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NOTE

From:	Presidency
To:	Permanent Representatives Committee/Council
Subject:	Future development of the area of Freedom, Security and Justice

INTRODUCTION

1. In June 2013, the European Council requested the Council to initiate the process of reflection that would lead to the adoption by the European Council of Strategic Guidelines for legislative and operational planning in the area of freedom, security and justice (pursuant to Article 68 TFEU).

2. The Council undertook extensive discussions on this matter at different levels (JHA Council, Informal Ministerial meetings, COREPER, Working Parties and Committees). Member States have also contributed with written positions, while the Commission issued two Communications¹ that fed into the relevant deliberations. The European Parliament recently adopted a Resolution,² which evaluates large parts of the achievements in the JHA area under the Stockholm Programme.
3. With this paper, the Hellenic Presidency aims to summarise the outcomes of these discussions and to present findings in view of the European Council in June 2014.
4. The discussions in the Council have concentrated on proposals for both general and thematic issues of the future development of the JHA area, which is reflected in the outline of this paper. Discussions in the Council were held separately on Justice and on Home Affairs, albeit following the same approach (consensus/ dissensus/ new ideas); the current paper merges all these dimensions to produce a comprehensive set of observations.
5. The Council has also considered, to the appropriate extent, numerous other contributions on the issue of the future development of the JHA area, in particular those by EU agencies, relevant international organisations, civil society and academia. The successful implementation of the JHA policies will depend on the concerted efforts by all EU Member States, institutions, and relevant regional, local and civil actors, thus proper communication and consultation should be undertaken to ensure complementarity, participation and pooling of resources.
6. The Presidency invites the Ministers to discuss open issues on the development of the JHA area.

¹ ST 7838/14 and ST 7844/14

² European Parliament resolution of 2 April 2014 on the mid-term review of the Stockholm Programme (2013/2024(INI))

I. GENERAL PRINCIPLES

7. The Stockholm programme (2009-2014), widely seen as a thrust forward in the building of the Area of Freedom, Security and Justice (AFSJ), has largely been described as ambitious and extensive from a legislative point of view. Beyond the completion of some ongoing initiatives (such as the Europol and Eurojust proposals, the European Public Prosecutor's Office, the PNR proposal, the Smart Borders package, the Data Protection package or the EU accession to ECHR) future development should be built on a **shorter and more political** and strategic document, resembling in its scope the Tampere programme. Future Guidelines must reflect interests, needs and political priorities of the European Union and its Member States, taking into account lessons learned and new challenges, in accordance with the competences in the Justice and Home Affairs area.
8. An overarching priority for the future should be the **quality and effectiveness of the EU law**. Discussions in the Council have looked at different aspects of the issue: from a better assessment of the need for EU legislation to an assessment of its adequate implementation on the ground.
9. There is a need to evaluate **consistency and effectiveness** of the existing legislative framework in the JHA area. This evaluation is widely seen as a precondition for the needed **simplification and/or consolidation** of the existing legislative framework after 15 years of intense legislative activity in the JHA area.
10. Another need is to ensure a **proper transposition and implementation** of the already existing instruments. The Treaties provide the necessary tools for this undertaking, notably with the Commission's general power over application of EU law as well as with the mutual evaluation tools of Article 70 TFEU, for which proposals had already been foreseen in the Stockholm Programme.
11. New actions are to follow an **evidence-based approach** and take into account **needs- and impact-assessments** in accordance with Protocol 2, which should encompass a review of the shortfalls in the existing legislation and its implementation, an effective screening of the criteria of proportionality and subsidiarity to show its clear EU-level added value, and

finally include a comprehensive impact assessment - notably on the financial consequences, whether at the EU or at the national level. Evaluation of the possible **linkage between envisaged action and the external policies of the EU** is to be considered more systematically as well as the desirable involvement of relevant stakeholders. Measures of approximation should only be undertaken when the necessity has been proven by impact assessments.

12. The **operational perspective** should be a core component of any EU legislation and should be based on **practitioners' needs**. Practical cooperation relies on the development of mutual trust and on the knowledge of the respective legal and administrative systems, thus decisive steps need to be taken in strengthening EU-wide practitioners' training. It applies in particular to the Justice field, by building on existing structures as a first step and focusing on cooperation between the Member States and notably on the consolidation of mutual recognition.
13. The contribution of **technological innovations**, especially in the IT area, to the improvement of practical cooperation in the JHA area is evident and can only gain importance in the future. Technical up-grade will require a **prioritisation of resources**. Efficiency should be sought through improved coordination and streamlining of relevant actors and making the best use of already available resources and operational capabilities. This applies notably to the ongoing developments, such as the enhanced exchange of information between law enforcement authorities, the development of E-Justice or the setting-up of a Smart Borders system. The EU agencies should, nonetheless, be provided with adequate resources that correspond to the increasing demands placed on their activities.
14. More efficient **evaluation/adaptation mechanisms** could accompany future policy documents to guarantee the necessary flexibility in view of the possible future challenges. This could notably be achieved by means of regular implementation reports and reviews, including an annual review by the JHA Council.

15. The synchronisation of the **Multiannual Financial Framework** and of the Strategic Planning in the JHA area was considered by many to be a priority.
16. The need for a fundamental **link between the JHA and external policies** has clearly emerged as one of the most important priorities and should elicit appropriate proposals, going further than a statement of intentions. This new approach to JHA External relations should not only apply to bilateral relations with third countries, but also in multilateral fora and on connected issues such as cyber security, protection of critical infrastructure as well as emergency assistance.

II. THEMATIC ISSUES

17. The Member States' positions on the possible thematic issues of the future JHA development have crystallised around three main themes, which were also echoed in the Commission Communications: (1) Freedom, Security and Justice in a changing and challenging world, (2) protecting citizens and societies, (3) JHA policies for more dynamic societies.

1) **FREEDOM, SECURITY AND JUSTICE IN A CHANGING AND CHALLENGING WORLD**

VISION FOR THE FUTURE

18. For geographical, economic and historical reasons, Europe is increasingly a zone of stability surrounded by a turbulent neighbourhood. This presents the EU with both a long-term challenge and opportunities, which should lead to the following objectives:
 - a. The EU should play a stronger role in **promoting its values and its interests** towards its neighbours and partners, as well as in international organisations.

- b. The EU must also take its share of **political responsibility and solidarity** in addressing the numerous challenges of asylum, border management, migration and return policies, towards the EU Member States that are particularly confronted with these difficulties.
- c. Moreover the EU should also address issues of migration and cooperation on border management with **countries of origin** and transit of mixed migration flows, while addressing long term challenges and in the broad context of all relevant EU policies. These policies should be pursued in accordance with the EU's historic legacy to protect and respect persecuted human beings.

CONSENSUS

- 19. Member States overwhelmingly supported the position that JHA issues should be among the main **building blocks of the EU's Foreign policy**. This can notably be achieved by ensuring a better complementarity between the actors (Member States, Council, Commission, EEAS, EU agencies) and by including JHA expertise in EU Delegations and Member States' diplomatic representations, where appropriate, as well as by linking EU assistance and cooperation programmes to this field.
- 20. JHA external policies **should encompass all aspects of the AFSJ**, notably on Migration (with strong support for the Global Approach to Migration and Mobility as overarching framework), on security issues, including the fight against terrorism, and on justice issues, both in civil and in criminal matters. Also horizontal issues, such as human and fundamental rights, data protection and the protection of critical infrastructure, should be addressed by the EU in a coherent manner in the development and implementation of relevant policies.
- 21. In partnerships to be established with third countries, **the principle of "more for more"** should be applied systematically, attracting partners into a **positive conditionality**. Strong and wide **partnerships** with third countries and regions would also allow to react in a more alert way to emergencies (for instance, for man-made natural disasters) and to focus on prevention.

22. In the field of Asylum, the effective and uniform **implementation of the Common European Asylum System** is now considered to be the first priority, to be reached in close cooperation with EASO. The approximation of practices in the Member States is seen by many as a decisive contribution to the process towards a convergent asylum area in the future.
23. The reinforced international positioning of the EU should also be accompanied by **adequate border management**, ensuring both security and mobility; a large consensus exists among Member States on the need to **strengthen efficient return policies**, including voluntary returns, notably with the involvement of Frontex and other relevant EU and international partners. In the context of mixed migration flows, the fight against illegal migration should be pursued through the effective implementation of agreed lines of action, notably the systemic linkage between visa facilitation and readmission agreements.
24. **Solidarity** between Member States is one of the fundamental principles on which the EU is built and it should take effective and concrete forms, especially when Member States face situations of emergency. Rendering meaningful solidarity would require, as a first step, the assessment of the costs of the EU and M-S asylum, border management and migration systems.

ISSUES FOR FURTHER REFLECTION

25. It is fair to state that at this moment there is no full consensus on the prospect of far-reaching **burden-sharing mechanisms** (the allocation of beneficiaries of international protection, asylum seekers, irregular migrants and non-removable returnees (3rd country nationals whose return is not possible) even though an important number of Member States claim that this is the logical consequence of the **solidarity principle** and of the huge current threat they are facing, which risks to disrupt their societies. Gradual convergence in the treatment of applications is advocated by some as a necessary prerequisite for the mutual recognition of decisions granting international protection and would also address potential pull-factors.

26. Although there is a strong support for an **effective border management**, the views among stakeholders still differ as to the costs of the Smart Borders project. The privacy, including data protection, aspects of these large scale systems must also be accommodated, while taking into account provisions of the Charter of Fundamental Rights and the case law of the Court of Justice.
27. Another new idea which was suggested by the Commission envisaged the creation of **Protected Entry Procedures**, but it met the scepticism of several Member States. The development of Regional Protection Programme seems to be more consensual.
28. The importance given by Member States to enhancing the coherence and consistency of the internal and external dimensions of the JHA area could justify **updating the 2005 EU Strategy for the External dimension of the JHA** and reconsidering its geographical, thematic and methodological priorities.

2) PROTECTING CITIZENS AND SOCIETIES

VISION FOR THE FUTURE

29. The ever-increasing digitalisation, mobility and inter-connectedness within and outside the EU will continue to provide novel structural challenges for maintaining safety and security of EU citizens, which in itself is indispensable for laying down conditions for the sustained economic growth in the EU as well as the effectiveness of the EU's role in the world. This should lead to the following objectives:
 - a. While maintaining the centrality of fundamental rights, including protection of personal data, and the rule of law, the EU should lead global efforts to set/maintain adequate levels of protection and security for **citizens and businesses, notably in the cyberspace**, and devise means to resolutely fight against any (new) form of abuse or exploitation.

- b. Given the complexity and cost of the challenges involved in **maintaining internal security** within the EU, the EU should not only improve, where necessary, the legislative framework and the inter-connectedness of different actors throughout the EU, but also consider pooling and sharing of operational capabilities in order to guarantee complementarity, availability and economies of scale.
- c. The EU should systematically mainstream internal security concerns within EU's external relations.

CONSENSUS

- 30. The **2010 Internal Security Strategy** should be **updated** by reviewing progress on the priorities and refocusing action on the most important future challenges. Although considerable progress has been achieved, further work is continuously needed on the main challenges (fight against terrorism, serious and organised crime, cyber-crime, cross-border crime, natural and man-made disasters).
- 31. A **common justice and internal security culture** should be developed/ sought at the national and European levels through better linkages between judicial and law enforcement authorities, in particular by means of training and cooperation.
- 32. In this respect, **comprehensive inter-connectedness** of information, communication and data systems among Member States and agencies should be actively explored, while also taking due consideration of data and privacy protection.
- 33. **Operational cooperation** among Member States public authorities and EU institutions should go hand in hand with closer **association of private and research sectors**, in particular on cyberspace.- Further development of the European Union Agency for Network and Information Security (ENISA), and of the European Cybercrime Centre (EC3) is a priority, as well as further action on the fight against exploitation and abuse in cyberspace.

34. The **terrorist threat** to the EU has become more diverse, difficult and urgent. This requires a robust EU response, both internally and externally. Member States, the Commission, the EEAS and the agencies should work closely together and support the role of the EU Counter-terrorism Coordinator so as to have a coherent EU response.

ISSUES FOR FURTHER REFLECTION

35. Despite some proposals for **further approximation of material criminal law**, there is support for the view that the level currently achieved in approximation of material criminal law is sufficient in several areas (further measures, administrative or civil, should be taken with regard to confiscation of crime proceeds). Issues have been raised relating to further approximation of procedural guarantees as a necessary pre-condition for mutual recognition.
36. There is no consensus over certain proposals on **the penitentiary systems**, such as on the transfer of prisoners and on improving detention conditions.
37. Further reflection on the way to better address **victims' rights** was suggested, for instance through the establishment of a victims' fund, partially funded by the confiscated crime proceeds.
38. Better combatting **hate crimes** was another area where further reflections was called for, notably in view of protecting core EU values.
39. The **best interests of the child** were raised by a number of Member States as an issue on which reflection and work could be undertaken as a matter of priority, especially in the context of exploitation of, and violence against, vulnerable groups.

3) JHA POLICIES FOR MORE DYNAMIC SOCIETIES

VISION FOR THE FUTURE

40. One of the main driving themes in Council's discussions was the necessity to approach JHA issues in the context of global economic challenges. The EU will only be able to recover a sustained growth in the future, if it is able to encourage the potential of positive dynamism in our societies, to which the Justice and Home Affairs have a critical contribution to deliver:
- a. Future growth will depend on close cooperation among Member States on setting flexible conditions for the **free circulation of ideas, knowledge, skills and talents** within the EU area, one of the examples being the achievements of the Schengen cooperation.
 - b. The economic development of the EU will also depend on the longer-term and foreseeable **social and demographic challenges**, such as the prospect of a decreasing and ageing population in Europe, as well as to the specific skill shortages in certain sectors of the Member States' labour markets.
 - c. In order to tackle some of these challenges, the priority must be set on reaping the economic and human capital **benefits of mobility** by using the EU-level tools already or near at hand.

CONSENSUS

41. The **contribution of Justice policies to growth** will be essential in the future and should capitalise on the advances already made: pushing forward mutual recognition in civil law and removing obstacles to EU citizens' free movement and business endeavours. As a priority, training for practitioners in the EU law and an improved cooperation through the e-Justice strategy should be promoted.

42. A reflection on how to **simplify and consolidate the legal corpus** is needed. If the general idea of codification has elicited reservations from Member States, they would support increased focus on user-friendliness through soft-law instruments and, possibly, through complementary technical simplification (notably by repealing obsolete or contradictory legislation) or recasting of existing important instruments.
43. The **common visa policy** should contribute to the attractiveness of the EU by centring its approach on *bona fide* travellers, while maintaining the necessary security standards. The full use and improvement of existing instruments, such as the Visa Code or the proposed touring visa, should be explored as a priority. In addition, it should be further considered to put more emphasis on individual risk assessment in the longer term; an impact assessment of an EU-ESTA should be conducted so as to move this discussion forward. A more uniform visa processing and a better geographical coverage would imply a reinforced consular cooperation as a first necessary step.
44. Maximizing migrants' contribution to growth is one of the many positive aspects of **integration policies**. Exchanging best practices so as to build on the long experience gathered in some Member States would be useful. The labour-oriented approach should be promoted, notably for women migrants. Other social aspects should also be included, in particular the involvement of local authorities and population.
45. With a high yearly cost, **corruption** in the EU hinders dynamism in the EU in many ways. Further work on that topic was deemed necessary with a view to achieving better cooperation with Member States and addressing the root causes of corruption.

ISSUES FOR FURTHER REFLECTION

46. Regarding **legal migration** of third country nationals, the comprehensive set of measures proposed by the Commission has elicited some concerns from the Member States. The prospect of codification and the extension of mobility rights for third country nationals were met with caution, the legislation being considered by some as going already far enough.

47. Most Member States defended the position that contribution by the migration to economic dynamism should be considered at the national level, taking in account the **national labour-market needs** and underlining, on the one hand, the division of competence between the Union and the Member States and, on the other hand, Member States' competence over volumes of admission. In this light, the Commission proposals on a “single area of migration” with the aim of facilitating intra-EU mobility of third country nationals, including mutual recognition of national permits and on an EU coordination platform for labour migration deserves some discussion so as to clarify how they could ensure a positive impact on the EU economy.
48. If the link between justice quality and economic growth is acknowledged by the Member States, the methodology (including the criteria to be used) of the **Justice Scoreboard** inside the European Semester make Member States question the added-value of this tool and they insist on being closely associated to the process so as to improve its quality.
49. Some Member States consider that a common **European Sales law**, as proposed by the Commission, is a valuable instrument, which could contribute to economic growth. Other Member States have a different view on this proposal.
50. The development of **information technologies** creates challenges and opportunities to three inherently linked dimensions: economic development, citizens' fundamental rights and security and it will thus remain a key cross-cutting issue for the JHA area. Striking the right balance between legal certainty, individuals' rights, public trust and security needs will require particular vigilance. There might be substantial support among Member States for a legislative initiative, for instance, on cloud security.
51. Further work was proposed in **non-judicial aspects of the Justice field**, some of which fall outside the JHA area, regarding administrative decisions and cooperation, administrative procedural rights and non-judicial remedies.