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COVER NOTE

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On Cooperation in the Area of Justice and Home Affairs within the Eastern
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On Cooperation in the Area of Justice and Home Affairs within the Eastern Partnership

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On Cooperation in the Area of Justice and Home Affairs within the Eastern Partnership

1. INTRODUCTION

The Stockholm Programme, adopted by the European Council on 2 December 2009¹, stressed the importance of the **external dimension of the Justice and Home Affairs (hereinafter JHA)** policies for the successful implementation of the objectives identified in the Programme and the need for it to be fully coherent with all other aspects of the European Union foreign policy.

The EU action in the external dimension of Justice and Home Affairs has been growing steadily in recent years guided, among others, by (1) the respect of **democracy, fundamental rights and rule of law**; (2) the principle of **partnership with third countries**, and in particular with the neighbouring countries, and (3) increasing coordination and **exchange of information** on EU and Member States actions and full use of all instruments available.

The Stockholm Programme invites the Commission to present a plan on how to take forward cooperation in the area of JHA with the Eastern Partnership countries. The need for such a cooperation was further highlighted in the Joint Communication of the Commission and the High Representative of 25 May 2011 on "*A new response to a changing Neighbourhood*"² and the conclusions of the Foreign Affairs Council on 20 June 2011, endorsed by the June European Council. The ongoing revision of the Global Approach to Migration also calls for progress in that area.

Facilitation of **people-to-people contacts**, while promoting **fundamental rights and strengthening the rule of law**, enhancing the judiciary, as well as engaging in judicial cooperation has proved to be important prerequisite for maintaining peace and stability and has beneficial effects on the **economic, cultural and social development** of all the countries involved.

This has been one of the guiding principles of the **Eastern Partnership** (hereinafter EaP) established at the Prague Summit in 2009 by the EU and Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova (hereinafter Moldova) and Ukraine. It remains a core objective of the Eastern Partnership to **enhance mobility of citizens in a secure and well-managed environment**. This objective entails visa facilitation and readmission agreements as a first step. Once these agreements are concluded and effectively implemented, the EU and the partner countries will take gradual steps towards visa-free regimes in due course on a case-by-case basis and provided that conditions for well-managed and secure mobility are in

¹ "The Stockholm Programme – An open and secure Europe serving and protecting the citizens" 17024/09.

² Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - A new response to a changing Neighbourhood, 25 May 2011, COM(2011) 303.

place. The Warsaw Eastern Partnership Summit of 29-30 September 2011 should confirm the key objectives and lend further impetus to this partnership including in the JHA area. Tackling illicit drugs, which are a complex health, social and security problem and require responses across different JHA areas, should continue to have an important place in the context of cooperation within the Eastern Partnership.

The dialogue and cooperation with the EaP countries in the area of JHA is already well developed, both at bilateral and at multilateral level. Therefore, there is no need to establish new frameworks but rather to **consolidate, streamline and complement the existing ones**.

Following the experience and lessons learnt throughout the first years of cooperation within the EaP, this Communication puts forward concrete proposals aiming at **enhancing further the level of political and operational cooperation** towards the establishment of a **Common JHA Space between the EU and its Eastern Partners**:

- **consolidating the existing frameworks** for dialogue and cooperation, including by identifying the principles for such cooperation, and
- **analysing the progress made** so far and **proposing orientations** for further strengthening of cooperation, including its thematic priorities.

2. CONSOLIDATING THE EXISTING INSTITUTIONAL FRAMEWORK FOR DIALOGUE AND COOPERATION: PRINCIPLES AND STRUCTURES

2.1. Principles for cooperation

Consolidating the existing cooperation in the area of Justice and Home Affairs with the Eastern Partners countries should be based on the following four **main principles**:

Differentiation - Further advancement of the cooperation on JHA matters with each Eastern Partner should depend on the progress made by the partner country on its JHA reform agenda and in implementing all relevant policies. Progress will be monitored in close cooperation with the partner country.

Conditionality - Further enhancement of the cooperation with Eastern Partners should be gradual and conditional on the progress made and successful cooperation in agreed areas.

Policy coherence - The approach to the JHA cooperation with the Eastern Partners should be considered in the context of the overall EU external policy and in coherence with other relevant EU policies, as well as cooperation pursued with other countries in the region.

Regional cooperation - Promoting regional cooperation is crucial for responding to cross-border challenges in the JHA area and should be further encouraged.

In addition to the above principles, dialogue, support and engagement with **civil society organisations, including migrant communities and local authorities**, from both the EU and EaP countries, is important for people-to-people contacts and increased mobility and should therefore feature prominently in the cooperation on JHA areas.

2.2. Structures for cooperation

2.2.1. Bilateral level

In order to avoid overlapping discussions in different fora, the following approach is suggested:

- **Partnership and Cooperation Agreement** (and future **Association Agreement**) structures, and in particular the relevant Subcommittees and political dialogues, should continue to be the main framework for discussing bilateral cooperation in the JHA area. Dedicated human rights dialogues should be maintained and strengthened in parallel.
- The results of the **joint readmission** and **visa facilitation committees**, as well as of the progress made in the **visa dialogues**, where these are in place, should be referred to at the meetings of the JHA-Subcommittees.
- Where relevant, **Mobility Partnerships** (MP) should continue to serve as the framework for the dialogue and **operational cooperation on migration** in all its dimensions: legal migration, fight against irregular migration, and migration and development. Ideally, MP meetings should be organised back to back with JHA-Subcommittees and should feed into their agenda. Depending on the progress made and the migration situation in the country, the possibility of signing a MP should in general be **open to all EaP countries**.³
- In line with the ongoing evaluation of the Global Approach to Migration, and for the sake of the improved thematic balance, the existing Mobility Partnerships should be further foster the cooperation in the area of **migration** and **mobility**. In order to achieve that, a commitment from all the partners involved should be maintained at both the political and the implementation level. A **tool for monitoring the long-term impact of MPs** on migration flows, migration management and other relevant policies in the partner countries and the EU should be developed. Regular monitoring will also make it possible to identify gaps and needs to be addressed within the framework of the MP. Moreover, this monitoring tool should be consistent and coherent with other tools and frameworks in order to focus and maximise its impact.
- **High priority areas** such as, the fight against organised crime, including trafficking in human beings, human rights issues and corruption, should be discussed on a systematic basis in the existing frameworks, in particular the JHA-Subcommittees and/or the dedicated Human Rights dialogues as well as MPs, where they are in place, with the aim of **intensifying practical cooperation** within the Eastern Partnership.
- **Cooperation on drugs** should continue through the existing bilateral political dialogues with Ukraine. The bilateral dialogues launched by the Polish Presidency (with Armenia, Moldova, Azerbaijan and Georgia) should be **replicated** and **institutionalised**, with the aim of having fora of this kind with all Eastern countries.

³ Two MPs have been signed with EaP countries so far (Moldova and Georgia) and a third one should be signed soon (Armenia) (see Annex).

- **Increased cooperation** with the **relevant agencies** (FRONTEX, Europol, Eurojust, CEPOL, European Asylum Support Office and the Fundamental Rights Agency) should be further promoted and continue to be a regular item on the agenda of the JHA - Subcommittees and MP meetings. Other institutions and agencies, such as the European Training Foundation (ETF) or the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), might be associated on relevant issues.

2.2.2. *Regional and multilateral level*

A number of regional fora in which the EU Member States and the Eastern Partners are brought together offer platforms for exchange of information and best practices as well as implementation of concrete cross-border initiatives (see Annex). With a view to **streamlining the framework for regional and multilateral cooperation and making it more efficient**, the following recommendations are made:

- In order to ensure the appropriate political guidance and coordination, the possibility of convening specific **JHA meetings at Ministerial level** in the context of the Eastern Partnership should be considered. Where appropriate, such meetings could be held on an annual basis in order to take stock of the progress made and provide orientations for the future.
- In order to **rationalise** the framework for regional dialogue and cooperation, JHA issues should continue to appear regularly on the agenda of the **EaP multilateral platform on democracy, good governance and stability**⁴, as well as other relevant platforms such as Platform 4, which promotes dialogue on "people to people contacts". The creation of a new **Panel on Migration and Asylum** with a view to incorporating the best practices and lessons learnt that have been acquired through the "Söderköping process" into the EaP framework would contribute to this objective.
- Given that the **Prague and Budapest Processes** are overlapping to a large extent, a partial incorporation of the latter in the Prague Process is advisable. The two processes would be made **geographically complementary**, whereby Eastern Europe and Central Asia would be covered by the Prague process and the "Silk Route", Iran, Pakistan and Afghanistan would be covered by the Budapest process. The engagement of Turkey would continue to be of key importance in the Budapest process.

2.3. **Coordination and financial assistance**

For the Eastern Partnership to become more operational, **effective coordination** between the actions implemented by the EU and its Member States is also necessary. A **light monitoring mechanism** of actions undertaken by all the players should be set up, including annual reporting on the activities implemented in the area of JHA.

The need to further strengthen regional cooperation between the EU and the Eastern Partners is one of the major objectives in the JHA area for the years to come and it requires

⁴ Integrated Border Management Panel, Panel on the Fight against Corruption and Panel on Improved Functioning of Judiciary.

substantial and flexible financial assistance. In particular, the building of networks between the EU and EaP countries and supporting projects and programmes to tackle cross border issues and similar issues affecting both regions should be enhanced. The EU should also consider taking on a **stronger role in donor coordination** in the area, e.g. by establishing consultation mechanisms dedicated to JHA issues.

3. PROPOSING THE FUTURE STEPS OF DIALOGUE AND COOPERATION IN THE JHA AREA: THEMATIC PRIORITIES

Strengthening the partnership on JHA issues requires putting in place a wide range of measures. The EU and its Member States should continue to encourage and support the EaP countries in implementing all the necessary actions, including through **capacity building measures, exchanging information and best practices** as well as, where appropriate and in line with the division of competences, by putting in place relevant legislative and policy measures in the areas of migration and mobility, security, and data protection, as well as justice and fundamental rights. Where possible, the measures mentioned below should be reflected in the Association Agreements currently under negotiations.

3.1. Migration, mobility and asylum

3.1.1. Data collection, analysis and their effective use in evidence-based policy making

A considerable amount of work and resources have already been invested in the improvement of systems of data collection and analysis in the EaP countries. An Extended **Migration Profile** is currently being prepared as part of the Mobility Partnership with Moldova, as well as for all the other EaP countries in the context of the EU financed project "Building Migration Partnerships". Nevertheless, the accuracy of available information on migration and, by extension, the accuracy of evidence-based policy-making are significantly weakened by the **lack of relevant, readily available and reliable statistical data** in the region, by the **poor quality** of existing data and by the **different definitions, statistical methodologies and indicators** used across the region.

There is a need to provide support to the **national statistical institutes** in order to develop their capacity to produce relevant statistics and assume the role of coordinators of statistical activities. Moreover, **harmonisation of statistical indicators and methodologies** in the EaP region should be encouraged in the future. The EU should promote the implementation, in the EaP countries, of the HIMS⁵ format of harmonised migration surveys, in order to collect data on migration, including the determinants and consequences of migration.

Where relevant, and fully respecting the **principle of statistical confidentiality**, the inclusion of migration-related questions in **national censuses and household surveys** should be promoted so as to provide a reliable and stable source of comparable data.

The EU should encourage and support the EaP countries to assume the ownership of their Migration Profiles, so that these can also be used as **tools to improve policy coherence and policy evaluation.**

⁵ The HIMS project (*Household International Migration Surveys*) was developed during the MEDSTAT programme of technical assistance to ENP-South countries, and aims to collect data on migration, including determinants and consequences of migration.

Finally, more should be done to foster **cooperation between research institutions** working on migration in the EU and the EaP countries.

3.1.2. *Legal migration, integration and migration and development*

Legal migration, if well-managed, can respond to the labour market needs of both the country of origin and of destination. It can also effectively contribute to reducing irregular migration as it makes legal alternatives available to the migrants. The EU and its Member States have worked together with the EaP countries on facilitating legal migration on the basis of bilateral initiatives and agreements and in the framework of the Mobility Partnerships.

In order to establish the basis for future action in these areas, the EU is currently undertaking a study on the **costs and benefits of labour migration** from the EaP countries to the EU.

In line with the labour market needs of individual EU Member States, the EU and its Member States should consider a **further opening of legal migration channels** for migrants from EaP partners. In parallel, measures to address “brain waste” and the loss of skills and human capital should be put in place, including **labour matching mechanisms, circular migration**, reinforced cooperation on **portability of social security rights**, and **recognition of skills and qualifications**. The role of the ETF in this regard should be highlighted.

Mobility Partnerships are a particularly useful framework, in which increased mobility can be favoured and migration better managed. In this context, Member States should consider in particular facilitating **legal migration and intra-EU mobility of students, academics, and researchers**.

Measures should also be taken to avoid EaP countries suffering from brain drain. In that context, the EU and its MS together with the EaP partners should fully explore the opportunities offered by **circular migration and support for involving diaspora in the development of their country of origin**.

Integration of migrants in host societies is a challenge facing both the EU Member States and EaP countries. It requires cooperation between authorities at all levels - local, regional and national - as well as with civil society, including migrants' associations.

The EU should provide further support in order to **enhance the capacities** of partner countries to effectively address the needs of migrants in their public policies, especially their social policies. Moreover, the EU should encourage the EaP countries to raise awareness among the local populations and among immigrant communities about **combating xenophobia and ensuring the enforcement of rights**. The design of policies that seek to address the needs of migrant's **families who are left behind** and other social impacts of emigration on local communities should also be a topic for further cooperation.

Remittances are an important source of income for the EaP countries. In 2009 the workers' remittances sent to Azerbaijan, Armenia, Georgia, Moldova and Ukraine amounted totalled almost €4 billion.⁶

⁶ World Bank Migration and Remittances Factbook 2011.

Given the role that remittances play in the economy of EaP countries, the EU and the EaP partners should build on the efforts made so far in **reducing costs of remittances** and promoting their **sustainable use**. The traditional focus on remittances should be complemented by initiatives targeting migrant savings and channelling of savings towards investments in countries of origin so that funds can be made available as seed capital for investors and entrepreneurs, in particular SMEs.

The EaP countries face similar challenges as regards legal migration, and cooperation in that area could help further in adopting appropriate responses.

Regarding cooperation on **migration between the EaP countries themselves**, support for a number of possible initiatives at the regional level could be considered, including the collection, harmonisation, analysis and exchange of data relevant for migration or the establishment of a **migration information network** aiming at enhancing cooperation and exchange of best practices between migration authorities of the EaP countries. Initiatives aimed at increasing the **mobility of people between the EaP countries** should also be encouraged.

3.1.3. Fight against irregular migration and cooperation on readmission, return and reintegration

Readmitting a country's own citizens who are not legally authorised to enter or stay in another country is a principle of customary international law by which all countries should abide. **EU readmission agreements** include provisions to facilitate and speed up the readmission procedures of persons staying without authorisation on the territory of EU Member States. Such agreements are an important tool in the fight against irregular migration and, as such, they constitute an important step towards increased mobility. Currently three EaP partners (Ukraine, Moldova and Georgia) have signed a readmission agreement in parallel with visa facilitation agreements with the EU.

The EU should continue to develop its cooperation on readmission with the remaining EaP countries and aim at concluding **readmission agreements** in parallel with visa facilitation agreements with **Armenia, Azerbaijan and Belarus**. The Commission has already been authorised to negotiate a readmission agreement with Belarus and is presenting the proposals for similar authorisations for Armenia and Azerbaijan in parallel with the present Communication. The necessary negotiating directives should be adopted by the Council as soon as possible.

In addition, the EU should continue to support the EaP partner countries in their **capacity building** efforts to prevent and combat irregular migration and to assist returnees in their sustainable reintegration.

3.1.4. Facilitated short-term mobility

Visa-free travel is a goal for all of the six EaP countries and as such it should be acknowledged and cooperation towards that aim should be actively pursued. Effective cooperation on readmission (including effective implementation of the EU readmission agreement), correct and efficient implementation of the visa facilitation agreement and an active engagement of the partner country in dialogue and cooperation in all the areas covered by this communication should allow for the opening of a dialogue on visa liberalisation.

Visa facilitation agreements (VFAs) are an important tool aimed at facilitating short-term mobility and a first step towards visa liberalisation. To date, three VFAs – with Moldova, Ukraine, and Georgia - have entered into force.

Both the EU and the respective partner country should ensure the **efficient and correct implementation of the** VFAs. For Moldova and Ukraine in particular, it is important to conclude soon the ongoing negotiations for new wider VFAs.

In line with its political commitments, the EU should conclude similar agreements also with the remaining EaP countries, i.e. Armenia, Azerbaijan and Belarus. Negotiating directives for Belarus were already adopted and the necessary negotiating directives for Armenia and Azerbaijan should be adopted by the Council as soon as possible.

In parallel, the EU MS should reinforce ongoing work within the framework of the **local Schengen cooperation** in all EaP countries. This should be done with a view to ensuring maximum **harmonisation of the visa issuing procedures** and full use of opportunities offered by the **Visa Code**, such as exempting certain categories of people from the visa fee and the issuing of multiple-entry and long validity visas for categories such as students, academics, researchers, and businessmen. Moreover, in order to further facilitate the visa application process, EU Member States should aim to improve consular coverage in the EaP area.

The visa dialogue is a framework to address the conditions leading to visa liberalisation, by allowing short-term visa free travels between the EU and the country concerned. It relies on the effective implementation by the partner country of a series of benchmarks covering a wide range of JHA matters. Following the completion of the exploratory phase, visa dialogues are based on two-phased, tailor-made Action Plans. To date, the EU has presented two such **Visa Liberalisation Action Plans (VLAP)** to EaP countries, namely to Ukraine in November 2010 and to Moldova in January 2011.

The Action Plans focus on key JHA areas such as document security, border and migration management, asylum policy, public order and security, including the fight against organised crime and trafficking in human beings, as well as relevant external relations and fundamental rights. They contain a **first set of criteria** concerning the **policy framework** (legislation and planning) and a **second set** of more specific benchmarks, covering the **effective and sustainable implementation** of relevant measures to produce concrete results on the ground.

VLAPs of this kind could serve as **useful models** for other Eastern Partners, bearing in mind the specific nature and independent **progress of each country and coherence in the region**.

The EU will continue to support Ukraine and Moldova in their efforts to implement the Visa Liberalisation Action Plans. The Commission will **regularly report** on the progress made in the implementation of the VLAPs to the Council and the European Parliament. The first assessment reports on Ukraine and Moldova are presented in parallel with the present Communication.

3.1.5. Functioning asylum and international protection systems in line with international obligations

Most of the EaP countries have made some progress in adopting relevant legislation to provide **international protection** to those who need it. Nevertheless, there are still **important**

gaps with regard to both **legislative frameworks and their implementation**. The EU has supported the EaP countries in strengthening their protection capacities, including through the Regional Protection Programme which covers Belarus, Moldova and Ukraine. The second phase of this programme started in 2011.

The EU will continue to encourage the EaP countries to **complete the relevant legislative framework** and ensure its **effective implementation**. Moreover, it will continue to assist EaP countries in the further development of institutions and training of staff involved in refugee status determination processes. The EU will also provide assistance in developing national policies on **refugee integration**. Where relevant, the assistance will be provided in cooperation with the European Asylum Support Office (EASO), which should support partner countries in all areas of practical cooperation on asylum-related matters.

3.2. Integrated border management

The EU, along with international organisations such as the Organisation for Security and Cooperation in Europe (OSCE) and the International Organisation for Migration (IOM) and other donor countries, has been supporting the EaP countries by way of a number of initiatives on border management such as **EU Borders Assistance Mission (EUBAM)** in Ukraine and Moldova and the **South Caucasus Integrated Border Management (SCIBM)** project in Southern Caucasus. Moreover, the **EaP flagship initiative** has provided the political framework for integrated border management projects financed from the European Neighbourhood and Partnership Instrument (ENPI). These projects seek to enhance operational capacities by providing operational and country-specific capacity building activities and contributing to the establishment of modern training systems in these countries⁷. Although significant progress has been made in the area, the development of **comprehensive training strategies** for this sector as well as **improvements to institutional capacity**, particularly in order to manage border crossing points effectively, require further efforts.

When it comes to effective border management, **FRONTEX** has an important role to play and operational cooperation is being taken forward in the areas of information exchange, risk analysis, training, joint operations and pilot projects. So far FRONTEX has signed **working arrangements** with the competent authorities of Moldova, Georgia, Ukraine and Belarus. As a result, border guard officers of these countries already participate as observers in Joint Operations coordinated by FRONTEX and benefit from some of the training products developed by FRONTEX in cooperation with the EU Member States.

Support should be provided for the drafting and the subsequent implementation of national **integrated border management strategies** in all Eastern Partnership countries, in the framework of existing initiatives.

The conclusion of **working arrangements** between FRONTEX and the competent authorities of **Armenia** and **Azerbaijan** will contribute to enhancing the implementation of the integrated border management concept and increase interoperability between the border guards of the EU Member States and those from these two countries.

⁷ In addition, the ENPI will fund in 2011 two pilot projects aiming at (a) strengthening the surveillance capacity and cross-border cooperation on the border between the Republic of Belarus and Ukraine and (b) enhancement of the border management capabilities between Georgia and Armenia.

In the area of **risk analysis**, the establishment of regional networks similar to the Western Balkans network (WEBRAN) might be further explored and developed.

3.3. Public order and security

Internal security cannot be achieved in isolation from the rest of the world, and in particular not in isolation from the immediate European neighbourhood. It is therefore important to ensure coherence and **complementarity between the internal and external aspects of EU security**. As is recognised by both the European Security Strategy⁸ and the Internal Security Strategy⁹, relationships with our partners are of fundamental importance in the fight against serious and organised crime and terrorism.

3.3.1. Security of travel and identity documents

Improvement of document security is a necessary step in order to benefit from visa facilitation with the EU. Some of the EaP countries have started issuing **biometric passports** to their citizens and worked on **securing the issuing process**, especially in relation to breeder documents, enrolment and personalization, which is essential for the international and national credibility of the personalized documents.

The EU should step up the **exchange of best practices** with the EaP countries in the area of security of documents, focusing in particular on the introduction of biometrics in IDs and travel documents, ensuring the **efficiency and the integrity of the personalisation process and the necessary data protection arrangements**. The EU should encourage and support the EaP countries to secure procedures for issuing documents and overall identity management, including appropriate registers.

3.3.2. Addressing trafficking in human beings,

According to the most recent United Nations' report¹⁰, a substantial number of the **victims and traffickers for purposes of sexual exploitation** in Europe hold nationalities of the EaP countries. Europol's recent assessment¹¹ underlines the involvement of criminal groups based in the EaP countries in the trafficking of human beings, along with other criminal activities.

Addressing trafficking in human beings is a **high priority for the EU** and the dialogue and cooperation with the EaP countries in this area is already well developed. The areas of cooperation include prevention, combating trafficking and protecting its victims and the EU and its Member States, as well as Europol have supported numerous projects to assist the EaP partner countries in combating this form of crime.

The EU should encourage the EaP countries who have not yet done so to ratify the **UN Palermo Trafficking in Persons Protocol and the Council of Europe Convention on Actions against Trafficking in Human Beings** and to make optimum use of international

⁸ European Security Strategy: A Secure Europe in a Better World' was adopted in 2003 and reviewed in 2008.

⁹ Communication from the Commission to the EP and the Council 'The EU Internal Security Strategy in Action: Five steps towards a more secure Europe' COM/2010/0673 final.

¹⁰ http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

¹¹ EU Organised Crime Threat Assessment OCTA 2011.

instruments in combating all the various forms of human trafficking, such as trafficking for the purpose of sexual and labour exploitation, domestic servitude and forced begging.

The EU should seek to further strengthen cooperation in tackling the trafficking in human beings. In particular, the EU should cooperate closely with the EaP countries on strengthening their capacities to provide **protection and assistance to victims of human trafficking**. This should be done in particular by creating partnerships between governments, non-governmental organisations and the private sector in establishing mechanisms and procedures to better protect and assist victims of human trafficking and to ensure their safe return to the countries of origin and in the prevention of trafficking in human beings. This cooperation should be based on the human rights approach taking into account the importance of incorporating a gender perspective and using a child-rights approach.

3.3.3. *Fight against organised crime*

Increased mobility not only benefits the citizens; it also indirectly facilitates the activities of **transnational criminal networks**. Cooperation between the EU and the EaP countries to tackle this challenge is already well developed. Nevertheless, the appearance of new channels and new forms of organised crime requires continuous cooperation in order to confront it in an integrated manner. The criminal phenomena prevailing in the region are the smuggling of drugs, excisable goods (including cigarettes), counterfeit goods and trafficking in human beings.

Cooperation, particularly at the operational level, between **Europol** and countries of the EaP is one of the tools to enhance effectiveness in the fight against serious, organised crime and terrorism. Europol has already concluded **strategic Agreements** with **Ukraine** and **Moldova**.¹²

In order to further **strengthen cooperation in the fight against organised crime**, the EU should invite countries of the EaP region to fulfil prerequisites, in particular with regard to data protection, in order to be ready to establish **strategic cooperation** between Europol and the EaP countries or to upgrade the current strategic cooperation agreements into **operational cooperation** agreements.

The EU should support **regional cooperation** in the area of security and the fight against organised crime. Relevant initiatives should include enhancing police and customs cooperation through **common training**, amongst others in cooperation with **CEPOL** and Europol, **exchange of best practices**, **joint investigations**, in particular in the investigation of cross-border crimes, joint customs operations coordinated by the European Anti-Fraud Office (OLAF), etc. In that regard initiatives such as the EuroEast police, aimed at increasing cooperation in the areas of internal security improvement in the EU and Eastern Partnership countries, and the Annual Task Group Cigarettes Conferences organised by OLAF, should be further promoted and developed. CEPOL should contribute via its existing Common Curricula in addition to its training courses. Arrangements on Cooperation with the relevant training institutions of the countries in question should be considered.

The EU should closely coordinate together with the EaP Partners in its efforts and measures to **fight against smuggling at the Eastern Border**, including by comprehensively

¹² Signed on 4 December 2009 and 12 February 2007 respectively.

implementing the Action Plan to fight against smuggling of cigarettes and alcohol along the EU Eastern Border.¹³

The EU should continue to support EaP countries in strengthening the capacities of the criminal justice authorities of EaP countries to **co-operate effectively against cybercrime** through the multilateral Platform on Democracy, Good Governance and Stability of the EaP with the assistance of Council of Europe. Furthermore, the EU should encourage partner countries to ratify and fully implement **the Convention on Cybercrime of the Council of Europe** (No. ETS 185). The Convention should serve as a guideline and framework for all countries that aim to develop a comprehensive national legislation against cybercrime.

The EU should encourage the EaP countries to further strengthen their institutional capacity to fight against Chemical, Biological, Radiological and Nuclear (CBRN) risks, in particular by an active participation in the CBRN Centers of Excellence EU initiative.

3.3.4. *Fight against financial crimes, including terrorist financing*

The fight against **money laundering** is important as a means to counter organised and other crime. International cooperation is key in this area as today's money flows hardly know any borders.

The fight against **terrorist financing** is one of the key elements in the EU's efforts in combating terrorism. It is regularly discussed at international and multinational fora such as the Financial Action Task Force (FATF), the UN and others. The majority of EaP countries are not members of the FATF but they are (as in the case of 12 of the EU Member States) members of FATF-style regional bodies. Active involvement in these bodies is important to adapt national Anti-Money Laundering/Countering Financing Terrorism regimes to international standards. The EU should encourage EaP countries to work closely together with the FATF and relevant FATF-style regional bodies.

The **Financial Intelligence Units (FIUs)** are key components of the anti money laundering and counter terrorist financing setup. The EU should encourage the EaP countries to strengthen their FIUs and foster their cooperation with the FIUs of the EU Member States.

The EU should encourage the EaP countries to ratify and implement the 2005 Convention on Laundering, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (No.ETS 198).

The EU should promote the implementation of the **UN Global Counter-Terrorism Strategy**, adopted by UN General Assembly in 2006, which represents a comprehensive framework to tackle the threat of terrorism.

The EU should also work with the EaP countries on **preventing radicalisation and recruitment** for terrorist activities.

¹³ Action plan to fight against smuggling of cigarettes and alcohol along the EU Eastern border, 24 June 2011, SEC(2011) 791 final.

3.3.5. *Fight against corruption*

Fight against corruption is highly relevant to all other thematic priorities and, unless it is dealt with efficiently, it may undermine the cooperation and mutual trust in all other areas. The Commission's Communication on Fighting Corruption in the EU¹⁴ stressed that the assistance for **strengthening the capacity** of the **neighbourhood countries to fight corruption** will be one of the key aspects of the overall EU support granted to these partner countries. Moreover, the Joint Communication of the High Representative of the EU for Foreign Affairs and Security Policy and the European Commission on '*A new response to a changing neighbourhood*' highlight that the levels of EU support to partner countries will be adapted according to the progress on political reforms and building deep democracy, including the commitment of governments to fight corruption.

EaP countries are now party to the relevant European and international anti-corruption instruments. **All EaP countries** participate in the Council of Europe Group of States against Corruption (**GRECO**) and all have ratified or accepted the United Nations Convention against Corruption (**UNCAC**). Moreover, all EaP countries participate in the OECD's Anti-Corruption Network for Eastern Europe and Central Asia.

Participation in the above-mentioned **anti-corruption monitoring mechanisms** needs to be complemented by **effective implementation** of the relevant legal instruments, including an adequate follow-up of their recommendations and of the relevant political commitments. In this context, the EU will further encourage EaP countries to implement in due time the outstanding GRECO recommendations and to actively participate in the UNCAC review mechanism, which promotes transparency of the evaluation process and involvement of civil society. The EU will also encourage the EaP countries to play an active role in the Anti-Corruption Network for Eastern Europe and Central Asia and in the case of those which are covered by the Istanbul Anti-Corruption Action Plan to also take further steps to ensure effective implementation of that plan.

Moreover, **promoting culture of integrity** should continue to be part of EU cooperation programmes with EaP countries in such areas as border management, customs, law enforcement and judiciary.

Overall, the EU should promote **greater involvement of civil society** in adopting, implementing and monitoring relevant legislative and policy measures as it is key to a sound and effective anti-corruption framework.

3.4 Tackling illicit drugs

Illicit drugs remain a top priority for the EU's cooperation with the EaP countries. The EU Drugs Strategy (2005-2012) and the EU Drugs Action Plan (2009-2012) reconfirm the EU's commitments to provide assistance to third countries so as to enable them to be more effective in reducing both demand and supply. Particular importance is attached to improving cooperation with the ENPI countries. Although some progress can be noted, there are still major gaps in the area of **prevention, harm reduction and treatment**. Moreover, some of the EaP countries are important **countries of transit** for drugs arriving to the EU from Asia.

¹⁴ Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee: 'Fighting Corruption in the EU', 6 June 2011, COM(2011) 308 final.

The EU should encourage the EaP countries to **actively cooperate with civil society**, particularly on **prevention** among vulnerable groups and on specialised health and social assistance aimed at reducing harms among high-risk drug users. In this context special attention should be paid to the relationship between HIV/AIDS and injecting drug use, which is also a challenge for neighbouring EU Member States. This can be achieved by supporting EaP countries to develop and implement integrated and balanced **national drug policies** and **integrated drug action plans**, incorporating both demand and supply reduction, as well as of ensuring a better coordination among the agencies and bodies involved in drug-related issues and including drug demand reduction programmes and services, based on the latest scientific evidence and best practices and fully respecting human dignity and human rights.

The Commission is also committed to working together with EaP countries in order to **disrupt drug trafficking, in particular the smuggling of heroin from Afghanistan** and of chemicals used to produce drugs, to Afghanistan. Support for capacity building of the various law enforcement authorities (police, customs, justice, etc.) therefore remains crucial. Proper attention should also be paid to preventing the diversion of drug precursors used for the illicit manufacture of narcotic drugs and psychotropic substances.

Where relevant, the development of capacity in monitoring the drug situation should be fostered, inter alia by promoting cooperation with the **EMCDDA**.

3.5 Justice and fundamental rights

3.5.1 Rule of law and reform of the judiciary

The rule of law is both a fundamental principle and an overarching objective of the EU in cooperation with Eastern Partners. The EU attaches considerable importance to **progressive reforms of state institutions** in order to build up **the effectiveness of the justice system and the public's confidence** in it. A strong justice system can become an important factor to support economic growth. Most of the EaP countries have made a substantial progress in reforming their judiciary but **major shortcomings persist**.

The EU is ready to monitor even more closely the reform of the judiciary, while encouraging and supporting the EaP countries to further strengthen their justice systems and guarantee the independence of the judiciary, its **impartiality, effectiveness and accountability**, as well as **access to justice**.

3.5.2 Fundamental Rights

The EU attaches great importance to comprehensive cooperation on the protection of fundamental rights. Respect for fundamental rights, as proclaimed in the Universal Declaration of Human Rights and as defined in the European Convention on Human Rights, the Helsinki Final Act and the Charter of Paris for a New Europe and in the EU Charter of Fundamental Rights, form the basis of the domestic and external policies of the EU.

The cooperation with EaP countries focuses on strengthening the respect for human rights, including respect for the rights of the child, freedom of expression, assembly of association, and the rights of persons belonging to minorities. The promotion and mainstreaming of gender equality and fight against discrimination, as fundamental principles of EU law, shall also be included in the objectives of the cooperation plan, specifically taking into account ethnic origin, disability, religion and belief, sexual orientation and age. The implementation of

international and regional human rights standards is highly relevant to the cooperation with the EaP partner countries. Finally, combating torture and inhuman and degrading treatment is an overarching objective of the EU's cooperation with Eastern Partnership countries.

The EU will continue to encourage EaP countries to discuss issues of human rights on regular basis in the relevant HR Subcommittees as appropriate. Improved performance in the field of human rights is also a key condition¹⁵ for further developing EU relations with Eastern Partners.

In view of the ongoing deepening of relations with the EaP countries, the EU will step up its **monitoring in the field of fundamental rights**, while encouraging and supporting the EaP countries to further strengthen the protection of fundamental rights, covering both individual cases and issues concerning international law instruments on human rights.

3.5.3 Judicial cooperation in civil and criminal matters¹⁶

Most of the EaP countries have signed and ratified a number of relevant international conventions on judicial cooperation in civil and criminal matters. However, there are **still important gaps as regards accession to the Conventions and full implementation of the conventions** remains a challenge in many of the countries.

The EU should continue to encourage all EaP countries to participate in the established multilateral frameworks, as regards cooperation in civil and criminal justice matters. The EU should further encourage and support the EaP countries in **full implementation** beyond ratification of the relevant international conventions on cooperation in civil and criminal matters (e.g. on extradition, mutual legal assistance), especially in the framework of the Council of Europe and the United Nations. This requires in particular **continued efforts to improve coordination and cooperation between the judiciary and all law enforcement agencies**, including through investment in training, human resources and IT tools. Further efforts and continuous monitoring of strengthening the rule of law and developing common standards, as agreed in common international fora (such as the Council of Europe), should remain a constant objective of EU cooperation with EaP countries.

3.5.4 Data protection

A solid system to ensure individual's right to the protection of their personal data, in terms of both **legislation and effective institutional capacity**, is of cross-cutting importance for all areas of cooperation between the EU and EaP countries which involve the exchange of personal data. In the JHA field in particular, robust protection rules are an essential precondition for operational cooperation, both with EU Member States as well as EU agencies, such as Europol and Eurojust. Moreover, the collection and exchange of a growing

¹⁵ For example the disbursement of the EU macro-financial assistance is conditional to continued respect of the Rule of Law, Democracy and Human Rights by the partner country authorities.

¹⁶ The aspects of cooperation with Eastern Partnership countries in this area will be further developed in a Commission Communication on the external dimension of justice planned for the end of 2011.

volume of personal data in the JHA field, such as biometric identifiers or individuals' personal identification numbers in databases, likewise requires robust rules ensuring individual's right to the protection of their personal data. To that end, it is necessary to adopt **comprehensive national legislation on the protection of personal data**, along with effective implementation of that legislation, including the establishment of a fully independent public data protection supervisory authority.

Progress in this area in EaP countries is mixed, with some of them having already ratified the relevant international conventions and put relevant legislation in place, while others have yet to establish a sound legal framework for data protection. The effective implementation of data protection instruments remains a challenge throughout the region.

The EU should encourage the EaP countries to **ratify the relevant international conventions, adopt appropriate data protection laws and ensure their effective implementation**, so as to guarantee the individual's right to protection of their data, in particular by establishing **independent data protection supervisory authorities**.

4. CONCLUSIONS

Continous, trust-based cooperation within the Eastern Partnership, both at the **strategic and operational** levels, is essential for **increasing mobility** and promoting **people-to-people contacts**, while addressing the **challenges and threats** that do not respect borders – such as terrorism, organised crime, corruption and trafficking in human beings – and helping the EU neighbours to anchor the essential values and **principles of human rights, democracy and the rule of law**.

The EU and its Member States will enhance **technical and financial support** to Eastern Partners with a view to consolidating the reform process in the area of Justice and Home Affairs that was recently launched.

The Commission is confident that the proposed set of orientations will enable the EU and the Eastern Partnership Countries to **further enhance the political and operational cooperation** within the Eastern Partnership in the area of JHA and move closer towards the establishment of a **Common JHA Space**, in line with the conclusions and recommendations made in the Commission and High Representative Joint Communication of 25 May 2011 on "*A new response to a changing Neighbourhood*" and the Council Conclusions on European Neighbourhood Policy of June 2011.

Annex

General overview of the frameworks for dialogue and cooperation in the area of Justice and Home Affairs between the EU and Eastern Partnership countries

1. EXISTING FRAMEWORKS FOR DIALOGUE AND COOPERATION AT THE BILATERAL LEVEL

The dialogue and cooperation between the EU and the Eastern Partnership (EaP) countries has a long tradition and a wide scope. It is based mainly on the **Partnership and Cooperation Agreements (PCAs)**, signed with Ukraine, Moldova, Georgia, Armenia and Azerbaijan, including the relevant sub-committees and regular sectoral dialogues. Justice and Home Affairs (JHA) issues, including human rights, have always been an important part of that framework and a wide range of initiatives have been implemented in that context. The main fora for the dialogue with EaP countries are the **JHA-Subcommittees and Human Rights dialogues**.¹ The PCAs will be replaced in the future by Association Agreements, for which negotiations are currently ongoing. Moreover, a number of dialogues have been developed, in which JHA issues are discussed, such as the **Mobility Partnerships** (currently in place with the Moldova and Georgia, since 2008 and 2009 respectively), **Visa Dialogues** with Ukraine and Moldova and the relevant structures and meetings set up in these different contexts.

Mobility Partnerships are a tool of the Global Approach to Migration and they are inspired by it. They constitute a political framework for an enhanced and tailor-made dialogue and cooperation with third countries in the field of legal migration, migration and development, fight against illegal migration, including readmission.

The **Visa Dialogue** is a framework to address the conditions for visa liberalisation, allowing short-term, visa free travel between the EU and the country concerned. It is dependent on the effective implementation of a series of benchmarks by the partner country covering a broad spectrum of JHA matters, following a detailed and tailor-made two-phased action plan. To date, the EU has presented two such **Visa Liberalisation Action Plans** to the EaP countries, namely to Ukraine in November 2010 and to Moldova in January 2011. The Visa Liberalisation Action Plans focus on key areas such as document security, border and migration management, asylum policy, public order and security, including the fight against organised crime and trafficking in human beings, as well as relevant external relations and fundamental rights. They contain a first set of criteria concerning the policy framework (legislation and planning) and a second set of more specific benchmarks, covering the effective and sustainable implementation of relevant measures to produce concrete results on the ground.

A specific **JHA Action Plan** was agreed between the EU and Ukraine in 2001 and was revised in 2007. Moreover, the EU and Ukraine meet every year at the Ministerial level to discuss JHA issues.

¹ The EU developed dedicated full fledged Human Rights dialogues with some countries in the Eastern Partnership (Armenia, Belarus, Georgia and Moldova). Whereas human rights issues are covered by the joint JHA&HR Subcommittee in the case of Azerbaijan with a full day dedicated to HR discussions, in the case of Ukraine a full day within the JHA Subcommittee has been dedicated to human rights since 2011.

Bilateral political dialogue on drugs regularly takes place with Ukraine. Political dialogues with Armenia, Moldova, Azerbaijan and Georgia have been organised for the first time by the Polish Presidency.

Furthermore, the EU developed specific contractual relationships with some countries in the Eastern Partnership in the JHA area by concluding **Readmission and Visa Facilitation Agreements** (Moldova, Georgia and Ukraine²) and established Joint Committees under those agreements. Negotiations on new broader Visa Facilitation Agreements with Moldova and Ukraine were launched in May 2011.

Belarus is participating in the multilateral activities of the Eastern Partnership. A Joint Interim Plan for Belarus is being drawn up. In addition, JHA issues are on the agenda of a number of fora at the regional level, involving some or all of the EU and EaP countries.

The analysis of the different frameworks for dialogue and cooperation between the EU and EaP countries at the bilateral level in the JHA area reveals a **multifaceted picture**, with the same issues being discussed in more than one framework. The complexity is further increased by the fact that some of the frameworks have a legally binding character (partnership and cooperation agreements, readmission agreements, visa facilitation agreements) and others are of a more operational (e.g. cooperation platforms) or a mixed political (dialogues at ministerial level) and operational nature (mobility partnerships, visa dialogue and its action plan). Some cover only part of the JHA agenda (mobility partnerships) and others are part of a broader dialogue structure (JHA-Subcommittees).

2. EXISTING FRAMEWORKS FOR DIALOGUE AND COOPERATION AT THE REGIONAL AND MULTILATERAL LEVEL

A number of regional fora bringing together the EU MS and the Eastern Partners provide platforms for exchange of information and best practices as well as implementation of concrete cross-border initiatives. However, there is some overlapping between them with regard to **topical and geographical scope**.

As for **migration issues**, both the EU and the EaP countries are involved in a substantial number of processes. One that encompasses all of the EaP countries and some of the EU Member States is the **Söderköping process**, which was created in 2001 and is aimed at sharing experiences on asylum, international protection, migration and border management issues between some of the EU countries and, initially, Moldova, Ukraine and Belarus, and subsequently also Armenia, Azerbaijan and Georgia.

All the Eastern Partners also participate in the **Prague Process (Building Migration Partnerships)**, which also brings together the EU Member States, Eastern and South-Eastern European countries as well as Central Asian Countries. It aims to strengthen cooperation between the participating states in migration management in all its different dimensions. A major Ministerial Conference due to be held on 3 and 4 November 2011 in Poznan, at which the participating States are expected to adopt an Action Plan.

² Signed on 10 October 2007, 22 November 2010 and 18 June 2007 respectively The Commission is further authorised to negotiate the same agreements with Belarus and will soon present the proposal for such authorisations for Azerbaijan and Armenia.

The **Budapest Process** is a consultative forum involving EU Member States, Eastern and South-Eastern European countries and Central Asian Countries, as well as the USA, Canada and Australia. Its main purpose is the exchange of information and experience in dealing with regular and irregular migration, asylum, visa, border management, trafficking in human beings and smuggling of migrants, readmission and return.

The fight against transnational crime is one of the topics discussed in the context of the **Black Sea Synergy**, which aims to strengthen cooperation between the countries around the Black Sea. One of the Eastern Partners - Moldova - participates in the **Southeast European Cooperative Initiative (SECI) Regional Centre for Combating Trans-Border Crime**, which is a regional organization bringing together police and customs authorities from 13 countries in South-East Europe. It supports national customs and law enforcement agencies through information sharing, knowledge development, joint planning and common action in the field of trans-border crime.

In the framework of the Eastern Partnership, a number of **multilateral platforms** have been established. Three of the platforms, on **democracy, good governance and stability** (platform 1), on **economic integration and convergence with EU policies** (platform 2) and **contacts between people** (platform 4) address some of the justice and home affairs issues. Three dedicated panels, namely the Integrated Border Management Panel, the Panel on the Fight against Corruption and the Panel on Improved Functioning of Judiciary, have been established under platform 1.

The **Integrated Border Management Panel** allows the EaP countries and EU Member States to share experiences and report on the progress made towards integrated border management strategies and action plans. It ensures that training activities are framed within a strategic and programmatic approach to integrated border management and differentiated appropriately, based on each partner's level of progress in the development of an integrated border management strategy. To help improving border management practices, the panel has also supported actions to measure the level of public satisfaction with the operation of border controls in the EaP countries.

The **Panel on the Fight against Corruption** aims to facilitate the exchange of information and best practices on building integrity, as well as prevention and prosecution of corruption in the EaP countries through a multilateral approach and with a view to promoting better implementation of the international commitments, in particular those set up by the Council of Europe and UN Convention against Corruption. Participants include the EaP countries, Member States, EU institutions, the Council of Europe and representatives of the civil society. The "Human Rights, Democracy and Rule of Law Facility", funded by the European Commission and implemented by the Council of Europe, includes the fight against corruption as one of its areas of cooperation.

The **Panel on Improved Functioning of the Judiciary** was established with the assistance of the Council of Europe under the multilateral framework of the EaP to respond to these needs. The Panel and its concrete activities will facilitate the exchange of information and best practices on effective delivery of justice with a view to promoting adherence of the partner countries to international standards, in particular those formulated in the relevant conventions of the Council of Europe and the UN.