

THE FUTURE DEVELOPMENT OF THE JHA AREA

Written contributions from MSs

Position paper of the German Federal Government

on the future development of EU Justice and Home Affairs policy

The multi-annual programmes of Tampere, the Hague and Stockholm illustrate the value of a strategic approach and a long-term strategy for future cooperation in the fields of Justice and Home Affairs. Moreover, the multi-annual programmes adopted by the European Council have contributed to the unity of the European Union and to strengthening the field of Justice and Home Affairs policy.

The **Stockholm Programme** sets out the strategic guidelines for legislative and operational planning for the period 2010 to 2014 in the area of freedom, security and justice and is characterized by numerous legislative acts the majority of which has already been implemented in the EU Member States.

The Federal Government agrees with the other Member States of the European Union that a **post-Stockholm programme** (PSP) is necessary. The legal basis is provided by Article 68 TFEU which states that the "European Council shall define the strategic guidelines". A PSP is very important owing to the institutional balance between the Commission and the EU Member States, because the guidelines adopted under Article 68 TFEU are the specific expression of the European Council's determination to shape the direction of EU policy in the area of Justice and Home Affairs.

With regard to shaping the post-Stockholm process, there is consensus in the JHA Council, including the Federal Government, that there should be **no extensive list of new legislative initiatives**. New legislative initiatives should therefore be the exception and should essentially be limited to closing loopholes that have been identified and consolidating existing procedures. *Less legislation, more consolidation*. The aim must be the **uniform implementation of EU law in the Member States**. Existing EU law should be consistently enforced.

The future European Justice and Home Affairs policy must

- be based on actual **regulatory needs** and **evaluations**;
- give priority to **quality, consolidation** and **implementation**;
- be **effective, cost-effective** and **oriented towards economic growth**;
- be adjusted to existing **resources** and abide by the **principles of better regulation**;
- be based on **European values and fundamental rights** and
- increase the **consistency between the internal and the external dimension**.

The German Federal Government acknowledges the horizontal principles which apply equally to European Justice and Home Affairs policy.

Against this background, the new strategic guidelines for the future JHA policy for the period from January 2015 to 2020 should contribute to consistency with the **EU financial framework**. Moreover, the PSP should be embedded in the current economic and social situation.

The internal and external measures in the field of Justice and Home Affairs must yet be better coordinated with the objective of a closer coordination between the various actors within the EU. The EU must increase efforts towards multilateral international cooperation within the Union's area of jurisdiction.

All new EU measures must build on sound **impact assessments**, including ex-ante cost-benefit analyses, taking account of Member States' actual needs. In each individual case, careful consideration must be given to whether a solution should be sought at national, EU or regional level or even at a multilateral/global level. At any moment during the procedure, implementation costs and organizational consequences to be borne by national administrations must be taken into account.

New technologies should be used to facilitate the aim of providing efficient public administration responsive to citizens needs in the field of freedom, security and justice.

To ensure that the guidelines direct the actions of the EU, the Council must also agree on the following concrete priorities:

Priorities of European Home Affairs policy

- strengthening and protecting the right of free movement within the EU and fighting abuse;
- mobility, migration and asylum;
- securing the Schengen external borders;
- expanding police cooperation;
- developing uniform EU data protection; and
- expanding European IT and cyber security.

Priorities of European Justice policy

- protection of fundamental values and fundamental rights
- The Digital Europe
- criminal law
- civil law and consumer protection

- Home Affairs -

1. General issues / horizontal aspects

The Stockholm Programme sets out the strategic guidelines for legislative and operational planning for the period 2010 to 2014 in the area of freedom, security and justice and is characterized by numerous legislative acts. These have largely been implemented, also those concerning asylum and Schengen. By contrast, additional legislation in the area of migration management and border security (smart borders) as well as IT security has just begun to be taken up.

The Federal Government agrees with the other Member States of the European Union that a post-Stockholm programme (PSP) is necessary. The legal basis is provided by Article 68 TFEU which states that the "European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice". A PSP is very important owing to the institutional balance between the Commission and the EU Council, because the guidelines adopted under Article 68 TFEU are the specific expression of the European Council's determination to shape the direction of EU policy in the area of Justice and Home Affairs.

Common application of existing EU law

With regard to the PSP, Germany and others agree – based on the Informal JHA Council meeting held on 18–19 July 2013 and the JHA Council on 5–6 December 2013 – that there should be no extensive catalogue of new legislative initiatives. New legislative initiatives should therefore be the exception and should essentially be limited to closing gaps that have been identified and consolidating existing procedures: less legislation, more consolidation. The aim must be the common implementation of EU law in the Member States. Existing EU law should be consistently enforced.

Greater involvement of EU agencies in implementing EU law

In the framework of their authority under the various founding regulations and on the basis of applicable EU treaties, existing EU agencies should play a greater role in implementing EU law and reviewing its implementation, as is already provided for to some extent in the case of EASO.

The aim is to make the best possible use of the agencies' potential for the interests and needs of the Member States with regard to implementing EU law. In this way, the agencies can take advantage of their role as a link between the Member States to yield greater understanding for problems and better information on specific implementation processes within the Member States.

Emergency mechanisms

If a Member State is unable to fulfill its obligations in the field of Justice and Home Affairs, this may lead under certain circumstances to cross-border or EU-wide problems.

If these problems worsen to the point that security or functional systems such as critical infrastructures are seriously threatened, then appropriate instruments and mechanisms should be available in case of such emergencies while maintaining the institutional balance, in order to ensure continuing security and functionality within the EU for the limited time until these problems have been remedied.

Such mechanisms are not entirely unknown in some areas. Good examples are the mechanisms for early warning, preparedness and crisis management in the Common European Asylum System, the mechanism to temporarily suspend visa-free travel and the mechanisms for Schengen governance. Schengen reform has shown that the EU Member States and the European Commission can work together to take decisive action against problematic developments.

To increase the EU's flexibility in case of emergency or crisis, area-specific emergency mechanisms which create more options for rapid action with the involvement of the European Commission should be subject to a needs-based review. Where Union law is not always applied in the area of Justice and Home Affairs to the extent advisable for various reasons (such as crisis situations), these emergency mechanisms for temporary relief and mitigation would supplement institutional procedures in the case of treaty infringements.

Discussion of strategic JHA issues in CATS and SCIFA

In the past, the European Commission has sometimes substituted informal coordination processes in ad-hoc structures (e.g. expert groups, workshops) for coordination with the Member States. We are critical of this development. The high-level committees in particular play an important role for cooperation in the JHA area. CATS and SCIFA must be effectively involved, as their mandate allows, in the discussion of strategic and legislative JHA issues in order to deal with unresolved issues and simplify the activities in the field of law enforcement and judicial cooperation as well as immigration, asylum and borders, thereby reducing the number of questions requiring review by COREPER and the Council. It is necessary to ensure early involvement of CATS and SCIFA in politically significant legislative proposals and initiatives so that these committees can fulfil their task of serving as a forum for an initial exchange of views, thus setting the course for the work at expert level in the competent groups.

Priorities

To ensure that the guidelines direct the actions of the EU and that the European Commission can be measured against them, the Council must also agree on the following concrete priorities:

- strengthening and protecting the right of free movement within the EU and fighting abuse;
- mobility, migration and asylum;
- securing the Schengen external borders;
- expanding police cooperation;

- developing common EU data protection; and
- expanding European IT and cyber security.

2. Strengthening and protecting the right of free movement within the EU and combating abuse

Freedom of movement in Europe is one of the most important achievements of the European integration process and one of the most visible benefits of the European Union for its citizens. As one of the freedoms in the single market, it is a driver of economic growth in Europe. Practical obstacles to exercising this right must be removed.

In order to maintain acceptance of the common European right of free movement, we must effectively combat its abuse.

To stress the importance of the freedom of movement and advance the implementation and awareness of the rights associated with Union citizenship, Union citizens must be empowered to participate actively and equally in the European integration process. To this end, measures should be taken and supported by the Member States to remove barriers for workers in the EU, to dismantle bureaucratic hurdles, improve procedural rights and strengthen and advance the European public space.

The common European right of free movement is a historic achievement and should not be taken for granted. It must be preserved. To do so, it is also important to combat abuse effectively. We must step up our efforts to investigate and prevent fictitious marriages and other forms of fraud and abuse in connection with the right of free movement. The Member States should increase their cooperation in this area and continue their dialogue with the Commission. The aim is to achieve a shared understanding as to which measures and sanctions are necessary and permitted under applicable EU law on the freedom of movement and in accordance with ECJ decisions in order to counter and punish fraud and violations of the law. This does not entail amending EU rules on freedom of movement.

3. Mobility, migration and asylum

Future asylum and migration policy should include a comprehensive and consistent strategy (global approach governments/EU) covering all relevant policy areas including the external policy dimension.

With regard to future European asylum and refugee policy, the focus is on reforming the Common European Asylum System (CEAS) as consistently and as soon as possible. The additional rules agreed in 2013 will result in key practical improvements, especially for the protection of refugees.

In the long term, countries of origin and transit will have a key role in solving these problems. They must respect human rights, protect refugees, improve living conditions and create a stable political and economic environment. The fight against human smuggling and human trafficking must be stepped up within the territory of the Member States as well as in the countries of origin and transit. The EU and Member States must increase their cooperation with these countries.

Future asylum and migration policy should concentrate on the complete implementation, consolidation and evaluation of existing law and policy. New legislative proposals should be presented only after thorough evaluation (including systematic impact assessment and cost-benefit analysis) of existing and proposed EU legislation. The Member States must be able to use EU funds effectively to implement such measures when carrying out their national policy priorities.

Crucial to achieving this goal is a new level of practical cooperation which enables the EU to continue to respond with the necessary flexibility to rapidly changing realities.

Responsibility and solidarity coupled with protection and prevention are the key elements in achieving our shared goals. To ensure solidarity in practice, Member States must meet their responsibilities for implementing the *acquis* in the fields of asylum, borders, visas and migration. This is the only way a migration and asylum system including effective border checks can be built and applied on the basis of mutual trust.

The external dimension in migration policy

Cooperation with countries of origin and transit must be intensified to promote legal mobility, protect refugees and prevent illegal immigration, among other things through measures to fight organized human smuggling and human trafficking, and by strengthening development policy to remove the causes of flight and expulsion as recently seen in the Mediterranean region.

The evaluation and further development of the external dimension in migration policy should build on the tested principles and methods of the EU Global Approach to Migration and Mobility and the instruments for implementation developed within that framework. The further development of this Global Approach (GAMM) must be equally based on the following four operational priorities while the Member States retain responsibility for their national labour markets:

- organizing legal migration more efficiently and promoting managed mobility;
- preventing and combating illegal migration and stamping out human trafficking;
- maximizing the impacts of migration and mobility on development;
- promoting international protection and the external dimension of asylum policy.

This is also in line with the Council Conclusions on the Global Approach to Migration and Mobility of 3 May 2012 (no. 8 in the annex to Council Document 9417/12).

In the further development of the GAMM, the various security policy and migration policy needs of the Member States must receive special consideration while maintaining high standards of fundamental and human rights. This could ensure consistency between these interests and needs and those of the Global Approach and its individual operational priorities. The resulting policy would be an integrated whole.

European asylum policy

With regard to future **European asylum and refugee policy**, the focus is on reforming the Common European Asylum System (CEAS) as consistently and as soon as possible. The additional rules agreed in 2013 will result in key practical improvements, especially for the protection of refugees.

The EU has substantially improved the legal basis for a shared area of refugee protection and solidarity by amending the Dublin Regulation, the Eurodac Regulation, the Asylum Procedures Directive and the Directive on reception conditions. The CEAS provides for high standards and is intended to ensure fair, rapid and effective procedures which will also prevent asylum fraud. Those seeking protection are to receive equivalent treatment with regard to procedural guarantees, reception conditions and a common protection status no matter which Member State they are in.

Based on the CEAS, all Member States must strive to implement the legislative acts to a common standard. This applies especially to practical improvements in refugee protection which could help prevent tragedies like those off Lampedusa. Improvements in the protection of the EU's external borders should be achieved by the practical introduction of instruments which have already been created.

The Member States are obligated to ensure the effective implementation and consistent application of the EU asylum acquis, especially the CEAS. In return, the European Commission should be called on to perform its role as "guardian of the Treaties" to a greater extent, particularly with regard to capacity-building measures on refugee protection with the use of EU funds. The Common European Asylum System should continue to aim at treating similar asylum cases in similar ways and with the same result, including comparable EU-wide reception standards. In this context, practical cooperation and the European Asylum Support Office (EASO) should be enhanced in order to help implement existing laws more consistently and cost-effectively, to promote policy and practical convergence in the Member States and to improve cooperation and information-sharing among the national asylum authorities. The mechanism for early warning, preparedness and crisis management in the CEAS should be used as a tool for strategic discussions and planning in the EU in order to better prepare for challenges and unforeseeable events (including emergency planning). The Member States' practical experience with the current acquis should serve as the basis for assessing the need for additional legislative proposals; where possible, improvements should be sought on the basis of existing instruments.

Cooperation with third countries on refugee issues and regional development and protection programmes (RDPP) should be further strengthened in order to advance the expansion of regional protection and reintegration capacities in solidarity with countries of transit and origin.

Promoting return

The return of persons residing in a Member State without a right to remain should be a priority. Such persons must return voluntarily or be deported in order to protect the integrity of asylum and migration management within the EU.

For this reason, effective and sustainable return policy which provides efficient ways to ensure the orderly and timely return of persons required to leave the country is an important instrument in the fight against illegal migration. We should always give priority to voluntary

return as a more humane alternative to forced return; support for voluntary return helps returnees become socially and economically reintegrated in their country of origin. . In addition, we must implement an effective return policy, because it is very important to the success of voluntary return measures.

To increase the number of voluntary returnees, the EU needs a strategic approach to prioritizing countries (including country-specific strategies) which relies on increased political dialogue with key third countries in order to secure and enforce the necessary return agreements and to ensure that people can be issued new documents without delay. EU readmission agreements are an important instrument in the fight against illegal migration. Any future agreements must concentrate on priority countries; existing agreements must be fully implemented. Where negotiations have come to a standstill, new efforts must be undertaken to arrive at a result. The Council must be in a position to revoke mandates.

With attention to the special situation in individual Member States, the Asylum and Migration Fund should encourage and support Member States to initiate, continue or expand reintegration programmes.

EU visa policy

A strict and consistently designed and applied EU visa policy is an essential building block in a European area of freedom, security and justice. Openness and growth must be balanced appropriately with security and the ability to manage illegal immigration. In addition to security aspects, EU visa policy also enhances the EU's overall attractiveness. In order to improve mobility, the EU's visa policy and protection of its external borders must be credible and its migration and asylum systems robust enough to stand up to future challenges.

EU visa policy should continue to be a key instrument for managing migration. Visa facilitation agreements and greater use of the possibilities allowed by the Visa Code may be considered where visa-free travel is not (yet) a realistic option. Negotiations on visa agreements and readmission agreements should be conducted in tandem. The EU must make sure that rights and obligations with regard to all future agreements on visa liberalization and facilitation go hand in hand, especially with regard to cooperation on readmission. It is necessary to determine whether the Council can withdraw a negotiating mandate and whether visa liberalization may be introduced temporarily.

Better local cooperation must be a priority to ensure that all Member States examine visa applications consistently and reliably. More extensive use of external service providers, the use of representation agreements and the establishment of joint visa centres all require further study.

4. Securing the Schengen external borders

Expanding the integrated border management system

Protecting the EU's external borders is one of the most important tasks to preserve the area of freedom, security and justice. Securing the external borders is essential for removing the internal borders. External border protection has two aims: making it easier for EU citizens to legally cross borders and taking measures to prevent illegal immigration and cross-border crime. A high level of security should be maintained. The European Commission should

develop a policy for gradually introducing integrated border management. Numerous measures for better protecting the EU's external borders have already been taken. However, work on issues such as implementing the Frontex Regulation, using the Eurosur border surveillance system and expanding automated border controls and consultations on the Smart Borders package should be continued. To this end, we need an IT architecture which fulfils the strict requirements of data protection, in particular data minimization, and interoperability.

Frontex

We should continue implementing the Frontex Regulation. The Regulation of December 2011 provides for numerous new instruments the implementation of which is very time-consuming and therefore has not been fully completed, in particular Article 14. The operational cooperation of Frontex with third countries and their responsible authorities covered by Article 14 is a priority also of the Task Force Mediterranean whose work results were adopted by the JHA and the European Council (e.g. seconding liaison officers to third countries, projects in third countries). However, the civilian nature of border management must be preserved. Additional surveillance measures of individual Member States should be closely coordinated with Frontex operations. The existing cooperation between Frontex and Europol should be institutionalized in an operational cooperation agreement.

Before we consider creating new Frontex instruments consolidation is needed so that the described measures can bring their influence to bear and their efficiency and effectiveness can be assessed.

In addition to the Frontex Regulation we are currently negotiating a European legislative act which transposes the guidelines for Frontex operations at sea (previously annex to the Schengen Borders Code) into a separate Regulation. Consolidation is needed also after the legislative act has entered into force to assess, after a sufficient period of application, whether further improvement is needed or whether the Regulation is appropriate for the relevant processes.

In line with its mandate, Frontex should assume greater responsibility by increasing its operational capacities and conducting more joint operations, in particular with third countries (countries of origin and transit). To advance this ambitious agenda, it should become easier for Frontex member states to conduct joint operations, the focus being on a stronger coordinating role of Frontex. The agency's operational activities will continue to be limited to the EU's external borders in line with the mandate.

The border surveillance system Eurosur

The border surveillance system Eurosur went into operation in December 2013. Given the fact that some EU Member States are not yet connected and that the system components are operating at an initial basic stage, we should initially focus on including further EU Member States and technically enhancing the system. Only then will we be able to reliably assess the efficiency and effectiveness of the border surveillance system and make any necessary improvements.

Automated border control

Automated border controls should be introduced across the European Union. About two-thirds of all people crossing the EU's external borders are EU citizens. Given the growing number of passengers and limited border management resources, introducing automated border controls for nationals of the EU, the EEA and Switzerland as well as for registered third-country nationals is an important instrument to support border police officers. This helps officers focus on checking third-country nationals, which requires more staff and time. Expanding automated border controls can significantly accelerate processing at the border. In addition, introducing automated border controls not only makes in technical and organizational terms, it is also necessary for economic reasons so that the EU can keep pace with the development of international travel.

Germany has made significant progress in this area: By introducing the EasyPASS system at the five busiest airports in terms of passengers, including Frankfurt, Düsseldorf, Hamburg, Munich and later Berlin, about 100 eGates will be installed in 2014 and 2015 to cope with growing passenger traffic.

Smart Borders package

The European Commission presented initial proposals for a Smart Borders package on 28 February 2013. The proposals comprise a Regulation on an Entry/Exit System (EES) to record the time and place of entry and exit of third-country nationals at the EU's external borders, a Registered Traveller Programme (RTP) and follow-up amendments to the Schengen Borders Code.

Intensive follow-up on the Smart Borders package is needed in the coming years. The cost-benefit ratio of Smart Borders must be proportionate. Some financial issues need to be resolved. To this end, the planned systems EES and RTP need to take practical requirements adequately into account. Fundamental rights and security aspects must be given appropriate consideration.

The task of EU border and visa policy is to facilitate as far as possible travel movements of bona fide third-country nationals while continuing to ensure a high level of security. Innovative technologies have created new ways to fulfil the various requirements in a more coordinated manner.

To reconcile visa liberalization and security interests we must examine which instruments are best suited for this task.

The Federal Government welcomes the study announced by the Commission, which is intended to assess the Smart Borders package in terms of benefits, efficiency, interoperability, technical feasibility and costs.

Examining the development of a common, efficient and data protection friendly European IT architecture for border management

The need for a central IT architecture so that border police officers can better handle the different IT applications (VIS, SIS II) should be examined. This may include additional EU IT systems.

There is a growing need for such architecture, in particular with a view to the planned introduction of additional IT systems for biometric identification (e.g. Smart Borders package of the European Commission). Without improving the structures, we cannot ensure the performance and efficiency of border management.

A new architecture must also fulfil strict requirements of data protection, in particular data minimization, and interoperability. Therefore, the German EasyPass system was technically designed to immediately implement the planned EU projects and to support a central identification system.

5. Expanding police cooperation

The exchange of information is of paramount importance for cooperation between security authorities. Several legislative acts have been adopted in recent years that have strengthened the legal framework for the exchange of information and introduced relevant technical regulations on the exchange of specific data (such as fingerprint data, DNA data and motor vehicle registration data) on the basis of central and decentralized systems. The measures resolved have not yet been fully carried out in many areas. This is owing to the technical complexity, the administrative challenges and the scarcity of financial resources. In addition, many police authorities are not yet leveraging the possibilities of cooperation and exchange of information presented by applicable law to the desired extent. Further work is needed in this area.

Implementing the Prüm Decisions/Swedish Initiative

According to the Prüm Decisions Member States should give one another automated access to DNA profiles, fingerprint data and certain data from national vehicle registers. All Member States had planned to implement the decisions by 26 August 2011. However, only half have implemented them so far.

That is why the European Commission is requested to formulate strategic recommendations to eliminate structural deficits that have already been identified in relation to the application of the Prüm Decisions. Specific solutions for the known deficits should be found.

The European Commission is also requested to conduct a feasibility study on how the automated exchange of fingerprint data could be supported in the framework of the Prüm Decisions; in this context, it should also examine whether to create a central fingerprint database.

Technically consolidating the exchange of biometric data in a standardized European IT architecture

A number of systems are used (Prüm, Eurodac, VIS, SIS II, Europol, and EES in future) to exchange biometric data (fingerprint data in particular). Data are being stored in a number of different systems, which seems unreasonable in economic, technical and data protection terms.

For this reason, the competent Council working group for the exchange of information between police authorities, DAPIX (Information Exchange and Data Protection), and the European Commission should jointly analyse the individual systems for exchanging

biometric data and should develop a concept to consolidate the existing systems with a view to creating a common European IT architecture. In doing so, special importance should be attached to meeting data protection requirements.

Further developing eu-LISA into a central IT service provider for European security authorities

The exchange of police information plays a key role for cooperation between European security authorities. When the Schengen Information System II (SIS II) was launched on 9 April 2013, the EU Agency for management of large-scale IT systems took over responsibility for the operational management of SIS in the area of freedom, security and justice (eu-LISA). There are other decentralized systems in place in addition to SIS II for the exchange of information at EU level. Central support for these systems would greatly facilitate technical and organizational processes such as request management, standardized and binding test systems as well as evaluation measures.

The European Commission is requested to present a study on how eu-LISA could be further developed. The study should also address how eu-LISA can support the management of decentralized procedures (e.g. Prüm Decisions) as well as the development of forward-looking services by eu-LISA (e.g. providing comprehensive services in the field of infrastructure – “infrastructure as a service”).

When the study is completed, the European Commission is requested to present a strategic concept for the future role of eu-LISA in the exchange of information between European police authorities based on the results of consultations on the study.

European Police Records Index System (EPRIS)

In December 2012, the Commission presented a feasibility study on possible measures to make the exchange of police records between Member States more effective by developing a European system for the exchange of police records, EPRIS. The feasibility study conducted by the European Commission on EPRIS found that a police records index system was needed to provide initial information on whether there are police records available when certain personal data are accessed and, if so, in which Member States. The study also arrives at the conclusion that the various systems and methods currently used by police authorities to exchange information in the EU are insufficient.

Therefore, the European Commission is requested to explain in a study how these insufficiencies of existing systems for the exchange of police information can be corrected and in particular whether and under which conditions EPRIS is an appropriate means to this end.

Using financial instruments to promote operational cooperation

EU-Policy Cycle – Promotion of EMPACT measures

Continuing to strengthen police cooperation is vital for the effective and sustainable fight against international serious and organized crime. With the EU Policy Cycle, an instrument has been created at EU level to manage and prioritize operational police activities of the Member States in this area. It is vital for the success of this instrument that the European

Commission provides financial support for the EMPACT measures provided for in the EU Policy Cycle (European Multidisciplinary Platforms against Criminal Threats) in accordance with the priorities defined in the EU Policy Cycle such as the fight against cyber crime, synthetic drugs and trafficking in human beings.

The European Commission is therefore requested to provide sufficient funds to promote the implementation of EMPACT measures from the centrally managed EU funds of the multi-annual financial framework (2014-2020).

Fight against cyber crime

The fact that criminals increasingly use the Internet is particularly important here. The soaring numbers of cases involving cyber crime are presenting the authorities with additional challenges. As criminals also operate across borders, it is vital to have a swift and effective exchange of data between law enforcement authorities in the Member States and to ensure access to the necessary technical expertise. The Europol Cybercrime Center (EC3) which has been operational since early 2013 is an important element of European cooperation to prevent and prosecute cyber crime. We must ensure that Europol receives additional funds necessary for running the EC3.

The European Commission is therefore requested to furnish EC3 with the necessary funding.

Examining the need for additional compensatory measures in the Schengen area

The Schengen area should be enhanced, as it has been expanded to include a total of 30 countries and as there is an increasing need for law enforcement cooperation, such as sharing police information. Close, efficient and smooth cooperation among Member States is necessary, especially in an area without internal border controls. We should therefore explore whether other ways are needed to compensate for the abolition of checks within the Schengen area.

6. EU data protection

General Data Protection Regulation

A state-of-the-art General Data Protection Regulation should protect citizens' privacy and help ensure fair competition in the digital internal market. We need to work vigorously to overhaul the EU data protection legislation, thus creating rules based on reasonable strategies and capable of addressing the challenges the digital society faces. Europe needs a common data protection law for businesses so that everyone offering services in Europe is subject to European data protection law.

The aim is to harmonize and modernize EU data protection law in order to create a level playing field and ensure that all citizens benefit from a common and high level of data protection on the digital internal market.

We need to find appropriate responses to today's challenges such as cloud computing, responsibilities on the Internet and the protection of individual privacy and consumer data.

One of the priority aims in completing the EU's Digital Agenda is to create common and modern data protection legislation to cover all businesses providing services in Europe (marketplace principle). With regard to the protection of employment-related data, the Federal Government seeks to uphold the national data protection level also in cross-border data processing and to allow for standards exceeding those provided for in the Data Protection Regulation.

Data Protection Directive

Germany welcomes the aim of the Directive, which is to enhance the protection and sharing of data in the area of police and judicial cooperation in criminal matters. However, there still are major concerns about the proposal. The high data protection level it seeks to achieve must be reconcilable with the interests of effective threat prevention and law enforcement. We must ensure that new provisions on domestic data processing do not unlawfully curtail the law on police and criminal procedures, which is the sole competence of the Member States.

7. Expanding European IT and cyber security

Our society has become more and more reliant on IT and the Internet in recent years. Robust and secure information structures and networks are central to the provision of vital services. By combining an intelligent legal framework for IT security, close cooperation with the IT industry and operators of critical infrastructure and ongoing international coordination we must find responses to these important home affairs policy challenges.

There are global interdependencies between infrastructures and networks, and Internet threats know no borders, either. We therefore need to combine our efforts to enhance international IT security mechanisms and standards. Some Member States, including Germany, treat cyber security as one of their priority issues, for instance as part of national cyber security strategies. Last but not least the European Commission, together with the European External Action Service, submitted a Cyber Security Strategy in February 2013.

These papers need to be implemented systematically so as to actually improve the situation in a sustained manner. The great number of players and activities require coordinated action, ideally at a high level, as decisions may have far-reaching effects. In Germany, what is referred to as the Cyber Security Council has proved its worth in this context. Initial measures at EU level, for instance the Friends of the Presidency on Cyber (Cyber FoP), have not yet developed their full potential in terms of strategic cyber security coordination.

For this reason, the main IT and cyber security issues should also be addressed in the Justice and Home Affairs area, as they also affect data protection, security and critical infrastructures at EU level. The existing structures and responsibilities in the Council should be upheld.

A major aspect of cyber security is the protection of critical infrastructures. Our societies rely heavily on the provision of vital services, such as electricity, water supply and medical care. Our analysis shows that by now all areas of critical infrastructures depend on IT. However, we have so far failed to ensure sufficient protection standards for these IT services across the board. To guarantee an appropriate level of service provision throughout Europe, it is vital to have coordinated IT security standards in place for the operation of critical infrastructures.

- JUSTICE -

Legal policy principles post-Stockholm (Justice)

I. Introduction

In the field of justice, the post-Stockholm process must achieve further progress in European integration while – as explicitly specified in Article 67 (1) TFEU – respecting the structures of domestic legal systems, which are an expression of the historically evolved legal orders of the Member States.

For this reason, mutual recognition should remain the fundamental instrument of judicial cooperation at the EU level. However, the mutual recognition of a judicial decision issued in another Member State in civil or criminal matters cannot be allowed to jeopardise the fundamental rights protection afforded to citizens in their home countries. This could damage trust in European legislation. Measures at the EU level cannot be allowed to diminish the protection afforded to citizens.

For the further development of the single market, all available instruments should be used appropriately.

II. Securing fundamental values and fundamental rights

The **fundamental values** of the European Union, as anchored in the Union's treaties, must be regularly reaffirmed and further strengthened in joint efforts by EU organs and citizens. The Federal Government sees the **protection of these fundamental EU values** as a matter of paramount importance for the process of European integration. But consequential protection of fundamental values is also central to the EU's credibility for the outside world. The Federal Government believes that, at EU level, the existing range of instruments does not suffice in all cases to protect the fundamental values enshrined in Article 2 TEU. Despite the important instrument of infringement proceedings and the mechanism under Article 7 TEU, there is a gap that must be closed, in the process of which the competences of the Union and the Member States must be respected.

In achieving better protection of fundamental values at EU level one of our key aims must be to ensure that such protection enjoys legitimacy both internally and externally. In the view of the Federal Government, it must therefore be based on the following principles:

- New instruments for better protection of fundamental values must apply, without any distinctions, to all Member States.

- Recognised expertise must flow into the assessment of whether there is a systematic threat to fundamental values. For this reason, cooperation between the Commission and the Council of Europe, as well as the various CoE bodies, should be sought in order to identify and consider potential for complementary approaches in accordance with the objectives set.

- The decision on whether to launch procedures to protect the fundamental values enshrined in Article 2 TEU cannot be made on the basis of individual criteria (a "scoreboard"), but requires an overall assessment of all relevant circumstances and prognoses of further developments in the Member State in question. An assessment could also be made of the extent to which the so-called "pilot proceedings" introduced by the Commission and the Member States in the area of treaty infringements could provide some guidance in this respect.
- The Council must also take ownership in the process of improving the protection of fundamental values.

The Federal Government rejects treaty change for the development of a further fundamental values mechanism.

The Federal Government will strive to ensure that unjustified **discrimination on the basis of sexual identity**, which is still to be found within the European Union, is eliminated from all areas of society. The Regulation on property regimes for registered partnerships should be adopted alongside the Regulation on matrimonial property regimes.

The Federal Government emphasises that any further development of EU justice policy must be tied to the **obligation to promote and comply with the rights under the Charter of Fundamental Rights**. The European Fundamental Rights Agency is of particular significance in this context. The Federal Government considers it essential for the Charter of Fundamental Rights of the European Union to complement domestic systems for the protection of fundamental rights, but not to replace them.

III. Digital Europe

Europe's role in the 21st century will heavily depend on whether we are able to **keep pace in the digital world**, set European standards and, in doing so, protect our European model of society. Shaping the digital reality of our lives within the European Union is a cross-cutting issue to which close attention will also have to be paid in the area of justice policy. It will be the task of those formulating this policy to set the legal framework and ensure that a fair balance is struck between the interests of the various players in the digital arena.

In the context of its 2012 Digital Agenda Scoreboard, the European Commission proceeds from the assumption that, by 2014, 75% of all EU citizens will use the internet on a regular basis. Online retailers, webmail services, auction platforms and online service providers have now become an inseparable part of many consumers' everyday lives. Social interaction is taking shape increasingly in virtual spaces such as social networks, blogs, instant messaging platforms and games portals.

In a borderless digital world consumers enjoy opportunities and face risks in equal measure.

In civil law this has resulted in a whole new range of contractual challenges that justice policy makers will have to face in the coming years at the European level. Copyright law in particular will have to adapt even further to the imperatives and challenges of the digital age, taking digital exploitation practices into account. Given the extraordinary speed of progress in digital technology as far as the collection, analysis and use of private data is concerned, consumers must be provided with effective tools in order for them to maintain their privacy.

This applies both to the relationship between citizens and the state, and to the relationship between companies and consumers.

There should be no such thing as a "transparent citizen" or a "glass consumer". At the same time, digital usage practices must be taken into consideration. To this extent, EU data protection law should be harmonised and brought up to date in order to create a modern legal framework for companies and consumers, in particular with regard to the internet, that can stand up to the challenges of a digital society.

Criminal law must afford citizens protection against threats emanating from the virtual world and ensure that no safe havens exist within the European Union for the perpetrators of cybercrime.

The internet, digital connectivity, and the interconnection of many areas of life (the Internet of Things) open the door to more and greater opportunities, information and participation. However, risks exist for those who, for technical or other reasons, do not have access to modern media and the impact of this technology on day-to-day living. Information and participation rights cannot be undermined in this way. The risk of paternalism vis-à-vis consumers must be avoided in every respect. Protecting the interests of those consumers who are cut off from the digital arena must go hand-in-hand with efforts to shape the legal framework conditions for the digital world. Discrimination in this area is not acceptable.

IV. Criminal law

In the field of **substantive criminal law**, significant progress has been made in the last few years. EU-wide definitions and provisions on penalties are now in place for serious/cross-border offences such as currency counterfeiting, terrorist offences, racism and xenophobia, sexual exploitation of children, cybercrime and human trafficking. From our perspective, discussions on a post-Stockholm process should be utilised not so much in order to identify where new action is required on a point-by-point basis in individual areas of criminal law, but to once again take a fundamental look at the needs and requirements of EU activity in the field of criminal law. This includes the principle of subsidiarity and the question of whether criminal provisions are essential for ensuring the effective implementation of Union policies. The discussion should also include questions as to the relationship between criminal penalties and administrative sanctions as well as the uniform application of criminal-law principles in legal instruments from different and diverse areas of Union policy. These are also important for the development of coherent EU criminal law.

Crime policy at the European level should be **evidence based** and take account of real trends in crime. Advancing our factual insight into crime trends at the European level could be a useful goal for the period ahead. This is all the more applicable, considering that the German Federal Constitutional Court has taken a critical stance on any further communitisation of criminal (procedure) law (*BVerfGE* [decision of the Federal Constitutional Court] 123, 267, 406 et seq.), and the powers conferred in Article 82 et seqq. TEU should only be exercised with restraint.

The Federal Government strongly endeavours to **protect the financial interests of the European Union**. The annual damage to the EU budget as a result of criminal conduct – and thus the injury suffered by European taxpayers – is indisputably high. In this connection, the Member States and the European Union are called upon in equal measure to combat this

phenomenon effectively. The Federal Government has therefore provided constructive support from the very outset for work on the draft Regulation to establish a **European Public Prosecutor's Office**. The Federal Government advocates the creation of a European Public Prosecutor's Office that is decentralised, slimline and effective. Our shared European budget can only be protected if all Member States work together. A future EPPO must therefore be supported by all Member States together if possible.

In the area of **cooperation in criminal matters**, mutual recognition of decisions is replacing classic forms of mutual legal assistance and extradition. With the European Investigation Order (EIO), a new instrument of mutual recognition will be created which will be of major significance and hopefully simplify the work of investigating authorities. Germany believes that the focus in the coming years should be on implementing these new instruments of cooperation in domestic law and rooting them in practice. It is important not to overface practitioners with more and more new rules. A certain amount of consolidation is first advisable in this field, especially since public prosecutors may possibly also have to integrate the completely new institution of the European Public Prosecutor's Office into their structures.

Mutual trust is the foundation of a well functioning area of freedom, security and justice. In order for the Member States to be able to trust each other in the extremely sensitive area of criminal law, a minimum set of joint standards are required to protect the rights of those affected by criminal proceedings (accused, indicted and sentenced persons, witnesses, victims). If these standards do not exist, are manifestly undercut or are treated very differently in legal practice, this will shake the foundations of our community area. First, it is irrelevant whether these are *de jure* or *de facto* shortcomings. Second, violations must not necessarily be "systematic": a significant number of isolated cases may be enough to destroy trust in the legal system of another Member State in the long term.

Protective standards in procedural law are sometimes governed differently in different Member States. In one Member State, for example, police and public prosecutors are subject to strict provisions on taking evidence even at the investigation stage. But then, in the State in question, the evidence gathered at this stage is usually fully admissible at trial. In another Member State the rules on taking evidence are much broader and the actual "filter" only comes into play at the trial stage. Neither of these systems is better or worse, but they are different. We should build bridges between our systems. We will therefore have to fundamentally consider the extent to which the domestic authorities of an executing State should retain a final right of scrutiny in recognising foreign decisions in criminal matters.

The Federal Government welcomes the major progress made in recent years regarding **rights of accused persons**, and hopes and expects that further work will be done to implement the roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, as adopted by the Council on 30 November 2009.

The Federal Government also welcomes the recent successes at the European level in **protecting the victims of crime**. The legitimate interests of crime victims must form an integral part of EU justice policy.

In assessing whether the essential rights of affected persons are protected, the **decisions of the Court of Justice of the European Union and the European Court of Human Rights** are of central significance. If one of those courts finds that the fundamental rights of affected

persons have not been protected, this must be perceived as a serious indication that the form taken by our area of freedom, security and justice may require scrutiny and adjustment in the interests of close and trusting cooperation.

Recently, decisions in particular of the ECHR on the **execution of custodial criminal sentences** have given rise to doubts as to whether the essential (minimum) standards in this area are protected throughout the EU. This issue is extremely relevant in practice:

In transferring prisoners under the European arrest warrant or pursuant to Council Framework Decision 2008/909/JHA of 27 November 2008 regarding the principle of mutual recognition of judgments in criminal matters which involve a sentence to a term of imprisonment or other measure involving deprivation of liberty for the purpose of their enforcement in the EU, the Member States must be able to rely on the conditions of imprisonment in the receiving State meeting the minimum standards of Article 3 of the European Convention on Human Rights that are applicable under international law.

Following analysis of the responses to the Green Paper on detention, the European Commission has already addressed various options. These options chiefly consist in evaluating the execution of sentences and improving cooperation between the Member States on the basis of existing instruments: intensifying cooperation between the EU and Council of Europe, developing networks of prison and justice administrations for the exchange of best practice in execution, and other "soft measures". These considerations should continue to be pursued more vigorously and the proposals implemented. Cross-border information exchange in the field of corrections should be intensified and structured in the form of a group of experts. EU financial support in corrections should be improved and dialogue should be intensified in particular with the EU's eastern neighbours.

V. Civil law

With regard to **Civil law** there are two tasks which must be fulfilled in equal measure: governing the way our citizens live in a Europe that is growing closer together and creating a framework for companies to be able to generate growth and prosperity.

The Federal Government welcomes the progress made in **European civil law**, which has greatly facilitated the cross-border activities of both citizens and companies.

The legal landscape should be further consolidated in the important field of **consumer law**, too. The legal instruments in this field (Consumer Rights Directive, Distance Marketing of Financial Services Directive concerning the, Consumer Credit Directive, Timeshare Directive, Services Directive; negotiations are currently underway on the rework of the Package Travel Directive) stipulate (pre)contractual information duties which are not set out in a uniform way. Information duties are important in order to ensure that consumers can decide freely themselves. However, non-uniform provisions in the various legal instruments cause red tape and perceived/irritation burdens for industry. On the other hand it should be borne in mind that both incomprehensible information and "information overload" do not result in improved consumer protection. We should strive to harmonise and simplify information duties at the European level, including on a multi-Directorate-General basis.

Furthermore, in the field of consumer law, attention should be paid to ensuring that sufficient account is taken of the existing legal systems of the Member States. A reduction in the

existing level of consumer protection provided in a Member State as a result of European law must be avoided where possible.

It is important for consolidation efforts that we continue the project to create a **Common Frame of Reference** as a matter of priority. The Draft Common Frame of Reference presented in 2009 ought to be discussed in detail and extended where appropriate to cover further areas of the law of obligations (special part) where there is a need for consolidation and systematic enhancement of the existing European private-law instruments (e.g. financed consumer sales contracts; sales contracts and the reservation of title).

This could be accompanied by an **inter-institutional agreement between the Council, Commission and Parliament** to consider the provisions of the Common Frame of Reference in reworking community private law and issuing new legal instruments (toolbox).

The Federal Government continues to perceive deficits in the harmonisation of rules on the applicable law (**rules on the conflict of laws**). The law governing the conflict of laws ensures that the same law is applicable to a civil case in all EU Member States, irrespective of where the litigation is taking place. The application of one and the same law to a case in all EU Member States is an imperative of justice. Now that considerable progress has been made in harmonising rules on the conflict of laws (Rome I, Rome II, Rome III, Regulation on succession, Regulation on maintenance), work should continue in this direction (e.g. marriage and the law governing names). Practical experience shows that much tighter limits are set for the harmonisation of substantive civil law, e.g. family law. Bridges should therefore be built with the law governing the conflict of laws.

We now have a considerable number of **procedural law instruments on judicial cooperation in civil matters**, which provide in part for different solutions to individual questions. This makes it more difficult for practitioners to work with these instruments. It would therefore be desirable to create coherence in the context of regular reworks of the legal instruments. In the medium term, a **consolidation of EU civil procedure law** could be undertaken.

There is also room for enhancement as far as the **external dimension** of judicial cooperation in civil matters is concerned. The goal must be to ensure that the EU can effectively assert its own standards at international level. This requires the EU and its Member States to develop a strategy of how they are going to act in existing multilateral forums such as UNCITRAL, the Hague Conference or the Council of Europe, and where additional bilateral or multilateral treaties are to be negotiated. In multilateral forums, different opinions on EU vs. Member State powers should not result in neither the EU nor the Member States being able to position themselves internationally. Instead, pragmatic solutions should be found in order to achieve the common goal in a timely manner.

VI. EU Justice Scoreboard

The Federal Government shares the view that adherence to rule-of-law principles in all Member States is the Union's common core value. The justice systems of the Member States must consistently follow the canon of values set out in Article 2 TEU and secure these values at all times. The Member States must therefore ensure that their justice systems are equipped in order to allow citizens and companies to bring about swift, reliable and enforceable judicial decisions before the courts of their countries.

In this connection, however, the Federal Government notes that exclusive competence for the structure of these justice systems lies with the Member States. The fact that justice is an important and determining factor in a Member State's economic appeal does not make it a component of economic policy as far as competence is concerned. The Federal Government therefore perceives the Communication on the Justice Scoreboard as a non-binding instrument for the purpose of self-reflection. Such a project is covered as an area of action for the Commission pursuant to the legal basis of TFEU (only) in this configuration.

The Federal Government points out that the quality of a justice system cannot be measured using basic statistical data such as completion figures or duration of proceedings alone. Rather, the standard of the substantive and procedural-law systems in place are crucial in determining quality. The Federal Government therefore appeals for the examination, in particular, of economic policy issues linked to the functioning of justice systems to be conducted in close dialogue with the Member States.

VII. e-Justice

Freedom of movement within the European Union requires sound cooperation between the administrations and courts of the Member States, as well as the creation and guarantee of clear and practicable legal framework conditions. Electronic communications should therefore be further expanded.

Easy electronic access for all citizens to all courts within the European Union should be made possible.

Furthermore, uniform European standards should be established for electronic legal communication. These also should include the option (but with no obligatory technical requirements) of establishing long-term interoperability between existing, technically diverse, domestic IT solutions.

On the technical level, the EU Justice Portal should be further expanded.

In order to implement these manifold tasks and provide support in the long term, projects of long-term benefit to citizens, companies or the justice system should be supported, including with money from the budget of the European Union, in easily implementable, easy-access form.

VIII. Basic and further training

EU-related issues are becoming more and more significant in legal practice. Therefore, without prejudice to the primary competence afforded to the Member States in the field of basic and further training in European law for the legal professions, additional joint efforts are required in order to bolster training in this area. The targets already formulated in the Stockholm Programme to this extent for intensifying and systematising basic and further training in EU-related areas have only been realised in part, and should therefore be further pursued.

However, given the greatly increased overall need for further training, and the resources already tied down to meet domestic needs alone as a result, greatly augmented organisational

and financial support from the EU is indispensable in order to provide practitioners with relevant further training on the desired scale.