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Subject: Mid-term review of the JHA strategic guidelines  
- Information from the Presidency

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Delegations will find attached a letter from the Estonian Presidency on the mid-term review of the JHA strategic guidelines together with a report on the " Informal Seminar "Freedom, Security and Justice Reviewing the 2014 strategic guidelines - where do we go from here?".

**Justice and Home Affairs**

**Mid-term review of the 2014 Strategic Guidelines**

**in the area of freedom, security and justice**

**1 December 2017**

Dear colleagues,

In its conclusions of 26-27 June 2014, the European Council defined the strategic guidelines for legislative and operational planning within the area of freedom, security and justice, in accordance with Article 68 of the Treaty on the European Union. The same conclusions provided that the European Council would hold a mid-term review of these guidelines in 2017.

In this perspective, we are pleased to present to you the outcome of discussions held at ministerial and experts' level.

During the meeting of the Council on 12 October 2017, political guidance was given to the review process. As Ministers, you identified several issues that deserve particular attention in the coming months – among which feature, unsurprisingly, migration, asylum, the functioning of the Schengen area and border management, security and counter-terrorism, digital issues, cybercrime, e-evidence and data retention, information exchange and interoperability, judicial cooperation and fundamental rights. Several of you stressed the link between rule of law and mutual trust as the cornerstone for the proper functioning of the area of freedom, security and justice.

It was underlined that the relevance of EU action in this area also crucially relies on our ways of working, and in particular:

- proper implementation of what has been agreed,
- consistency between policy areas,
- and cooperation between stakeholders.

These three overarching objectives were further addressed during an informal seminar convened by the Presidency on 8 November 2017, which brought together key personalities and practitioners from Member States and from Schengen Associated Countries, from European institutions, services and agencies, and from academia and civil society organisations. This informal setting allowed for quite frank, interesting, and sometimes challenging discussions. Action points were developed, as reported in the Annex to this letter.

We would therefore like to draw your attention to a number of considerations which should guide future developments in the Justice and Home Affairs area.

**1. Effective implementation, consistent transposition and consolidation**

The 2014 European Council conclusions stressed that consistent transposition, effective implementation and consolidation were the overall priority for the area of freedom, security and justice. However, it is fair to say that the quality of our legislation in this area and its consistent implementation demand more attention at both national and European level.

During our exchanges, it was suggested that the rotating Presidency of the Council should engage more in monitoring implementation, together with the Commission and with the support of a multipresidency team for enhanced continuity.

Full use should be made of the tools provided by the Treaty, in particular Art. 70 TFEU which is not exploited to its full potential.

As it would be impossible to cover all legislation, it has been recommended to identify a few topics that are key enablers for the proper functioning of the area of freedom, security and justice. EU technical and financial assistance should support adequate implementation in these few fields. The Commission could further develop its capacity to help Member States facing implementation challenges or Member States that need to enhance their national systems.

Addressing implementation gaps through monitoring, evaluation and training would in turn influence in a positive manner the development of our legislation. In this endeavour, enhanced interaction with practitioners and legal professions should be encouraged as these communities are aware of practical difficulties on the ground.

The operational role of EU agencies should be further developed, particularly as regards the European Asylum Support Office and the Fundamental Rights Agency.

Finally, no serious attempt at codification seems to have taken place since 2014. We should at least consider how we could streamline our legislative corpus, the complexity of which greatly impairs its proper implementation.

## **2. Consistency across policies**

Data protection, conflict-of-law rules, protection of financial interests of the Union, rule of law - issues dealt with in Justice and Home Affairs circles are linked to many other policy areas. Consistency and coherence are becoming major challenges and policy responses increasingly need to provide coherent solutions across various fields, which also need to be reflected in the EU's external policies.

The development of the digital sphere is one of the most obvious cross-sectoral issues. However, administrations, both national and European, have often been built around sectoral setups, which are sometimes at odds with challenges arising from our increasingly digital and interconnected world. Establishing or improving links between policies, adjusting internal and external objectives, properly addressing fundamental ethical questions and generally thinking global is called for by the very nature and impact of technology. This 'new normal', challenging environment sets the scene for our collective action, as discussed in Tallinn on 29 September 2017 during the Digital Summit and at the October meeting of the European Council, which both set clear and ambitious objectives for the European Union.

Against this background, the Justice and Home Affairs communities need to review rather radically their way of approaching traditional, sovereignty issues such as territoriality, jurisdiction and norm setting. Recommendations were made to develop issue-based networks, in particular in the field of cybersecurity. The responsibilities of private entities and the way the EU interacts with them need to be addressed. Finally, capacity-building, funding and training for practitioners and legal professions need to be drastically increased so that they engage positively in the digital transformation.

### 3. Coordination and cooperation between stakeholders

The EU is confronted with an increasingly volatile environment, which has a direct impact on national politics in Member States. Experience in the migration area over the recent years shows that further progress is necessary to prepare the EU for managing properly operational challenges and crises.

In crisis situations, solutions lie more with operational decisions than with legislation. Robust data have to be collected and shared for common analysis. The planning of actions should be streamlined at strategic level through simplified coordination involving all interested parties. At tactical level, a coherent command structure should be established through the designation of an overall EU coordinator, so that the political, operational and financial responsibilities are as much as possible linked. As regards operational activities, the EU still lacks credible crisis management tools, which would ensure the rapid and sustainable deployment of adequate resources, both human and technical, the organisation of hotspots with clear functional objectives and the appropriate interaction with international partners.

To sum up, it is strongly recommended that the lessons learned and the practices that have emerged with the migration crisis be consolidated into a framework that would allow future emergency migration situations to be tackled more efficiently.

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All of the above would not make sense without proper funding. We are convinced that these considerations will have to form a part of upcoming debates on the next Multiannual Financial Framework, that needs to provide appropriate funding for the Justice and Home Affairs area.

We would like to thank you personally as well as your administrations for the contributions you have provided to this limited, but we believe important, review of our current strategic guidelines.

Yours sincerely,



Andres Anvelt

Minister of the Interior



Urmas Reinsalu

Minister of Justice

**Informal Seminar "Freedom, Security and Justice**

**Reviewing the 2014 strategic guidelines - where do we go from here?"**

**(8 November 2017, Council Justus Lipsius)**

**REPORT**

**OPENING SESSION**

**Christine Roger, Director General for Justice and Home Affairs in the General Secretariat of the Council**, welcomed guests and participants, outlining the context of the seminar, its purpose, programme and topics. A video prepared by the General Secretariat of the Council was presented to participants to set the scene.

**For the Estonian Presidency of the Council, Lauri Lugna, Secretary General of the Ministry of the Interior**, outlined the process followed for the mid-term review of the 2014 JHA Strategic Guidelines. Following the political guidance by the Ministers of Justice and of Home Affairs on 12 October 2017, this informal seminar aimed to inject innovative ideas into the review of the strategic guidelines. The seminar would address the three overall priorities of the 2014 strategic guidelines:

1. Transposition, effective implementation and consolidation of existing measures;
2. Coherence across policy areas;
3. Coordination and cooperation.

Lauri Lugna characterised "crisis" as "the new normal", which meant that policies needed to embrace the unexpected. In this context, new technologies created both opportunities and risks. Policy makers should define already in 2018 what should be done before a 'tsunami of cybercrime' would occur, so that Member States are ready to tackle and investigate those crimes and uphold justice.

Mr. Lugna introduced the keynote speech delivered on video by **Urmas Reinsalu, Minister of Justice of Estonia**. The Minister insisted on the importance for policy makers to be driven by a long term vision, as there are no such things as quick fixes. The values and fundamental rights on which the European Union is based should not be forgotten. *Better law making* and *digital by default* should guide the production of each piece of legislation and every measure.

**This introduction by the Presidency was followed by a panel discussion involving:**

- **Ard Van der Steur, former Minister of Security and Justice of the Netherlands**
- **Lauri Lugna, Secretary General of the Ministry of the Interior**
- **Heather Grabbe, Director of the Open Society European Policy Institute**

#### **Summary of panel discussions and interventions from the floor**

The panel discussed the consensus for EU action that existed in the JHA area at the 1999 Tampere European Council and is perceived as fading away twenty years later. It was said that the EU needed to develop a unifying narrative, as an alternative to the toxic and divisive one which was too often heard. The EU values had to be brought into the debate – democracy, fundamental rights and the rule of law – in order to develop a new emotionally compelling case for Europe.

The need to support rotating presidencies was underlined during panel discussions. A multi presidency approach was suggested, based on a team comprising civil servants from several consecutive rotating presidencies and the General Secretariat of the Council, working in cooperation with the Commission and encouraging stronger dialogue with the European Parliament.

The panel discussions also underlined the need for the Council dealing with Justice and Home Affairs to improve its working methods. For this to happen, the following rules were proposed for further consideration:

- intense preparation: delegations to send advance written contributions, for the Presidency to single out issues and channel the discussions;
- active chairing: involvement in the subject matter of priority files and provoke discussion;
- active participation: speaking time reduced, briefs' reading avoided, encourage debating, which is linked to good preparation;
- informal settings favoured, when possible, to facilitate exchanges;
- agencies to participate when this leads to concrete actions, limited speaking time as for Ministers, mere information to be transmitted in written form prior to the Council meeting.

Effective implementation of agreed measures should be approached with the same ambition and speed as their adoption. The Presidency should define tasking, action and deadlines and monitor progress. Ministers should be accountable for implementation.

## WORKSHOP 1 - CONSISTENT TRANSPOSITION, EFFECTIVE IMPLEMENTATION AND CONSOLIDATION

- **Tiina Astola, Director General for Justice and Consumers, European Commission**
- **Andrée Colas, First Government Counsellor and Chair of COSI during the Luxembourg Presidency, former Permanent Secretary of the Ministry for Internal Security**
- **Moderator: Isabelle Jégouzo, Head of the Commission Representation in Paris**

### Summary of panel discussions and interventions from the floor

The panel considered that Member States should factor in transposition and implementation as from the negotiations stage. They should engage politically and remain accountable for good implementation, beyond government changes. Successive rotating Presidencies should cooperate to allow for continuity in implementation. The experience of past presidencies having participated in preparing legislation should be used to support implementation.

It was underlined that better regulation, at EU but also at national level, is also conducive to better implementation. Law enforcement, justice and legal practitioners contribute to effective implementation and they should be involved at national level already at the stage of public consultation on a new piece of legislation. Discussions leading to legislation should take account of the needs and reality on the ground, and training should be enhanced once legislation is adopted.

Cooperation between stakeholders within Member States is a challenge that Member States need to tackle if they want political decisions to be applied. The panel felt that the Council and its Secretariat could help bridging gaps.

The panel considered that the role of the Commission in monitoring and supporting implementation should be developed and made more operational. The trend towards a more operational role of EU agencies in the field of Justice and Home Affairs should also be confirmed, to contribute to filling the gap between political decisions in Brussels and the reality on the ground. The example of Europol and Frontex could inspire the development of other agencies. Some existing limitations in the mandates of JHA agencies mandates should be reconsidered, for instance in the case of the Fundamental Rights Agency.

The panel underlined that the availability and the use of EU funding should be made more strategic. It is necessary to identify the strategic fields where implementation is costly and to devise a European answer involving support to the Member States. The financing of national infrastructures should be developed. The intervention of the Structural Reform Support Service of the European Commission should be considered as appropriate.

EU financial instruments should also be made more flexible and reactive. Financial resources should match the high political stakes surrounding JHA issues. This must be an essential component in the future negotiations of the next Multiannual Financial Framework.

The panel recalled that implementation also requires the availability of data across borders, hence the importance of the work on databases and their interoperability.

Certain pertinent evaluation and monitoring mechanisms exist but are not used to their full potential. They should be developed into a constructive and effectively supportive toolbox for the Member States, comprising the Schengen evaluation mechanism, the mechanism for peer review in criminal matters and the EU Justice Scoreboard. A light but comprehensive mutual evaluation mechanism in the JHA area could also be considered, on the basis of Article 70 TFEU, although some doubts were expressed as to its added value.

## **WORKSHOP 2 - SYNERGIES BETWEEN RELATED AREAS - DIGITAL ISSUES**

- **Giovanni Buttarelli, European Data Protection Supervisor**
- **Bertrand de La Chapelle, Executive Director and Co-founder of the Internet & Jurisdiction Policy Network**
- **Robert Madelin, Chairman of Fipra International Ltd, and Visiting Research Fellow at the University of Oxford's Centre for Technology and Global Affairs**
- **Heli Tiirmaa-Klaar, Cyber Security Policy Advisor, European External Action Service**
- **Moderator: Roland Genson, Counsellor of the Ministry of Justice of Luxembourg, Permanent Representation in Brussels**

### **Summary of panel discussions and interventions from the floor**

In the digital sphere, all issues are fundamentally cross-border, most issues are cross-topic and all this leads to a different way to manage sovereignty that is not only a matter for governments and regulation. The panel considered that policies are developed and activities conducted in isolation, in terms of topics but also of stakeholders. The lack of an overall perspective limits efficiency and entails collateral damages in various policy areas. But more importantly, as policies develop organically in response to sectoral needs, a general reflection is lacking on societal development, on objectives to be pursued and on the general supervision and checks and balances to be established between all stakeholders, public and private. Moreover, in the absence of an appropriate global framework, it was stressed that the EU runs the risk of having to follow norms that would be established without its participation.

In the current context, the panel considered that there might be a window of opportunity for the EU to develop as a global norm maker in the cyber world. Following Tallinn's Digital Summit on 29 September 2017, the engagement of the high political level in the EU and the Member States is required to integrate sometimes conflicting objectives as regards security and justice, economy and innovation and the protection of fundamental rights.

The panel felt that issues-based networks, bringing together stakeholders from different policy areas and regions, would be instrumental in defining and applying this coherent perspective. Cybersecurity was mentioned as a field where all competences need to be around the table. It was recalled that the case law of the Court of Justice of the EU had to be taken into account when legislating. Data protection should not be seen as a barrier but one of the elements to be considered. The European Data Protection Supervisor could help in this regard. Moreover, the panel stressed that the role and responsibilities of private entities should be more systematically addressed.

The panel recalled that coordination is key between EU Member States, but also with like-minded countries and with organisations such as NATO. This would help dealing with the uncertainty around the application of international law to cyberspace and the norms of responsible state behaviour. In the area of cybercrime, a proper legal framework and more international cooperation should be sought. Capacity building should be developed in some third countries.



The panel considered that if the EU is to be more relevant in setting norms, it should also be more relevant in technology, striving to be part of a core circle of advanced countries. That means a stronger cyber industry and a balanced development of cyber economies and cyber societies, which need to be supported. A robust JHA area requires forward thinking, acknowledging the impact of digital transformation and encouraging JHA professions to engage into this transformation.

The panel concluded that capabilities had to be drastically increased together with funding and training – a generic objective of the 2017 Commission communication on cyber issues, which, building on the 2013 Cybersecurity Strategy, calls for increasing capabilities in Member States and cooperation between them, and for strengthening the EU's cyber resilience.

### **WORKSHOP 3 - BETTER COORDINATION AND COOPERATION - THE CASE OF MIGRATION**

- **Jan Willem Beaujean, Director for Consular Affairs and Visa Policy, Ministry of Foreign Affairs, The Netherlands**
- **Sophie Magennis, Head of Policy and Legal Support Unit, UNHCR's Office for Europe, Brussels**
- **Simon Mordue, Deputy Director-General for Migration, DG HOME, Commission**
- **Moderator: Elizabeth Collett, Director of Migration Policy Institute Europe, Senior Advisor to MPI's Transatlantic Council on Migration**

#### **Summary of panel discussions and interventions from the floor**

The panel felt that the handling of the migration situation over the last three years had shown some progress in coordination and cooperation in times of crisis. However, it considered that consolidation of what had been achieved and further progress was necessary, drawing on the lessons learned. The structural setting, decision making and implementation procedures have to be better designed to anticipate future volatility and demonstrate resilience to developments and crises.

The panel singled out the rapid availability of needs-based funding as one obvious constraint to be addressed. At EU level, emergency funding must be more readily available. Procedures should be simple and flexible. The panel felt that this should be taken into account in the negotiations of the next Multiannual Financial Framework. Moreover, coordination within each Member State should be improved, in order to quickly transfer resources to where they are needed.

Regarding the institutional set up, the panel argued that temporary disruption in the recent years had forced coordination, leading to less duplication and increasing trust between stakeholders. "Smashing through silos" had brought results. Still, further progress was needed on coordinating at all levels, enabling EU agencies to provide more operational support, building partnerships, working with private entities. The chain of command, a central issue, was not straightforward. Decisions had been taken by some leaders and/or by institutions, less so by the JHA Council.

The panel recommended that the EU should endorse a more operational role, for which both the EU and its Member States were not sufficiently prepared.

At strategic level, robust intelligence was needed, a gap which the activation of the IPCR and the weekly ISAA reports had contributed to close by developing a reasonably sound situational picture. However, to deliver on political guidance given by the European Council or by the Council, the planning of actions to be implemented on the ground had to be streamlined at headquarters' level, through simplified coordination involving all interested parties. The efficient internal coordination developed by the Commission was mentioned as very useful in this regard.

At tactical level, the role played by the Commission representative Maarten Verwey and his team in supporting Greece and overseeing the implementation of the 18 March 2016 EU-Turkey statement showed the way forward. The appointment of Mr. Verwey by the President of the European Commission had followed the agreement by the European Council in March 2016 that the Commission would "coordinate and organise together with Member States and agencies the necessary support structures to implement" the statement effectively. This model could be useful to support other Member States as well, although this ad-hoc crisis management structure had not been fully developed into a coherent command structure through the designation of an overall EU coordinator, which would also ensure that the political, operational and financial responsibilities are linked as much as possible.

As regards operational activities, EU agencies, also through changes in their mandates, had become much more engaged, an evolution to be completed by the future development of EASO into a fully-fledged Asylum Agency. Reluctance to reinforce EU agencies needs to be overcome in the future in order to make sure accountability goes hand in hand with authority.

However, it was stressed that the EU still lacked credible crisis management tools which would ensure the rapid and sustainable deployment of adequate resources, both human and technical, the organisation of hotspots with clear functional objectives and the appropriate interaction with other international partners.

Finally, the panel considered that EU institutions should formalize lessons learned from crisis situations, so that knowledge and trust are kept as persons change posts. Operational guidelines could be drafted.

On the basis of the above, it was recommended that the lessons learned and practices that have emerged with the crisis be consolidated into a framework that would allow future emergency migration situations to be efficiently tackled.

## TAKEAWAY SESSION

- **Isabelle Jégouzo, Head of the Commission Representation in Paris**
- **Roland Genson, Counsellor of the Ministry of Justice of Luxembourg, seconded to the Permanent Representation in Brussels**
- **Elizabeth Collett, Director of Migration Policy Institute Europe, Senior Advisor to MPI's Transatlantic Council on Migration**

At the end of the seminar, the three moderators summarised the main takeaways they considered could be drawn from their panels. Those are presented here in a non-prescriptive manner, for further consideration.

## Multipresidency approach

1. To ensure continuity, establish a multipresidency team with civil servants from the presidency trio, from several previous and following presidencies and from the General Secretariat of the Council. Plan action so that this group provides substantial support to the Presidency in office.
2. Review the working methods of the JHA Council to ensure more dynamic and efficient debates. Multipresidency team to offer suggestions.

## Implementation

3. The Presidency in office to develop a political framework to oversee and support implementation: defining action and deadlines and encouraging stakeholders possibly in the multipresidency team to support implementation.
4. The Council and its Secretariat to facilitate coordination between Member States as well as within Member States for the purposes of implementation.
5. The Commission to develop monitoring and support to implementation by the Member States. Role of SRSS of the Commission to be promoted towards all the Member States.
6. Make EU agencies more operational, including FRA and EASO.
7. Assess proposals against the following criteria: better law-making, digital by default, implementable/transposable in all EU Member States.
8. Identify a few specific fields where consolidation would be relevant.
9. Identify the few fields which are "key enablers" for the good functioning of the AFSJ and define EU support to achieve adequate implementation in these areas.
10. Assess how existing evaluation, adaptation and monitoring mechanisms support implementation. Identify ways to better use them. Consider increasing the timespan before launching amendments to an instrument, to allow for a better understanding of how the instrument works in practice. Consider using Art 70 TFEU for general mutual evaluation.
11. Support the Member States in further enhancing justice systems to uphold the area of freedom, security and justice. Assess whether and how to use tools such as the EU Justice Scoreboard or the cooperation with international organisations.
12. Better use cooperation with JHA professions when preparing legislation, legislating or implementing: consult their views, take account of their needs and of their feedback, develop training.

## Funding

13. Particularly with a view to the negotiations of the next MFF: make the availability and use of funds more flexible. Identify strategic fields where implementation is costly, devise a European solution including EU funding. EU financial instruments to allow for flexible and simpler allocation of resources, especially in a crisis context.
14. Member States to confirm that internal procedures will allow for resources to deliver on commitments agreed at EU level. Commission and Council Secretariat to help bridging possible gaps.

## Digital issues

15. Following the Digital Summit (29 September 2017), political level to define vision of Digital Europe.
16. Develop issues-based networks, putting together stakeholders from different policy areas and regions, to help defining and applying this coherent vision (e.g. cybersecurity).
17. EDPS to contribute to help developing actions in compliance with jurisprudence.
18. Address the issue of the role and responsibilities of private entities.

19. On cybercrime, EU instruments to be adjusted or developed to enable judicial and law enforcement authorities to act in time.
20. Enhance coordination between Member States and with like-minded countries and organisations such as NATO.
21. Increase capabilities, funding, training for the JHA area to engage in digital transformation.

### **Emergency/Case of migration**

22. Consider establishing a framework for an emergency approach. Possibly also in case of a large scale cyberattack. Framework to take account of elements below.
23. Rethink EU funding in case of crises for it to match needs on substance, amount and speed. Review procedures for deployment of resources.
24. To be clarified: chain of command (appointment of a crisis coordinator), coordination structures, communication channels, evaluation processes.
25. Consider how a more operational role should be developed with EU institutions and agencies.
26. Formalise lessons learned.

### **CONCLUSIONS FROM THE UPCOMING BULGARIAN PRESIDENCY**

Intervening on behalf of the incoming Bulgarian Presidency of the Council, **H.E Ms Lilyana PAVLOVA, Minister for the 2018 Bulgarian Presidency**, stressed the importance of justice and home affairs issues in the priorities for the first semester of 2018, including the following ones:

- Security and stability of Europe, including border control
- European perspective and connectivity for Western Balkans, stability and rule of law in this region
- Debate on the future of Europe, work on the next MFF to address challenges, including a possible new fund for migration, stability and external borders
- Digital Europe, digital economy, digital agenda, cybersecurity, ePrivacy

The Bulgarian Presidency will build its approach on three necessary components: cohesion, better competitiveness and consensus. "United we stand strong" (Bulgarian Presidency motto).

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