

Note from the Presidency of the Council of the European Union on the priorities and objectives of the EU in the field of JHA (Brussels, 24 May 2000)

Caption: On 24 May 2000, the Presidency of the Council of the European Union forwards a note to Coreper on the priorities and policy objectives for external relations in the field of justice and home affairs (JHA).

Source: Note from Presidency to Coreper (Part 2), Subject: European Union priorities and policy objectives for external relations in the field of justice and home affairs. 7512/00. Brussels: Council of the European Union, 24.05.2000.

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Note from the Presidency to Coreper (Part 2) European Union priorities and policy objectives for external relations in the field of justice and home affairs (Brussels, 24 May 2000)

A. The European Council meeting in Tampere on 15 and 16 October 1999, dealing with justice and home affairs (JHA) matters, clearly signalled the growing importance of this area and the Union's resolve to place these matters at the top of Europe's political agenda.

At that summit, the Heads of State or Government expressed their determination to develop the Union as an area of freedom, security and justice, making full use of the possibilities offered by the Treaty of Amsterdam, and showed a clear interest in the need to integrate justice and home affairs concerns into the definition and implementation of other Union policies and activities.

In Tampere the European Council asked the Council, in close cooperation with the Commission, to draw up specific recommendations on priorities, policy objectives and measures for the Union's external action in justice and home affairs, including questions of working structure, to be submitted prior to the European Council meeting in June 2000 (point 61 of the Tampere conclusions).

B. The appended report to the Heads of State and Government deals with the Justice and Home Affairs dimension of external policies of the Union, the priorities to be set, the means to implement these priorities and working structures.

The Report stresses the need for the Union to integrate JHA matters fully in the Union's external policy so that a comprehensive, integrated, cross-pillar action is carried out by the Union as a whole. The priorities for this action are defined in the report and include in particular immigration and asylum matters, fight against organised crime and terrorism, drugs and money laundering, high-tech crime and trafficking in human beings, civil law cooperation and building partnerships with important countries including the candidate countries, international organisations and bodies relevant to the Union's priorities.

The Report suggests ways and means to make full use of all the instruments available to the Union to integrate JHA matters in Union policies, in particular use of Articles 300 TEC and 24 and 38 TEU, and deals with representation of the Union both in Title IV and Title VI matters. The Report suggests appropriate working structures to ensure a coherent approach to these matters under the authority of COREPER.

C. The present Report by the Presidency has been drawn up, pursuant to a mandate given by COREPER, by JHA Counsellors at meetings of 23 April, 8, 16 and 23 May 2000. It was based upon a Presidency draft and a contribution from the Commission services.

JHA Counsellors agreed that the external dimension of the Union's work in the JHA field would entail the following tasks:

- i. developing long-term strategies,
- ii. preparing positions on subjects going beyond the terms of reference of a single working party or incorporating cross-pillar aspects,
- iii. ensuring, for the attention of COREPER, overall consistency of external JHA aspects by drawing up a body of general principles,
- iv. monitoring work carried out by other bodies relevant to JHA external relations,
- v. early warning mechanism on new problems that might arise,
- vi. identifying, for the attention of COREPER, priorities in this field.

These tasks would require a thorough knowledge of programmes and measures taken in the JHA field, ongoing activities in international fora and oversight of upcoming events to enable the Union to take a more proactive approach to these matters.

The role of COREPER is crucial in this respect since it is the only Committee in a position to assess the overall objectives of the Union's external policy.

In order to prepare its deliberations, JHA Counsellors identified four options, that all have received support from various delegations:

- [creation of an interpillar Working Party competent for the JHA external dimension]
- [regular meetings of JHA / RELEX Counsellors dealing with these matters]
- [formal extension to the JHA dimension of the mandate of the geographical or thematic merged Working Parties of the Council]
- [use of existing structures and in particular the senior level groups in the respective areas (CATS, SCIFA, Civil Law Committee) as well as increased coordination with working groups responsible for external relations].

COREPER is invited to decide which option is the most efficient structure to implement the Tampere mandate.

COREPER is also invited to endorse the idea of organising a regular political dialogue, in preparation for decisions by the Council, between the Presidency, the incoming Presidency, the Commission and the Secretary-General/Deputy Secretary-General of the Council. Such a political dialogue should be prepared by the JHA external relations Group reporting to COREPER.

D. The European Council is invited to endorse the above orientations based on the attached report and to ask COREPER/Council to start implementation and to submit a progress report to the meeting of the European Council in December 2001 together with the report requested in the Conclusions of the Tampere European Council.

EUROPEAN UNION

PRESIDENCY ANNEX

European Union priorities and objectives for external relations in the field of justice and home affairs

FULFILLING THE TAMPERE REMIT ¹

I. The Tampere remit

The European Council in Tampere instructed the Council, in close cooperation with the Commission, to draw up "*specific recommendations on policy objectives and measures for the Union's external action in justice and home affairs, including questions of working structure, prior to the European Council in June 2000*" (point 61 of the Tampere conclusions). In order to define political priorities and the means of achieving them, this report aims to identify the objectives of a coherent approach towards external action in the field of justice and home affairs (JHA) on the basis of a study of the main characteristics of such action.

II. The JHA dimension and the Union's external policy

Before laying down the criteria needed to establish priorities for JHA action in the external field (point B), it should be borne in mind that since external JHA action is not fundamentally different from other aspects of the Union's external policy, it should be consistent with the latter. As a result, such action is subject to a number of constraints (point A).

A. Constraints on the external aspects of JHA:

(1) There are a number of different objectives: The Amsterdam Treaty brought together the various matters of common interest which the Maastricht Treaty had simply listed in Article K.1 of the Treaty on European Union ("TEU": immigration, asylum, external border controls, combating drug addiction, customs cooperation, police cooperation and judicial cooperation in civil and criminal matters) under the single heading of an area of freedom, security and justice. This does not alter the fact that many different issues are involved in each case.

(2) Developing the JHA external dimension is not an objective in itself. Its primary purpose is to contribute to the establishment of an area of freedom, security and justice. The aim is certainly not to develop a "foreign policy" specific to JHA. Quite the contrary.

(3) The JHA dimension should form part of the Union's overall strategy. It should be incorporated into the Union's external policy on the basis of a "cross-pillar" approach and "cross-pillar" measures. Once the objectives have been defined, they should be implemented by making joint use of the Community provisions available under the CFSP and those on cooperation laid down in Title VI of the TEU.

(4) The resources required to implement external action need to be mobilised. It is essential that both EU institutions and Member States have sufficient human and financial resources to implement such external action.

B. The guiding principles for establishing priorities for the JHA dimension of the Union's external policy:

Hitherto, external JHA action has been re-active, rather than pro-active, and fragmented because lacking in overall coherence.

In the light of the many requests from our partners, the Union should endeavour to define priorities which correspond to its own objectives, rather than merely respond to the requests it receives. In future, five criteria should govern the establishment of those priorities:

(1) Relevance in terms of creating the "area": The existence of internal policies or measures is the key parameter justifying the need for external action. This aspect should be an extension of the measures outlined in the scoreboard on the follow-up to the Tampere European Council.

(2) Added value in relation to action by Member States: Subsidiarity requires that the Community or Union should intervene only if their action provides added value to bilateral action by Member States. The objective should not focus on general policy links, but on fostering effective cooperation in those areas in which Union intervention represents genuine added value. Adding a JHA dimension to common strategies is a good illustration of this. Political decisions of this kind should be implemented as a means of translating such external action into practical achievements.

(3) Contribution to the general political objectives of the Union's external policy: JHA action is essential given the worldwide challenges facing the Union, such as restoring the rule of law, controlling migratory movements and combating organised crime. Above and beyond the strategic importance of a particular country, a global approach is required.

(4) Achievability within a reasonable period of time: The Union has produced a large number of programmes and action plans. The time has come to turn these into practical measures. Henceforward the Union must see to it that the commitments undertaken are genuinely implemented and then assessed. The JHA external dimension will show its usefulness more through its achievements than through its intentions.

(5) Applicability for a longer period: It is vital to extend the timescale of external JHA action beyond the six-month period of a presidency.

III. Priority areas for cooperation

On the basis of the guiding principles outlined above, it is proposed that the following priority areas for cooperation be adopted:

Broad aims of the Union's external policy: The need to incorporate JHA into the Union's external policy means first of all defining the JHA aspects of those main overall policies which reflect the political resolve clearly expressed by the Union.

- **Enlargement:** The imminent arrival of new Member States adds special emphasis to the need for effective adoption of the JHA *acquis* by the applicant countries. When applying the *acquis*, it is important to ensure that differences do not arise which result in a fall in the current level of effectiveness between Member States. This does not mean interfering in accession negotiations, but finding ways of having a positive impact not only on relations with third countries, but also – by means of bilateral agreements – with the applicant countries themselves.

- **The Stability Pact in the Balkans:** The Union has repeatedly underlined the importance of restoring the rule of law in the region (see point 55 of the Lisbon European Council conclusions emphasising the need to "ensure the coherence" of the Union's policies towards the Western Balkans). The JHA dimension is an essential means of achieving this. It is necessary to ensure that the measures undertaken are consistent with the principles behind the stated aims.

- **Common strategies** on Russia, Ukraine and, shortly, the Mediterranean.

- **Non-military aspects of crisis management:** The events in Kosovo demonstrated the need to strengthen the non-military aspects of security through police cooperation with the crisis regions. It would thus be advisable to define as soon as possible the legal, technical and operational conditions for intervention outside the Community, particularly by Member States' police forces in destabilised regions, as at present in Kosovo.

Horizontal issues of the JHA external dimension: In addition to the specific aspects referred to above, a number of horizontal issues must be taken into consideration insofar as they are closely linked with respect for the rule of law and the security of citizens:

- **The external dimension of migration policy:** The Tampere European Council fostered the idea of a partnership in relations with countries of origin. The High-Level Working Party's action plans have demonstrated the need for a cross-pillar approach to this issue. The European Council also stressed the importance of effective control of the Union's future external borders and the conclusion of Community readmission agreements.

- **The fight against organised crime and terrorism:** Many third countries need to be involved in this action; EUROPOL should be given a key role, thus illustrating the urgent need to conclude an agreement on its dealings with the external partners identified in the Council Decision of 27 March 2000.

- **The fight against specific forms of crime:** Financial crime, money laundering, corruption, trafficking in human beings, high-tech crime and environmental crime should be given constant attention, particularly by bodies such as the Council of Europe, the OECD or the G8. The Union must defend its policies in each area within these bodies.

- **The fight against drug-trafficking:** The origin of the problems to be resolved is well known. Certain countries or regions play a crucial role in the production/processing/transit of drugs. The remedies are also fairly clearly identified (see the European Union's Drugs Strategy (2000-2004)): i.e. alternative development, generalised preferences, direct development aid, aid for the training of police and judicial authorities, exchanges of information through Europol. [The Community is funding measures to prevent and combat drug production and drug-trafficking in many regions of the world. The appropriateness of the choices made and the effectiveness of policies conducted should be discussed further within the Council.]²
- **The development and consolidation of the rule of law in countries on the path to democracy.**

The definition of these priorities influences the Union's choice of partners, whether third countries, groups of countries or international organisations. If the Union is to adopt a more pro-active approach, the appropriate partners will need to be identified for each priority area.

Identification of partners:

(1) Bilateral or multilateral cooperation: This rationalisation on the basis of existing relations and the general objectives of external policy is a precondition for correcting the current fragmentation of cooperation. The enlargement aspect is a specific one, because its aim is to enable applicant States to join the Union.

(a) States which have structured relations with the Union: for JHA this means Norway and Iceland, which belong to the area of free movement of persons;

(b) The Union's traditional partners: this concerns existing frameworks for dialogue such as the transatlantic dialogue and the cooperation fora established under common strategies;

(c) States with which the Union is bound by agreement: this concerns bilateral and multilateral cooperation agreements like the Lomé Convention.

(2) International organisations: The Union must coordinate its stance in wider geographical contexts where aspects representing a further dimension to its internal activities are addressed. A distinction must be made between:

(a) Organisations which prepare political guidelines and legal acts, in which all the Member States participate (United Nations, Council of Europe, OECD, FATF, Hague Conference, etc.). In these fora it is important to ensure, using the procedures under the Treaties, that the commitments entered into at international level are compatible with the Union's internal objectives and policies.

(b) Fora which focus on practical cooperation, whether formal (e.g. UNHCR, UNCDP) or informal (Budapest Group), which may require appropriate coordination.

(c) Fora in which not all Member States participate (e.g. G8, Visby Group) and in which, under Article 19(1) TEU, participating Member States uphold common positions.

IV. Means and instruments

It is important to take a decision on the means and methods to be used to enable the Union effectively to implement its priorities for external action in the JHA area.

The methods: These must be examined at three levels:

(1) Institutional: It is essential to observe the legal framework provided by the Treaties. This entails defining external positions which are consistent with internal decisions, with due regard for the procedures laid down in Title IV TEC or Title VI TEU.

(a) The communitarisation of Title IV TEC entails applying tried and tested rules for negotiation in international fora and for the conduct of bilateral and multilateral relations.

(b) For Title VI TEU: the Treaty of Amsterdam adapted the procedures for conducting the European Union's external action with regard to police and judicial cooperation in criminal matters (see Articles 37 and 38 of Title VI TEU which, by referring to Articles 18, 19 and 24 TEU, define the respective new roles of the Presidency and the Secretary-General/High Representative and open up the possibility for the Union³ to conclude agreements on these matters)⁴ so as to enable the Member States to act [as a Union]⁵ on the international stage. More use should be made of this. Action in international fora should, as far as possible, be formalised in common positions, as provided for in Article 37 TEU, when the aim of negotiations is to adopt legal texts. Failing that, systematic prior coordination between Member States is essential.

(2) Administrative: Adequate human resources need to be mobilised, both in the Union institutions and in the Member States. One of the advantages of the Union consists in combining Community financial resources with the expertise of the Member States, which the institutions do not have to the same degree. It is also desirable that Member States' diplomatic and consular missions and Commission delegations in third countries should be more aware of justice and home affairs issues and cooperate closely in affirming their external dimension.

(3) Financial: In addition to the general programmes (PHARE, TACIS, MEDA), which include JHA aspects, the forthcoming recasting of the legal bases of programmes adopted under Title VI must fuel a debate on whether – abiding strictly by the financial perspective – there should be flexible financial instruments to implement specific cooperation objectives with the applicant countries, or at the very least with the other third countries, in the JHA field. This would make it possible to refocus programmes on their initial purpose of cooperation between Member States.

V. Structures

A. Fora:

Under the current working structure in the field of JHA, no one group has responsibility for external relations enabling it to ensure a cross-pillar approach and the overall consistency of the European Union's external policy.

Furthermore, the high-level coordination groups (Article 36 Committee, Strategic Committee on Immigration, Frontiers and Asylum, Committee on Civil Law Matters) do not have an overview of JHA matters as they have only partial powers in this area.

COREPER's responsibility is central in this respect, in that it alone is capable of evaluating the overall objectives of the Union's policy. (...) In order to prepare for COREPER's discussions it proposed that [to be completed after the matter has been discussed in COREPER – see the options described in the cover note to this report.]

(...)

A threefold objective could thus be considered: firstly, developing long-term strategies; secondly, preparing positions on subjects going beyond the terms of reference of a single working party or incorporating cross-pillar aspects; lastly, ensuring overall consistency of external JHA aspects by drawing up a body of general principles.

[It is proposed that regular meetings be held between the Presidency-in-office and the incoming Presidency – both represented by the Ministers responsible for Foreign Affairs and for Justice and Home Affairs –, the Commission and the Council Secretary-General/Deputy Secretary-General.]⁶

B. Conducting the dialogue with certain partners:

Three situations are conceivable:

(a) As far as possible, use should be made of institutional frameworks set up by the Europe Agreements or cooperation agreements. Both at political and Working Party level, the existing structures allow cooperation to be implemented. Where such dialogue is restricted by legal constraints, there is still the possibility of holding consecutive meetings in different capacities to tackle JHA aspects not covered by those agreements.

(b) Where that kind of institutionalised frame of reference is lacking with some partners (e.g. Council of Europe), flexible formulae could be envisaged.

(c) In the case of international fora in which not all Member States participate, a system should be set up, as provided for in Article 19(2) TEU, for keeping Member States informed, either by the Presidency if it is a participant or, failing that, by another participant. ⁷ [The information could be given to the body instructed to prepare for COREPER's discussions so that the results could be included in the general debate on external JHA relations.] ⁸

¹ In accordance with point 61 of the Tampere conclusions, this document has been drawn up by the Council in close cooperation with the Commission.

² The Commission wants the passage in square brackets deleted.

³ The Finnish and Netherlands delegations sought to replace "Union" by "Council" as the question on whose behalf such agreements should be concluded has not been settled – See Opinion of the Council Legal Service of 23 February 2000, SN 1628/00.

⁴ The Swedish delegation wants the text in brackets deleted.

⁵ The Swedish delegation wants the text in square brackets deleted.

⁶ The Commission and the French and Swedish delegations want the text in square brackets deleted.

⁷ The Commission and Belgium want the words "and the Commission" added here.

⁸ The discussion on structures will determine whether or not this sentence is kept.