



Council of the
European Union

Brussels, 11 September 2024
(OR. en)

12464/1/24
REV 1

LIMITE

JAI 1246

NOTE

From: Presidency
To: Delegations

Subject: Strategic guidelines in the field of Justice and Home Affairs

Delegations will find in annex a revised text of the draft strategic guidelines in the field of Justice and Home Affairs ahead of the JHA Counsellors meeting on 16 September 2024.

Changes compared to document 12464/24 are indicated in **bold underline** (added text) and ~~strikethrough~~ (deleted text)

DRAFT STRATEGIC GUIDELINES

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

Article 68 TFEU states that the ‘European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice’. The strategic guidelines are the important expression of the key role that the Treaties confer on the European Council in shaping the direction of EU policy in the area of Justice and Home Affairs.

The new Strategic Agenda provides ~~further~~ guidance and calls on the EU institutions to put these priorities into action during the next legislative cycle, respecting the institutional balance of powers set out in the Treaties and the principles of conferral, subsidiarity and proportionality.

As enshrined in Article 2 TEU, the European Union **is founded on** ~~shall protect~~ the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights ~~in a single area of freedom, security and justice~~, **including the rights of persons belonging to minorities. Upholding the respect for the rule of law, fundamental rights and democratic values will remain a core principle for the functioning of the area of freedom, security and justice.**

[Against this background, the European Council defined the strategic guidelines for legislative and operational planning for the coming years within the area of freedom, security and justice, as follows:]

1. The European Union constitutes an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States. One of the key objectives of the Union is to offer its citizens the absence of internal border controls for persons and to frame a common policy on asylum, immigration and external border control, based on **responsibility and** solidarity between Member States.

2. ~~Furthermore~~ **At the same time**, it endeavours to ensure a high level of security through measures to prevent and combat serious and organised crime, **as well as terrorism and radicalisation**, including strengthening cross-border law enforcement and judicial cooperation, while not affecting the exercise of responsibilities incumbent upon Member States with regard to their internal security.
3. In the recent legislature, much has been done to develop policies that ensure the functioning of the area of freedom, security and justice. Efforts should now primarily focus on coherent and effective implementation of adopted legislation and policy measures already in place, with full cooperation among all relevant stakeholders, upholding a high level of mutual trust, while maintaining a forward-looking vision to address persisting and future challenges.
4. Ensuring that implementation, future ambitions and increased obligations of Member States are underpinned by adequate EU funds will be key. To this end, **without pre-empting future negotiations**, the next Multiannual Financial Framework for the Union will have to reflect these priorities, ensuring that the EU budget is fit for the future and that European responses are given to European challenges.

5. A well-functioning Schengen area is a matter of common interest, under which all actions will be centered on the freedom and security of our citizens. It **Border security** is of paramount importance for border security to ensure a complete and fully functioning Schengen area **to ensure a fully functioning Schengen area, amongst others by curbing secondary migration, countering and preventing abuses.** The EU will defend **guarantee a high level of security, in particular through border controls, and will preserve** the unfettered free movement of persons by ensuring that reintroduction of internal border controls remains a **limited** measure of last resort while guaranteeing a high level of security. To this end, managing and further improving one of the world's most modern and effective border management systems at the external borders is crucial. In order to ensure the effective and efficient functioning of the area without internal border control, as well as its unity and coherent development as an essential element of the Area of Freedom, Security and Justice, the governance of the Schengen area as well as its regulatory framework and implementation will need to be strengthened by the Council, in close cooperation with the other institutions and the relevant agencies, while fully taking into account the JHA Protocols and the role of the Schengen Council under the Schengen Association Agreements. **Furthermore, focus on more strategic discussions is necessary, including operational follow-up of deficiencies identified.**
6. **Interoperability fosters the mutual exchange of information also significantly contributes to the prevention, detection, investigation and prosecution of terrorism and serious crime. The European Union remains committed to managing and further improving the external border management systems, as well as the decentralised systems for information exchange in the field of law enforcement, automated data exchange, which will become even stronger with the gradual entry into application of the different components of a fully interoperable IT architecture, compliant with fundamental rights.**

7. Member States decide who enters Europe, not smugglers or hostile external actors, and the Union must mobilise all the tools at its disposal to support Member States in their primary responsibility of protecting the external borders and ensuring security. At the same time, the further development of the Union's strategy on visa policy will contribute to the resilience of the Schengen Area, in particular with a view to preventing abuse ~~on~~of the EU's visa regime.
8. The European Union must remain committed to breaking the business model of traffickers and smuggling networks and to tackling the root causes of irregular migration in order to avoid that people embark on perilous journeys. To this end, the European Union **will remain vigilant to all migratory routes and** will continue to develop **ambitious and durable** comprehensive partnerships with countries of origin and transit in a mutually beneficial way, including border and security partnerships with our neighbours and with countries globally, **and encompassing legal pathways in line with the mutual needs of third countries and Member States. The Commission is invited to consult with Member States on various ideas for strategically optimizing such partnerships.**
9. In parallel, new **and innovative** ways to prevent and counter irregular migration will be explored, **in accordance with international and EU law**. Drawing on the route-based approach, collective efforts with IOM, ~~and~~ U NHCR **and other relevant stakeholders** need to be designed and implemented to reinforce responses to mixed movements, and to ensure that effective national asylum systems are in place within a whole-of-route approach.
10. Faced with new types of threats and hostile actors at the EU's external borders, Member States need to be able to counter these types of activities effectively and guarantee stability and security of the Union. Therefore, the Union will continue reflecting on strengthening the EU's legal framework to address challenges that affect asylum and border management and may impact security.

11. Given the new legislative framework on asylum, migration and Schengen the beginning of the 2024 - 2029 legislative cycle will be also characterized by the focus on the implementation of the recently adopted instruments. In parallel, the European Union must ensure that those without the right to stay are effectively returned. To this end, a more assertive and comprehensive approach to returns will be developed, by upgrading our legal framework, in combination with the use of the internal and external tools at our disposal. **A successful return policy is a fundamental pillar of a comprehensive and credible EU migration system.**
12. Serious and organised crime, including illicit drug-trafficking undermines the functioning of the area of freedom, security and justice. It poses a threat to the safety of citizens and erodes the rule of law. To tackle serious and organised crime effectively, it is important to deprive criminal groups from their resources, to disrupt ~~criminal~~ **illicit financial networks flows, to make logistical hubs more resilient,** and to prevent the infiltration of the legal economy. **Public private partnerships should be leveraged in the fight against organized crime.** Furthermore, it is essential that **the European Multidisciplinary Platform Against Criminal Threats (EMPACT)** remains the cornerstone of the EU's action to fight organised crime and that it receives the appropriate funding. With ramifications of criminal organisations and criminal activities going far beyond the EU, it is essential to further improve law enforcement and judicial cooperation with third countries, at the level of the EU and of the Member States.
13. The fight against crime online and offline is at the centre of safeguarding the EU's internal security. In this regard, the result of the work of the High-level Group (HLG) on access to data for effective law enforcement, and its recommendations should be the basis for the political and practical direction for the European vision of effective access to data for law enforcement purposes.

14. The European Union will take a firmer approach to prevent and combat terrorism, radicalisation, disinformation, violent extremism and anti-democratic tendencies online and offline, and will uphold its common values and the European way of life. We will continue to fight the financing of terrorism in all its forms, will aim at curbing access to financial resources, and bolstering information exchange. To underpin our firm approach, it is timely to develop a new Counter-Terrorism Agenda encompassing a comprehensive range of policies and actions designed to address new and persisting challenges, and strengthen the EU's collective security and resilience. In addition, the European Union will encourage cooperation among Member States as well as international cooperation in this field. Tackling hybrid threats from external actors, foreign information manipulation and interference, and the fight against disinformation will be key.
15. EU institutions and Member States have a shared responsibility to ensure that respect for the rule of law is guaranteed and that effective tools are available and used and, in accordance with the principles of conferral, subsidiarity, proportionality, non-discrimination and equal treatment of Member States, as well as the requirement of respecting the national identities of the Member States.
16. Justice Ministers will continue to hold specific thematic discussions on rule-of-law-related issues falling within the remit of their expertise, without prejudice to the central role of the General Affairs Council in this respect and in line with the Rule of Law Dialogue developed thereof. This will help EU institutions and Member States to identify and share best practices, and to identify issues that deserve attention and demand actions, as appropriate and in accordance with the Treaties, with a view inter alia to ensuring access to justice before independent courts, legal certainty and a people centred approach in justice systems. This, in turn, will further reinforce mutual trust which is the basis for the development of policies in the field of justice and home affairs that rely on the principle of mutual recognition.

17. Judicial cooperation across the EU is a key objective in the area of freedom, security and justice. The smooth functioning of the area of justice with respect for the different legal systems and traditions of Member States is essential and mutual trust in national systems is a cornerstone in the field of judicial cooperation. To underpin these efforts the e-Justice Strategy 2024-2028 should guide the ongoing digital transformation in the justice domain across the European Union. In parallel, a common reflexion on the use of artificial intelligence in justice, based on the AI Act, needs to take place.
18. Judicial cooperation in civil matters should be further developed in order to foster economic competitiveness and create the right environment for companies to operate in the European Union. The attractiveness and the efficiency of legal systems could be improved by reducing administrative burden on businesses and by simplifying the legal landscape through targeted approximation or harmonisation and providing better access to legal information and legal remedy.
19. In the area of EU criminal law, it is essential that EU institutions engage in a structured and comprehensive joint reflection on all aspects of EU criminal law, including on reinforcement of its internal consistency, and its consistency with closely related instruments.
20. **In a changing global political landscape, the coherent external dimension of the area of freedom, security and justice is of key importance. In this context, Russia's unprovoked and unjustified war of aggression against Ukraine has exposed the lack of fully-fledged and effective responses – both legal and operational - to fight impunity regarding most serious crimes under international law. Therefore, the EU will remain committed to support coordination and cooperation between all competent authorities at international and national levels with a view to ensuring accountability and successful investigations and prosecutions of core international crimes.**

21. Sound institutional working methods will be paramount in ensuring the efficiency of the legislative process and in underpinning the strategic guidelines for legislative and operational planning for the coming years. To this end:

- it is vital that non JHA legislative initiatives with significant impact on internal security, using concepts or affecting instruments pertaining essentially to the area of justice and home affairs cooperation, will be subject to increased coordination already in the preparatory phase within the Commission services and the Council;
- it is essential that all new legislative proposals and initiatives are based on evidence and are supported by meaningful impact assessment. Further action is required to ensure that the impact on internal security, in particular law enforcement and judicial authorities, **on the fundamental rights of citizens and vulnerable persons** as well as on competitiveness **of the EU and its Member States** are thoroughly evaluated and continuous efforts will be needed to ensure that security, **respect for fundamental rights** and competitiveness aspects are duly embedded in various EU policies, **thus ensuring that those objectives are comprehensively fostered as an integral part of all policy initiatives in the area of freedom, security and justice;**
- in order to ensure that legislative proposals respect the system of **the attribution of competences** laid down in the Treaties and therefore that the specificities of the justice and home affairs area are fully taken into account in the legislative process, all institutions should make sure that the appropriate legal bases are applied.
- maintaining and strengthening the coherence and consistency of the different policy areas under the JHA, while preserving the realisation and the unity of the Area of Freedom, Security and Justice as well as the coherence of the Schengen acquis, will be imperative.

*

The European Council calls on the EU institutions and Member States to ensure the appropriate legislative and operational follow-up to these guidelines and will hold a mid-term review.