



JUSTICE

**Presidency Draft
Multi-annual programme for an area of Freedom,
Security and Justice serving the citizen
(The Stockholm Programme)**

**Briefing and Suggested Amendments
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Introduction and summary

1. JUSTICE is a British-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is also the British section of the International Commission of Jurists.
2. The Swedish Presidency of the EU has produced its draft of the Stockholm Programme, the focus for the area of freedom, security and justice for the years 2010 to 2014 (the Draft). This follows on from the Commission Communication.¹ This response seeks to provide JUSTICE's views on the appropriateness of those recommendations and to make suggestions which it is hoped the Council will consider in order to ensure development in this area reflects the principles enshrined in the Treaty on the European Union, the European Convention on Human Rights (the Convention) and the Charter of Fundamental Rights (the Charter). This briefing is intended to highlight JUSTICE's main concerns regarding the Communication. Where we have not commented upon a certain recommendation, that should not be taken as an endorsement of its contents.
3. We welcome the developments that have been made in this Draft since the Commission Communication and are pleased to see some of the concerns that we raised in our previous briefing² have been addressed.
4. We make an overall observation as to the style of these drafts which we hope may be considered for the finalised version. It would be immensely helpful for the paragraphs throughout the Draft to be numbered, not only the headings, thereby ensuring that in discussion regarding a particular paragraph, it can be identified.

¹ Communication from the Commission to the European Parliament and the Council, *An area of freedom, security and justice serving the citizen*, COM (2009) 262/4

² Which can be found on our website at the following address:

<http://www.justice.org.uk/images/pdfs/Response%20to%20the%20European%20Commission%20Communication%20on%20an%20ar%85.pdf>

1.1 Political priorities

A Europe of law and justice:...

Cooperation between legal professionals should also be improved, and resources should be mobilised to put an end to barriers to the recognition of legal acts in other Member States.

5. In our view, it should not be assumed that in all circumstances recognition of legal acts of other Member States is appropriate. This will always be subject to the rule of law and fundamental rights, which may not have been sufficient in the particular action of the Member State concerned. The judicial process requires each act to be subject to scrutiny to ensure compliance with fundamental principles of justice.
6. We consider that the sentence should be qualified with ‘where appropriate, resources should be mobilised...’

1.2 The tools

7. We are very encouraged by this section. It is imperative that effective evaluation of implementation takes place and that all relevant professionals are engaged in this exercise. Where the section mentions an efficient system of follow up, in our view this should be clearly followed by ‘amendment of legislation where evaluation shows this to be necessary’.
8. At the bottom of page 3 and on to page 4 the Draft,

*...calls on all institutions, and in particular the Commission and the Member States, to consider ways to **better communicate the concrete results** of the policy in the area of freedom, security and justice to citizens and practitioners. New tools and legal instruments should be explained. It asks the Commission to devise a strategy on how best to communicate with citizens and to explain to them the added value of the work of the Union and the contents of the Stockholm Programme.*

It is the responsibility of the Member States, having adopted legislation, to effectively implement this into national law, and to ensure that its relevant practitioners and

citizens understand the developments achieved. This is not clear from the Draft, rather the responsibility appears to be placed with the Commission. Whilst the Commission may propose ways of doing this, in our view the Member States are best placed to decide the most appropriate way of communication, in accordance with informing their citizens of domestic legislation. The resources of the Commission should be limited to considering ways of communicating the policy and future action envisaged under the Stockholm Programme, rather than legislative instruments which require transposition.

2. Promoting citizens' rights: a Europe of rights

2.1 A Europe built on fundamental rights

The case law of the Court of Justice of the European Union and the European Court of Human Rights will be able to develop in step

9. The Draft should be careful to recognise the respective roles of the two Courts and the concerns held by the Member States that the roles may become confused. The European Court of Human Rights has responsibility for the interpretation of the Convention. The European Court of Justice should not reinterpret that jurisprudential line, but apply Strasbourg decisions to the cases before it and ensure that EU legislation and decision making accords with Convention principles. In our view it would be more appropriate in the context of this paragraph to say 'The case law of the Court of Justice of the European Union should develop in step with the European Court of Human Rights.'

The European Council invites the Commission to...

- *ensure that every legal initiative is consistent with fundamental rights by way of strengthening the methodology for a systematic and rigorous monitoring of compliance with the Convention and the Charter of Fundamental Rights*
10. The Draft provides examples throughout and could propose a practice similar to that contained in the UK Human Rights Act 1998, section 19 which provides that,

(1) A Minister of the Crown in charge of a Bill in either House of Parliament must, before Second Reading of the Bill—

(a) make a statement to the effect that in his view the provisions of the Bill are compatible with the Convention rights ("a statement of compatibility"); or

(b) make a statement to the effect that although he is unable to make a statement of compatibility the government nevertheless wishes the House to proceed with the Bill.

(2) The statement must be in writing and be published in such manner as the Minister making it considers appropriate.

11. To this end, the Commission should be invited to provide a statement at the outset of each explanatory memorandum to the effect that the Convention and the Charter have been complied with.

2.3.4 Victims of crime

12. This section is particular welcome. The Framework Decision³ has not been implemented satisfactorily amongst the Member States and there needs to be effort on developing programmes to support victims, through services such as Victim Support in the UK.⁴ These initiatives should be supported through the Funding available under the Programme as indicated. Member States also need to explain why this Framework Decision has not been successful, despite its adoption in the Justice and Home Affairs Council in 2001.

³ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)

⁴ <http://www.victimsupport.org.uk/>

2.4 Rights of the individual in criminal proceedings

The protection of the rights of the individual in criminal proceedings is a fundamental value of the Union, which is essential in order to maintain mutual trust between the Member States and public confidence in the European Union. The European Council therefore welcomes [the adoption] by the Council of the Roadmap on the rights of the individual in criminal proceedings, which will strengthen the rights of the individual in criminal proceedings when fully implemented. That Roadmap will henceforth form part of the present multiannual programme.

13. We welcome the inclusion of this area, and the reference to the Roadmap. Procedural safeguards for defendants in criminal proceedings have been made one of the priorities of the Swedish Presidency because of the urgent and serious need for action in this area. The language is insufficiently clear in our view however as to what is being discussed here. We think, in accordance with ensuring openness and access to information for the citizen, the paragraph should read,

The protection of suspects and accused persons in criminal proceedings is a fundamental value of the Union, which is essential in order to maintain mutual trust between the Member States and public confidence in the European Union. The European Council therefore welcomes [the adoption] by the Council of the Roadmap on the rights of the individual in criminal proceedings, which will strengthen the rights of suspects and accused persons in defending criminal proceedings when fully implemented. The Roadmap forms an integral part of the present multiannual programme and Member States should strive to ensure measures are fully considered within the timeframe of the programme.

2.5. Protection of personal data and privacy

14. Consideration of the protection of personal data is important, and an effort to consolidate existing legislation to make the law clearer and more accessible is welcomed. This section makes no mention of the European Data Protection Supervisor however. He plays an important role in the development of data protection and should be consulted in relation to any enhancements in this area. Cooperation with him, as mentioned with regards to other agencies in the Draft, should be acknowledged.

3. Making people's lives easier: a Europe of law and justice

The EU should continue to enhance mutual trust in the legal systems of the Member States by establishing minimum rights as necessary for the development of the principle of mutual recognition. The European judicial area must also allow citizens to assert their rights anywhere in the Union by significantly raising overall awareness of rights and by facilitating their access to justice.

15. In our view the use of the word 'rights' is too wide in this section. What is envisaged by this development? Should citizens be assisted in understanding how to bring civil claims in other Member States? Should they be given more information about how to report a crime and how the criminal justice system will work to assist them? Does it encompass provision for victims and witness? Is it a reiteration of the rights of suspects and accused persons? If all of these aspects of access to justice are anticipated, this should be clearly stated in the Draft to avoid future confusion. There is a distinction between ensuring fundamental rights are protected and enabling the justice system to operate clearly and openly.

In this respect, the European Council emphasizes the horizontal importance of e-Justice, which is not confined to specific areas of law. It should be integrated into all areas of civil, criminal and administrative law in order to ensure better access to justice and reinforced cooperation between administrative and judicial authorities.

16. We do not believe that this section actually means e-Justice should be 'integrated' since e-Justice will be an information portal for Member States to add information to. Rather, we think that the appropriate term is 'encompass' to reflect an extension to these areas.

3.1.1 Criminal and administrative law

In the face of cross-border crime, more efforts should be made to make judicial cooperation more efficient. The instruments adopted need to be more "user-friendly" and focus on problems that are constantly occurring in cross-border cooperation, such as issues regarding time limits and language conditions. In order to improve cooperation based on mutual recognition, some matters of principle should also be resolved. For example, there is a need for a horizontal approach regarding certain recurring problems during negotiations on the adopted instrument, e.g. Member States' authority structures and grounds for refusal.

17. We welcome this provision, which seeks to focus on reviewing and addressing the real concerns at cross-border level. We are concerned by the example given however. Member States should be entitled to review measures through scrutiny procedures and ensure that these accord with subsidiarity, competence and the rule of law. In any event, with the ordinary legislative procedure under Lisbon this will resolve the concern mentioned, and we wonder what the benefit of criticising Member States is here? If the Draft seeks to ensure that Member States fully engage with an issue and ensure that they appreciate the issues for consideration before refusing their consent, this could be better phrased. Equally, if it is suggested that grounds for refusal should be given in writing and made available in the public register, this would be helpful to the process of legislation and the development of future policy. It would also aid transparency and the understanding of citizens as to the process of law making in the EU.

The European Council considers that the setting up of a comprehensive system for obtaining evidence in cases with a cross-border dimension, based on the principle of mutual recognition, should be further pursued. The existing instruments in this area constitute a fragmentary regime which lacks efficiency and flexibility. A new approach is needed, based on the principle of mutual recognition but also taking into account the flexibility of the traditional system of mutual legal assistance. This new model should have a broad scope and should cover all types of evidence, taking account of the measures concerned.

The European Council invites the Commission to propose

- a comprehensive legal instrument to replace all the existing instruments in this area, including the Framework Decision on the European Evidence Warrant, covering all types of evidence, including orders to hear persons by means of videoconferencing, and containing deadlines for enforcement and limiting as far as possible the grounds for refusal.*

18. This provision is welcomed. The current instruments are fragmentary, overlap, and have not been sufficiently implemented. However, the EU and Council of Europe mutual legal assistance instruments in place already replicate each other in this area. We consider that focus should be placed on amendment to the EU instrument, which Member States are already familiar with, by additional protocol, to up date the new technologies and further types of evidence referred to here, rather than replicate yet again with a different type of instrument.

3.2.1 Training

19. There is still no mention of defence practitioners in this section. This is disappointing. The obligations upon the prosecution and judicial bodies identified should extend to ensuring the relevant Bars and Law Associations require the same training programmes for defence practitioners, so as to ensure equality of arms for suspected and accused persons.

3.2.3 Evaluation

20. As mentioned earlier, this should point to *effective* evaluation through amendment to legislation where necessary (the need for proportionality in the European Arrest Warrant Scheme, as shown through the Working Group Final report on the fourth

round of mutual evaluations⁵ (the Fourth Round Report) should be included as an example of where amendment could be considered).

3.3.1 Criminal law

In criminal law, certain offences having a typically cross-border dimension should become the object of common incriminations and common minimum levels of maximum sanctions.

21. We do not think it should be so conclusively presumed that all types of sanctions are equivalent or appropriate as between Member States. We would suggest that the section go on to include the qualification of 'so far as national laws allow'.

In the long term, it should be considered whether it is necessary to approximate all or most offences for which double criminality does not apply in the mutual recognition instruments.

22. We consider this short and unassuming paragraph to be quite concerning. We question the Treaty Base to such a course, and how that approach accords with the agreed development of mutual recognition as opposed to harmonisation? Whilst we encourage the development of laws against cross-border criminal activity, we cannot see how it is appropriate for domestic offences to be subjected to EU approximation, given the different moral, cultural and historical premises behind criminal offences. We would oppose the inclusion of this sentence in favour of continued attempts to develop mutual trust. It is ambitious and unsupported by the majority of Member States.

⁵ Working Group Final report on the fourth round of mutual evaluations – *The practical application of the European Arrest Warrant and corresponding surrender procedures between Member States*, COPEN 68, 8302/2/09, 18.05.2009, p 15.

3.4. The benefits for citizens of a European judicial area

3.4.1. Providing easier access to justice

23. We welcome the reference to legal aid and overcoming language barriers in this section. It would be further assisted by a reference to the Roadmap on the rights of the individual in criminal proceedings (see above). We remain concerned about the advancement towards videoconferencing and use of other technologies without this being recognised as a measure of last resort, and of the need for improvements in this form of technology in order to achieve best evidence in court cases.

Certain formalities for the legalisation of documents also represent an obstacle or an excessive burden. Given the possibilities offered by the use of new technologies, including digital signatures, the EU should consider abolishing all formalities for the legalisation of authentic documents between Member States. Where appropriate, thought should be given to the possibility of creating authentic European documents.

24. The reference here to ‘all’ formalities in our view goes too far, particularly since the section starts with the qualification ‘certain’. This section should be qualified as ‘abolishing formalities where appropriate to the measure concerned.’

3.5.2 Criminal law

25. We welcome the initiatives and proposed areas for activity under this and the subsequent sections for tackling cross border crime and look forward to the concrete proposals in the Action Plan as to how these might be achieved.

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