



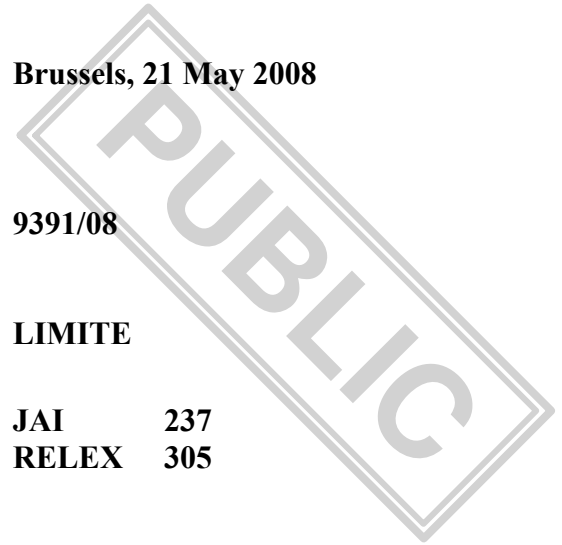
**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat of the Council
to : Coreper/Council

Subject : Second progress report on the implementation of the strategy for the External Dimension of JHA : Global Freedom, Security and Justice

I. Introduction

1. In December 2005, the Council adopted a *Strategy for the External Dimension of JHA : Global Freedom, Security and Justice* (hereafter "the JHA-Relex Strategy"). The strategy can be seen as one of the practical expressions of the wider European Security Strategy adopted by the European Council in 2003. It aims both to set thematic priorities, clarifying underlying principles, reviewing mechanisms and tools, and to present EU structures and processes which are involved in the field of JHA-Relex policies.

2. The Strategy holds that "The Commission and Council Secretariat will systematically monitor the progress of JHA external activity and report to the JHA Council and GAERC every 18 months". An early progress report issued in November 2006 provided a valuable assessment of the strategy's implementation, in spite of a short reporting period. In the run-up to the Strategy's new report due in June 2008, the time has come to carry out a second evaluation.

3. In the following report, the Council Secretariat will :

- a) briefly sketch out several important activities that have taken place over the past 18 months ;
- b) call the attention of Council/Coreper to areas where more work might be done, in particular : taking forward civil law cooperation, coping with data protection requirements, improving existing cooperation, establishing new partnerships and designing more effective instruments.

II. Recent developments under the past three Presidencies

A) United States : the key issues are travel requirements and exchange of information

4. During the period in question, three EU-US ministerial Troika meetings on Justice and Home Affairs were held, in Berlin (April 2007), Washington, D.C. (December 2007) and Brdo in Slovenia (March 2008) respectively.

a) Visa policy and border management

5. In November 2006, President Bush announced a far-reaching reform of internal US legislation on visas, and a revised Visa Waiver Program (VWP) was adopted in August 2007 including plans for an Electronic System of Travel Authorization (ESTA). This development added a new dimension to the challenge of equal treatment of all EU Member States by the US. After thorough discussion, the EU adopted a twin-track approach, according to which measures under Member States' responsibility should be dealt with separately from those falling within the EU's competence. The Council adopted a mandate to the Commission to open discussions with the United States regarding certain conditions for access to the Visa Waiver Program.

6. The use of new technologies for border management purposes also requires enhanced cooperation. New initiatives were discussed, including the Visa Information System (VIS), an electronic entry/exit information register, a possible EU Electronic Travel Authorization, and biometrics. Both the EU and the US reaffirmed that they were committed to the introduction of biometric identifiers in the passports of the EU's close neighbours (notably those from the Western Balkans, the Black Sea region and the Caucasus countries). The optimal use of the Interpol lost and stolen passports database is another issue of common interest.

b) Data protection and information exchange

7. EU-US common commitment to both improving information exchange and setting the highest standards in data protection has been reaffirmed. The informal dialogue that began in 2006 in the framework of the High-Level Contact Group (HLCG) should result in concrete achievements, and both sides have agreed to speed up its work with a view to reaching an understanding. Avenues for future development of the data protection aspects in the EU's JHA-Relex agreements will be presented in the third part of the present Report.

c) Judicial cooperation in criminal matters, law enforcement cooperation and the fight against drugs

8. The ratification process for EU-US mutual legal assistance and extradition agreements is being taken forward, but is still subject to ratification by eight Member States (and a constitutional procedure in four of them), the hearing in the Senate being already scheduled. The agreements were signed back in 2003. In order to take full advantage of these two legal instruments, training programmes should be carried out in the form of seminars organised by Eurojust so as to offer practitioners a better knowledge of the possibilities provided by the agreements.

9. Although cooperation between US law enforcement authorities and Europol and Eurojust has progressed, no classified information has been received from the FBI since the signature of the agreements, which calls for an interpretative document dealing with that issue. Regarding law enforcement cooperation in the Western Balkans, which is one of the EU's priorities, two major items were discussed with the US. First, considering the US interest in the SECI centre, a discussion took place on common standards for ensuring adequate protection of data. Second, the EU's initiative on the South-Eastern European organised crime threat assessment (SEE-OCTA), to which the SECI would be an important contributor, was presented.

10. Concern was expressed for the situation in Afghanistan and the new Western African cocaine route, as well as other regions affected by drugs trafficking, like Russia, the Black Sea area and the Caucasus. Regarding the fight against drugs trafficking, the US is eager to cooperate with the EU and possibly Eurojust, for the extradition of some top drug-traffickers whose cases could not be dealt with by the local courts in Afghanistan. The role of the ECMDDA observatory was highlighted, as well as that of the newly-created MAOC-N centre. The US was invited to contribute to the operations of the MAOC-N centre.

d) Fight against terrorism

11. In the field of the prevention of radicalisation and recruitment, the EU and US exchanged views and shared practices. Fighting illegal use of the internet for terrorist purposes has been identified as a priority. The issue of recruitment in prison, and the necessity of promoting a moderate interpretation of Islam have also been highlighted. Compendia of best practices are due to be produced, in order to disseminate knowledge and learn from each other's experience.

12. Chemical, Biological, Radiological and Nuclear (CBRN) risk reduction is also a major challenge. The need for efficient cooperation has been recognized by both parties. The FBI will consider the Commission's proposal to join in an exercise. Additionally, a joint analysis may be carried out, and the US proposed an exchange of CBRN protection plans. Information has been provided by the EU on its key priorities in the field of critical infrastructure protection.

B) Russia : striking a balance between security and freedom

13. Three meetings of the EU-Russia Permanent Partnership Council on Justice and Home Affairs were held, successively in Moscow (April 2007), Brussels (November 2007) and St Petersburg (April 2008). At these meetings, an assessment was made of the implementation of all parts of the *Road Map for the Common Space of Freedom, Security and Justice*. Additionally, a Trilateral EU-Russia-US meeting of ministers responsible for internal security was held in Berlin in April 2007, followed by the EU-US ministerial Troika. It should be noted that this trilateral format of cooperation was assessed very positively by the Russian side at the highest political level, and that the EU agreed to it provided that the agenda calls for it.

a) Freedom

14. Regarding visa policy, two issues are being dealt with. First, meetings of the four Blocks which form the visa dialogue to examine the conditions for mutual visa-free travel as a long-term prospect. Second, successful work (notably through the drafting of Guidelines) has been carried out on harmonised standards and rules for the implementation of the Agreement on the facilitation of issuance of visas ; as regards the Agreement on readmission, it is noteworthy that this instrument is being implemented even in the absence of the bilateral protocols, which are currently under negotiation.

15. Document security is a priority for Russia and the EU. The project supported by the EU, as well as the visit of Russian experts to several Member States, will foster the use of the Interpol "Lost and stolen passports" database. Moreover, Russia is currently introducing biometric identifiers in its travel documents. Finally, it was agreed that a close link between illegal immigration and organised crime in Russia called for stronger cooperation with agencies, notably Frontex and Europol.

b) Fight against terrorism

16. Both sides showed a strong commitment to adopting a preventive approach by addressing the issue of radicalisation and recruitment, including illegal use of cyberspace for terrorist purposes. The increasing phenomenon of home-grown terrorism was mentioned, as was the importance of modern prevention and communication techniques. Whereas both parties agreed on the key importance of education, Russia emphasized the potential role of women in promoting peace and tolerance among young people. The EU recalled that, since the number of radical websites is rapidly growing, initiatives like the "Check the Web" project must be promoted.

17. In the fight against terrorism financing, Russia is an active partner in the Egmont Group and Moneyval. In its fight against terrorist financing, the EU promotes openness and transparency of financial streams, to which Russia also shows commitment through FATF. Nevertheless, the EU encourages Russia to sign the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism. Finally, it was agreed that the activity of non-profit organisations in terrorism financing must be prevented, through enhanced cooperation between Financial Investigation Units.

c) Organised crime and law enforcement

18. It was agreed that the current institutional instruments for cooperation in this field, such as cooperation with Europol and Eurojust and the liaison officers network, must be reinforced. Regarding the former two, the EU side stressed that taking forward such cooperation required mutual confidence, which calls for a high level of data protection. Russia pointed out that several laws had been adopted to that end, *inter alia* on data protection and on the disclosure of data, and that reaching an operational agreement with Europol was considered a priority. The specific issues posed by data protection in the EU's external relations with Russia *inter alia* will be addressed in the third part of the present Report. Regarding Liaison Officers, contacts between the liaison officers network in Russia and their counterparts in the Russian law enforcement agencies have proved useful and must be promoted. The meeting that was held under the Slovenian Presidency in March 2008 proved highly positive.

19. Specific cooperation is also being ensured in the field of drugs, trafficking in human beings (THB) and corruption. Regarding drugs, it was agreed that the Moscow/Paris process provided a relevant framework. Moreover, Russia is cooperating with the ECMDDA and with the Maritime Analysis and Operations Centre – Narcotics (MAOC-N), based in Lisbon. Finally, it was stated that the fight against precursors must be a priority for both sides. Regarding THB, TAIEX seminars provide a relevant framework for exchanging expertise and sharing practices. It is noteworthy that a legislation has been introduced in Russia, with a view to reinforcing available instruments. Finally, in the fight against corruption, the Russian side undertook to ratify and implement the United Nations and Council of Europe Conventions and to participate actively in fora such as GRECO.

d) Judicial cooperation

20. Regarding judicial cooperation in criminal matters, the EU encouraged Russia to sign several instruments of the Council of Europe *acquis*, including the Second Additional Protocol to the 1959 European Convention on Mutual Assistance in Criminal Matters and the Convention on Cybercrime. The need for a better follow-up to letters rogatory has also been felt and will be discussed with Eurojust. Specific cases, such as the murder of Alexander Litvinenko and the disappearance of a Lithuanian businessman in Kaliningrad, were raised by the EU side.

21. Given growing personal and commercial relationships between the EU and Russia, stronger cooperation is needed with Russia in the field of judicial cooperation in civil matters. This cooperation should be developed in the framework of the Hague Conference on Private International Law. The possibility of a bilateral agreement between the EU and Russia is being considered. Russia was invited to accede to the 1980 Convention on the Civil Aspects of International Child Abduction.

C) Partners of the Global Approach to Migration

22. In December 2005 the European Council defined priorities for a *Global Approach to Migration : Priority Actions focusing on Africa and the Mediterranean* so as to enhance operational cooperation with Africa at bilateral, regional and EU-African Union levels, between Member States and with Mediterranean partners. In its conclusions of December 2007, the European Council endorsed conclusions on mobility partnerships and circular migration. It was decided to open dialogues with a view to launching pilot mobility partnerships with Cape Verde and the Republic of Moldova.

23. The EU should ensure consistency between migration and development policies. On issues like "brain-drain" and "brain-waste", circular and temporary migration, as well as the link between migration and employment, a comprehensive approach ought to be promoted. By way of illustration, the critical shortage of health workers (doctors and nurses) in Africa has been addressed by a European Programme adopted in May 2007. Similar initiatives should be taken in other matters related to the Global Approach.

24. As regards THB, the EU-Africa Action Plan to Combat Trafficking in Human Beings, Especially Women and Children was adopted in the Tripoli Ministerial Conference. Cooperation in this field should be taken forward by a continued joint commitment.

D) Western Balkans : making the prospect of EU membership a real one

25. An EU-Western Balkans JHA Ministerial Forum was held in Brdo (October 2007) with Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Montenegro and Serbia, with the participation of UNMIK, Europol, Eurojust, Frontex, the SECI Center and the Special Coordinator of the Stability Pact for South Eastern Europe. Regarding the implementation of the Stabilization and Association Process, the Commission stressed the need to adopt and implement internal legislation ensuring efficient operation of the judiciary and police, given that all these countries have European prospects, two of them (Croatia and the Former Yugoslav Republic of Macedonia) having already been given candidate status.

26. In parallel, additional efforts should be undertaken to reinforce border management and follow EU standards in document security. Progress is being made with respect to visa facilitation and readmission agreements. Moreover, it was agreed that the fight against transborder crime was a priority; judicial cooperation in criminal matters (CARDS project) and police cooperation within the existing bilateral and regional framework (notably the Police Cooperation Convention for South Eastern Europe and the South East European Cooperation Process) should be promoted.

E) Ukraine : a close partner at the EU's borders

27. EU-Ukraine ministerial Troika meetings on Justice and Home Affairs were held in Luxembourg (June 2007) and Kyiv (May 2008). It was noted that both the Revised Action Plan and the Scoreboard had improved EU-Ukraine cooperation. In order to take forward such cooperation, a new enhanced agreement is under negotiation. In the field of movement of persons, both parties expressed their satisfaction with the signature of the EC-Ukraine readmission and visa facilitation agreements, and the EU managed to obtain equal treatment for Bulgarian and Romanian citizens.

28. The implementation of the EU-Ukraine JLS Action Plan was reviewed. First, regarding border management, the improved cooperation (notably through the "five borders pilot project") between Ukraine and the Black Sea region, Frontex and the national Border Guards of the Member States was welcomed. Then, given that Ukraine is a country both of transit and of destination for illegal migrants and asylum seekers, the EU side underlined the necessity of enhancing cooperation and retaining high standards with regard to the reception of refugees and conditions of return. Finally, the importance of the fight against organised crime (including money laundering, trafficking in human beings and drugs), terrorism and corruption was reaffirmed ; to this end, strengthening the judiciary should be a priority.

III. Future Prospects and Necessary Breakthroughs

29. On the basis of the lessons learned during the past 18 months, the Council Secretariat recommends that Coreper/Council consider the following suggestions.

A) Meeting citizens' needs in civil law matters

30. In order to make the European citizen more aware of the EU's added value in the field of JHA, the external dimension of civil law policies should be taken forward. In particular, the issues of jurisdiction, applicable law, taking of evidence and service of judicial and extra-judicial documents, recognition and enforcement of decisions, and administrative cooperation should be a priority. Such cooperation can take place in the existing frameworks, so as to build on previous relations with third country partners, whose status (European perspective, economic ties) should determine the level of expectations.

31. Cooperation in civil law matters with third countries can be achieved mainly through three types of instruments: international agreements and negotiations at multilateral level; bilateral agreements and exchanges of experiences and best practices. Firstly, international negotiations taking place in particular in the framework of the Hague Conference on Private International Law provide the EU and its partners with worldwide instruments. Secondly, bilateral agreements should be sought more specifically with certain countries, account should be taken of the special relationship with the particular third country (historical, sociological, geographical, economic and political ties), of the extent of judicial cooperation and of the existing multilateral agreements in force. Finally, cooperation and the multilateral and bilateral levels could be reinforced more systematically by exchanges of experience and best practice at the level of practitioners, thereby reinforcing informal dialogue and creating mutual trust.

B) Finding an appropriate way to cope with data protection requirements

32. In different international contexts, data protection has proved an obstacle to deepening cooperation among law enforcement agencies of the EU and , for instance the US, Russia, Ukraine and Israel. In particular, there are no standardised criteria for evaluating the independence of the data protection "supervisory authority".

33. In order to set up a secured framework for EU-US information sharing, the High-Level Group on data protection and data sharing was created at the JHA Ministerial meeting in Washington in November 2006. Its purpose is to examine whether and to what extent common data protection principles can be formulated. Discussions are held on a list of principles, of which 12 have already been agreed during exploratory talks. A report is under preparation.

34. Negotiations with Russia on data protection take place in a different context. The establishment of the operational cooperation agreement between the Russian Federation and Europol requires the Council to authorise starting these negotiations, based on a Data Protection Report submitted by Europol. To that end, a comprehensive review of the legislation and administrative practice in the field of data protection has been conducted, based both on a study of the legal framework and a visit to Russia. Internal Russian legislation must be brought into line with the Council of Europe Convention No 108. There are specific rules on time limits applicable to data stored, onward transmission to third countries and the management of sensitive data. Finally, the supervisory agency which is referred to in the Council of Europe Convention No 108 should be set up.

35. The Council is invited to reflect on a practical way of cooperating between Europol and third states, similar to the one in place between several EU Member States and these partners. The current methodology used by the EU and its law enforcement bodies in order to assess the level of data protection in third countries should be reviewed.

C) Improving existing cooperation

a) ENP : overcoming recurrent disparities in the implementation of the Action Plans

36. In its May 2005 *European Neighbourhood Policy Strategy Paper*¹, the Commission set out several priorities in the field of Justice and Home Affairs which were intended to result in more specific measures in each particular Action Plan. Regarding movement of persons, migration pressure from third countries poses a major challenge that should be met through effective cooperation in border management, in order to provide security without impeding legitimate movement.

¹ COM(2004)373 final.

To this end, we should promote the creation and training of professional corps of non-military border guards, as well as measures to secure travel documents. Cooperation on visa policy, asylum and migration is also necessary. Since trafficking in human beings and terrorism are growing concerns among many of our ENP partners, a strong commitment is also required in the field of police and judicial cooperation, including on family law. Cooperation with Europol and Eurojust must be fostered, and relevant international instruments should be signed, ratified and implemented.

37. More generally, the EU has noted that the implementation of Action Plans was subject to significant variation. Whereas several EU partners display a commendable commitment to translating these documents into concrete and efficient actions, other partnerships have not yielded substantial results until now. This is a major concern in JHA matters, since the way common threats are addressed by the EU and its partners can deeply affect the citizen's security in the long term. Therefore, a thorough review of the implementation of the Action Plans should be carried out, and recommendations be made in the framework of JHA subcommittees, with reference to the conditionality principle.

b) Russia : considering the creation of a high-level group

38. Considering the wide scope of the cooperation with Russia in the field of JHA and the need to better prepare the half-yearly ministerial meetings, the Council Secretariat suggests that a senior level be set up at the beginning of every Presidency. The objective would be to ensure a proper follow-up of priorities and major initiatives between the ministerial meetings.

D) Establishing new partnerships

a) Western Africa and Latin America : advancing beyond the current cooperation on drugs

39. Western Africa is a region in which most of the key themes dealt with by the EU's JHA-Relex are of growing concern. Being a major hub in the cocaine route from Colombia to Europe, it is involved in drug trafficking, but also terrorism, notably in Mauritania, and illegal immigration. Therefore, in negotiations with Western African countries the internal security of EU citizens is at stake, as well as Africa's political stability. Up until now, cooperation between the EU and Western Africa has focused on the fight against drugs trafficking. Broader cooperation is necessary, in order to address the abovementioned issues and promote the rule of law in this region.

40. It is important to cooperate with Latin America in the field of JHA, because of the many factors in that region leading to instability. Common threats derive from the prevalence of organised crime, the long-lasting conflict in Colombia and the large-scale production of and trafficking in drugs, which call for an enhanced partnership. The EU has adopted a 2005-2012 strategy to address the consumption, production and trafficking of illegal drugs. A balanced approach, based on the concept of shared responsibility, has been adopted so as to tackle both supply and demand. Nevertheless, fighting drugs is not the only matter in which cooperation with Latin America could bring added value. As the Commission pointed out in its last Communication *A Stronger Partnership between the European Union and Latin America*¹, the fight against drugs trafficking as well as terrorism and other forms of serious crime require efficient cooperation in the field of money-laundering, corruption and fraud and tax avoidance through the promotion of minimum rules on transparency of financial circuits and business structures. Illegal immigration is another issue of concern which needs to be addressed with Latin America.

b) China and India : working on immigration, trafficking in human beings and civil law

41. In October 2006, the Commission issued a Communication entitled *EU-China : Closer Partners, Growing Responsibilities*². In that document, it was stated that the building of an effective migration relationship was a major issue, calling for a strengthening of bilateral cooperation. To that end, both sides were invited to work towards an effective Readmission Agreement. Additionally, the existing consultation process was to be taken forward and extended to both legal and illegal immigration, and specific cooperation to be improved, notably in the field of exchange and training of officials, as well as exchanges on biometric technologies. Although the Commission called for a dedicated dialogue with the Ministry of Public Security on the fight against organised crime, terrorism and corruption, no practical action has been taken for the time being. To plug this gap, the Council is invited to consider whether a dialogue should be initiated, and extended to cooperation in the fight against THB, which is a growing common concern.

¹ COM(2005)636 final.

² COM(2006)631 final.

42. In its June 2004 Communication on *An EU-India Strategic Partnership*¹, the Commission set out two priorities in the field of JHA. First, regarding the fight against terrorism and organised crime, the EU was invited to increase technical cooperation through meetings at experts level, dialogue on document security, civil aviation and maritime security as well as exchange of information and expertise in areas such as drug trafficking, chemical precursors, and money laundering. Second, as regards migration, the fight against trafficking and smuggling in human beings require that a comprehensive dialogue be promoted in order to design an effective prevention policy (by addressing grassroots causes of these crimes), to combat networks and to protect victims. Such informal dialogue should be strengthened and lead to concrete action.

43. Additionally, China's and India's growing economic weight calls for closer cooperation on civil law in commercial matters. The burgeoning trade relations with these two countries are bound to create a need for stronger legal ties. To this end, the Hague Conference on Private International Law could provide a relevant framework.

E) Designing more efficient instruments

a) Institutional framework : considering structures and human resources

44. Currently, the monitoring of JHA-Relex issues within the Council is split between a variety of Committees and working parties, the focus of which is not necessarily on these matters. Coreper/Council might reflect in the future on alternative ways of disseminating information and using the scarce human resources available in this context.

b) Liaison officers : encouraging exchange of information

45. Meetings of liaison officers have proved to be valuable tools for reinforcing the EU presence abroad. However, the EU would derive benefit from a better assessment of threats if the information which is currently shared between liaison officers and their national authorities was also to be shared with Europol and the EU's other law enforcement authorities. The objective of the EU-Russia meetings should be to enhance operational cooperation.

¹ COM(2004)430 final.

c) Europol : clarifying its negotiation mandates with third countries

46. Europol's relations with third countries are a key aspect of its mission. The internal security objective, which of high importance for our Member States, is closely linked to external threats. This growing Europol's activity poses two challenges : the abovementioned challenge of data protection, and that of the management of Europol's negotiating mandates. Many of the EU's third-state partners (e.g. India and Georgia) are very eager to cooperate with Europol, and commitments have been made by our political authorities without systematic follow-up; in some cases the commitments are even reflected in legally binding instruments (Action Plans). Some limitations in that respect find their origin in the Council list of third partners with which Europol can enter into negotiations. The Council should clarify to what extent Europol is requested to engage in negotiations with third partners, with due consideration for the operational needs and obstacles encountered by the organisation and its Management Board.

IV. Conclusions

47. Coreper/Council is invited to take note of the report and of the proposals made by the Council Secretariat. A discussion should be launched under the French Presidency as a contribution to an update of the JHA-Relex Strategy by the end of 2009.