

Brussels, 31 January 2020
(OR. en)

5636/20

LIMITE

JAI 65

NOTE

From: Presidency
To: Permanent Representatives Committee
Subject: Strategic guidelines in the field of Justice and Home Affairs

Delegations will find in annex the draft strategic guidelines in the field of Justice and Home Affairs ahead of the COREPER meeting on 5 February 2020.

In June 2019, the European Council adopted the Strategic Agenda 2019-2024 to guide the European Union's work in the next five years.

The Council is to turn the new priorities into reality and to integrate the priorities of the new Strategic Agenda into its work. The first step in the implementation of the strategic agenda in the field of Justice and Home Affairs was a reflection process initiated by the Romanian Presidency and continued during the Finnish Presidency, which was wrapped up in December 2019. The Croatian Presidency inherited the results of this reflection process and prepared the ground for strategic guidelines under Article 68 TFEU ¹ to take forward the strategic agenda and facilitate its implementation.

The following strategic guidelines are submitted for endorsement to the Council (Justice and Home Affairs) on 12-13 March 2020 in view of the European Council meeting on 26-27 March 2020.

¹ Article 68 TFEU reads as follows: "The European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice".

DRAFT STRATEGIC GUIDELINES
for legislative and operational planning within the area of freedom, security and justice

In the last five years, the EU was confronted with a serious migration and asylum crisis, a brutal wave of terrorist attacks and increased foreign interference. We rose to these challenges as a Union, by putting together a solid set of initiatives and tools. We also had our differences, often related to geographical or historical specificities. Diverging views emerged that have an impact on mutual trust and hamper the Union's ability to meet expectations.

Looking ahead, we need to overcome our differences on what to do, but we also have to focus our attention on how to organise our work, tools and structures to achieve our common objectives.

Values and rule of law

1. As stated in Article 2. of the Treaty on European Union, the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. The respect for those values, and for the rule of law in particular, is key for the good functioning of the Union and its internal market, for the area of freedom, security and justice and for the protection of the fundamental rights of European citizens.
2. EU institutions and Member States have a shared responsibility to ensure that respect for the rule of law is guaranteed and that effective tools are used and, as necessary, developed to this aim.
3. In the Council, Justice Ministers will continue to deal with issues related to the rule of law. The respect for the rule of law in all Member States will be examined by the General Affairs Council, through a yearly stocktaking exercise closely involving Member States. This dialogue will help EU institutions and Member States identifying best practices that are worth disseminating, but also issues that deserve attention and demand corrective actions, including adequate support where capacity building is needed. This, in turn, will reinforce mutual trust.

Mutual trust

4. Mutual trust between Member States is the basis for the development of many policies in the field of justice and home affairs which rely on mutual recognition. More attention should be devoted to ways in which mutual trust can be reinforced.

Implementing EU law

5. Time and again, the European Parliament, the Council and the Commission have stressed the need for EU legislation to be properly applied. Yet, it is debatable whether enough resources are secured both at national and EU levels for turning these repeated calls into reality - starting, perhaps, with a critical examination of existing legislation to improve its quality and consistency. For instance, as regards judicial cooperation in civil matters, clear added-value for citizens and businesses needs to be demonstrated before new legislative initiatives are presented that would affect well-functioning national legal frameworks.
6. Rather crucially, the Union lacks aggregated information on how key pieces of EU *acquis* are being applied by Member States, including whether Member States actually make use of some of those instruments. This situation is not optimal when it comes to adapting EU legislation or producing new obligations. The work led by the Commission for evaluating the Schengen *acquis* and by the Council for mutual evaluations on the implementation of criminal law, such as, quite recently, on environmental crime and now on legal instruments such as the European Arrest Warrant, clearly serves to improve efficiency in the implementation of those policies and related legislation.
7. To reinforce mutual trust, we need to do more by developing systematic and effective joint evaluation schemes as provided for by Article 70 TFEU. And more resources at central level, including expertise, have to be made available to support Member States. The support given by the Commission to encourage the implementation of the passenger name record directive (PNR) is a good practice that needs to be replicated in other areas, also to address uneven financial and absorption capacities in different Member States.

Encouraging convergence of law enforcement and judicial culture

8. Law enforcement and judicial communities operate in different environments, developing different cultures within and among Member States in a way which is not always adequate for consistent implementation of EU law across the EU. Digitalisation offers opportunities for overcoming administrative divisions, but also challenges if departments reproduce and consolidate those divisions in the organisation of information. At EU level, digitalisation can enhance trust between Member States through joint law enforcement and judicial training schemes that could be developed for instance with Erasmus-like training modules for law enforcement and judicial communities. The Commission, EU JHA agencies and the European Judicial Training Network are uniquely placed to foster such developments.

The Schengen area – a matter of trust

9. As stated in the Strategic Agenda, we must ensure the integrity of our territory, also as a means of reaching the objective of the Treaty as regards the absence of internal border controls.
10. Control over who enters and travels in the European Union and the Schengen area will be reinforced through the full implementation of the rules recently adopted on systematic controls at the external Schengen borders, and through the greatest possible use of existing systems (SIS, VIS, EURODAC, PNR, Prüm, ECRIS, EIS), fed with quality data, and the rapid deployment of new systems (ETIAS, EES, ECRIS-TCN).
11. The effective implementation of interoperability solutions, opening the way for the integration of decentralised systems, customs databases and financial investigation tools, will also strengthen mutual trust – as will control over secondary movements of migrants and asylum seekers.

One Europe, One Space

12. What the EU policies should be as regards border checks, asylum and immigration is well defined in the Treaties and has been widely debated over the last five years, in meetings of working parties, special committees, Coreper, Council and European Council. Divergences have appeared over the reform of the common European asylum system but there is also a broad measure of agreement over the objectives of our common policies - including on the necessity to streamline the operation of our asylum system, from entry to either integration or return, so that decisions are taken in the most efficient and expedient way in the interest of all persons involved. In developing a new pact on Migration and Asylum as announced by its President, the Commission will address all these issues. To deliver on our objectives, however, organisation also matters.

Reaching out to third countries with appropriate means and resources

13. The EU's efforts to strengthen cooperation with countries of origin and transit have produced some results. But more needs to be done to prevent irregular migration, to protect refugees close to their homes, encourage returns, readmission and reintegration, and to offer legal pathways. Incentives and leverages, with appropriate financial support, should be brought to bear in a reversible manner and with a thorough understanding of the difficulties faced by each country – whether through structured partnerships or more flexible arrangements. The role of Member States is essential in reaching out to partners, building upon existing relations and making sure the messages conveyed by EU actors and by those Member States that are most involved are coherent.

14. Expanding efforts towards third countries means bringing interaction between Member States and EU structures to a whole new level. To engage properly with third countries in our complex institutional set-up, we need to identify much more clearly who is in charge of what on the basis of which information and with what leverage. Securing returns of migrants who have no claim to remain on European soil is a difficult task, for which support from EU structures and institutions could make a real difference if conducted in a coordinated way, with appropriate consideration for the situation of countries of origin and with proper alignment of several policy areas, including visas, legal migration possibilities, development and trade.
15. Streamlining the EU's efforts in this manner, with political steer from the Council to define positions to be adopted towards third countries on migration issues, would help convince Member States to engage their political capital in a common approach, to be conveyed with adequate commitment and firmness by all EU institutions and services.

Facing migration and asylum crises – lessons learned

16. Over these last years, much has been done to address difficult situations in Member States most affected by disproportionate migratory and asylum pressure. The EU's empirical response, developed with those Member States by the Commission and EU agencies, has yielded important results. This know-how will help the EU to deal with similar situations of various intensity which will occur in the future. Hence the call for a structured migration management mechanism, with real-time monitoring, early warning and a single point of coordination and decision-making across the EU to mobilise structures, tools, human and financial resources as needed, across EU institutions and agencies and in cooperation with Member States. Robust intelligence coming from all actors, supported by adequate technology, can provide accurate situational pictures, with risk and threat assessments leading to preventive action to avert crisis situations before they arrive at the EU's external borders or to handle such situations should they nevertheless occur.

From prevention to sentencing – strengthening the security chain

17. Because of their importance or their geographical coverage, many security threats have to be addressed also at EU level - such as corruption or organised crime, which is a growing concern in all its dimensions. A truly integrated approach to security means covering the entire security chain, with enhanced operational and interagency cooperation between police, border guards, customs, judiciary, immigration and asylum authorities. Appropriate action at EU level, through the integration of tools and operational frameworks, would help overcome deep-rooted administrative divisions at national level, encouraging cooperation and synergies. EU JHA agencies have an important role to play in an enhanced interagency approach and priority should be given to pooling and sharing equipment, specialised technical solutions, resources and expertise in areas where Member States lack sufficient capacities.

18. Information management is a key enabler for these developments. Implementing properly EU legislation on interoperability requires a lot of attention at national and EU level, as demonstrated by the Commission's current support to Member States in managing change. At practical level, priority should also be given to the quality of data fed into EU information systems and to improving data analysis capacities, supported by common standards, structures, and technological tools. Developing artificial intelligence solutions and further automation in full compliance with data protection rules could help address the challenges posed by the processing of large data sets.
19. In this context of digitalisation, it is not clear that the mandates and resources of relevant JHA agencies adequately cover current and future needs. Adequate funding has to be secured for all JHA agencies and offices so that sound financial management can be combined with correct allocation of resources in view of the tasks they have to perform. This evaluation will have to be made, also as regards the mandate of Europol and the possible extension of the mandate of eu-LISA to customs and judicial systems.

Mastering new technologies and artificial intelligence

20. The Strategic Agenda recalls that the EU must work on all aspects of the digital revolution and artificial intelligence, in a manner that embodies our societal values, promotes inclusiveness and remains compatible with our way of life. This technological revolution calls for an ethical and regulatory framework to ensure the sound integration of new technologies – thereby making choices, ethical, political, economic and legal, to define the place of such technologies in human society. Industry, professionals and citizens expect clarity, legal certainty and structured knowledge, including risk awareness.
21. This means developing standards and certification procedures for agents and systems based on, or integrating artificial intelligence, with protocols including ethical considerations, statistical validation and risk assessment. There is also a need to deal with some specific characteristics of artificial intelligence, such as the opacity of the systems, to ensure the effective enforcement of existing laws and the protection of fundamental rights, and to avoid discrimination. Current concepts of "civil liability" and "criminal liability" would need to be further developed.
22. Our regulatory framework has to address data protection issues in a big data environment, as well as security concerns related to automated decision-making and, more generally, to digital transformation. This raises the issue of impact assessments, which, when available, do not seem to give enough priority to the implications of technological developments for internal security.

23. More generally, new technologies currently emerge in a loose regulatory environment, which is an issue in view of the disruption they are apt to cause to representative democracies. One way of addressing this concern upfront is to encourage at EU level a preventive approach, involving dialogues with industry, research and academia and taking an active part in standard-setting instances. Synergies with relevant developments in defence industry should also be exploited to avoid duplications and optimise the use of resources.
24. All in all, the cross-cutting nature of these challenges calls for new ways of working between policy departments, both at national and EU levels. Within the Council, presidencies will have to devote time and resources to ensure that the development of common policies is properly coordinated.

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The implementation of those guidelines will be regularly monitored by the Council to ensure that, in particular, organisational issues are addressed in order to deliver on the priorities of the Strategic Agenda 2019-2024.