In addition, the operational cooperation has rightly become crucial. The concept of the **EU policy cycle on organised and serious international crime** should be further promoted and strengthened. It is a good example of an intelligence-led approach which translates shared strategic priorities into operational actions. The 2012-13 Policy Cycle actions indicated that working within the EMPACT framework was highly effective. All actors of the process are more experienced and confident in their roles. The first two years were a valuable learning period. Moreover OCTA and SOCTA reports have been set out and new methodology of SOCTA reports has been adopted. In the future, new four-year Policy Cycle 2014-17 against serious and organized crime will be implemented. It provides opportunities to undertake more targeted activities and tackle more challenging tasks, helping to progress towards achieving strategic goals. **Multidisciplinary and administrative** approach should also be one of a key tools of undertaken actions.

As the internal security threats are more and more sophisticated and the criminals make use of the latest technological developments, the law enforcement authorities should be equipped with appropriate **technological tools** to address new challenges. For this reason, a well-balanced and innovative approach is needed. More emphasis should also be put on the **crime prevention** aspect, potential development of **special investigative techniques** and building mutual trust between the law enforcement authorities. It is also desirable to further develop the cooperation between Member States and third countries in the area of the **safety of mass sports events**, taking into account increasing mobility of citizens, frequent organization of major sports tournaments together with third countries and the emergence of new security threats in this area. Moreover, **training** in the area of law enforcement remains one of the most important factors contributing to the creation of the well-managed Area of Freedom, Security and Justice. The law enforcement authorities should be equipped with knowledge and skills they need to prevent and combat cross-border crime effectively.

**Corruption** and **trafficking in human beings** should remain high on the EU agenda as they still constitute serious threat to the internal security of the EU. The strategic frameworks at the EU level have been adopted on both issue, therefore it is important to implement them properly in the coming years, taking into account the need to cooperate more closely with third countries and other international bodies, such as GRECO.

*Information exchange*

The law enforcement cooperation cannot be successfully conducted without effective information exchange mechanism in place, guaranteeing the quality and security of information. For this reason, the JHA policies have developed so far an extensive toolbox for collecting, processing and sharing information. The principle of **availability** has been established as a driving force in this regard. Moreover, the Information Management Strategy and the European Information Exchange Model have been put in place to systematize the achievements made and to define the direction of further developments. But still, there is a need to make full use of existing instruments, like the Prüm Decisions or the Swedish Initiative, as well as the Europol products. If the exchange of information is to be the cornerstone of the internal security architecture of the EU, there is a need to make further efforts to properly **implement and consolidate** existing instruments. New developments could take place in the context of simplifying procedures, standardization of formats, automation of processes and interoperability of various systems. The evaluation and possible update of the Information Management Strategy should also be taken into account in the coming years.

#### *Terrorism*

In the area of preventing and combating terrorism all efforts should be undertaken to efficiently implement existing tools. The idea of **revision of strategies** covering for example radicalization and recruitment seems to be a good way forward. Also more emphasis should be put on the **link between organized crime and terrorism**. It could be useful to work on a for example threat assessment report that could cover these two issues. As the discussion on the link between CSDP and FJS seems to be intensified, it is vital to concentrate on the practical aspect of this linkage.

#### *Firearms trafficking*

According to the recently published European Commission Communication concerning firearms, Poland welcomes the identification of certain gaps existing in the legislation at the European level. In order to limit the illegal firearms trafficking, it is necessary to integrate our efforts and **cooperate** especially with countries from the **Western Balkans and other post-conflicts zones**. As it is one of the priorities in Operational Action Plan in EMPACT 2014-2017, the great emphasis should be put on that issue.

### *Cyber security*

Ensuring the security in cyberspace is one of the most essential challenges to the European Union and its Member States. To effectively prevent and combat this phenomenon it is necessary to make **full use of the instruments** adopted at European and international level, in close cooperation with the European Cybercrime Centre (EC3), third countries and private sector. The implementation of the Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace should be also a priority. Future actions in this field should focus on the issue of sexual exploitation of children and child pornography, cyber-attacks, crimes related to payment cards and Internet fraud.

### *Economic and financial crime*

In the context of global crisis, stress should be put on the problem of the increasing interest of the organized crime groups in business and financial activities. To efficiently recognise the phenomenon and to combat economic and financial crimes, sophisticated instruments have been introduced. The strengthening of the quality of financial investigations and the development of financial intelligence in the EU Member States are priorities within the framework of the *EU internal security strategy in action: Five steps towards a more secure Europe*, as well as the revised EU Strategy on Terrorist Financing. Financial and economic crimes are also included in the EU Policy Cycle. Serious organized crime, particularly financial one, constitutes a major threat in terms of costs to the EU economy. Therefore, strengthening effective cooperation between Financial Intelligence Units (FIU), as well as further development of the FIU are important. Moreover, a particular interest should be given to enhance financial forensics and analysis, money laundering, and effective investigations. In addition, projects aimed at analysing the current situation regarding the transparency of trusts and companies in Member States are necessary, taking also into account the possible elaboration of alternative or additional models to increase such transparency.

## *Drugs*

Concerning the future of the EU drugs policy, the two fundamental documents, namely the Drug Strategy and the Action Plan should drive future developments in this field. One of the basic and crucial assumption in the domain of drugs is a **balanced approach and a policy based on evidence**. Another important activities aimed at limiting the drug trafficking are Policy Cycle actions. Due to the significance of such instruments they should be effectively supported during the implementation process. The drugs' market is extremely dynamic. In recent years we have also been observing new threats, unparalleled so far in the EU to such extent, like NPS and precursors. Therefore, the following priorities for the future may be defined: continuing the legislation work focused on the **modification of the controlling process of NPS** in EU; further **cooperation with third countries** in the field of precursors and narcotics; Policy Cycle implementation in the domain of narcotics for 2014-2017; preparing the tactical and legislative response to **new threats** associated with the expansion in the EU of illegal precursors from uncontrolled and unknown substances - precursors.

### *b) Disaster management*

Poland welcomes the development of the civil protection policy. New legislation on civil protection mechanism should result in diminishing the consequences of the catastrophes. Our efforts should be concentrated on the **prevention** in order to change the picture of crisis response from reactive to active. The circumstantial and emergency acting approach should be changed and Poland sees a great potential in a development of the **threat assessment** instruments. Such approach could enhance the effectiveness of our activities and have an impact on the coherence of the crisis response system. Also, there is space for improvement in critical infrastructure protection area. Furthermore, Poland is of the opinion that due to a review of new crisis coordination arrangements (the EU Integrated Political Crisis Response – IPCR) is it vital to concentrate on prevention activities (trainings, workshops, exercises, exchanging of experiences).

*c) Border management*

With regard to the integrated management of external borders, it should be noted that impressive legislative progress has been made during the period covered by the Stockholm Programme. The strengthening of the Frontex, development of the local border regime, the recent adoption of the legal framework for the Eurosur and the Schengen governance package, amending the rules on border control in the Schengen Borders Code should be highlighted.

In the next programming period focus should be put on the efficient implementation of the adopted legislation. These activities should be monitored by the Commission.

An evaluation of the implementation of the current legislation and identification of the new challenges should form a basis for presenting any possible new legislative proposals in the near future.

The **proper monitoring** of the situation at the borders, particularly in the framework of Eurosur, is needed. Its full implementation by the Member States and Frontex, as well as providing an adequate level of security of the system should remain a priority. The key issue is also a **reliable risk analysis** at the EU level. Much in this regard has already been done, Eurosur can still contribute further to that process.

Given the importance of the challenge for the Member States in the field of internal affairs, it is necessary to analyse an impact of future EU visa liberalization with respect to the Eastern neighbouring countries. The relevant EU agencies could contribute to that purpose.

Smooth adoption and implementation of the **Smart Borders package**, ensuring an effective border control and return policy, contributing to internal security (including through access to the system for law enforcement), as well as including facilitation of border crossings by *bona fide* travellers, while limiting additional administrative burdens, remains a priority. These measures should be based on an **in-depth cost-benefit analysis** to ensure an adequate level of EU funding, also for the development of the national components of the IT systems and addressing the organizational and administrative. Particular attention should be paid to the specificity of land borders and practical feasibility of the proposed technical solutions, as well as interoperability with other EU systems.

**Cooperation with third countries**, in particular with the neighbouring countries, is another priority in the field of management of the external borders. Apart from the tools for the management of crisis situations, this should be considered in the context of the regular border management.

For the most efficient use of available resources and avoiding duplication of efforts, cooperation between border guards, police, customs and immigration services should also be strengthened at the national level, as well as the inter-agency cooperation at EU level.

#### *d) Migration and Asylum*

It is certain that the area of migration and asylum needs further development. It is particularly important to ensure proper implementation of the already existing measures, as well as possible identification of various goals and issues under the Stockholm Programme that have not been implemented in a satisfactory way. Taking on board new initiatives should be preceded by an in-depth analysis of their added value, taking into account current needs and the possibility of their financing by the EU and the Member States. In case new initiatives are identified, the principle of subsidiarity should be assessed – when it comes to legal migration, for instance, the transnational dimension of new proposals is the most important aspect as it is the transnationality that constitutes its greatest asset.

Providing a sustainable development of cooperation at the EU level, as well as with third-countries, in all thematic areas of the migration and asylum policies is essential. There is also a need to take into account other strategic documents that entail a set of key actions in the area of migration and asylum, e.g. *EU Action on Migratory Pressures – A Strategic Response*. Their implementation is crucial for improving the management of migratory flows to the EU.

Taking into consideration current migratory situation of the EU and its neighbouring countries, it is of utmost importance to take up steps focused on the long-term solutions to migratory pressures. Therefore, there is a need to proceed to building up a comprehensive programme involving all the necessary measures stemming from **various political fields of the EU's activity**, like humanitarian aid, development, trade and foreign policies, that would complement the activities carried out on a global scale by the international actors, like UN and IOM.

No actions would be possible without **adequate financial support**. In the area of migration and asylum we see the need to ensure effective usage of financial resources at our disposal. Any new initiatives should be analysed also from the financial perspective with view to their cost-effectiveness. The financial capacities of each Member States should also be taken into consideration.

When analysing the degree of implementation of actions foreseen in the Stockholm Programme, the biggest progress was observed in the area of **external dimension of migration**, in particular GAM, as well as migration and development. The cooperation with third countries in all the areas of migration and asylum is of utmost importance. Particular support should be provided to strengthening of the actions in that respect. Also it is crucial to enhance cooperation with diaspora groups in the Member States and the cooperation with third countries concerning remittances.

Poland pays also great attention to the phenomenon of **irregular migration**. Lots of issues have been developed, especially new strategic documents and other political initiatives aiming at combating irregular migration. The sudden mass inflow of the North African and Syrian refugees urged the EU to take up steps of short-term and medium-term nature. In our opinion, these initiatives should be further implemented, in particular as regards the cooperation with third countries and Member States at the frontline of the mass inflow in the area of return. Common actions at the EU level aiming at identification of immigrants should be further organized. As for third countries, we see the need to develop on the spot the network of immigration liaison officers.

**Asylum** is another area where a major progress has been made. This is particularly relevant to the adoption of the Common European Asylum System and the establishment of the European Asylum Support Office that plays a major role in supporting Member States in a difficult migration situation. Therefore, Poland supports the proper implementation of CEAS tools and further strengthening of the EASO. **The external dimension of asylum** is equally important. A lot has been done as for relocation and resettlement schemes. Poland supports both measures as they constitute one of the possible solutions to the current difficult situation at the EU shores. However, due to migratory pressure in the whole EU, related among others to the secondary movements of irregular migrants, Poland opts for keeping the principle of voluntary participation in reference to the abovementioned measures. Moreover, we fully support further development of the Regional Protection Programmes as a key instrument in relations with third countries.

One of the most important areas is **legal migration**. The majority of proposals presented by the COM are under discussion at the Council and in the EP, which is a success. Hence, we consider that for the time being no new initiatives are needed – we need to focus on the proper implementation of the already existing legal acts and to work on finalizing discussions on the three pending acts. However, when considering the scope of rights granted to third-country nationals, we need to be cautious in order not to alleviate this scope above the level of protection granted to our own citizens and those from other EU Member States. Another important issue is to avoid measures that would seem beneficiary to third country workers only on paper, while in practice the complexity of adopted measures would hinder the possibility for these workers to take advantage of the rights formally granted to them. The Stockholm Programme foresaw the consolidation of the existing legal framework in relation to legal migration in general, but no attempt has been made in that respect. In our opinion, the possible decision to launch such an initiative should be preceded by a comprehensive discussion taking into account the progress made so far in this area.

Further development of **the external dimension of migration** on the basis of GAMM would be welcome, in particular the areas like: practical cooperation with third countries concerning all four pillars of GAMM; capacity-building in the countries of origin and transit; keeping the current geographical priorities as for the cooperation with third-countries, especially with those within the European Neighbourhood Policy; further strengthening of the Eastern Partnership and Prague Process tools.

**Legal migration** is another area of importance to Poland. In reference to admissions, Poland is of the opinion that there is a need to focus primarily on the implementation of the adopted legislation in relation to the conditions of entry and stay of third-country nationals and on ensuring effective execution of the EU's priorities concerning the admission of specific categories of immigrants. As for economic migration, in our opinion any new initiatives undertaken should respect the specificity of national labour markets and their needs. Adopted procedures should be as simple and flexible as possible in order not to constitute a burden to the national administration of the Member States and ensure their smooth implementation to national legislation.

Effective return and readmission policy (including re-integration measures), as well as further support for actions carried out by Frontex and EASO are crucial for the effective management of migration flows to Europe, especially in relation to **irregular migration**. We would welcome further promotion of assisted voluntary return and organization of joint return operations co-financed by the EU. Moreover, there is a need to continue practical cooperation with third countries in reference to combating and preventing irregular migration and implementation of return policy and reintegration measures. In that respect, thematic projects aiming at enhancing capacity of third countries in this field would be useful.

As for **asylum**, we should focus on the proper and effective implementation of the CEAS, including its monitoring and evaluation. Secondly, there is a need to develop practical cooperation among Member States with a view to starting the process of consolidation of national practices and increasing the quality of asylum decision-making. This could be done by means of exchanging best practices and know-how. Operational role of EASO should be further strengthened. Another area of importance is **the external dimension of asylum**. Poland would support maintaining the principle of voluntary participation in relocation and resettlement programmes. Moreover, we see the need to define in a precise and clear way what should be understood under the term “solidarity”. Finally, we would like to underline the necessity to develop capacity-building of third countries in the area of asylum, as well as working on consecutive Regional Protection Programmes.

#### *d) The Schengen Area*

Schengen cooperation which has led to the removal of internal border controls, is one of a major achievements in the area of freedom, security and justice. One of the key factors of the safe Schengen area is an effective evaluation mechanism. The strengthened evaluation mechanism allows for a sound Schengen governance, based on clear and transparent European rules that will make the system more efficient. Therefore, in the coming years, it is essential to ensure effective implementation of the Schengen Governance package.

The Second Generation Schengen Information System II (SIS II) has become fully operational. As it is fundamental for the functioning of the Schengen Area, maintaining it fully operational should present a core priority for all stakeholders. The Visa Information System has been in operations since 11/10/2011. However, it is necessary to ensure the full roll-out of VIS. The enlargement of the Schengen should be continued. Provided that all requirements to apply the Schengen *acquis* have been fulfilled, all necessary measures should be taken to allow for the abolition of controls at internal borders with the remaining Member States that have declared their readiness to join the Schengen area without delay.

*e) Promoting Citizen's Rights*

The EU faces a democracy and identity crisis, therefore focus should be put on EU citizens and the idea of the Union citizenship as a fundament of unity and solidarity of the EU. To build stronger and active Union, respect for civil rights should be strengthened and developed. If citizens know about their rights and exercise them, they benefit as individuals. The EU as a whole feels this benefit, both economically and in terms of citizen support for the EU project.

Actions taken in accordance with the Stockholm Programme undoubtedly have contributed to the promotion of citizens' rights and have spread the knowledge this matter. As a success story, it is worth mentioning launching the European Citizens Initiative, amendment to Directive 93/109/EC, or establishing the 2013 the European Year of Citizens. However, we must not forget that still much remains to be done and improved. Citizens still face obstacles in exercising their rights, they still encounter too many responsibilities and administrative burdens. EU citizens are not benefiting fully from their rights because they are not aware of them – lack of this knowledge seriously restrain them from exercising the right to move and reside freely in other EU countries, which is a cornerstone of EU integration.

Therefore, in the next strategic guidelines more emphasis should be put on removing barriers that significantly limit the ability and willingness to exercise rights deriving from the EU citizenship (e.g. circulation of the civil status documents). Focus should be put on enhancing awareness of the rights and responsibilities attached to the free movement, being one of the most tangible proofs for the EU citizens of the success of the European project and, in times of economic crisis, must be seen as a means to boost the MSs' economies.

As such, the safeguarding of the free movement of persons should constitute a horizontal imperative when defining and implementing sectoral policies of the AFSJ (migration policy, external border policy etc.) Actions should also focus on promoting knowledge concerning electoral rights (such as the right to vote for and stand as a candidate in municipal and European Parliament elections in whichever EU country the citizen resides, under the same conditions as nationals). Future priorities should aim at promoting active citizenship, encouraging participation in EU public debate and fully benefiting from the citizens' rights.

*f) External Dimension of JHA*

The events of recent years, such as the so-called Arab spring, increased migration pressure, cybercrime, terrorism and transnational organized crime, show the importance of the external dimension and its strong correlation with the internal situation of the EU. If the EU is to be effective in responding to security challenges and managing migration flows, it needs to work with countries outside the EU.

Actions taken under the Stockholm Programme undoubtedly contributed to strengthening the external dimension and consolidating activities. However, not all assumptions have been fulfilled or have been realized partially like insufficient increase of the JHA knowledge in the EU delegations (e.g. lack of JHA experts), insufficient complementarity between the EU and MSs. What is more, there has been no significant improvement in strengthening solidarity and cohesion of the EU and MSs and lack of signed strategic agreements with third countries. The rapidly changing political situation outside the EU and its impact on the internal security of the Union, make it necessary to further strengthen the external dimension. Future strategic guidelines should be focused on continuing and improving already existing initiatives and solutions that bring added value and tangible benefits. Greater emphasis should be put on increasing knowledge of JHA matters in the EU delegations (e.g. employment of experts), ensuring complementarity between the EU and MSs, including the efficient exchange of information between MSs and EU institutions and agencies, strengthening cooperation of liaison officers. Moreover, focus should be on continuation of cooperation with third countries, particularly the countries covered by the European Neighbourhood Policy and other strategic partners. What is more, it is worth to consider developing permanent mechanisms of cooperation with third countries while taking action on a global scale (e.g. in the framework of crisis management). Last but not least, Poland is of the position that the use of existing and planned for 2014-2020 EU financial support instruments should be taken into account in setting new strategic guidelines.

## **Contribution from Portugal (PT)**

### **POST-STOCKHOLM** **THE WAY FORWARD** **IN THE AREA OF JUSTICE AND HOME AFFAIRS**

#### **CONTRIBUTION FROM PORTUGAL**

Portugal commends the Lithuanian Presidency for its initiative launching an EU-wide process of reflection in the Council on the way forward in the area of Freedom, Security and Justice after the current Stockholm Programme comes to an end on 31 December 2014.

This is an exercise which is both necessary and desirable, in view of the mandate given by the June European Council this year.

Accordingly, and to lay the groundwork - properly and in good time - for the debate due to take place in the European Council in June 2014, Portugal considers it crucial that the JHA Council hold a formal and substantive debate on this subject and adopt conclusions setting the political priorities for the future of JHA.

To that end, below is an outline of Portugal's initial thoughts on future developments in the area of JHA.

#### **I. GENERAL PRINCIPLES**

##### **Consolidation, simplification, coherence and quality**

In recent years, we have come a long way towards ensuring that European citizens can move freely and in security in the European area. In fact, thanks to the ambitious sights set by the three multiannual programmes for JHA to date (Tampere, The Hague and Stockholm), the EU today possesses a solid and comprehensive strategic and legislative framework.

The next multiannual programme in the area of JHA should therefore aspire to be short, strategic and self-assured - easy to read and easy to evaluate.

After a flurry of legislative activity, the EU now needs to focus its efforts in the coming years on applying, consolidating and, where there is good cause, simplifying, the legal instruments that already exist, chiefly through compilation.

Ensuring they are applied in practice is the only way to derive the maximum potential from instruments already adopted and will, at the same time, prevent duplication of effort and avoid unnecessary waste.

On the other hand, and irrespective of whether new areas, or areas which might require additional initiatives are identified, the EU must uphold quality in its action in the area of JHA: in terms of policies, (legislative and non-legislative) instruments, and practices.

More attention will also have to be paid to ex-ante and ex-post evaluations of the EU's legislative activity, and there will have to be careful assessment of the need for legislation and whether or not the proposed legal solutions are reasonable and appropriate - largely based on a cost-benefit analysis of the policies they are intended to serve. All legislative initiatives must be preceded by a fair and full analysis of the possible cost of implementing the proposed measures.

In this connection, the EU will have to respect the fundamental principles of subsidiarity, necessity, proportionality and coherence, and it will be especially important to safeguard the division of powers between the EU and its Member States and between the different European institutions.

## **Alignment with the financial cycle**

Lastly, it would also be desirable to align policy planning with the multiannual financial programming cycle, as existing means could then be strategically channelled towards the priorities targeted. In other words, the financial programmes should be geared towards the strategic objectives set in the area of JHA, and it is essential that the future financial framework ensure that measures in the area of JHA are accorded more importance and that, above all, the necessary funding is provided.

## **II. HORIZONTAL ISSUES**

### **Europe of the citizens**

The area of Freedom, Security and Justice does not make sense if it is not buttressed by a solid framework for the defence of human dignity.

Fundamental rights are, first and foremost, rights, and thus form part of the legal system. Consequently, a future JHA policy should take on a more prominent role in defining EU human rights policy, which would then spread to other sectoral policies.

In a climate where the Charter of Fundamental Rights of the European Union has taken on a solid role in shaping the human rights strategy both inside and outside the EU and in light of the ongoing discussion on the EU's forthcoming accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, it is important for JHA policy to be seen to be making a more proactive contribution to human rights, whether within the Union or in its relations with third countries.

### **Justice, security and economic growth**

The current international financial and economic crisis has had a major impact in the area of JHA and should result in a more systematic commitment to the principle of justice and security for economic growth and development.

The current economic situation in Europe calls for specific wealth- and job-creation measures.

Justice reform is a key tool for getting closer to the citizens and to business, complementing labour-market reforms and promoting growth and competitiveness.

To this end, there ought to be a review of the Community legislative framework in these areas in order to stimulate confidence in business and citizens' confidence in cross-border e-commerce, to facilitate freedom of establishment and the provision of services by companies and sole traders, and lastly, to reduce the administrative and financial burden on companies, especially SMEs.

Another important step on the path to increased internal security in the EU will be to find ways of offsetting the negative consequences of the crisis, ensuring that the chosen solutions facilitate economic recovery in individual Member States and in the EU as a whole.

### **External dimension**

The Stockholm Programme had the great merit of highlighting the relevance of the external dimension of Justice and Home Affairs policy - an initiative which Portugal immediately supported.

It is now generally recognised that the EU's internal security is closely linked to external security and that the situation in third countries can directly impact on Member States and on the European Union as a whole. For this reason, due attention should be given to the external dimension of JHI in Europe's foreign policy.

The external dimension of JHI, which is becoming increasingly important, will need to be strengthened and deepened in the future.

The important thing is to ensure continuity in the guidelines laid down in the Stockholm Programme, in terms of both thematic and geographical priorities, while seeking to optimise existing policies and instruments and developing them to the full.

There is thus an urgent need to reinforce political dialogue and operational cooperation in a number of countries and regions, to promote the rule of law, good governance and law enforcement, and to move closer to European standards of security, management of borders and migratory flows and an effective asylum policy, based on the protection of human rights, on fighting terrorism and serious and organised crime, with the emphasis on trafficking in human beings and crime associated with the facilitation of illegal immigration, as well as reinforcing legal and judicial cooperation in civil and criminal matters.

Particular emphasis should be given to strengthening the Global Approach to Migration and Mobility and developing the mobility partnerships between the EU and relevant third countries, as a key instrument for the balanced management of migratory flows.

In line with the internal reinforcement of the area of Justice when defining EU human rights policies, the external dimension of JHA should take on a more prominent role in the protection and promotion of fundamental human rights, while giving due weight to the EU's interests, in particular as regards the fight against transnational organised crime.

Along with consistency between the internal and external dimensions of JHA, it will also be important to ensure consistency of action between the Union and Member States in third countries, in order to achieve concrete and sustainable results. With this in view, the emphasis should be on a multidisciplinary approach, involving all relevant actors (MS, COM, third countries, EU agencies, international partners and civil society) and promoting European values.

Lastly, as for JHA policy itself, the external dimension of JHA should be governed by an approach which is more active than reactive.

### **Other issues**

In a fast-changing world, priority should be given to the use of new technologies, for border control and for internal security, without neglecting the necessary protection of citizens' data and privacy.

There also needs to be greater supervision by Member States of the work done by the European agencies in the area of JHA, together with enhanced cooperation between agencies, which is needed to improve results and avoid duplication of efforts and unnecessary costs.

### III. STRATEGIC PRIORITIES

#### **In the area of Justice**

- In the **criminal** field: combating cybercrime committed by organised groups, cyber-attacks on Member States' IT structures and systems and organised crime active in producing and distributing goods and in counterfeiting goods and products; preventing and combating corruption at European level; consistency between the strategic priorities in combating transnational organised crime and the priorities adopted in the fight against serious and organised crime, in particular the preventing and combating of terrorism, implementing the EU's new policy cycle for organised crime with the emphasis on trafficking in human beings and crime linked to illegal immigration.
- In the **civil and commercial** field: perfecting instruments aimed at improving the life of citizens and companies, by creating a sound and secure legal environment for companies, for trade and for investment, so as to promote the recovery of European economies. This will involve a greater focus on company law and developing e-Justice, since information and communication technologies have a key role to play in improving judicial systems and are one of the most effective means of reducing the costs of legal proceedings and simplifying the handling of cross-border issues.

#### **In the area of Home Affairs**

- In the field of **internal security**: updating the Internal Security Strategy; cyber-security; preventing and combating terrorism; implementing the EU's new policy cycle for organised crime with the emphasis on trafficking in human beings and crime linked to illegal immigration; reinforcing police cooperation, and especially the exchange of information, fully implementing the Prüm Decisions and the Swedish Initiative; adopting the European PNR system.

- In **Schengen cooperation**: strengthening the political steering of Schengen Governance and the lasting enlargement of its area.
- In **civil protection**: full applicability of the Solidarity Clause; operational implementation of the new European Civil Protection Mechanism; and adaptation of the Directive on European Critical Infrastructures.
- In the area of **immigration**: (i) legal immigration – concluding the implementation of the Action Plan on Legal Immigration, ensuring that legal immigration and mobility contribute to economic growth, in an open Europe, while resolutely combating abuses and fraud in the exercise of the free movement of persons; (ii) integration – continuing and deepening the work of welcoming and integrating immigrants, concentrating efforts on the successful integration of second- and third-generation immigrants, for whom ensuring more effective civic participation is an important aspect; adopting active and cross-cutting integration strategies and mobilising institutional and social resources, in line with the new migration profiles; (iii) illegal immigration – combating illegal immigration and reinforcing the common policy on return and readmission, within the framework of the EU Strategic Response.
- In the area of **visas**: strengthening reciprocity; a fully-functioning VIS and visa policy's contribution to economic recovery (without neglecting the necessary security safeguards).
- In the area of **borders**: reinforcing the system for the integrated management of external borders; operational support for Member States' efforts, in particular via interoperable "smart borders" (Entry/Exit System, Registered Traveller Programme and EUROSUR); and rapid response to situations on borders under exceptional or urgent pressure.
- In the area of **asylum**: effective consolidation of the CEAS – ensuring, with EASO's support, the effective application of all its legislative and operational instruments; rapid response to emergency situations.

## Contribution from Sweden (SE)

### The Future Cooperation in the JHA Area - Initial thoughts by Sweden

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A new strategic vision is needed to give long-term guidance for future cooperation in the Justice and Home Affairs (JHA) area towards 2020. The follow-up of the Stockholm Programme should take into account new realities and it must be anchored in the current economic and social context.

At the same time, many of the challenges that existed already when the Stockholm Programme was approved are still there and many of the measures included in the Stockholm Programme remains to be decided and implemented.

This paper presents some initial thoughts from Sweden on how the cooperation in the JHA area should be developed in the coming years. Sweden has also together with a group of other Member States formulated goals and priorities for the area which have been sent to the Commission and the Presidency.

#### *The future JHA policy framework*

The purpose of Justice and Home Affairs cooperation is to serve the interests of all citizens as well as businesses and authorities concerned and should therefore be based on their actual needs. New actions should build on those needs, the existing EU framework and on knowledge gained through evaluations and impact assessments, including ex-ante cost-benefit analyses, using robust measurements developed by Eurostat. In each case it is necessary to consider at which level the solution has to be sought: regional, national, European, - or even multilateral/global. Implementation costs and organisational consequences for the government services also have to be taken into consideration at every stage.

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 of the existing instruments into national legislation, as well as their use in practice. It is time to make sure that the cooperation can lead to real added value on a practical level. There is a need for better and deeper cooperation, but not necessarily more measures.

Also the quality of legislation needs to be improved. Legal acts should be more user-friendly, taking into account the needs of Member States' authorities and legal practitioners. There should be better regulation principles built into each proposal including robust and independent impact assessments scrutinized by the Council.

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 and to the rights of victims. Cooperation between Member States in cross border victims related subjects should be supported. Consideration should for instance be given to setting up a European virtual network of authorities responsible for victim policy to explore best practices.

Practical cooperation between Member States is of utmost importance for further development of JHA. It is therefore essential to exchange experiences and good practices in order to improve cooperation between law enforcement agencies and deepen mutual trust and understanding of different legal and judicial cultures. It is also necessary to step up training on EU-related issues and make it accessible to all professionals concerned.

Successful operational cooperation between Member States, such as joint investigation teams and joint operations, should be better communicated at EU level in order to promote best practices.

The EU agencies in the JHA area also have a central role in coordinating common European efforts and supporting cooperation between national authorities in the JHA sector. Further work is required in order to make full use of the potential capacity of these agencies.

#### ***A well-functioning asylum system and migration policy***

The focus in asylum and migration policy should be on full implementation, consolidation as well as evaluation of existing legislation and achievements (“less legislation, more consolidation”). A new level of practical cooperation is essential to achieve this goal.

The full and inclusive application of the 1951 Geneva Convention should continue to be the basis for the work. Member States shall ensure the effective transposition and coherent implementation of the EU asylum acquis, particularly the newly adopted Common European Asylum System (CEAS), as it applies to Member States. The longer term objective of CEAS should remain that similar asylum cases should be treated alike and result in the same outcome. Practical cooperation between Member States should be prioritised. The need to focus on implementation entails a robust mechanism to secure coordination and competence. The European Asylum Support Office (EASO) should fully use and effectively execute its mandate with a view to contribute to the cost effective implementation of applicable legislation, policy and practice in Member States, in particular the use of the EASO asylum and training curriculum. An early warning system should also be used as a tool for strategic discussions and planning within the EU in order to be better prepared for challenges and unforeseen events outside the EU.

The EU can and should play a greater role in providing protection for the most vulnerable refugees. Sweden urge upon all Member States to join UNHCR's work to expand the resettlement base. The starting point should be that all Member States will establish permanent resettlement programs, with support from the Asylum, Migration and Integration Fund. Solidarity with regions of transit and origin, through asylum capacity building and Regional Development and Protection Programmes should be further developed.

With the aim to secure a sustainable asylum and migration policy, it is important to develop preconditions for an effective and humane system for return. Continued practical co-operation should be encouraged, for example in the implementation of re-admission agreements and relevant return projects. Future readmission agreements should focus on priority countries and existing agreements must be implemented.

It is essential to make EU more attractive in order to address the future demographic challenge of an aging population and future labour market. The EU competes in the global labour and education market and increased opportunities for third country nationals to come to the EU in order to study, work or conduct research should therefore be encouraged. Many Member States face the challenge posed by the current high rate of unemployment. But it is important to underline that the economic crises does not necessarily exclude labour shortages from occurring in some occupations or sectors. The challenge is to match the demand of employers and workers with particular skills. Therefore, facilitating increased opportunities for labour migration is important to meet both present and future challenges.

The freedom of movement for EU citizens and their family members is one of the central achievements of the European Union. This principle must be safeguarded, including the rights and responsibilities that it entails. As a means to boost growth and jobs and make Europe more competitive, labour mobility within the EU should also be facilitated.

The EU should continue to develop the cooperation on integration in order to benefit fully from migration. The Common Basic Principles for Integration are still relevant and should be implemented and promoted, in particular in the areas of employment, education and language training. The EU should also develop a regular follow-up and evaluation mechanisms on integration based on the agreed indicators. This is important in order to enhance the European learning process. The emphasis should primarily be on outcomes and follow-up of results that are measurable and not on policy and legal texts, A gender equality perspective on integration should always be applied in all evaluations.

The implementation of the Common Visa Code and the Visa Information System (VIS) remains the foundation for a harmonized visa policy. The full roll-out of the VIS must be safeguarded. A more regular update on the state of harmonization regarding the implementation of the Visa Code, the functioning of the Local Schengen Cooperation and the use of the VIS should be considered.

The EU should continue to make use of the EU Visa Policy in a coherent and sensible way. It is necessary to promote reforms and strengthen the rule of law and the fundamental rights in the neighbouring regions but also to promote mobility, tourism and economic growth. Issues such as a well-functioning asylum system, effective work against corruption and protection of minorities could be included in the Schengen evaluation process in order to strengthen the mutual trust between Member States and ensure free movement in a better way.

Cooperation with countries of transit and origin in line with the EU Global Approach to Migration and Mobility (GAMM) should continue in a strategic and consolidated way. Political impetus is required to enhance GAMM effectiveness and impact. The four focus areas of GAMM need to be addressed in an integrated and balanced manner both in terms of policy response and operational activities. The further strengthening of existing and future Mobility Partnerships and Common Agendas for Migration and Mobility is important to maintain and develop long-term actions and sustainable results. In particular the new fourth area on international protection must be further integrated and operationalized within the GAMM-framework.

All relevant financial instruments, including the new Asylum, Migration and Integration Fund should be used efficiently.

***Developing Civil Justice – to settle cross border disputes and support free movement.***

The progress made in the field of EU civil law has laid an important foundation for enhanced and simplified cross-border activities for citizens and businesses.

There are however several civil law instruments which are rarely applied and partially overlapping. Enhancing the knowledge of the existing instrument among the legal practitioners should therefore be at the centre of attention rather than taking new legislative initiatives. The aim must be to ensure that already adopted EU legislation has a real impact throughout the Union.

Civil law is an area where action at EU level could make a real difference in people's everyday lives. The focus for the future cooperation should therefore be on measures which in a concrete way can simplify and facilitate for citizens and businesses in their cross-border activities.

An efficient enforcement of judgements is of great importance in the civil judicial cooperation. The process of abolishing unnecessary intermediate measures, such as exequatur, should continue where appropriate, when revising existing instruments. The use of the principle of mutual recognition of judgements and decisions to new fields should also be explored. The harmonization of rules of applicable law should continue where it is necessary from a citizen's perspective. Also the process of creating effective tools for judicial cooperation in cross-border cases is essential. In that regard, the forthcoming review of the Regulation on the Service of documents in civil and commercial matters has an important role to play.

In the area of family law there is an obvious need for swift procedures, e.g. to ensure the speedy return of a child. More can be done to abolish the exequatur while maintaining necessary safeguards, to make further use of the principle of mutual recognition and to increase the understanding of the different legal systems in this field. The Member States' different substantive family law is based on long traditions and important cultural perceptions and must be respected. For this reason, and to be able to move forward at European level, focus should also in the future be on finding solutions to cross-border issues that can hamper cooperation, such as rules on jurisdiction, applicable law, recognition and enforcement. The upcoming review of the Brussels II regulation is in this context welcomed.

The financial crisis has highlighted the need for the EU to contribute to the development of a healthy and competitive European business climate. In the JHA area it means primarily to assess the needs not least for consumers and small and medium sized businesses to have easy and efficient access to the justice systems so that they can enforce their rights throughout the Union. It is important that the process of strengthening the position of consumers and businesses in cross-border disputes continue. The upcoming review of the Regulation on Small claims is therefore welcomed.

When it comes to consumers the directive on alternative dispute resolution is a great progress and there is a need of a thorough follow-up of its implementation and actual functionality. Furthermore the ambition should be to fully harmonise the parts of the consumer protection legislation that are important in connection with cross-border trade. Uncertainties as regards the legal rights is most certainly contributing to the uneasiness towards cross-border shopping that can still be noted from both business and consumers. Moreover, harmonised rules give a better basis for effective cooperation on enforcement.

The on-going revision of the insolvency regulation has the potential to create a sound legal infrastructure for business to operate, not least in times of economic crises. Further work on insolvency will be needed at EU level. A starting point should be to identify the issues that create problems and need to be tackled, taking into account the work done on the regulation so far.

### ***Fighting Crime - to increase the security of citizens***

The fundamental aim of EU Criminal Policy is to increase the security of citizens by improving cross-border cooperation in preventing and combatting crime. To fully achieve this aim further development and facilitation of judicial cooperation between national authorities in different Member States is required. In order to fight crime it is essential that the police, judges and prosecutors in the Member States are able to cooperate across borders.

The principle of mutual recognition should continue to be the cornerstone on which judicial cooperation in criminal matters is built. Mutual recognition has proved to be a successful method for making crime fighting in the EU more efficient, e.g. by allowing direct contact between authorities and introducing strict time limits and standard forms.

Substantive criminal law measures should remain a measure of last resort and common minimum rules have already been adopted in several crime areas. Further approximation measures should be considered only when there is evidence from practical experience in the areas of particularly serious crime with cross-border dimension, or needed to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures.

Focus should be on eliminating any gaps that may exist in cooperation on criminal law matters, thus strengthening this cooperation in the interests of successful prosecutions in cross-border cases. Such gaps can be found e.g. in cooperation regarding execution of decisions on confiscation and cooperation on transfer of procedures.

With regard to EU law enforcement cooperation, the principle of availability – to have access to the right information at the right time - is a cornerstone. The coming years should focus on identifying obstacles to the realisation of this principle and find means to overcome them. In order to fight crime, it should be easy to cooperate across the borders whilst keeping a high level of protection concerning personal integrity. Information exchange must not be hampered by issues of competence (mutual recognition of different national structures) while fully respecting the applicable legal framework for such information exchange. This is why we believe in the introduction of a single point of operational contact in each Member State, providing a “one-stop shop” for law enforcement information exchange between Member States.

It is also important that certain essential processes, such as the collection, processing and use of forensic data are reliable and comparable in all Member States. Applying common forensic-scientific (minimum) quality standards can increase mutual trust and thereby contribute to law enforcement and judicial cooperation between Member States.

Europol and Eurojust must be further developed and the cooperation between these institutions and the national authorities of the Member States has to be improved. This must be a long-term objective that will require continuous attention and the building of mutual trust in the day-to-day interaction in concrete cases.

Fighting serious international and organised crime requires operative cooperation between law enforcement authorities but also a multidisciplinary approach. One area which could be given further attention in the EU cooperation is the use of administrative measures to combat such criminality. Further, the fight against cyber-crime requires joint efforts and Sweden therefore welcomes the establishment of the European Cyber Crime Centre within Europol.

Freedom of movement of persons is a cornerstone of the EU cooperation. Abolishing border checks between Member States requires mutual trust and measures to compensate for the detriment it entails for the law enforcement authorities. EU external borders are our joint external borders. Border control is the responsibility of each Member State and Sweden would not want to see a system of European border guards. Instruments already in place could however be used more efficiently and measures could also be taken to enhance the trust in the border checks performed at the external borders.

### ***Strengthening the coherence between the internal and external dimension***

The external dimension of the JHA area is becoming increasingly important. Cooperation with third countries is crucial in order to fully address global issues like terrorism, drug trafficking, trafficking in human beings, migration and human rights. A better coherence between internal and external actions in the JHA area is therefore needed. The civilian capability within the framework of EU external missions must be further developed. This requires relevant civil competence in strategic positions within the EEAS and the involvement of relevant structures within the council (e.g. COSI) in the planning process.

The external dimension of JHA policies and actions also has significant possibilities for providing a better environment for economic growth in the EU and its partner countries. Furthermore the EU civil protection mechanism is a good example of operational EU internal and external coordination in relation to natural and man-made disasters.

The links between migration and development should remain central to EU policies on migration. Policy development in the area of migration and development as well as efforts to implement concrete projects needs to be continued. EU migration and development initiatives should mainly focus on the areas identified in the Stockholm Programme: enhancing the development impact of remittance transfers and circular migration and enabling diaspora members to actively contribute to the development in their country of origin. Efforts to implement projects together with partner countries needs to be further strengthened.

In the field of migration and asylum, an increased dialogue and cooperation with countries of origin and transit is needed. EU Global Approach to Migration and Mobility should be further developed, including in particular Mobility Partnerships and Common Agendas for Migration and Mobility. The EU needs to further develop a coherent external policy, assessing the EU Visa Policy and readmission cooperation, and instruments such as the EU Action on Migratory Pressure and Region Development Protection Programmes. These policy areas should be further strengthened as well as promoted, building on related areas such as EU foreign and development policies. Migration as an enabler for economic growth and its links with the overall economic and social strategy could be explored.

## Contribution from Slovenia (SI)

### FUTURE DEVELOPMENT IN THE FIELD OF JUSTICE AND HOME AFFAIRS

#### 1. KEY PRINCIPLES AND HORIZONTAL ISSUES

Future policies ought to follow the following principles:

- policy coherence – "internally", i.e. with other JHA policies, and "externally", with policies on employment, social and foreign policy, etc.;
- implementation support and elimination of identified legislative shortcomings as well as major inconsistencies hindering efficient transposition and implementation in practice;
- simplified drawing of funds and removal of administrative barriers in the acquisition of funds in accordance with the multiannual financial framework 2014-2020;
- communication strategies for better visibility of freedom, security and justice policies in relation to the public in member states and third countries;
- selection of adequate process management methodology; recent good examples include particularly *policy cycle* and *roadmap*, which are adapted to the specific nature of a particular area;
- integrity and ethics in authorities competent for the provision of public security: neither member states authorities nor EU agencies are immune to corruption and system abuse. We should develop a uniform framework of ensuring integrity and ethics in these authorities. In this way, greater transparency of measures against corruption would be achieved and mutual trust enhanced.
- to support implementation, we propose to devise a fast-track legislative procedure. With such *common approach*, all institutions involved in the legislative process would address without delay the legislative shortcomings identified, which hinder adequate transposition and implementation in practice, in full respect of the Lisbon Treaty provisions;

- cooperation with third countries in the field of JHA must follow the development of EU policies. The conclusion of sectoral agreements between the EU and third countries in the field of JHA should be accelerated. The Western Balkan countries ought to be given adequate support to achieve EU standards in the field of JHA. Special forms of partnerships for geographical areas where countries of origin and transit of illegal migration prevail should be encouraged. In doing so, cooperation with and efficiency of the already existing regional initiatives, organisations and processes ought to be strengthened;
- strengthening the operation of JHA agencies, including autonomous operation of CEPOL. Smooth cooperation between agencies within their mandate needs to be ensured as well as compliance in the operation of EU agencies and international organisations;
- the development of the JHA area is characterised by rapid changes and a need to adapt to the circumstances, which is why in devising the new programme we should avoid objectives that are too specific and allow for flexibility.

## **2. SECTORAL PRIORITIES**

### **2.1. Migration, borders, asylum and visas**

In the field of border and illegal migration management, particular attention will need to be devoted to the problem of illegal crossing of internal Schengen borders and movement within the Schengen area. At the same time, we ought to make use of the compensatory measures to their fullest potential, e.g. take better advantage of the SIS II, VIS and Eurodac, police cooperation centres and police units for targeted prevention and repression of cross-border crime and illegal migration at key international routes. More activities will have to focus on preventing abuse of legitimate entry and residence permits and improving the implementation of return policy.

In the field of legal migration, implementation of legislation is an important issue. We can begin a serious discussion on preparing an *immigration code* in terms of codification of basic requirements of legal entry and provision of facilities for certain categories of migrants that are needed by the EU and not only by individual Member States.

In the field of international protection, member states must be afforded every support in implementing the extensive legislation package. We also ought to think about setting up and connecting the envisaged crisis response systems. In this framework, we could embark on a serious debate on joint processing of applications, in pursuance of the conclusions of the informal SCIFA meeting in Vilnius. More attention should also be devoted to the prevention of abuse of international protection procedures.

As a further step in modernisation and optimisation of visa procedures, we should consider replacing visa stickers with electronic information. In this way, we would reduce the costs while also contributing to removing administrative barriers. Moreover, by abandoning visa stickers and their complicated handling, diplomatic-consular representations could focus on the substance of the procedure, which would further increase their efficiency.

## **2.2. Internal security and EU police cooperation**

It is necessary to accelerate the implementation of legislative acts of the former Third Pillar including Title VII, Protocol no 36 of the Lisbon Treaty. We should take better advantage of already performed work and established findings in the field of mutual evaluations, also by subsequently checking the implementation of the adopted recommendations. The EU Policy cycle can be considered a major success, and full support should be provided to the implementation of activities in the future period both at the EU level and at the level of member states. We will also have to reflect on updating the activities of the EU Internal Security Strategy.

We must keep strengthening criminal intelligence and information exchange. The role of Europol is of key significance, although we should strive for more efficient use of all tools for international police cooperation and operation of member states' central authorities for international police cooperation. For the purposes of investigative procedures by the competent authorities, we should consider a more rapid exchange of information subject to a court order in member states.

In the field of suppression of organised crime and serious crime we should support the development of innovative measures, e.g. administrative measures, and develop measures in the field of crime prevention. Most of all, cooperation with third states should be developed and regional initiatives supported. In the field of terrorism we should further focus especially on radicalisation prevention and recruitment. The development dictates increased involvement of COSI in strategic activities in the field of prevention and suppression of terrorism – internal aspect. The use of the analogy of the EU Policy cycle in this field would greatly contribute to the coherence of the planned measures and to a more effective and priority-oriented use of available resources.

Economic crime and corruption and environmental crime, will, in addition to cyber crime, represent the greatest challenge in the future period. In the area of freedom, security and justice we should particularly strive for measures repressing illegal activities of this type of crime with a view to supporting economic revitalisation of EU member states.

### **2.3. External dimension of migration and asylum**

Global approach to migration (GAMM) represents the basis to develop partnerships with third countries. The performance of GAMM tools (mobile partnerships, migration missions, migration profiles) should be promptly assessed based on which an upgrade should be proposed in the new programme: as many member states as possible should join mobile partnerships, development of extended migration profiles, Common Agenda for Migration and Mobility as a pre-level for mobile partnerships.

The competencies of the European External Action Service (EEAS) and the European Commission need to be more clearly defined as well as areas remaining within the national competence.

The issue of illegal migration and mixed migration flows needs to be tackled by eliminating the root causes in countries of origin and transit that enable such a situation.

## **2.4. SI position: judicial cooperation in criminal matters**

### ***1. What further development of criminal law at EU level is needed?***

- **General remarks**

Respect for the principle of subsidiarity as a general principle of the EU law should be given a greater emphasis. The importance of the subsidiarity principle has been recently demonstrated in the case of the EPPO. In this context, we emphasize the need to improve the preparation of impact assessments, on which the Commission bases its legislative proposals.

The co-decision procedure between the Council and the European Parliament should be improved; the special characteristics of criminal law should be taken into account to a greater degree. The recent yellow card (the EPPO) has shown in particular that the national parliaments should be included in the decision-making in a more substantial manner. Moreover, it is important that the EU institutions do take yellow cards seriously!

After all, the Treaty itself recognizes the particular sensitivity of the criminal law from the point of the sovereignty of the Member States. That is why the Treaty gives the Member States the option of the emergency brake.

At the EU level, we should primarily focus on the implementation of a number of framework decisions that have been adopted in recent years, especially since the transitional period will expire on the 1 December 2014 and the Commission and the European Court of Justice will acquire full powers over all pre-Lisbon legislation relating to police and judicial cooperation in criminal matters. More precisely, it should be examined more accurately how the implementation of the adopted measures functions in practice, in particular with a view of improving the implementation of mutual recognition instruments and the quality of legislative proposals. In this regard, we would like to highlight the added value of "follow up" mechanisms and practical measures.

We should keep in mind that criminal law should be considered as a measure of last resort; therefore, more emphasis should also be put on prevention. However, we are aware that harmonization is excluded in the field of crime prevention (Article 84 TFEU).

- **The scope of Article 83/1 TFEU: Eurocrimes**

Slovenia believes that at this stage there is no need to extend the EU CRIMES list. We assess that organized crime should be primarily addressed at the EU level, since perpetrators take advantage of the freedoms granted by the EU law. We believe that the current legal basis is appropriate.

- **Article 83/2 TFEU**

*If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonisation measures in question, without prejudice to Article 76.*

We think it is essential that decisions at the EU level regarding the necessity to adopt criminal law directives for the effective implementation of other EU policies are taken on a case by case basis.

**In this context, the question is whether the criminal measures are actually more effective than administrative measures.** For example, the discussion on MAD and MAR (Market Abuse Directive and Market Abuse Regulation) has shown that MAR is probably more effective than MAD. Slovenia highlighted this in discussions in the Council. First of all, MAR envisages very high penalties, and furthermore, the administrative procedure is, as a rule, faster than the criminal procedure. In this sense we may even assume that the perpetrators of such crimes prefer criminal proceedings to the administrative ones!

In general, Slovenia welcomes the unified approach regarding standard definitions. Standard definitions should be unified to eliminate discrepancies between different criminal law directives. In this sense, Slovenia has also repeatedly argued in the Council that it is necessary to ensure the uniform approach in all Council formations when discussing criminal law provisions!

Slovenia has some concerns regarding the harmonization of the statutes of limitation, since it affects the foundations of judicial systems. We believe that the harmonization of the statutes of limitations is more appropriate for the EUROCRIMES as defined in the first paragraph of Article 83 of the TFEU.

**Our goal should be: implementation, consolidation and coherence!**

• **Regarding the Passerelle Clause and enhanced cooperation issue:**

Slovenia believes there is no need to exercise the Passerelle at this stage; we should first assess how the judicial cooperation in criminal matters will function after 1 December 2014, when the transitional period will expire and the European Commission and the European Court of Justice will acquire full powers over all pre-Lisbon legislation relating to police and judicial cooperation in criminal matters. In addition, we expect that by 1 December 2014 Member States will implement the Framework Decisions adopted before the Lisbon Treaty entered into force, which will have an impact on the judicial cooperation in criminal matters. The Passerelle should be used only on a case-by-case basis and after careful consideration.

Moreover, Slovenia believes that the enhanced cooperation should be a measure of last resort, since this is a form of cooperation, which should only be used in extraordinary cases. Generally, all Member States should participate in the measures regulating judicial cooperation in criminal matters. This is why, with regard to the EPPO, Slovenia is of the opinion that as many Member States as possible should participate in the EPPO.

***2. What initiatives at EU level would best strengthen mutual trust between Member States?***

Slovenia believes that it is essential **to strengthen the mutual trust between Member States**, since this is the cornerstone of mutual recognition. Therefore, we should put the emphasis on the harmonization of minimum procedural standards in criminal proceedings, which will subsequently strengthen mutual trust. Furthermore, we should promote the rights of victims of crime.

In addition, Slovenia expects that the mutual trust will be strengthened when the Commission and the Court of Justice will acquire full powers in the field of justice and home affairs after the expiry of the transitional period. Moreover, Slovenia estimates that the mutual trust between judicial authorities will also be strengthened by other mechanisms, such as the "rule of law" initiative and the EU's accession to the ECHR, etc.

Slovenia believes that it is important to identify the need to consolidate, simplify and standardize the methods of judicial cooperation within the EU. Above all, it is essential to ensure that the measures are clear and easy to use for practitioners, which would certainly be ensured more efficiently by regulations. Additionally, Slovenia believes that there are many cases in which the instruments of mutual recognition in the field of cooperation in criminal matters should be adopted in the form of regulations rather than directives, which would result in a better functioning of mutual recognition. In this sense, Slovenia, for example, also favors the potential EAW (European Arrest Warrant) amendment in the form of a regulation.

Regarding strengthening of mutual trust, Slovenia agrees with the measures that have been proposed so far - mainly judicial training, networking among practitioners, various handbooks, sharing of best practices etc.

In this context, it is also Slovenia's position that there should be more emphasis on practical measures. Therefore, it is especially important to fund the various projects by the EU, especially in view of the ongoing financial crisis.

Slovenia is also of the opinion that we should make an assessment of how to further improve and enhance the recognizability of the measures among the practitioners.

Slovenia also expects that after 2014 more emphasis will be given on mutual recognition instruments (after the Lisbon Treaty entered into force, the EIO is the only mutual recognition instrument), especially since significant progress has been achieved recently in the area of minimum procedural standards.

Moreover, Slovenia estimates that certain problems of mutual recognition arise from the current legal framework (legal bases) which is very rigidly defined and does not always take into account the inherent differences between the legal systems of the Member States. Certain issues are inevitably addressed quite differently in different legal systems. Confiscation, for example, is regulated in general by criminal law in most Member States; however, a civil forfeiture procedure is primarily applied in the UK and Ireland. In this particular case, problems in the field of mutual recognition can be exploited by criminals. Therefore we should address the issue at the EU level.

Slovenia also finds as very interesting the idea to set up "victim funds" at the EU level funded by the confiscated property.

## **Contribution from Slovakia (SK)**

### **Slovak Republic – Comments**

**27.11.2013**

#### **Discussion: Future of JHA**

##### **Questions from Presidency for discussion:**

**g) Which main strategic priorities would you like to highlight for the post-2014 period under the mandate of your committee/working party?**

- In the area of asylum we consider as a priority the harmonisation of asylum practice in the Member States with emphasis on measures against abuse of the asylum system.
- As regards migration, we equally consider as a priority the fight against abuse of legal migration instruments, while it is necessary to facilitate the entry and residence of bona fide travellers, especially tourists and others who are an economic contribution to the EU.
- As regards illegal migration, it is necessary to fight against the abuse of visa-free regime and put into place effective sanctions against all forms of illegal migration including the sanction on persons participating in illegal migration and persons that profit from it.
- In the area of security policy there is a number of priorities, such as the problem of synthetic drugs, the perennial topic of radicalisation and terrorism, or more efficiency in the everyday cooperation among police forces of the Member States. In the context of present economy situation we should to include as a priority the fight against economic crime, against the legalisation of the proceeds of crime and against cross-border tax fraud.

**h) Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?**

- The Slovak Republic prefers a consistent and continuous implementation of the existing legislative, administrative, technical and other tools on the EU level and adopted rules before creating new regulations. Possible new legislative proposals should be aimed to the perfection, consolidation or adaptation of existing legal tools in the light of experience with their application.
- Strengthening of mutual cooperation and the interoperability of EU agencies and also the improvement of cooperation and information exchange among the law enforcement authorities of the Member States and EU agencies is desirable.
- There is a need to strengthen the external dimension of policies in the area of justice and interior, improvement of communication and cooperation with third countries, particularly with transit countries and countries of origin in the context of illegal migration.

**i) What principles could be useful in constructing the post-2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?**

- Unifying the time framework of political and financial planning would be highly beneficial and the Slovak Republic strongly supports this idea.
- The existence of 7-year financial planning cycle makes it not reasonable to have a different planning cycle for justice and interior policies. The unified time framework of planning is a basic precondition for the coherence of political priorities with the financial support provided from EU budget.
- At the same time, the unified time framework is a basic precondition for an effective evaluation of efficiency of both the political priorities and their financial support.

## **2nd Contribution from Slovakia (SK)**

### FUTURE DEVELOPMENT OF THE JHA AREA

**Which main strategic priorities would you like to highlight for the post 2014 period under the mandate of your committee/working party?**

During the previous years several effective legal instruments were adopted in the area of criminal law and judicial cooperation in criminal matters. This resulted into the strengthened cooperation of the member states and its bodies in the sphere of combating criminal activities of the cross-bordering nature. On the other hand, it is important to emphasize that not all of the legal instruments constituted significant advantage and efficient enforcement in practice. New legal instruments must not only be incorporated into the legal orders, but shall be introduced to the judicial bodies as well. This procedure is time-consuming and adoption of the new legal instruments does not allow to use their full potential. In this connection it is important to mention, that several legal instruments adopted within the European Union are used relatively rarely by the bodies of the member states in the everyday practice.

In the upcoming period the focus shall be primarily directed at the evaluation of the valid legal instruments on the level of the European Union. The objective would be to reach more consistent adoption procedure of the legal instruments and the usage of obtained knowledge and practical experiences while revising evaluated legal acts. It would be suitable to make the analysis of the assumed objectives, in particular in the area of judicial cooperation in criminal matters and possibly indicate the reasoning behind the fact that some objectives of the certain legal arrangements were not reached and subsequently suggest solutions for improving the functioning and effectiveness of the mentioned legal instruments. In this connection instead of adoption of the new legal instruments, the priority should be the evaluation of the existing ones and search for the means of improving them and creating more efficient usage by the competent bodies of the member states. This would lead indirectly towards the increase of the contribution of the legal instruments for the European Union citizens.

**Which other horizontal issues would you like to highlight for the post-2014 period including (if relevant) the external action?**

From the horizontal stand point of view the main challenges the European Union is facing nowadays is the global financial crisis, which concerns all the sectors and life of the society, therefore it is important to effectively punish all the forms of the criminal activity, which undermines the basis of the healthy economy. With regards to the cross bordering cases it is necessary to intervene through the legal instruments and put emphasis on the cooperation. This would possibly compel the perpetrators not to commit the crimes. The effective criminal procedure discourages the perpetrators from committing the crimes more than the threat of incensement of the duration of the sentence regulated by the national legal acts. In connection with the improvement of the application of the instruments in the area of the judicial cooperation it is important to focus on strengthening the professional preparation of the practitioners, which should be aimed at the creation of direct professional connections on the European level and solving substantial practical problems. This kind of attitude would contribute to the reinforcement of the security of the citizens and their basic rights.

**What principles could be useful in constructing the post -2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?**

Future regulations for the purpose of development after year 2014 should clearly relate to basic principles the European Union is governed by. Based on the intensity of the intervention of the criminal instruments to the basic rights these should be used in cases where other legal disciplines and instruments fail to apply. The legal instruments should be based on the substantial consideration in conformity with the principles of subsidiarity and adequacy. The impact studies with the subject matter in the area of submission procedure of the legislative initiative should be carefully based on the professional grounds and quantifiable arguments. It is equally important to administer internal and external consistency of the legal instruments with reference to the evaluation of its functioning in practice. At the same time we assume, that for the successful plan of the future development in the area of criminal justice it is not inevitable its harmonization with the cycles of the financial framework.

## Contribution from United Kingdom (UK)

### UNITED KINGDOM RESPONSE TO PRESIDENCY DISCUSSION PAPER FUTURE DEVELOPMENT OF THE JHA AREA

The United Kingdom is pleased to respond to the Presidency Paper of 16 October and to set out our views on the strategic priorities and principles that should drive development of new JHA strategic guidelines under Article 68 TFEU.

We are grateful to the Lithuanian Presidency for their initiative in holding a discussion on the future development of the JHA area at the Vilnius JHA informal Council, the productive discussions it facilitated at the three Directorlevel working groups, and for holding a further discussion at the December JHA Council. It is important that future JHA guidelines reflect closely the interests and needs of Member States and their citizens and we consider the JHA Council to be best positioned to achieve this. We hope that the forthcoming discussion will lay firm foundations for a constructive, Council-led process of dialogue and policy development in the JHA area.

In submitting this response we refer to the joint letter of 18 November from Interior and Justice Ministers of the Netherlands, Sweden, Finland, Hungary, Estonia, Slovenia and the UK and reiterate the importance of the guiding principles outlined in the letter. We believe that those principles establish a good basis for the development of clear and effective strategic JHA guidelines that meet the needs of Member States and their citizens. We would encourage all Member States to sign up to the principles contained within this letter as the basis for future development of the JHA area.

We also call upon the incoming Greek Presidency to take forward this work with renewed vigour to maintain momentum and to ensure that the European Council is in a position to agree a meaningful set of new JHA guidelines in June 2014.

## **Principles and priorities for future development of the JHA area**

Article 68 of the Treaty on the Functioning of the European Union (TFEU) requires the European Council to “define the strategic guidelines for legislative and operational cooperation within the area of freedom, security and justice”. As JHA cooperation affects core aspects of national sovereignty, such as immigration, border control and criminal law, it is right that the Member States, working with the Commission in the European Council, set the overall strategic direction for this cooperation. It is equally essential that JHA Council and its working groups play the leading role in preparation of the new JHA guidelines and in monitoring their implementation and evaluation.

In developing new strategic guidelines we must ensure that they take into account the current political, economic and social realities. Rather than a detailed new programme, the new guidelines should be much shorter, setting out clear strategic objectives towards which the EU should work and key principles which the EU should follow in their implementation. The crosscutting strategic priority for the new JHA guidelines should be to achieve shared objectives through more effective practical cooperation between the Member States, the consolidation of existing measures over new legislation, better regulation and repeal of defunct measures.

In light of the aforementioned, we propose that the new JHA guidelines:

a) Set out strategic priority areas for action. They should be:

- i. preventing the abuse of free movement rights:** This is one of the biggest challenges we and other Member States face. Interior Ministers from Austria, Germany and the Netherlands have already expressed their concerns to the European Commission on this matter. The problem involves both non-EU nationals seeking to circumvent immigration controls (for example by conducting false marriages with EU citizens) and EU citizens moving to other Member States without any genuine intention of working, studying or otherwise exercising their Treaty rights. The guidelines should commit the EU to robust action in this area, for example, by supporting the Member States in their efforts to tackle criminality and non-exercise of Treaty rights, making it easier to remove those who flout the free movement rules and to prevent them from reentering if necessary.
- ii. strengthening the EU's external borders:** Significant numbers of illegal migrants are entering into the EU where our external borders are the weakest. Unfortunately at times this results in human tragedies for those attempting to reach the European Union via clandestine routes. It is in the interest of the EU to strengthen its external border, work more effectively to reduce illegal migration and avoid future repetition of recent tragedies. The new guidelines should support stronger cooperation at the external border, both through the FRONTEX and European Asylum Support Office Agencies, and by helping individual Member States in Southern and Eastern Europe, which are affected by the growing influx, in strengthening their borders. The guidelines should also promote better cooperation to return those with no right to be in the EU, and better coordinated work in third countries to prevent illegal migration at its source.

- iii. action against human trafficking:** Member States can do more in this field and should work together more effectively, exchanging intelligence and launching joint investigations under existing frameworks. The new guidelines should seek to rationalise and reduce existing reporting requirements, but should commit the EU to coordinating its anti-trafficking work and funding in third countries more effectively.
- iv. the more effective return of prisoners to their country of origin:** It is important the Member States agree on easier and efficient return of foreign criminals to their countries of origin, whether they are EU nationals or citizens of third countries. At EU level, we should push for effective and timely implementation of the Prisoner Transfer Framework Decision, so that it serves as an effective mechanism for the transfer and mutual recognition of sentences. This is important as increasing numbers of foreign national offenders in custody are from Europe but many of the high volume countries have yet to implement the Framework Decision. We also want to ensure the prompt return to the UK of British national offenders from European prisons. As for offenders from outside the EU, the guidelines should call for more effective sharing of best practice on the returns process (including on obtaining travel documents for returnees) and joint work and funding in third countries to build up their capacity to receive returnees, for example by improving prison standards and capacity so prisoner transfer agreements can operate more effectively.
- v. improved exchange of criminal records:** Criminals do not respect borders, and it is important that we can share information about their records effectively. We support the existing European Criminal Records Information System (ECRIS) and the new guidelines should ensure that all Member States can benefit fully from this system. The guidelines should consider how we can provide appropriate technical assistance, including financial assistance from existing resources, to make this a reality. We should seek to explore ways (through existing arrangements) of sharing proactively information about dangerous individuals before they are arrested for a further offence.

- b) Set out how the Commission and Member States should work together in achieving these objectives. The guiding principle for the EU should be to achieve these objectives through **practical cooperation rather than new legislation**. The guidelines should also explain where we do not expect the European Commission to act, for example, by recalling that national security remains a Member State competence and reinforcing the principles of subsidiarity and proportionality. The principle of subsidiarity, in particular, must be respected at every stage and appropriate consideration must be given to levels at which JHA problems are best addressed (i.e. national, EU or global).
- c) Ensure that Commission's proposals, particularly in the area of civil law, always **take into account costs and burdens** to both private sector organisations and public bodies. The guidelines should seek a **stricter set of criteria against which the value of EU legislative action must be assessed**. The Council, for example, should require that a clear case be demonstrated that there is a positive and unambiguous value in the instrument being proposed.
- d) Ensure that **"better regulation"** principles are built into each Commission's proposal including more robust, independent and comprehensive impact assessment scrutinised by the Council both before publication of new proposals but also after their adoption.
- e) Start the process of tidying the European statute book as there is a significant number of European measures in the JHA field which are defunct or obsolete and repealing them would be a positive move. Having extant legislation over which Member States could be infracted, but which serves no useful purpose, is not a good practice.
- f) Set out a Council-led process of **monitoring and reviewing** implementation of the new guidelines to ensure that they are being applied as intended and that they continue to offer value and relevance throughout their duration.

- g) Ensure that where **external or third country agreement negotiations** include Justice and Home Affairs obligations, the JHA Council should have early and continuous oversight of the negotiating process, to ensure effective oversight (or control) over the actions of the European Commission and European External Action Service.
- h) Ensure better and **more effective coordination of our activities in third countries**, to address security, crime risks and illegal immigration “upstream”. Whilst doing this, it is also important that the EU aims for the most effective use of its overseas funding to help recipients build their capacity to deal with these risks (for instance by improving prison conditions) and develop a framework for practical cooperation.

It is the view of the United Kingdom that such a combination of **clear shared objectives that Member States wish to see addressed and clear guidelines on the way in which all JHA work should be taken forward at EU level** will provide the basis for a strong and coherent set of guidelines that will remain relevant and timely for their duration.

#### **Other horizontal issues**

A number of horizontal issues are already addressed above.

2 December 2013

**Joint contribution from Austria (AT), Belgium (BE), Denmark (DK),  
Netherlands (NL) and Sweden (SE)**

To: Presidency, Member States and the Commission

From: Austria, Belgium, Denmark, the Netherlands, Sweden

Subject: Political priorities for the future development of the JHA area in the field of asylum, migration, visa and borders

On behalf of the Ministers responsible for asylum, migration and border matters of Austria, Belgium, Denmark, the Netherlands and Sweden, we have the honor to share with you some of our views on principles and priorities in the field of asylum, migration, visa and frontiers matters. We think that these should be taken into account when shaping the future development of the EU's Asylum, Migration and Frontiers policies beyond 2014 as a part of our Justice and Home Affairs framework. Germany and France were fully involved in preparing this paper.

The guidance by the multi-annual JHA Programmes of Tampere, The Hague and Stockholm proved in our view to be of great value as a long term strategic approach to the work within our policy areas. The future strategic guidelines for the legislative and operational planning within the area of freedom, security and justice beyond 2014 as defined by the European Council in June 2014 will be of paramount importance also to the policy matters under our responsibility.

We consider it of the utmost importance that the JHA Council is closely involved in the preparations process of this new JHA policy framework. In this context we welcome the opportunity the Presidency created to have a first exchange of views among ministers at the next JHA Council on 5 December 2013.

We are looking forward to contributing to a fruitful and constructive dialogue with all involved.

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.

## **Joint contribution from the Salzburg Forum (AT, BG, CZ, HU, HR, PL, RO, SI, SK)**

**Subject: Future orientations in the JHA area**

### **General remarks**

Since its establishment in 2000, the Salzburg Forum has been dealing with a wide range of security related matters: operational police cooperation, information exchange, fight against illegal migration etc. The cooperation of the Salzburg Forum countries is taking place at different levels: practical-operational, strategic and political. The Salzburg Forum would like to contribute to the discussion process which should lead to the adoption of strategic guidelines on the operational and legislative planning by the European Council in June 2014. The Salzburg Forum emphasizes the need to establish a concise, strategic and forward-looking multiannual framework which should put the security-related interests of the citizens of the European Union very high on the agenda of EU politics.

The area of freedom, security and justice must, above all, be a single area in which fundamental rights and freedoms are protected and promoted. JHA policy must seek to safeguard and promote the values of the Union and the fundamental rights enshrined in the Charter also with regard to third countries. The fight against criminality must follow a holistic approach which takes into account cultural, economic and social aspects. It must aim at tackling the root causes of criminality and shall foster the mutual respect and social cohesion also among people of different cultural backgrounds. The EU and its Member States must develop and improve their ability to anticipate future security challenges on regional, European and international level. The future AFSJ programme should follow several benchmarks:

In order to ensure the convergence of the strategic objectives and their corresponding measures with the financial framework to be set, the **same time frame** should be considered, namely 2020. As this represents a considerable period of time, the AFSJ programme should focus on strategic guidelines. A mid-term review should allow adjustments, according to the latest developments and emerging needs. The evaluation made by the Commission is to identify the weaknesses and the additional measures needed; furthermore, the effective adjustment must be drafted in consultation with the relevant actors, in the spirit of the Lisbon Treaty.

Building on the achievements of the Tampere, Hague and Stockholm Programmes, the future JHA framework shall seek accomplishing **all the goals** of the Stockholm Programme and bringing to a swift solution the on-going negotiations on the legislative and non-legislative proposals tabled so far.

Globalisation represents both a great opportunity and a great challenge. There are disasters and crisis that no Member State should face on its own and that should be addressed by joining EU and Member States crisis responsibilities. As the **solidarity** principle stands at the root of the Treaty of Lisbon, it has to be put into practice, beyond political statements. Yet, the solidarity principle represents one side of the coin; the responsibility of an individual state is the other.

Furthermore, the EU is the most important provider of humanitarian aid. With this in mind and using the instruments of the Lisbon Treaty, EU has, now, the chance to promote even more actively its values and interests on the international stage. Consequently, achieving **synergies between internal and external dimensions** becomes a necessity nowadays. *The EU external actions must be in line with the internal policies and strategies, both at political and operational level.* A close attention should be also paid to the internal dimension of solidarity to disasters, in order to avoid deepening the gaps between the assistance provided between EU MS and to third states.

In the past years, it has become increasingly evident that **public-private partnerships** are a solid support for the authorities dealing with security aspects and must be established and further developed according to clearly defined framework provisions (e.g. concerning data protection etc.). This is in particular the case in the field of **cyber-security** and **critical infrastructure protection**. The use of **new technologies**, in cooperation with the private sector and the academia, brings a significant added value for areas such as the fight against terrorism and organised crime. The Member States should be continuously involved in the field of cyber security and its relations to the protection of critical infrastructure.

The cooperation with **civil society** and the continuous development of this relation increases the involvement of the citizens in drafting EU policies. It can also narrow the gap perceived between the EU and its citizens. Therefore, timely consultation of civil society is of utmost importance in particular when the Union intends developing new instruments which have an impact on fundamental rights. In this context, striking the right balance between the fundamental rights and freedoms and the effectiveness of actions aimed at maintaining a high level of internal security of the EU should be one of the key principles in the coming years.

Taking into account all the above mentioned benchmarks, we can build on the positive past experience, shifting from legislation drafting to its effective implementation.

For an effective and efficient implementation, **a coordination of sectoral strategies and initiatives** is needed, as far as their objectives and time frames are concerned, so as to avoid overlapping of efforts or, on the contrary, the development of gaps.

Welcoming the launch of more in-depth debates within the Council and its strategic and/or operational bodies (in particular CATS, COSI and SCIFA) regarding the future developments in the Area of Freedom, Security and Justice, **the Member States of the Salzburg Forum would like to share a few thoughts:**

### **Cross cutting issues**

Notwithstanding the particular challenges in the different policy areas described below, there are some issues that should be considered on a general level in order to embed the AFSJ programme in a more strategic dimension:

#### 1. Policy making based on comprehensive, reliable and comparable data sets

The collection and processing of reliable data should be part of all policy areas as basis for policy making. This concerns developments within the EU as well as in third countries and should also contribute to the comprehensive definition of challenges and common principles.

#### 2. Holistic policy approach in external relations including the promotion of fundamental rights

When it comes to addressing the root causes of threats to the area of Freedom, Justice and Security, particular attention must be paid to the economic and social situation in third countries. External action must, thus, consider these aspects and integrate them into a holistic approach, raising cooperation with third countries to a new level. The respect and the promotion of fundamental rights must be sought whenever the Union interacts with third countries.

### 3. Tracking financial proceeds of organised and transnational crime

Organised and transnational crime as well as terrorism do not only pose a threat to security, but do also have considerable economic impacts. Tracking and freezing the proceeds of crime can have significant prevention effect, being crucial for the success of JHA policy. In this field, enhanced cooperation with the banking sector and financial institution should be further developed

### 4. Consolidation, implementation and evaluation of legal acts to make full use of their potential in practical cooperation and to ensure that solid foundations are in place to make further progress.

Bearing in mind these strategic challenges, concrete action is needed, in particular, in the following areas:

#### **Border management**

The EU is and will also remain in the future under a significant migratory pressure – this will require an efficient border management policy.

Focus should be made on monitoring of the situation at the external borders, in particular within the EUROSUR framework, and on providing reliable risk analysis. Particular attention should also be paid to the future EU visa liberalisations to the Eastern neighbouring third countries, including preparing an impact assessment of these developments with involvement of relevant EU Agencies, in order to ensure a proper preparation of Member States in the home affairs field.

Thus, the high level of implementation of existing technical instruments and legislation, including EUROSUR, Schengen governance, SIS, VIS, as well as the enhancement of operational cooperation and the convergence between these different tools is essential for the success in this area. New instruments and legislation in the field of border management should therefore be considered only after a thorough evaluation of the effectiveness of the current border management regime.

Adoption and ensuring implementation of the Smart Borders Package, ensuring efficient border management, including facilitation of crossing the borders by bona fide travellers, and an effective return policy as well as contributing to ensuring of the internal security, remains a high priority. This should be made on the basis of an in-depth cost-benefit analysis and adequate level of EU financing to the Member States. Special focus should be made on the specificity of land borders and practical feasibility of the proposed solutions.

Once aforementioned systems are implemented, the focus in border management should be on full implementation, consolidation as well as evaluation of existing legislation and achievements, the new Schengen evaluation mechanism will play an important role in this regard. New legislative proposals (like for the introduction of an EU-ESTA) should be presented only after a thorough evaluation (including systematic impact assessments and cost-benefit analysis) of the existing EU acquis.

With this regard, the effective use of the capacity of the EU Agency for large-scale IT systems should be further increased, especially for setting up the Entry/Exit System and the Registered Traveller Program, while ensuring the coherency with the existing large-scale IT systems.

An effective management of the external borders is considered basic precondition guaranteeing development of Schengen area without border controls. Consolidating the role and possible enhancement of the agencies operating in the border field, migration and the fight against cross-border crime should be a goal, as well as optimising the cooperation mechanism between these Agencies.

In the case of neighbouring third countries, developing connections between border and law-enforcement authorities is necessary in order to achieve good results in the field of fighting cross-border criminality and securing the external EU border. Therefore, cooperation with the neighbouring third countries is crucial. In this field enhanced cooperation with the banking sector and financial institution should be further developed. Particular attention should be drawn to the fulfilments of the obligations of the Western Balkan countries with regard border and migration management during their EU accession process, while ensuring effective supports based on their evidence-based needs assessment.

### **Asylum and migration**

One of our shared goals in the field of asylum must be the coherent transposition and effective implementation of the EU asylum acquis, including the adopted Common European Asylum Package in order to ensure the compatibility of the Member States asylum systems as well as same standards in all fields in the EU Member States.

Further strengthening the **practical cooperation** in the field of asylum, especially through the support of EASO should be continued in order to reach a new level of practical cooperation and solidarity between the EU Member States.

The principle of **solidarity**, along with effective and full implementation of the CEAS and the individual responsibility of each Member State, are key elements in the further achievement of our shared goal of a truly common system, taking into account the overall situation of the Member States (e.g. also the “per capita burden”).

Further building and evaluating of capacities (contingency planning) in the Member States, including reception capacities, as well as emergency management should be broadened with the aim of building a solid asylum system and to enable Member States to better react to unexpected migration flows. In this context also **the Early Warning and Preparedness Mechanism** should be used.

The EU migration and asylum policy needs to provide for the flexibility allowing quick reaction, including financially-wise, so as to support the management of the operative needs determined by the migratory pressure in the EU.

Migration policy must observe the fundamental rights and human dignity. The vision should be such construed so as to reflect enhanced mobility in a globalised world. The current trend should make us aware that illegal migration cannot be approached only by strengthening control at the external borders: hence, a comprehensive **strategic approach towards illegal migration** is needed that would cover all of its aspects, starting with cooperation with countries of transit and origin, making best use of external action, based on the principles of conditionality and “more for more”.

The value of EU readmission agreements to tackle illegal migration should be fully recognised. In this context the full and effective implementation of the readmission agreements must be promoted and effectively evaluated. Future negotiations must be concentrated on priority countries of origin and destination. In this regard, the EU should consider a mechanism to withdraw negotiation mandates where no progress can be achieved.

A clear distinction should be made between the measures against illegal migration and the right of free movement of people. The legitimate intra-community movement of EU citizens should be seen as tool for stimulating economic growth, while in the same time tackling the possible frauds and abuse with efficient and proportionate measures.

Efficient measures in the field of **integration** are valuable solutions for an adequate management of the asylum and migration phenomenon.

## **Visa policy**

New legislative initiatives at EU level should be formulated on the basis of impact assessments that include the identification of financial needs and consequences, calling for the Member States' expertise and aiming to avoid unnecessary administrative tasks.

Likewise, the improvement of IT instruments developed up to now should continue and adequate resources should be provided. The consular personnel working with visas should benefit from training at EU level programmes (at the beginning of a new programme and also periodical trainings), in order to ensure uniform practices within all Member States. This training programmes could be organised at regional level and managed\ coordinated at the Union's level.

Taking into account the increased necessity to exchange personal data through electronic systems, minimum standards on the protection of personal data should be drafted, targeted on the operations involved in the visa process. These standards should take into account the circumstances that justify the involvement of public authorities in the visa granting process, but also to apply the principles of data protection in the private area.

The EU visa policy must continue to reflect a balanced approach between security and mobility taking into account that the EU visa policy must not lose its credibility. Therefore, unrealistic offers should be avoided; where visa liberalisation is not a realistic option other possibilities, such as the Visa Code, could be used. Visa facilitation and Readmission Agreements must be negotiated in parallel.

## **Fight against serious organised and transnational crime**

The economic situation in Europe continues to represent a facilitating factor for organised and serious crime and even for the emergence of new forms of crimes.

Preventing and fighting serious organised crime not only requires a very good cooperation between Member States' judicial and police authorities and EU agencies such as Eurojust and Europol but it also requires better cooperation with private sector from various fields, such as transport, logistics, the chemical industry, internet providers, banking and financial services from the Member States and third countries -Member EU States.

On the basis of the recommended priorities set out in the SOCTA 2013, the Council approved 9 crime priority areas for the fight against serious and organised crime in the EU for the period 2014-2017. These priorities will remain high on the JHA agenda in the post-2014, also regarding the external dimension. Taking into account that the new policy cycle 2014-2017 corresponds with the time period of the new multiannual strategic guidelines in the JHA area, the 9 identified priority areas are entirely up to date. In short- and mid-term perspective the focus should be put on the fight against illegal migration by disrupting the OCG's involved in trafficking and smuggling of human beings.

The fight against trafficking in human beings must mobilize all the available means by efficiently combining the prevention and repression of the phenomenon with adequate protection and assistance granted to the victims.

Moreover, special attention should be paid to the phenomenon on unaccompanied children and the children trafficked by their own families (cases that must, in particular, be considered if the children are to be returned in their country of origin). Gender should be taken into consideration but also the impact on their health or disabilities.

In the field of the economic-financial crime, an efficient legal framework on the money laundering has to accommodate the interaction between the measures for fighting the phenomenon and the need to safeguard the fundamental rights when processing personal data. A positive example in this respect is the Europol data protection system.

The future multi-annual programme must focus mainly on consolidating mutual trust and enhancing cooperation between the law enforcement authorities of the MS in view of combating serious organised crime, paying special attention to the European dimension of the educational training of experts , taking into account the framework of the European Law Enforcement Training Scheme, the important role of the European Police College (CEPOL) and priorities established for the fight against serious and organized crime for the years 2014 – 2017.

At the same time, continuing and enhancing dialogues as well as increasing information exchange with third countries and international organizations, will allow a more precise analysis of evolutions and challenges, contributing to the cut down of organized crime. The role of Europol within this context should be underlined.

In the area of fight against organised and transnational crime the cooperation and synergies among EU Agencies should be further enhanced

### **Increasing the cyber security and fighting cybercrime**

The cyber threat is one of the most dynamic challenges posed to the security of the EU and its Member States, with consistent effects on multiple dimensions. The efforts of the Member States and EU institutions/agencies should converge in order to achieve a trans-sectoral approach.

Under the coordination of the European Cybercrime Centre (EC3) and after preparing feasibility studies, several Centres of Excellence should be set up for training the specialists in fighting cybercrime. The Centres should gather representatives of the private and the public sector, as well as academics; the information exchange should operate through a dedicated portal.

In this context, a useful instrument would be the development of awareness programmes targeted to the population and the private sector on the threats, vulnerabilities and specific risks linked to the cyber-space. Likewise, developing platforms or networks of practitioners from the institutions or other authorities of the Member States managing cyber security, can substantially contribute to the exchange of expertise, best practices and training. Also, raising the interaction between national and EU CERTs is necessary.

Strengthening international cooperation also with international organizations such as NATO will consolidate the response capacity in case of major cyber-attacks.

There is an urgent need to further develop the legal framework and the operational instruments at European level also with the support of the European Cybercrime Centre (EC3). The main goal is to provide a high level of security to the citizens, especially vulnerable individuals, enterprises and public authorities, without prejudice to the freedom of information and the personal data protection. To this end, Member States should consider adopting national strategies on cyber security taking into account the EU cyber security strategy.

Sexual exploitation of children and child pornography remains a huge challenge that should be tackled on the national, regional, European and global level. For an efficient fight against sexual exploitation of children and child pornography, appropriate funding and a robust support of Europol's EC3 should be guaranteed. Moreover, the abuse of social networks for the purpose of sexual exploitation of children and child pornography must be considered more in-depth.

## **Fight against terrorism**

The role of COSI in the fight against terrorism can be further developed. The Committee may be the connection between the Member States and the EU agencies and, on the other hand, between the strategic and the operational dimensions, without prejudice to the Member States competencies in security issues.

A closer COSI-PSC cooperation would ensure the convergence of the EU actions at internal and external level from the strategic point of view. Complementarily, further cooperation TWG-COTER would ensure the synergy at operational level.

The terrorist threat is a very present issue and the dynamic of this phenomenon calls for the consolidation of the initiatives in preventing and countering radicalisation and violent extremism. For an efficient fight against the misuse of internet and social media in the radicalisation of individuals, against the actions of the *foreign fighters, returnees and lone wolves*, an increased level of cooperation between the relevant authorities is needed by means of intensifying the information exchange. A better capitalisation by the Member States of the information existing at the level of the various agencies is needed, as well as the consolidation of the inter-agency cooperation mechanisms for a more efficient use of information and corroboration thereof.

All instruments (PNR, EPCIP, TFTS) must be considered when drafting the future programme

## **External dimension**

The external dimension of the home affairs sector consists of certain thematic and geographical priorities, which should be highlighted for the post-2014 period.

Regarding *thematic priorities* we think that home affairs should be better channelled into the broader context of the EU external relations.

- **Global Approach on Migration and Mobility/ GAMM**

The global approach should become strategic and more efficient, based on closer connections and on a greater coherence between the relevant EU policies and the internal and external dimension of those policies.

GAMM must consolidate the safeguard of fundamental human rights in the case of migrants, regardless of their presence in an origin, transit or destination country. Human rights, in what concerns the migrants, are a crosswise aspect in GAMM, given the fact that this dimension is relevant for all four pillars.

Regarding the external dimension of visa policy, its coherence with the overarching framework of the Global approach on Migration and Mobility must be ensured.

- **Migration and development**

The future development in AFSJ area should have a wider, more coherent and better coordinated approach on connection between migration and development, especially with a view to including it in the UN post -2015 agenda on development.

Well-managed migration and mobility should be recognised as “propitious factors” for a sustainable development, a first step in this direction being to incorporate migration aspects in the national development plans, especially within the strategies involving partner states.

EU needs to continue its engagement in this area in order to maximise the impact of migration towards EU on the development of origin countries. This can be done by continuing the efforts in the priority areas, such as funds transfer, “brain drain” and circular migration.

A useful instrument is the development of policies that elaborate on the connections between climate change, environmental decay and migration, integrating the long term refugees’ situation in the development planning and consolidating the impact of migration on development in destination, as well as origin countries.

Systematic efforts are needed in order to ensure sufficient information on how the migration can encourage or hinder the progress towards reaching the development goals, especially within the sectors that are influenced the most by demographic data and labour aspects.

Credible statistics on international migration are needed, including, when possible, statistics on the contributions of migrants to the development of destination as well as origin countries; this data could fundament the political decision in aspects relevant to sustainable development.

From an operational perspective, migration remains insufficiently integrated in the development policies at national, regional and global level and the contribution of migrants in the destination country are not accurately perceived by the wide public causing xenophobe reactions and intra-community tensions. In the context, developing initiatives in order to cover this deficit must be taken into account for the next multi-annual programme.

**Geographical priorities:**

Turkey and Western Balkans - helping acceding and candidate countries adjust to the EU acquis and contributing to stability in the region. Dialogue on certain key issues should be enhanced, such as prevention of illegal migration, including border management, fight against trafficking in human beings, smuggling of persons and drug trafficking. Special emphasis should be put on continuing the negotiations between EU and Turkey on signing of the readmission agreement.

Middle East, North and West Africa - cooperation in the area of capacity building as regards prevention of illegal migration, human trafficking, terrorism, radicalisation and recruitment and the development of asylum and migration capacities.

**Joint contribution from Finland (FI), Netherlands (NL), Sweden (SE), Estonia (EE), Hungary (HU), Slovenia (SI) and United Kingdom (UK)**

The Hague, 18 November 2013

On behalf of Finland, The Netherlands, Sweden, Estonia, Hungary, Slovenia, and the United Kingdom, we have the honor to present to you our shared views on the general principles which could guide the future development of the EU's Justice and Home Affairs policies beyond 2014.

The multiannual 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 sector. As the Stockholm Programme is coming to an end, a new strategic vision is needed to give long-term guidance to the EU's JHA policies beyond 2014.

On the basis of article 68 TFEU the European Council has been asked to define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice in June 2014. Given the importance of JHA cooperation for the Member States, and considering the preparatory process that has been set in motion, we consider it to be essential that the JHA Council is closely involved in the preparation of a new policy framework. Therefore, we also attach great value to discuss this topic during the JHA Council meeting of 5- 6 December 2013.

We sincerely hope this may contribute to a fruitful and constructive dialogue, and are looking forward to continuing our exchange of views over the next couple of months.

With assurances of our highest consideration,

Ivo Opstelten  
Minister of Security & Justice  
The Netherlands

Beatrice Ask  
Minister of Justice  
Sweden



Anna-Maja Henriksson  
Minister of Justice  
Finland

Päivi Bäsänen  
Minister of the Interior  
Finland



Chris Grayling MP  
Secretary of State for Justice  
United Kingdom

Tibor Nauracsics  
Deputy Prime Minister/Minister of Public  
Administration and Justice Hungary

Hanno Perkur  
Minister of Justice  
Estonia

Ken-Marti Vaher  
Minister of Interior  
Estonia

Senko Pličanic  
Minister of Justice  
Republic of Slovenia

## **The future development of the EU's Justice and Home affairs (JHA) policies**

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.

Operative 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.

## **Joint contribution from Finland (FI) and Ireland (IE)**

### **Rule of law – enhancing the respect for the rule of law in the EU**

European integration is founded on a common value base which cannot be compromised. The Union's foundational values are reflected in Article 2 of the Treaty on European Union (TEU): respect for human dignity, freedom, democracy, equality, the Rule of Law and respect for human rights, including the rights of persons belonging to minorities.. There is a need to further enhance the application of these common values in the EU institutions and the Member States. Strengthening respect for the common values in the EU would enhance the effectiveness of EU law and the legitimacy of the Union internally by helping us to address real issues for our citizens, increase mutual trust amongst Member States and reinforce the credibility of the EU's external human rights policy.

Notwithstanding the current economic challenges facing the European Union, we must not forget that the Union does not exist for economic purposes alone. The primary purpose of the original Single market was to create a new Europe that, in the words of Jean Monnet, "is indispensable for the preservation of peace". The aspiration was – and remains – to create a zone of peace and prosperity and to bind the nations of Europe so closely together in ties of solidarity that the horrors of the past - wars and genocide - could not be repeated, because they had become unthinkable.

The rise in negative social phenomena such as Xenophobia, Anti-Semitism and other forms of extreme intolerance presents a real challenge to be tackled together. We must ensure that our societies re-engage with the founding spirit and common values of the Union. The protection of human rights within a system of government based on the Rule of Law is a central element in the values that bind us as members of the European Union and of the commitment that all Member States sign up to on accession. Effective tackling of these negative phenomena requires political commitment. It also requires robust criminal law and anti-discrimination legislation and effective institutions, particularly in the justice area, that can protect the rights of individuals in practice. The future accession of the EU to the European Convention on Human Rights is crucial.

While it is important to have effective corrective measures in crisis situations, it is also beneficial to focus on the positive elements of an on-going collaborative process, such as the benefit of sharing experience and learning from each other, building on our universal shared values, equal treatment of all Member States, and the involvement of national human rights bodies and other civil society representatives in promoting the shared values of the European project, along with the relevant national authorities and EU institutions.

A method of sharing best practice and benchmarking ourselves in critical areas of institutional effectiveness and of fundamental rights is needed. We also need an approach that involves a willingness in the EU to:

- recognise that all of us have imperfections, and
- engage in a collaborative and mutually respectful discourse that is grounded on factually and objectively-based data.

To this end more effective procedures should be established to support adherence to our common values in practice; such a method should aim at contributing to an ongoing debate on respect of fundamental rights and the rule of law in the European Union, identifying general trends in this regard, supporting Member States to identify and act on problem areas by provision of advice, including objective and comparative assessments and benchmarking against best practice in other Member States. In concrete terms the following general elements are important.

- The follow-up should be **continuous and permanent** and the **Commission as guardian of the treaties should have a central role**. All **Member States should be covered** and treated **equally**.
- The method should include a dialogue between the Commission and the Member States and annual **discussions at the Council level** in a systemic and structured manner. These discussions could take place on the basis of periodic assessments prepared by the Commission. In preparing such assessments, the Commission should, as appropriate, avail of its own reports as well as those of other relevant bodies, including the Council of Europe and, within the remit of its mandate, the reports of the Fundamental Rights Agency of the European Union (FRA). The existing fundamental rights reporting of the Commission and of the FRA could be further developed, with a special emphasis on the rule of law. The method could include an exchange of best practices and peer review between the Member States.

- Objective and reliable data is essential. To collect data use should be made of **existing instruments** both at the EU and international level, such as the Commission's annual report on the application of the Charter of Fundamental Rights and the EU Justice Scoreboard. The reports of the **Fundamental Rights Agency** are of high quality and sound methodology and should be used.
- Close cooperation with other international organizations, such as the Council of Europe, the OSCE and the United Nations is also essential. Duplication of work and unnecessary administrative burden should be avoided.
- Continuous dialogue would allow a proactive and **pre-emptive approach**. Continuous assessment would make it possible to identify general trends in the respect of the rule of law in the EU. In addition, a regular monitoring method would help to assess whether there is a potential for a crisis situation to arise in which Article 7 of the TEU should be applied and whether positive and supportive actions on a timely basis can assist in avoiding such a scenario.
- The proposed method should be established and applied **within the framework of the existing Treaties**.
- While the approach should be one of solidarity in adhering to our common values and positive assistance in overcoming issues and problems that arise, a credible method needs also to provide for extreme situations where a positive and collaborative approach does not succeed in deflecting an Article 7 situation from coming into being. In such situations, a **dialogue between the Commission and Member States** is important, on the basis of formal procedures which should be articulated and agreed in advance.

The organisation by the Commission of the **Assises de la Justice** is an important step in the debate mandated by the Council in its Conclusions of June 2013 on a possible future Rule of Law method or mechanism. It is important, however, also to engage with a wider range of actors in developing awareness of the issues involved and the reasons for creation of such a mechanism. Emphasis needs to be placed on a holistic approach, involving raising awareness of the benefit to the ordinary citizens of working together at EU level on the issues involved. At this stage in the process, it would be important / beneficial that the Commission facilitates this wider debate by presenting ideas and options on the following elements:

- (a) the need for a precise description of the subject areas that a Rule of Law mechanism would concern itself with;
- (b) how to craft a fair and objective methodology – treating all Member States equally - by which data and evidence under each heading would be gathered and analysed, indicators developed, and thresholds determined in advance that would warrant a rule of law mechanism to be triggered;
- (c) a process by which the Commission as guardian of the treaties would assess the evidence and give guidance;
- (d) the role of discussions in the Council and a political dialogue, including engagement with and by Member States concerned, as well as the Council and Parliament; and
- (e) questions of implementation and review.

Finland and Ireland are working with the Fundamental Rights Agency and a number of other Member States to identify a methodology by which appropriate rule of law indicators could be developed. The intention is to focus on a limited number of fundamental rights issues with a view to developing a methodology that can be applied to the wider range of rule of law questions. We would be more than willing to cooperate with the Commission in taking this work forward.