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NOTE

from:	Presidency
to:	JAI-RELEX Working Party (JAIEX)
Subject:	Towards a complementary approach by the Union and the Member States to the external dimension of JHA policy in the EU

I. Introduction

The European Council in its conclusions of December 2009 stated that *“The Union and the Member States must act with solidarity, coherence and complementarity”*. This paper sets out the issues at stake in this connection. In particular, it initiates the Union’s work on the request formulated in the Stockholm Programme: *“The European Council underscores the need for complementarity between the Union and Member States’ action. This will require a further commitment from the Union and the Member States. The European Council therefore asks the Commission to report on ways to ensure complementarity by December 2011 at the latest.”*¹

¹ The Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens. Official Journal of the European Union 2010/C 115/34.

The objective of the present document is to invite delegations in the JAIEX group to comment on these issues with a view to presenting a position of the Working Group. This note will be presented for consideration to the members of other working parties and committees, in particular to CATS, SCIFA, the Civil Law Committee and CivCom. JAIEX representatives are invited to approach their respective national delegations to CATS, SCIFA, the Civil Law Committee and CivCom with questions raised in the note and include their inputs in answers which will be sent to the Presidency.

II. Background

The external dimension of the EU's policy in the area of freedom, security and justice is strongly emphasised in the Stockholm Programme and several other strategic documents, such as for example the Internal Security Strategy. There is an increasing need for improvement in the effective achievement of strategic objectives in this area as well as to ensure that the coordination of activities facilitates the better use of resources. It is essential to better integrate these policies into the general policies of the European Union and to ensure their coherence with other aspects of EU foreign policy. The Stockholm Programme also calls for greater complementarity between the EU and its Member States' action in the external dimension of JHA policies. This is reiterated in the Stockholm Programme's objectives for the external dimension of JHA which should be considered as guidelines for action undertaken within external relations in the area of freedom, security and justice.

As regards the obligations of the EU Member States, the Stockholm Programme stated that:

- *The Member States will increase further the exchange of information between themselves and within the Union on multilateral and bilateral activities.*
- *The Member States should coordinate with the Union so as to optimise the effective use of resources.*

As regards the Union, the Stockholm Programme stated that:

- *The Union has a single external relations policy.*
- *The Union will engage in information, monitoring and evaluation, inter alia, with the involvement of the European Parliament.*

III. Key objectives

We assume that the objectives of the Stockholm Programme can best be obtained by ensuring the optimal adequacy of means (financial and human resources) in line with the political priorities defined by the EU and by its Member States. These means and priorities concern all JHA areas, i.e. mobility, security and justice.

A prerequisite to reach this adequacy of means is to obtain proper information about the following:

1. - activities currently undertaken towards country X or region Y
 - a) by the EU (Commission and EEAS)
 - b) The Presidency (on behalf of the Member States),
 - c) by the EU Member States,
 - d) by the EU agencies;
2. - whether these activities have brought satisfactory results;
3. - whether country X is committed to contributing to agreed objectives;
4. - which international partners (third countries, international organisations, including regional groupings) are also active on the same terrain;
5. - whether the country or region should remain on the priority list for EU and MS action.

All this information should be put into a proper frame of reference that includes:

- a) description and assessment of requests of third countries concerned towards the EU and Member States within the JHA area,
- b) summary of the EU and MS offers for technical assistance and other forms of support for third countries concerned,
- c) possible synergy or overlap with assistance proposals by third countries and international organisations in the JHA area.

This frame of reference should facilitate an assessment of actions undertaken or planned in terms of their adequacy vis-à-vis fundamental values of the EU and interests of Member States. It would also allow a better understanding of interests of third parties and their readiness to cooperate with the EU and Member States in particular areas of JHA.

IV. Towards a report by the Commission

Member States consider that appropriate measures need to be taken to ensure the effective coordination of the EU and its Member States' activities in the domain of the external dimension of JHA. Relevant initiatives might encompass a comprehensive set of instruments aiming at:

- improving policy coordination between all stakeholders,
- ensuring more efficient use of funds earmarked for purposes related to cooperation with third countries in areas of security and migration management,
- improving the exchange of information between Member States, EU institutions and agencies on matters of importance for external cooperation in JHA,
- building public awareness of the significance of the external dimension of JHA.

The report to be prepared by the Commission as set out in the Stockholm Programme is a great opportunity for strengthening the effectiveness of all our efforts aimed at developing cooperation with third countries in justice, migration, mobility and security matters. It should contribute to the Council's reflection on the whole paradigm of activities in this particular area.

Given the new structures set in place with the Lisbon Treaty, it appears that a more targeted involvement of the EEAS could substantially contribute to the objective of complementarity of action.

The Presidency considers that this may be achieved by involving the JHA Council structures in a more comprehensive and systematic way in CFSP thematic and geographical working groups and the planning and conduct of CSDP civilian crisis management missions. The establishment of strong JHA expertise in the European External Action Service as well as geographical working groups could also be a way forward. Establishing a regular reporting mechanism to and from relevant RELEX and JHA working groups and the inclusion of JAIEX group members in regional working parties could also be considered. Some initial steps have already been taken to establish regular cooperation between JAIEX and the Eastern Europe and Central Asia and the Western Balkans Working Parties.

The Hungarian Presidency has focused on enhancing links between the external and internal aspects of EU security, and has started a discussion on the working methods of JAIEX².

² 13351/11

The Polish Presidency believes that a strategic discussion in preparation for the Commission's report on complementarity is needed in order to identify the main issues at stake and the views of the Member States thereon. In conducting their bilateral external relations, each MS in a way also “exercises” the foreign policy of the EU as a whole. Therefore, the Presidency would like to ask delegations to respond to the questions set out below during our discussion at the JAIEX meeting in September and in written form by sending their contributions by 26 September 2011 at the latest.

As a next step, your answers will be collated and presented for further consideration at the JAIEX meeting in October and for final approval in December.

The aim of the Polish Presidency is to finalise a set of prepare recommendations that will contribute to the preparatory work to be carried out by the the Commission in view of its report.report.

V. Questions:

While the final question on this issue should be: *What should be done to strengthen the EU and MS capacity to develop and subsequently implement the external dimension of JHA strategy?*, taking into account how difficult it is to find an answer to it, we would suggest that the following questions be answered first:

1. Which measures could be applied to respond in a more proactive way to new challenges within the external dimension of JHA, in particular when rapid political and social changes occur in some third countries or regions? Please point out no more than three preferred measures in your opinion.
2. How can information on Member States' policies and priorities be shared with all interested actors, such as other Member States and EU institutions?
3. How could information on (external JHA?) EU policies be made available to Member States, and how could the EEAS and EU delegations possibly contribute to this objective?
4. Should JAIEX devote parts of the strategic discussions it plans to have at its meetings (see also the analysis of replies to the JAIEX questionnaire) to in-depth updates on activities and priorities in certain countries?

5. Have the Member States noticed any duplication between the projects undertaken by the EU and those undertaken by Member States? If so, please provide examples. How could possible duplications (or lack of activities in certain areas) be identified? Is the matrix a useful tool for identifying such cases? (and if so, how it could be used to this end?)
6. How can the Member States and the EU institutions, taking into account past experience, try to prevent such duplication? What potential “safeguards” could be introduced at a practical/pragmatic level?
7. Taking into account the role of the EEAS in the CFSP, what should, in the opinion of the Member States, be the role of the EEAS in the process of ensuring the complementarity of actions undertaken by the EU and Member States? What possible actions may be proposed , taking into account experiences and mechanisms already developed by the Member States in relation to particular States or regions as well as in relation to a particular policy? What would be the added value of including specific JHA experts in EU delegations in strategic partner countries? Are delegations supportive of this?
8. How may EU agencies contribute to the process of ensuring complementarity within the external dimension of JHA?

Possible scenario for ensuring complementarity of EU and MS action in JHA External relations

Objective of the Stockholm Programme	Phase 1 Information phase	Phase 2 Analysis	Phase 3 Evaluation	Phase 4 Outcome
<p>The Stockholm Programme calls for greater complementarity between the EU and Member States' action in the external dimension of JHA policy</p>	<p>Collect information on what is done by</p> <ul style="list-style-type: none"> - COM, - EEAS, - Presidency, - EU Agencies - Member States - third countries (e.g. USA, EEA countries) and multilateral organisations <p>and what the concerns are:</p> <ul style="list-style-type: none"> - in other Council working parties - in the EP - in NGOs <p>and what financial resources are available</p>	<p>On the basis of all this information, JAIEX should discuss and confirm or propose modifications to priorities of actions towards the countries concerned and the distribution of activities</p>	<p>After a while, JAIEX should re-evaluate the situation in the relevant countries and regions, based on the same information sources and, if available, on reports by the Court of Auditors of the EU</p>	<p>The process as described above would lead to regular "Complementarity debates" in JAIEX during which all parties involved would re-assess the optimal allocation of resources in JHA projects in the light of the political priorities towards the relevant partners, such as the Western Balkans, the Southern neighbourhood, West Africa, the Eastern Partnership, Central Asia, Afghanistan/Pakistan, Central and Latin America)</p>