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NOTE

From: Presidency
To: Delegations
Subject: Discussion Paper on the future development of the JHA area

Delegations will find below the Discussion Paper on the future development of the JHA area distributed at the Informal Justice and Home Affairs Ministers' meeting on 18-19 July 2013 in Vilnius (Lithuania) adapted for the forthcoming discussion at CATS, COSI, SCIFA committees and Working Party on Civil Law Matters (General Questions).

**Discussion Paper for CATS, COSI, SCIFA and
Working Party on Civil Law Matters (General Questions)
Future Development of the JHA Area**

Introduction

At the informal ministerial meeting in Vilnius on 18-19 July 2013, the ministers held a first debate on the follow-up to the Stockholm Programme. Building on the results of that meeting, the Presidency invites to hold a more in-depth discussion during the forthcoming meetings of the four horizontal preparatory bodies in the Council (CATS, COSI, SCIFA and the Working Party on Civil Law Matters (General Questions)).

To facilitate the preparation of the debate in the aforementioned format, the ideas raised in the Presidency papers for the informal ministerial meeting (Council documents no. 13340/13 and 13341/13) have been regrouped into this single document. The goal of the discussion is to analyse issues specific to the mandate of each of the committees as well as horizontal aspects such as those pertaining to the external dimension of the JHA area. This should prepare the ground for a ministerial debate on the post-Stockholm period in the JHA Council at a later stage and should serve as a contribution of the Council to the Commission's Communication on the future of the JHA area foreseen for the first quarter of 2014.

The Presidency thus looks forward to an open and lively exchange of views that could help the EU institutions to hold an EU-wide debate on the future of the JHA policy during the next nine months in accordance with the mandate given by the European Council in its conclusions of 27-28 June 2013:

"The European Council will hold a discussion at its June 2014 meeting to define strategic guidelines for legislative and operational planning in the area of freedom, security and justice (pursuant to Article 68 TFEU). In preparation for that meeting, the incoming Presidencies are invited to begin a process of reflection within the Council. The Commission is invited to present appropriate contributions to this process."

Background

The JHA area has undergone the most profound transformation in the EU during the last two decades. First appearing in the EU remit with the Maastricht Treaty in 1992, then integrating the Schengen Agreement into the *acquis* in 1997 with the Amsterdam Treaty, the EU moved to the first multi-annual programme, the Tampere Programme, in 1999, building around four milestones: common EU asylum and migration policy (including achieving the first phase of a Common European Asylum System), a genuine European area of justice, the Union-wide fight against crime and stronger external action. The implementation of the Tampere Programme in the area of justice is assessed in positive terms as well. Better access to justice for individuals and businesses has been secured by the principle of mutual recognition of judgements in civil and commercial matters. In criminal matters, the entry into force of the European Arrest Warrant and the establishment of Eurojust are two striking examples of the progress made.

The Union had already been enlarged when the Hague Programme was adopted (in late 2004). Its adoption coincided with a shift to more effective decision-making procedures for the adoption of border, asylum and certain migration-related measures. The Hague Programme focused not only on legislation, but also on sharing responsibility and on solidarity, including the establishment of three large financial framework programmes - the General Programme "Solidarity and the Management of Migration Flows", the Specific Programme "Prevention, Preparedness and Consequence Management of Terrorism and other Security-related Risks" (CIPS) and the Specific Programme "Prevention of and Fight against Crime" (ISEC). One of the most noteworthy achievements during the years of the Hague Programme was the enlargement of the Schengen area as well as the integration of the provisions of Prüm Treaty into the EU framework. In the area of justice the Hague Programme continued along the lines of the Tampere Programme in defining mutual recognition as the cornerstone of judicial cooperation. One of the most noteworthy achievements in the justice area during the years of the Hague Programme has been the significant progress made through improved cross-border judicial cooperation in both civil and criminal matters.

Finally, the current Stockholm Programme witnessed the entry into force of the Lisbon Treaty. It has put the focus on the interests and needs of citizens. The Council made a mid-term review in December 2012 and informed the European Council of its findings as it was requested. The achievements of the Stockholm Programme have yet to be summarised and should serve as a starting point for reflecting on the post-2014 objectives with regard to the EU policies on freedom, security and justice.

Since the Lisbon Treaty introduced major changes, including institutional ones, in the freedom, security and justice area, these modifications should also be taken into account. The future developments in this field should be discussed in the light of Article 68 TFEU, which provides that the European Council “*shall define the strategic guidelines for legislative and operational planning*” in this regard.

Reflections on the way forward

The three JHA multi-annual programmes have significantly contributed to creating a common European legislative environment and hence to clear and transparent rules for all actors involved, government agencies and citizens alike.

With the current economic uncertainties and limited financial resources, future Union actions have to be focused on the key priorities. Emphasis therefore has to be placed on the quality, effectiveness and enforcement of the EU action. With European rules for many aspects of freedom, security and justice now in place, the stress should be laid on the quality of implementation of the Union *acquis*, in other words, consolidation of the achievements of the three programmes. Europe has to be **credible** in terms of implementation and abide by its commitments. Therefore, the reflection on the future should focus on ways of consolidating the progress made so far in the JHA area. At the same time, a forward-looking and strategic political approach to post-2014 planning calls for discussion on whether the current JHA regulatory framework is evenly developed or there are some areas that require additional efforts.

Thanks to the achievements of the last 15 years, the Union has been able to develop not only the legislation, but also its own expertise and know-how, especially through the European agencies (FRONTEX, EUROPOL, EUROJUST, CEPOL, EASO, LISA, etc.) that are so vital in providing practical support to the competent authorities of the Member States, as well as in building a common judicial culture, creating and sharing professional knowledge (e.g. thanks to the training courses and common core curricula) and building a common culture oriented towards a safer Europe for the benefit of all EU citizens.

The financial support tools in the JHA area have been very instrumental not only in financial burden sharing, but also in providing additional opportunities for cooperation between the Member States. The financial support provided by the EU financial instruments should be strategic and orientated to the achievement of the policy priorities and objectives. One of the ways to ensure better synergies could be to reflect on a better synchronisation between policy planning (post-2014) and the financial programming cycle (MFF) that should also make it possible to avoid fragmented action and offer instead a strategy-oriented approach.

The way the follow-up to the Stockholm Programme is designed should take into account the new realities. The Tampere Programme was designed for a Europe of 15, the Hague Programme was intended for a Europe of 25, Stockholm for 27 and the next policy programming cycle will serve Europe of 28. A **growing** Europe also needs adequate tools to meet the challenges of today. Notably, the initiatives should not be a burden on economic growth but rather promote it by providing a stable and appropriate legal environment and contribute to the predictability and **openness** of the economy and of society. Openness also means further developing partnership and contacts with European neighbours and EU strategic partners, therefore, the external dimension of JHA policies should also be considered of great importance for the future development of the area.

At the same time, the citizens and the visitors alike should feel safe. Security is also an asset for growth in Europe, because it provides a safe environment where economic activities can be developed. Access to justice should also be facilitated so that people can assert their rights throughout the Union. One of the major threats to our internal security is organised crime and its detrimental effects on the economy of the EU, including distortions in the internal market.

Europe should reap the benefits of the most recent scientific and technological achievements in ensuring that the technological developments facilitate and contribute to the functioning of area of freedom, security and justice, at the same time respecting privacy and fundamental rights. In addition, more efforts are needed to build an open and safe Europe that protects citizens and respond effectively to the security threat.

Hence the delegations are invited to reflect on the principles of building the post-2014 area of freedom, security and justice. A credible future needs to take into account lessons of the past, but also to look for new and innovative solutions. **With this in mind, the Presidency suggests the following questions for discussion:**

- a) **Which main strategic priorities would you like to highlight for the post-2014 period under the mandate of your committee/working party?**
- b) **Which other horizontal issues would you like to highlight for the post-2014 period, including (if relevant) the external action?**
- c) **What principles could be useful in constructing the post-2014 guidelines? Would it be reasonable to align policy planning and financial framework cycles?**

On the same occasion, delegations also invited to submit one single written contribution per Member State on these questions to the Presidency and the General Secretariat of the Council* by 2 December 2013 at the latest.

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