

**UK CONTRIBUTION TO THE EU'S NEW MULTI-ANNUAL
JHA WORK PROGRAMME**
October 2008

The demands placed on the governments of Member States to ensure the security and safety of their citizens have never been higher. To harness the benefits and meet the increasingly complex and inter-related challenges that JHA issues pose, Member States will need to find innovative ways to collaborate to deliver practical results and real benefits for their citizens, as well as ensuring that work that is undertaken delivers the desired outcomes.

General principles for the next Justice and Home Affairs work programme

To support this, all proposals should be evidence based and subject to impact assessments. They should only be pursued if they are negotiable and deliverable in a reasonable time – recent experience has shown that it is highly desirable to avoid issues that are very political and contentious within or between Member States. Proposals should also respect the principles of proportionality and subsidiarity. Non-legislative options should always be considered, and are often to be preferred because they can be more effective at addressing the real problems that people experience, and can often be agreed and implemented more speedily than legislation. The EU should consider methods to simplify current legislation before looking to introduce new legislation. Where legislation is necessary, the approach adopted should be to seek to address the problems identified with the least possible degree of legislative intervention.

Including an item in the work programme should not create an assumption that it will proceed to implementation (whether legislative or not). The impact assessment should be developed and the case for change kept under review throughout the process. Accordingly, the decision about whether to take forward into the new programme any outstanding items from the Hague Programme should not be automatic and should follow the same kind of assessment. These “better regulation” principles should be expressly reflected in the new programme.

A toolkit for legislators

The EU should develop a toolkit to improve the process by which decisions about whether and how to legislate in a particular area are considered. Use of the toolkit should help to identify the best solution to an identified problem, including decisions on whether it would be better to start with a less ambitious proposal and build on it in stages. It should also facilitate the development of a proper business case for legislative or non-legislative measures. The toolkit should include:

- i. Full consideration of how a proposal will act with and respect the different legal systems of the Member States – including the impact on common law systems. It should also have regard to the different political and cultural perspectives of the Member States. This will facilitate consistency and improve the likelihood of agreement.
- ii. A checklist of issues to be considered including: an impact assessment; e-Justice compatibility; achievability based on assessment of likely positions of Member States; alternative solutions; proportionality; justification for EU action in light of the subsidiarity principle; accountability; consistency of approach; and best practice in, for example, forms design.

PROPOSALS FOR INCLUSION IN THE NEW PROGRAMME

With the above in mind, the UK believes that the EU's new multi-annual JHA work programme should place significant emphasis on the following areas:

FUNDAMENTAL RIGHTS AND CITIZENSHIP

DATA-SHARING

The ability to **exchange and use information**, subject always to robust **data protection** safeguards, is fundamental to the achievement of significant benefits for EU citizens, businesses and the public sector. These include: more effective and efficient action to combat terrorism and crime; quicker and safer travel and immigration procedures; better experiences for citizens living, working, studying or doing business abroad, including by ensuring they are able to prove their identity when necessary; and better functioning global markets. In this regard, the EU should:

- ensure early adoption and implementation of key instruments promoting the exchange and protection of personal data within the EU and with third countries. These must include: adoption of the Data Protection Framework Decision; implementation of the Prüm Council Decision within 3 years of its publication in August 2008; quick but effective migration to SIS II ; and a formal EU-US agreement on data protection in the field of law enforcement, building on the work of the High Level Contact Group; and
- develop a cross-pillar JHA Information Management and Data Protection Strategy – a comprehensive, coherent, inward and outward-facing EU-level strategy that:
 - consolidates, simplifies and modernises data protection rules as they apply to data exchange in all pillars, including in respect of third countries;
 - identifies, on the basis of a clear assessment of necessity, proportionality and operational need, the long-term information requirements of Member States' police, justice, customs and immigration authorities;
 - identifies the most efficient and effective way of delivering those information requirements, including through appropriate use of ICT and interoperable systems; and
 - seeks to improve information flows and data protection between the EU and third countries, including by building on the work of the High Level Contact Group and extending this approach to other sectors and other priority countries.

With a strategic approach to data sharing and data protection in place, the ability of Member States to take a more consistent and coherent approach to data sharing initiatives, including a clear “across the board” view of benefits and potential impact on privacy rights, should be enhanced.

CHILD PROTECTION

The EU needs to **improve child protection** arrangements across the EU, as well as consolidate existing arrangements for **exchange of criminal record information**. The EU should:

- set up a single EU hotline for child abuse images on the internet and integrate information held by Member States on child abuse websites;
- agree common standards for eradicating child pornographic content on the internet and develop an “EU quality” seal for parental control software;
- set up arrangements to monitor sex offenders crossing borders and systems to share information on movement of sex offenders through the EU, including notifications for relevant authorities when known child sex offenders are moving or travelling to other Member States; and
- allow the sharing of criminal record information for the purposes of pre-employment checks.

DRUGS

As regards tackling **drugs**, the EU should:

- encourage the coordination and focus of European drugs research on both the demand and supply (technology and methods) sides;
- examine ways to better encourage reintegration of drug users during and post-treatment, including via better coordination between Member States;
- help to embed an intelligence-led approach in drugs investigations, develop a system of individual country national threat assessment exchange, and encourage the adoption of a common form of debriefing on seizures;
- present an EU common position in the high level segment of the 52nd UN Commission on Narcotic Drugs (CND), follow up the ten year action plan agreed at UNGASS 1998, and ensure improved coordination between the Horizontal working group on drugs and EU Member State delegations to the CND;
- extend work with source and transit countries to tackle drug trafficking, including developing “bridge” operations (akin to “Operation Airbridge” in Jamaica and “Operation Westbridge” in Ghana) at the main source/transit points for class A drugs into Europe;
- develop common threat assessments with third countries along the lines of the Russian Organised Crime Threat Assessment (ROCTA); and
- ensure increased EU support and assistance to third countries (including Jamaica and Afghanistan) and regions (including West Africa and South America) to help combat and disrupt drug production and trafficking through their counter-narcotics efforts; and provide development assistance to reduce the incentive to produce.

SECURITY

EU Member States face similar complex and interconnected security risks, including threats from international terrorism and organised crime. There is further scope for the UK to work with other Member States, for example to increase the efficient exchange of information between Member States on criminal activities to enable the pursuit and prosecution of criminals (including terrorists) and the targeting of their financing and assets.

COUNTER-TERRORISM

The EU can play an important role in the fight against terrorism and needs to continue ensuring **concerted action on counter-terrorism** at EU level, complementing action at national level. The EU should:

- give a renewed EU focus to Prevent, placing countering radicalisation (for example in prisons) at the heart of the EU's CT policy. This means ensuring better EU awareness and understanding of the threat, a clearer idea of the importance of Prevent in a comprehensive CT strategy, and agreement on what further action the EU, and its Member States, will take;
- ensure higher standards across the EU on Protect, taking action to reduce vulnerability to attack, particularly through tighter control on the movement of hazardous substances, and more coordinated sharing of best practice on dealing with security of critical infrastructure and crowded places;
- continue activity to Pursue terrorists and to Prepare for the consequences of a terrorist attack through incremental improvements to EU sanction and listing systems and ensuring EU institutions have contingency plans in place;
- beyond the EU's borders, work to ensure that the Prevent agenda is mainstreamed across all geographic EU funding programmes in CT priority countries, and that the EU and its Member States work together, through the common lexicon and coordinated action in other fora, to further the spread of an anti-terrorism global consensus; and
- consider the scope for enhancing mutual assistance in emergencies within and outside the EU, based on existing assets of Member States and within the current framework of the EU Civil Protection Mechanism: the consequences of terrorist attacks, or other man-made and natural disasters, require the generic emergency management methods of civil protection.

ORGANISED CRIME

The EU must also continue supporting practical cooperation on fighting **cross-border organised crime**. The EU should:

- increase cooperation and information sharing to improve seizure of criminals' assets and to combat money laundering and terrorist financing, as well as increase use of recovered asset sharing agreements amongst Member States and better use of the surrender mechanism, particularly to combat money laundering;
- work with industry and internet service providers to prevent cybercrime;
- improve sharing of law enforcement information and criminal intelligence, including with countries outside the EU;
- promote properly directed research to ensure we know enough about the organised crimes which affect us and how best to tackle them;
- take action to prevent movement of prohibited weapons including firearms;

- continue to combat human trafficking into and within the EU through co-operation amongst Member States and implementation of the 2005 EU Action Plan on Human Trafficking;
- make more effective use of operational collaboration between Member States through joint investigation teams or other means, for example extension of the MAOC(N) model; and
- encourage UN Member States to ratify the UN Convention on Transnational Organised Crime.

POLICING

On **law enforcement**, the EU should:

- agree a common approach on tackling the abuse of the right to free movement, looking at how we manage the negative impact or criminal exploitation of EEA migration while upholding the principle of free movement;
- make police forces across the EU more aware of legal and policing systems as well as practices e.g. through use of CEPOL;
- improve assistance for victims of crime, including by encouraging minimum standards and helping facilitate longer-term support to assist victims in getting their lives back on track; supporting the sharing of best practice between civil society and NGOs involved in victim care; use opportunities to assist witnesses (including victims) give their best evidence in criminal proceedings, such as via live-links; and consider the introduction of compensation schemes and programmes throughout the EU for victims of crime;
- implement intelligence-led policing more consistently, for example by embedding threat assessments as part of national strategy setting; and
- share expertise, information and research between Member States concerning neighbourhood policing, including developing ideas on cooperation in the field of community policing.

JUSTICE

The EU needs to ensure that individuals and organisations can and do have confidence in the EU as an area to live, work, study, travel and do business by ensuring consistent high standards of justice and protection of fundamental rights. The EU should also aim to ensure that the public enjoys the highest level of protection from criminal activity, whilst at the same time ensuring that the rights of those charged with criminal offences are fully respected. Mutual recognition should continue to be the cornerstone of judicial cooperation in civil and criminal matters, in keeping with the Tampere conclusions of 1999 and The Hague Programme which recognised mutual recognition as a main priority.

Priority should be given to practical measures to address real problems within the existing legal framework. The EU could help implement the following practical measures in Member States facilitated by the use of Community funds.

E-JUSTICE

Regarding **e-Justice**, e-technology should be used to facilitate justice processes, thereby improving access to justice for citizens. There is a lot of potential in the development of the e-Justice portal, both as a means of providing information, and in facilitating ways of accessing judicial systems. Video conferencing for interpreters should also be explored. The current lack of interpreters for all EU languages presents a clear, practical problem, and yet one which appears readily capable of solution using such electronic means. However, e-Justice should be cost effective, proportional and reduce duplication by ensuring that EU e-Justice projects take proper account of other IT work in the justice field – e.g. the linking of land registers through EULIS.

More attention should be given to defining the strategic direction of the e-justice programme and giving the work some focus for the next five years and beyond, building on the recent Communication. This should include:

- comprehensive analysis of the current funding streams, to ensure that they are used effectively to support the e-Justice strategy. E-Justice is one of the areas where implementation often requires considerable financial input – there should be a clear basis on which EU funding for e-Justice projects is made available;
- considering the impact on/of other non-Justice IT related measures; and
- work to ensure that, where possible, all new measures and systems are e-Justice compatible.

Priorities in the area of **e-Justice** should be:

- setting up electronic means of translation and interpretation, including video conferencing for interpreters to facilitate cross border procedures;
- consideration of compatibility standards;
- creation of the e-Justice portal, including the linking of registers, such as insolvency registers and land registers; and
- consideration of electronic processes such as that for the European Order for Payment.

CIVIL JUDICIAL COOPERATION

As regards the **European Judicial Network (EJN) on the civil law side**, the EU should consider methods of increasing the service to citizens. Many of the problems that citizens face when they are living, travelling or working in a country other than their own could be avoided if they had a greater understanding of the relevant law of that other country. This greater understanding could be facilitated by practical measures, such as improved information in the relevant languages. In the event that problems are encountered, this would also improve access to justice, as people will be better able to find redress or resolve a dispute once they know how to go about it.

The Network's website is likely to continue to be the most valuable source of information for the public. Citizens should be able to find as much information as possible to enable them to make informed decisions when deciding whether to undertake cross-border litigation – e.g. how long the process is likely to take and what kind of costs can be expected. Information on mediation and other forms of alternative dispute resolution should also be made available.

To this end, the EU should consider:

- what other information should be provided – e.g. the information about the law governing transactions in other countries, such as the legal consequences of buying property abroad;
- regular evaluation of the content of the site and research to ensure that the most useful information is being provided in the most user-friendly way;
- how to make it easier for citizens to find the website – e.g. links to the website from relevant domestic information sources; and
- how to enhance the ways the Network facilitates contact between practising judges to allow them to seek information from their peers in other Member States on a case by case basis within established rules – e.g. through the appointment of liaison judges in specific types of law or meetings on specific subjects at which specialist judges can participate.

In order to improve the operation of justice systems in a cross border context, the EU should consider methods to further develop the **sharing of best practice**, so that Member States could learn from the experiences and systems of other Member States. The EU should:

- further develop Best Practice Guides that have shown to be useful in other International fora, such as The Hague, and just started to be produced by the EU; and
- consider more systematic use of the Council of Europe's Standing Commission on the Efficiency of Justice (CEPEJ) and the proposed network for legislative co-operation for sharing information and best practice.

In terms of possible **legislative initiatives**, the EU should consider development of the following areas:

- Priority should be given to **enforcement**: the EU has agreed a number of measures that either produce European court decisions in cross-border cases or allow for national court decisions to be recognised in another Member State. Once a court decision is obtained, parties face the uncertainty and cost of using existing national enforcement procedures. The introduction of European enforcement measures – strictly limited to cross-border cases – are likely to make it easier for citizens and businesses to enforce court decisions in other EU countries. Generally the ideas set out in the green papers on freezing of bank accounts and transparency of debtors' assets should be supported, and further work in this area should be developed in a coherent way. The EU should move on to investigate how attachment of earnings systems can be better enforced across Europe. The EU should also explore what other methods of enforcement across borders could be made more easily accessible.
- The extension of the **abolition of exequatur** should be considered: Priority should be given to the abolition of exequatur for contested judgments in civil and commercial matters for claims with a value greater than €2000 (claims under €2000 are provided for by the European Small Claims Procedure). There is no necessary link between abolition of exequatur and the harmonisation of applicable law rules and the EU should resist such a link. The principle of mutual recognition should mean that Member States can take on trust that other Member States have laws (including applicable law rules) that respect basic common standards like human rights and procedural justice, and that their judgments will not throw up offensive results.

- High priority should be given to the programme of **regular reviews** of existing instruments such as the Brussels I Regulation. The EU should be ready to take appropriate action in the light of such reviews, including reform, repeal or replacement of measures.
- **Interaction among existing measures** should be considered as a key part of this work. For example, no provision was made for interaction between the recent Regulations creating a European Order for Payment and Small Claims procedures. That means that at present a claimant who initiates a claim for less than €2000 under the European Order for Payment in the belief that it will be uncontested must initiate separate proceedings under the small claims Regulation if the debtor defends the claim. It would be more helpful if the case could move automatically.

CRIMINAL JUDICIAL COOPERATION

In the field of **criminal justice**, the EU should:

- **develop a mechanism for sharing country information for the European Evidence Warrant** in a timely manner (prior to its introduction): this should be modelled on the current EAW Atlas and provide practitioners with the contact details and procedural knowledge required to ensure EEWs are both formulated and transmitted correctly in order to smooth its introduction. Realism will be needed about the level of detail that can be provided prior to the system going live;
- **make the EJM more practitioner focussed**: this could be done through updating the EJM Atlas to include the relevant domestic legislation. It would also be of more use to practitioners through a raised profile, and one way of doing this may be to host more meetings regionally;
- aim to discourage judicial authorities from issuing **European Arrest Warrants** for offences which, while extraditable, are likely in practice to be punished by way of a fine;
- ensure swift implementation of the newly agreed **Eurojust Council Decision** which will enhance practical cooperation, provide clarity on the role of National Members and the College, and strengthen Eurojust's role in fighting cross-border crime;
- aim to learn more from **best practice** elsewhere: Eurojust should produce briefing and notes on best practice from around the world and suggest how this could affect the manner in which we operate both internally at EU level but also externally with third parties;
- aim to establish a more coherent and **joined up approach to tackling fraud and corruption** through Eurojust: the intelligence gathered could then be used for education, prevention, disruption, to identify patterns, and ultimately for evidence gathering for prosecution and confiscation;
- take a measured approach to **driving up criminal procedure standards** and promoting fair trials across Europe, in particular recognising the difficulties that would be posed by a general measure on criminal procedural law. There is fertile ground for agreement here, but we need to recognise the existence and ongoing

utility of the ECHR, and avoid overly ambitious language on harmonisation. Work in this area should be focused and evidence-based – and might include legislation; the recent Framework Decision on enforcement of decisions rendered in absentia is a good example. Areas for action may include:

- the principle of ne bis in idem;
 - promoting the provision of a letter of rights to suspects;
 - promoting the provision of legal assistance for suspects;
 - promoting the audio-recording of interviews with suspects in police stations; and
 - considering issues relating to interpretation and consider how these can be addressed by both Member States and the Commission.
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- **improve and facilitate the exchange of information** and best practice on protecting the public, reducing re-offending and the particular problems of youth crime. This may help to identify further areas for EU action and areas where practical measures, rather than legislative, would be more appropriate. We need to recognise that a one-size-fits-all approach can be counter-productive, and there should be room for agility in how information is shared between Member States;
 - subject to the entry into force of the Lisbon Treaty and Protocol 14 to the ECHR, **promote EU accession to the ECHR** to minimise the risk of inconsistencies between the European Court of Human Rights and the European Court of Justice;
 - ensure that the Council of Europe’s European Convention on Human Rights (ECHR) forms the basis for any EU action on rights. It is the basis for human rights in all EU Member States and the Convention is complemented by a wealth of sophisticated case-law; and
 - also subject to the entry into force of the Lisbon Treaty, consider some properly targeted **minimum rules on criminal offences and penalties** where they are necessary to ensure the effective enforcement of EU policy rules.

EXTERNAL ASPECTS OF JUSTICE

As regards the **external aspects of justice**, the EU should:

- provide financial support for further work with third countries on the protection of children (through the Hague convention and other instruments);
- persuade Russia to sign Protocol 14 to the European Convention on Human Rights to streamline the working of the Strasbourg Court, and – subject to Lisbon entering into force – to allow the EU to accede to the ECHR;
- work to raise procedural and prison standards in third countries to facilitate the extradition of suspects and repatriation of prisoners; and
- continue work on future bi-lateral agreements with third countries in the area of civil judicial cooperation, especially in relation to recognition and enforcement of judgements in civil and commercial matters and the service of judicial and extra judicial documents.

IMMIGRATION, ASYLUM AND BORDERS

In line with the EU Migration Pact, EU action should focus on the broad aims of managing legal migration and tackling illegal immigration, making border controls more effective, improving EU co-operation on asylum and developing effective partnerships with countries of origin or transit.

IMMIGRATION CONTROL

To this end, the EU should prioritise **modernisation and effective cooperation between Member States' immigration control systems**, encompassing the development of an EU strategy to strengthen Member States' border controls, based on latest technology, data-sharing and interoperable systems. The EU should:

- develop an EU e-Borders system through cooperation between neighbouring Member States, using passenger name records;
- ensure extensive sharing of data held on EU databases (SIS II and VIS), subject to data protection principles;
- develop an EU identity management strategy based on biometric passports and visas, Eurodac and other elements;
- enhance the role of Frontex to develop a 24/7 capability and high quality intelligence collection and analysis; and
- ensure effective and robust Schengen Evaluations.

PRACTICAL COOPERATION

The EU should also continue to **improve practical cooperation** between Member States using EU structures such as Frontex, GDISC and CIREFI. This should include:

- on asylum: better enforcement of existing directives, extension of Eurodac fingerprint matching to successful asylum claimants;
- on returns: extend range of agreements with third countries, either EC or bilateral with EU support;
- on people trafficking: effective sharing of intelligence, co-operation on false documents and visa fraud; and
- building on the "Global Approach": use EU collective leverage to achieve stronger practical cooperation with source and transit countries on migration issues, especially on returns and readmission.

JHA FUNDING

In line with the [UK's contribution to the Commission consultation on the fundamental review of the EU budget](#), EU JHA spending should be targeted and delivered to achieve maximum benefits, giving citizens the confidence that money is being well spent. A principled approach will help to ensure that choices are made with rigour and consistency. The following three principles below provide a framework for designing a future EU budget:

- First, the EU should only act where there are clear additional benefits from collective efforts or '**EU added value**', compared with action by Member States, either individually or in co-operation;
- Second, where EU-level action is appropriate, it should be **proportionate** and flexible; and
- Third, there must be **sound financial management** at all times, including the highest standards of financial control and independent audit, and greater focus on delivery of outcomes in programme design and evaluation. It will be important to maintain budget discipline.

With regard to **action, Framework Partner and operating grant funding**, the Commission should ensure that the consultation process with Member States on the award of funding is open and transparent, and that there are appropriate channels for Member States to relay their approval or concern about draft award decisions. Sufficient time should be built into the programmes' time schedules to evaluate the previous year's funding round, and also to allow bidders adequate time to complete applications and find partners for their bids. More support should be offered to bidders through Information Days, clearly worded guidance documents and prompt responses to individual queries.

The EU should steer away from legislative proposals being the default option for JHA spending, and instead focus on **operational cooperation** between Member States on specific projects.

More specifically, on **Solidarity and Management of Migration Flows funding**, the EU should:

- increase the level and flexibility of funding available for capacity building and other initiatives in third countries, including:
 - considering a stand alone Thematic Funding Programme for migration for the 2014 – 2020 period;
 - allowing more flexible reallocation of the €5m Thematic Programme contingency fund for 2008 and in subsequent years if unspent on emergencies;
- concentrate funding on legal migration, illegal migration and development, focusing particularly on Assisted Voluntary Returns; and
- develop a funding programme to succeed the Solidarity Mechanism Funds (European Refugee Fund, European Integration Fund, European Return Fund, and External Border Fund) which finish in 2013.

On **Security and Safeguarding Liberties**, the EU should ensure that a full and rigorous evaluation is undertaken before the 'Prevention of and fight against crime' and 'Preparedness' programmes finish in 2013; this learning should be fully utilised in the development of the successor funds.

To **improve child protection** arrangements, the EU should consider providing support to states to establish registration mechanisms for convicted sex offenders with a view to linking up national mechanisms in the future.

On the **fight against violence and providing assistance and protection to address violence against children, young people, women and those who are vulnerable**, the EU should continue to provide a flexible funding programme to support initiatives in this field when the Daphne III Programme finishes in 2013.

In the field of **civil judicial co-operation** the EU needs to ensure that funding is concentrated on the areas which will bring real added value to citizens and businesses who live, work, study and travel across borders. That means:

- improving the provision of information to enable individuals and companies to make informed decisions about whether to undertake cross-border litigation;
- enhancing mutual recognition – starting with the abolition of exequatur for contested civil and commercial claims valued at more than €2000;
- introducing European enforcement measures to ensure that there is an easier procedure to allow creditors to enforce cross-border judgments; and
- Improving the implementation of existing legislation, including through the sharing of best practice.

The work undertaken on **e-Justice** is a valuable tool in improving access to justice for citizens and co-operation between national authorities. The EU should ensure that, where possible, all new measures and systems are e-justice compatible. As this is an area which often requires considerable financial input the UK believes:

- projects should be cost effective, proportional and reduce duplication;
- they should be created so as to be technically compatible; and
- there should be a clear basis on which funding is made available – especially as the projects can cover both civil and criminal justice.

Regarding **external funding**, the EU should continue to use the Instrument for Stability (SI) to address key counter-terrorism and organised crime objectives in specific regions, and the Instrument for Pre-Accession (IPA) to support law enforcement and judicial reform to tackle serious organised crime and corruption, illegal migration and (to a lesser extent) terrorism. Turkey and the Western Balkans should be prioritised under the IPA because of the role they play in the well established ‘Western Balkans transit route’ for organised crime. Although the primary objectives of the European Neighbourhood and Partnership Instrument (ENPI) and Development Cooperation Instrument (DCI) are poverty reduction and sustainable development, further consideration should be given to the positive impact that these Instruments can have on JHA objectives.