



HOUSE OF LORDS

European Union Committee

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13th Report of Session 2013–14

**Strategic guidelines  
for the EU's next  
Justice and Home  
Affairs  
programme: steady  
as she goes**

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Evidence is published online at <http://www.parliament.uk/hleuf> and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence.

Witness names without a question reference refer to written evidence.

## **EXECUTIVE SUMMARY**

The Stockholm Programme, which set the EU's five year justice and home affairs (JHA) agenda for 2010–14, expires at the end of this year. That programme was the third of its kind and covered significant policy areas such as asylum, immigration, border controls, judicial cooperation in civil and criminal justice matters, and police cooperation. This Report covers the strategic guidelines for the next programme.

The substantial increase in cooperation between Member States and in EU legislation on JHA matters which has taken place over the last 15 years reflects the rapid internationalisation of many different forms of criminal activity and the increasing interdependence of our societies. JHA matters affect the day-to-day lives of European citizens, and the next programme must provide a steady direction of travel that responds to the challenges facing our increasingly interconnected societies, and the rise in serious and organised crime across national borders.

We have reviewed the Stockholm Programme and conclude that, although it made a significant contribution to the joint efforts needed to deal with, for example, serious organised crime and the new international challenges the EU faces in the field of JHA, its “shopping list” style was too detailed and too diffuse. The new programme should set clear strategic objectives for the further development of the European Area of Freedom, Security and Justice. Its emphasis should be on consolidation and implementation.

The next programme should, as a high priority, undertake to complete negotiations on important legislation which has been proposed but not yet agreed, including the Passenger Name Record Directive, the Data Protection package, and the reforms of Europol and Eurojust.

Effective evaluation must be at the heart of the next programme. We recommend reviews of the efficacy, transposition and implementation of existing JHA legislation, and that robust mechanisms must be put in place to review any future legislation or activities. In addition, future legislation must be underpinned by appropriate data and a convincing rationale for EU-level action.

Finally, we review and strongly support the important work of the EU agencies in JHA such as Europol, Eurojust, the European Union Agency for Network and Information Security, the European Asylum Support Office, and the European Monitoring Centre for Drugs and Drug Addiction. We conclude that EU agencies must be properly resourced, well managed and subject to light-touch parliamentary scrutiny by a combination of European Parliament and national parliament representatives.

It is important and in our national interest that the UK remains a key player and has influence in European JHA matters. We urge the Government to continue to participate fully and constructively in the discussions to achieve political agreement on the EU's next JHA programme.



# Strategic guidelines for the EU's next Justice and Home Affairs programme: steady as she goes

## CHAPTER 1: INTRODUCTION

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1. Over the past 15 years, the European Council, which defines the general political direction and priorities of the European Union,<sup>1</sup> has adopted a series of five-year programmes setting out future priorities in the fields of justice and home affairs (JHA). The current programme, known as the Stockholm Programme,<sup>2</sup> covers the period 2010–2014 and in the last year there have been discussions between various Member States, the EU institutions and other interested parties about its successor. We decided to conduct an inquiry into the outcomes and value of the Stockholm Programme, what lessons could be learnt from that programme, and what the shape and content of the next programme should be. Our aim in so doing was to make a contribution to that programme's development upstream.

### Our inquiry

2. This inquiry was conducted by the House of Lords European Union Sub-Committee on Home Affairs, Health and Education, with contributions from the Sub-Committee on Justice, Institutions and Consumer Protection on justice matters.
3. We issued a call for evidence (set out in Appendix 3) in July 2013 and received 15 submissions. Between November 2013 and February 2014 we held 7 evidence sessions in the House of Lords. In January 2014, we visited Brussels and held 6 evidence sessions there. Our Chairman participated in a meeting of the Chairpersons of the JHA Committees of the national parliaments of EU Member States on 16–17 February 2014. The membership and interests of the Committee are set out in Appendix 1, and those who submitted evidence are listed in Appendix 2. We are grateful to all those witnesses who provided written and oral evidence: that evidence is available from our website.<sup>3</sup>

### Justice and home affairs at EU level

4. Justice and home affairs cover a wide range of policy areas including asylum, immigration, border controls, judicial cooperation in civil and criminal justice matters, and police cooperation. These matters affect the day-to-day lives of European citizens and are of considerable importance. The whole field is one of shared competence—that is to say, one where the Member States retain exclusive powers on some matters, such as counter-terrorism, but where the Treaty provides for the European Union to take legislative decisions on a limited number of issues.

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<sup>1</sup> Article 15, Treaty on the Functioning of the European Union (TFEU)

<sup>2</sup> The programme was adopted under the Swedish Presidency in the second half of 2009.

<sup>3</sup> [www.parliament.uk/hleuf](http://www.parliament.uk/hleuf)

5. Prior to the entry into force of the Maastricht Treaty in 1993, cooperation in JHA matters was achieved exclusively by intergovernmental cooperation and the European institutions were on the whole not involved. That Treaty created a formal intergovernmental system for JHA cooperation, with a specific decision-making mechanism: measures adopted required unanimity in the Council of Ministers and the European Parliament was only granted a limited consultative role.<sup>4</sup> The European Court of Justice had no jurisdiction.<sup>5</sup>
6. The Amsterdam Treaty, which entered into force in 1997, introduced the concept of developing an area of freedom, security and justice (AFSJ).<sup>6</sup> The aim was to facilitate the free movement of persons while ensuring safety and security through “appropriate measures” covering external border controls, asylum, immigration, and the prevention and combating of crime. The Treaty also changed visa policy, conditions for issuing residence permits to immigrants, asylum procedures and rules for judicial cooperation in civil matters from matters of intergovernmental cooperation to matters covered by the community method (see box 1 below). Police and judicial cooperation in criminal matters remained matters covered by the intergovernmental method.<sup>7</sup>

### BOX 1

#### Community and intergovernmental methods prior to the Lisbon Treaty<sup>8</sup>

The Maastricht Treaty set out three groups of arrangements, commonly referred to as “the three pillars”.

The **community method**, which applied to the first pillar of the European Union (that covered the supranational European Community), was based on a premise of integration and was characterised by the following key features:

- Commission monopoly of the right of initiative;
- widespread use of qualified majority voting in the Council;
- an active role for the European Parliament (for example, producing opinions and proposals for amendments.);
- uniform interpretation of Community law by the Court of Justice.

The **intergovernmental method** of co-operation used in the second and third pillars (that covered common foreign and security policy, and JHA) was based on a premise of intergovernmental cooperation, characterised by the following main features:

- the Commission’s right of initiative was shared with the Member States or confined to specific areas of activity;
- the Council generally acted by unanimity;
- the European Parliament had a purely consultative role;
- the Court of Justice did not have mandatory jurisdiction.

<sup>4</sup> Peers, S. *EU Justice and Home Affairs Law*, 2011

<sup>5</sup> Except for intergovernmental measures dealing with civil cooperation.

<sup>6</sup> Article 1(3), The Treaty of Amsterdam, 1997

<sup>7</sup> *Ibid.*

<sup>8</sup> Based on the European Commission’s glossary of terms available from:

[http://europa.eu/legislation\\_summaries/glossary/community\\_intergovernmental\\_methods\\_en.htm](http://europa.eu/legislation_summaries/glossary/community_intergovernmental_methods_en.htm)



7. Following the entry into force of the Amsterdam Treaty in 1999, the European Council held a special meeting in Tampere to consider the development of the AFSJ. A number of key conclusions (known as the Tampere conclusions) were agreed summarising the need to develop:
  - common policies on asylum and immigration;
  - control of external borders;
  - integration of third country nationals lawfully resident;
  - a genuine area of justice;
  - a common effort to prevent and fight crime and criminal organisations;
  - integrity of authorities;
  - cooperation with partner countries and international organisations; and
  - a draft EU Charter of Fundamental Rights.<sup>9</sup>
8. The Tampere conclusions were the first of a series of multi-annual five year programmes for JHA. In the five years that followed its adoption, the foundations were laid for a common asylum and immigration policy, for the harmonisation of border controls, and for closer police and judicial cooperation based on mutual trust and recognition.<sup>10</sup>
9. The Nice Treaty, which came into force in 2003, provided for cooperation through the European Judicial Cooperation Unit (Eurojust) and set out fundamental rights.<sup>11</sup>
10. In November 2004, the Hague JHA Programme was adopted to further strengthen the AFSJ. The programme was designed to build on the Tampere conclusions and to respond to “new challenges”, such as the terrorist attacks on the United States in September 2001 and Madrid in March 2004. It drew upon input from the Commission and the European Parliament as well as Member States. The key objectives of that programme were:
  - to guarantee fundamental rights;
  - minimum procedural safeguards and access to justice;
  - to provide protection to persons in need in accordance with the Geneva Convention on Refugees and other international treaties;
  - to regulate migration flows and to control the external borders of the Union;
  - to fight organised cross-border crime and repress the threat of terrorism;
  - to realise the potential of Europol and Eurojust;
  - to carry further the mutual recognition of judicial decisions and certificates both in civil and in criminal matters;

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<sup>9</sup> European Council Conclusions of the European Council Meeting in Tampere, 15-16 October 1999: *Towards a Union of Freedom, Security And Justice: The Tampere Milestones*

<sup>10</sup> COM (2009) 263, *Justice, Freedom and Security in Europe since 2005: An evaluation of the Hague Programme and Action Plan*

<sup>11</sup> The Nice Treaty, 2001

- to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications; and
  - development of a coherent external dimension of the Union policy of freedom, security and justice.
11. The programme also highlighted the need for adequate and timely implementation and evaluation of all types of measures in the AFSJ, and a review of the implementation of the programme.<sup>12</sup>
  12. The Lisbon Treaty of 2009 moved the remaining aspects of JHA, that is to say police and judicial cooperation in criminal matters, into the community method. That meant that all AFSJ legislation, save for a few exceptions,<sup>13</sup> would be subject to the ordinary legislative procedure of qualified majority voting and co-decision between the European Parliament and the Council, and, following a transitional period which ends in December 2014, come within the jurisdiction of the Court of Justice of the European Union.<sup>14</sup>
  13. Shortly after the Lisbon Treaty entered into force in 2009, the Stockholm Programme was agreed as a successor to the Hague Programme. The programme was not, however, drafted with the provisions of that Treaty in mind as implementation of the Treaty and agreement of the programme occurred shortly after one another.<sup>15</sup> The programme was almost 40 pages long and covered a wide range of policy areas, making very specific recommendations. They fell within six broad priorities:
    - (1) Promoting citizen's and fundamental rights;
    - (2) A Europe of law and justice;
    - (3) A Europe that protects;
    - (4) Access to Europe in a globalised world;
    - (5) A Europe of responsibility, solidarity and partnership in migration and asylum matters; and
    - (6) The role of Europe in a globalised world—the external dimension of freedom, security and justice.
  14. The programme called for: a mid-term review by the Commission; better tools for evaluation of JHA policies; more attention to full and effective implementation, enforcement and evaluation of existing instruments; clear impact assessments and data to support any new legislation brought forward; and increased attention to coherence between policies.<sup>16</sup>
  15. The Council also agreed that the Commission should publish an Action Plan detailing how the various aspects of the programme would be implemented.<sup>17</sup> The Commission published a Communication entitled *Delivering an area of freedom, security and justice for Europe's citizens: Action Plan Implementing the*

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<sup>12</sup> European Council, *The Hague Programme: strengthening freedom, security and justice in the European Union*, 2005

<sup>13</sup> For example, legislation on family law, matters with cross-border implications and for legislation creating a European Public Prosecutors Office.

<sup>14</sup> TFEU

<sup>15</sup> Q 123

<sup>16</sup> European Council, *The Stockholm Programme—an open and secure Europe serving and protecting citizens*, 2010

<sup>17</sup> *Ibid.*

*Stockholm Programme* in April 2010. JHA ministers were critical of the Action Plan because they felt that some aspects went beyond what had been agreed in the Stockholm Programme, while other matters which had been agreed were omitted from the Action Plan. As a result, in their Conclusions the Council, rather than adopting the Action Plan, noted that there were inconsistencies between the two documents and urged the Commission only to take forward the matters that were in full conformity with the content of the Stockholm Programme.<sup>18</sup>

16. The past 15 years have seen the challenges to all Member States from international crime increasing both in scope, for example cybercrime, and intensity, and they have been an intense period of legislation in the fields of JHA. Stefano Manservigi, Director-General, Directorate-General for Home Affairs, European Commission, characterised it as legislating to “catch up” with Treaty change and the development of the Union.<sup>19</sup> We consider the main outcomes during the term of the Stockholm Programme in detail in Chapter 2.

### The next programme

17. Both Commissioner Malmström (the Commissioner responsible for home affairs) and Vice-President Reding (the Commissioner responsible for justice) had questioned whether a detailed successor to the Stockholm Programme was necessary given the Commission’s right of initiative in JHA matters now conferred by the EU Treaties.<sup>20</sup> Article 68 of the Treaty on the Functioning of the European Union (TFEU) is clear that “the European Council shall define the strategic guidelines for legislative and operational planning within the area of freedom, security and justice”.<sup>21</sup> The European Council conclusions of June 2013 said:

“The European Council will hold a discussion at its June 2014 meeting to define strategic guidelines for legislative and operational planning in the area of freedom, security and justice (pursuant to Article 68 TFEU). In preparation for that meeting, the incoming Presidencies are invited to begin a process of reflection within the Council. The Commission is invited to present appropriate contributions to this process.”<sup>22</sup>

18. Accordingly, the Commission has held two consultation exercises (one each for justice and home affairs) about what should succeed the Stockholm Programme, which both culminated in conferences of academics, practitioners, senior officials and Ministers.<sup>23</sup> The Commission published two Communications on the matter on 11 March 2014.<sup>24</sup> In parallel, Member States have discussed the shape and content of the next set of guidelines both informally and at JHA Council meetings. The discussions

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<sup>18</sup> The Bar Council of England and Wales, European Council, *Conclusions of the JHA Council meeting in Luxembourg, 3-4 June 2010*

<sup>19</sup> Q 103

<sup>20</sup> Statements made at an inter-parliamentary committee meeting regarding the Stockholm Programme on 20 June 2013 and at the Assises de la Justice conference on 22 November 2013.

<sup>21</sup> TFEU

<sup>22</sup> European Council, *Conclusions of the European Council meeting in Brussels, 27-28 June 2013*

<sup>23</sup> Q 106, Q 120

<sup>24</sup> COM (2014) 154, *An open and secure Europe: making it happen*, COM (2014) 144, *The EU Justice Agenda for 2020—Strengthening Trust, Mobility and Growth within the Union*

will continue in COREPER (the Permanent Representatives Committee) and at JHA Council meetings over the coming months, and it is probable that the European Parliament will express a view. The process is likely to culminate in the next set of guidelines being agreed at the June European Council (with the possibility of further activity under the Italian Presidency in the second half of 2014).<sup>25</sup>

19. It is in this context, and with a view to contributing to these discussions, that we make our Report. While the AFSJ covers areas of shared competence and, since the coming into force of the Lisbon Treaty, legislation in this field is largely subject to the ordinary legislative procedure, it retains some distinctive features. In particular: the AFSJ concerns areas of law in relation to which the diversity of national legal systems and traditions must be respected; closely related areas, such as, national security are outside EU competence; and the Member States have a right of initiative in relation to criminal justice and policing measures. As this situation is unlikely to change, JHA require a distinctive approach, different from that for policy areas such as trade where the EU has exclusive powers. **This is the first full application of Article 68 of the Treaty on the Functioning of the European Union which provides that the European Council shall set strategic guidelines for the AFSJ. As such, it is important that it is handled well as the next JHA programme is likely to set a precedent for future multi-annual JHA programmes.**

#### Structure of the report

20. In Chapter 2 we consider the impact of the Stockholm Programme. Chapter 3 sets out our findings on the next programme. Chapter 4 deals with the important issues of evaluation and implementation. Finally, Chapter 5 considers the work of the various EU agencies which operate in the AFSJ.
21. **We make this report to the House for debate.**

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<sup>25</sup> Q 112, Q 107

## CHAPTER 2: THE STOCKHOLM PROGRAMME

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### Comments on the programme as a package

22. In this chapter we review the Stockholm Programme. Most witnesses to our inquiry considered the Stockholm Programme to have been too long, excessively detailed and overly specific. The Government described it as a “shopping list”,<sup>26</sup> Dr Yves Pascouau, Senior Policy Analyst, European Policy Centre, likened it to a “Christmas tree”<sup>27</sup> and Elizabeth Collett, Director, Migration Policy Institute Europe, said it was a “catalogue of things being undertaken, as well as the logical next steps”, rather than long-term in approach.<sup>28</sup> Mike Kennedy, former Director of Eurojust, said it was “far more lengthy” and “far more complex” than previous programmes. Professor Elspeth Guild, Queen Mary University, London, was similarly critical of the Stockholm Programme’s shape: she called the document “extraordinarily long and complicated”.<sup>29</sup> Professor John Spencer, Professor of Law, University of Cambridge and President of the European Criminal Law Association UK, viewed the programme as “too big” and “windy”.<sup>30</sup>
23. Many considered the range and specificity of the programme to be a key reason for the difficulties over its adoption and implementation. Professor Spencer argued that “if it had fewer items on it, it would have been harder” for the European Commission to “pick and choose” which aspects to take forward.<sup>31</sup> The Government shared this assessment, characterising the European Commission’s approach to the Stockholm Programme as “cherry-picking”.<sup>32</sup> A sharp contrast was drawn with the Tampere Programme by many witnesses, which was viewed as more strategic in approach.<sup>33</sup>
24. We considered the main outcomes of the Stockholm Programme, what actions were still outstanding and where further work might still be required in five key policy areas: policing and crime; civil and criminal justice; drugs; asylum and migration; and civil protection and disaster relief. Our findings are not intended to be a comprehensive stock take of the Stockholm Programme.

### Policing and crime

25. One of the programme’s political priorities was “a Europe that protects”. The programme called for:
  - definition of a comprehensive Union Internal Security Strategy;
  - consideration of the feasibility of setting up an Internal Security Fund;

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<sup>26</sup> UK Government

<sup>27</sup> Q 130

<sup>28</sup> Q 30

<sup>29</sup> Q 16

<sup>30</sup> Q 7

<sup>31</sup> Q 11

<sup>32</sup> UK Government

<sup>33</sup> Q 30

- enhanced mutual trust between all the professionals concerned with law enforcement at national and Union level;
- coherence and consolidation in developing information management and exchange;
- mobilisation of necessary technological tools;
- more effective European law enforcement cooperation;
- active promotion and support for crime prevention measures focusing on prevention of mass criminality and cross-border crime affecting the daily life of EU citizens;
- adequate, reliable and comparable statistics;
- an organised crime strategy, within the framework of the Internal Security Strategy;
- strengthening and enhancing the prevention and combating of trafficking and smuggling; and
- action to combat cybercrime, drugs, terrorism, economic crime and corruption.<sup>34</sup>

### *Internal security strategy*

26. An EU internal security strategy, *Towards a European Security Model*, was adopted in 2010, as provided for by the Lisbon Treaty and recommended by the programme.<sup>35</sup> The strategy was supported by an action plan produced by the Commission covering: the disruption of international crime networks; the prevention of terrorism; security in cyberspace; improved border management; and increased resilience to crises and disasters.<sup>36</sup> We judged these to be the right priority areas in our 2011 Report, *The EU Internal Security Strategy*.<sup>37</sup> The Government considered that the strategy had “provided a generally effective strategic framework for Member States to work together on issues such as counter terrorism, organised crime and human trafficking”. They were pleased that the strategy had led to a number of “successful measures” including the creation of a new European Cybercrime Centre at Europol, an EU Strategy against Trafficking in Human Beings and a Radicalisation Awareness Network.<sup>38</sup>

### *Joint Investigation Teams*

27. The programme encouraged Member State competent authorities to use Joint Investigation Teams (JITs)<sup>39</sup> “as much as possible in appropriate cases”.<sup>40</sup> Keith Bristow, Director General, National Crime Agency, Sir Hugh

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<sup>34</sup> *The Stockholm Programme, Op. Cit.*

<sup>35</sup> *Ibid.*

<sup>36</sup> COM (2010) 673, *The EU Internal Security Strategy in Action: five steps towards a more secure Europe*

<sup>37</sup> European Union Committee, *The EU Internal Security Strategy* (17th Report, Session 2010–12, HL Paper 149)

<sup>38</sup> UK Government

<sup>39</sup> Investigation teams set up for a fixed period based on an agreement between two or more EU Member States and/or competent authorities for a specific purpose.

<sup>40</sup> *The Stockholm Programme, Op. Cit.*

Orde, President of the Association of Chief Police Officers, and Rob Wainwright, Director, Europol, said that JITs were a valuable tool in the battle against organised crime. They were being formed more frequently in recent years.<sup>41</sup>

### *Human trafficking*

28. The programme recommended new legislation to address human trafficking, as well as increased work with third countries, better data, further measures to protect and assist victims, and work at borders to help in the fight against such trafficking.<sup>42</sup> In 2010, the Commission appointed its first Anti-Trafficking Coordinator to strengthen coordination, coherence and partnerships in and outside the EU.<sup>43</sup> A Directive on preventing and combating trafficking was adopted in 2011, which defined minimum common rules for identifying and sanctioning offences of trafficking in human beings. The Directive also established provisions for the protection of victims and preventative measures.<sup>44</sup>
29. A complementing strategy, *Towards the Eradication of Trafficking in Human Beings 2012–2016*, was agreed in 2012. It set out actions to support the implementation of the Directive and focused on: identifying, protecting and assisting victims of trafficking; stepping up the prevention of trafficking in human beings; increasing prosecution of traffickers; enhancing coordination and cooperation among key actors and policy coherence; and increasing knowledge of and effective response to emerging concerns related to all forms of trafficking in human beings.<sup>45</sup> These actions were another success of the programme, although the Government, Keith Bristow and Rob Wainwright noted that much more needed to be done.<sup>46</sup>

### *Cybercrime and cybersecurity*

30. The programme called for legislation to ensure a very high level of network security and to allow faster reactions in the event of cyber attacks, and action to tackle cybercrime. The Commission brought forward a legislative proposal in February 2013.<sup>47</sup> The European Cybercrime Centre was set up within Europol in January 2013 to focus on: cybercrimes committed by organised crime groups, particularly those generating large criminal profits such as online fraud; cybercrimes which cause serious harm to their victims, such as online child sexual exploitation; and cybercrimes (including cyber-attacks) affecting critical infrastructure and information systems in the EU. The centre aims to become the focal point in the EU's fight against cybercrime, through building operational and analytical capacity for investigations, and cooperation with international partners in the pursuit of an EU free from

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<sup>41</sup> Q 60, Q 63, Q 55

<sup>42</sup> *The Stockholm Programme, Op. Cit.*

<sup>43</sup> European Commission Press Office, *The Commission appoints an EU Anti-Trafficking Coordinator*, 14 December 2010

<sup>44</sup> Directive 2011/36. The Government initially decided not to opt in to this proposal against the Committee's advice; a decision they reversed after the proposal was agreed by the other Member States.

<sup>45</sup> COM (2012) 286, *The EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016*

<sup>46</sup> UK Government, Q 69

<sup>47</sup> COM (2013) 48, *Proposal for a Directive of the European Parliament and of the Council concerning measures to ensure a high common level of network and information security across the Union*



cybercrime.<sup>48</sup> Furthermore, in the same month the *cybersecurity strategy for the European Union: an open, safe and secure cyberspace* was put forward by the Commission and the High Representative of the Union for Foreign Affairs and Security Policy “to make the EU’s online environment the safest in the world”.<sup>49</sup> The programme promoted further attention for these areas, although as we note below further efforts are required.

### *COSI*

31. The programme said that “developing, monitoring and implementing the internal security strategy should become one of the priority tasks of COSI set up under Article 71 TFEU”.<sup>50</sup> COSI, the Standing Committee on Operational Cooperation on Internal Security, is a Council body of high-level officials from Member States and Commission representatives which: facilitates and ensures effective operational cooperation and coordination in the field of EU internal security; evaluates the general direction and efficiency of operational cooperation; and assists the Council in reacting to terrorist attacks, natural disasters and man-made disasters. The Government considered that COSI had contributed positively to the work of the Internal Security Strategy, particularly in identifying EU priorities for cooperation against serious and organised crime (in the policy cycle on that subject).<sup>51</sup> Similarly, Europol said that COSI had “considerably enriched” opportunities for EU-level coordination in internal security. It also argued that COSI had “improved the joint use of strategic resources and expertise on organised crime to inform policy-making”.<sup>52</sup>
32. Both the Government and Europol did, however, argue that COSI could operate more effectively. The Government suggested that COSI could improve its supervision of the implementation of other areas of the internal security strategy, and give higher priority to monitoring the delivery of individual projects.<sup>53</sup> Europol said there was “still room for improving effective operational cooperation within COSI” and “a more active presence and role for law enforcement agencies”. It also identified funding and variation in Member States’ level of involvement as problems which needed to be addressed.<sup>54</sup> The Meijers Committee and Claudio Matera criticised the lack of transparency and accountability of the committee.<sup>55</sup>

### *Areas requiring further action*

#### *Cybercrime and cybersecurity; private sector engagement*

33. Cybersecurity and cybercrime were recognised as issues that would require further action during the lifetime of the new programme. Keith Bristow felt

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<sup>48</sup> COM (2012) 140, *Tackling crime in our Digital Age: Establishing a European Cybercrime Centre*, Europol

<sup>49</sup> COM (2013) 1, *Cybersecurity strategy for the European Union: an open, safe and secure cyberspace*

<sup>50</sup> *The Stockholm Programme*, Op. Cit.

<sup>51</sup> UK Government

<sup>52</sup> Europol

<sup>53</sup> UK Government

<sup>54</sup> Europol, Q 53

<sup>55</sup> The Meijers Committee, Claudio Matera



that more could be done to address cyber-enabled crime;<sup>56</sup> Sir Hugh Orde agreed.<sup>57</sup> Rob Wainwright called for effective implementation of existing measures<sup>58</sup> and also recommended greater “policy coherence” in the area of cybersecurity.<sup>59</sup> Europol wanted the programme to give clear support to the European Cybercrime Centre.<sup>60</sup>

34. One key tool to support law enforcement work in these areas would be consistent exploitation of private sector experience. Europol recommended involving the private sector in a more systematic way in policy development and implementation in JHA.<sup>61</sup> The European Union Agency for Network and Information Security (ENISA) agreed that structured engagement with the private sector was essential when it came to cybercrime and cybersecurity.<sup>62</sup> Charlie McMurdie, former head of the Metropolitan Police Central e-crime Unit and senior cybercrime adviser, PricewaterhouseCoopers, said that “most of the data, systems and expertise exist within industry” so improved co-operation between industry and law enforcement would be essential.<sup>63</sup> Keith Bristow highlighted an example of good practice in the UK: being able to “swear in” specialists from the private sector on a voluntary basis.<sup>64</sup> We were told that industry must see value in participating in such work and heard widespread agreement amongst cybersecurity experts over the need for better partnerships.<sup>65</sup> **We agree with this advice and recommend that the strategic guidelines for the next JHA Programme should place particular emphasis on the need for closer cooperation between the private and public sectors in the fight against cybercrime.**

*Serious and organised crime*

35. Many argued that further attention needed to be paid to serious and organised crime. The Scottish Government and NI Executive agreed that there was a need for greater police cooperation, practical steps to tackle serious organised crime, and collective action to tackle human trafficking.<sup>66</sup> Further action to fight against drugs and radicalisation should also be priorities, according to Sir Hugh Orde and Rob Wainwright.<sup>67</sup> The European Parliament called for further progress in the fields of cybercrime, protection of critical infrastructure, the fight against corruption, money laundering, funding of terrorism and the trade in illegal firearms.<sup>68</sup> Rob Wainwright said that “we should be arguing for a much more effective integrated response to organised crime within the EU”.<sup>69</sup>

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<sup>56</sup> Q 54, Q 58

<sup>57</sup> Q 57

<sup>58</sup> Q 65

<sup>59</sup> Europol

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

<sup>62</sup> Q 75

<sup>63</sup> *Ibid.*

<sup>64</sup> Q 67

<sup>65</sup> Q 78, Q 82

<sup>66</sup> Scottish Government, NI Executive

<sup>67</sup> Q 57, Q 71

<sup>68</sup> Europol

<sup>69</sup> Q 55

*Information management*

36. Another tool for law enforcement work would be the modernisation of EU intelligence sharing structures and information management architecture. Europol recommended “a revitalised approach towards ensuring effective trans-border exchange of information on security, building on the Commission’s European Information Exchange Model”.<sup>70</sup> Rob Wainwright said that “data sharing is the oil in the engine that in the end will make this work to fight organised crime better at an international level”.<sup>71</sup> Charlie McMurdie agreed that information-sharing was key to the fight against crime,<sup>72</sup> as did Sir Hugh Orde who said: “the more we can get agreement on sharing ... intelligence and information more quickly, perhaps through a central hub rather than ... through bilateral agreements, the more the power of law enforcement is enhanced substantially”.<sup>73</sup>
37. Europol also argued for further efforts “to ensure synergy between the internal and external aspects of security” especially as the European External Action Service (EEAS) did not exist when the Stockholm Programme was adopted. It recommended a framework to facilitate a “technical security dialogue” on common threats between EU security actors, including EU agencies and third countries, in particular as regards organised crime”.<sup>74</sup> Keith Bristow and Sir Hugh Orde agreed that such a structure would be beneficial.<sup>75</sup>

**Criminal and civil justice**

38. The political priorities of the Stockholm Programme included promoting citizenship and fundamental rights, and a “Europe of law and justice”. It recommended, in particular:
- a proposal on the accession of the Union to the European Convention for Protection of Human Rights and Fundamental Freedoms as a matter of urgency;
  - consistency with fundamental rights to be achieved in all initiatives;
  - adoption of the Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings;
  - an examination by the Commission, and appropriate proposals, to ensure the transparency of decision making, access to documents and good administration of justice in the light of the new opportunities provided by the Lisbon Treaty;
  - furthering the implementation of mutual recognition, including by replacing the European Evidence Warrant;
  - strengthening mutual trust, through strengthened training, the development of networks of senior officials and sharing of best practice;

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<sup>70</sup> Europol

<sup>71</sup> Q 72

<sup>72</sup> Q 75

<sup>73</sup> Q 57

<sup>74</sup> Europol

<sup>75</sup> Q 63, Q 64

- developing a core of common and coherent minimum rules, including in respect of civil procedural law affecting cross border cases;
- easier access to justice in the European judicial area, particularly in cross-border proceedings to the benefit of citizens, including new legislation facilitating enforcement of judgments against debtor's bank accounts and other assets, new legislation on contract law, and possible measures on company law and insolvency of banks;<sup>76</sup>
- increasing the Union's international presence in the legal field;<sup>77</sup> and
- proposals for protection against serious and organised crime, including combating human trafficking, the protection of victims of crime and combating the sexual abuse of children, and the criminal enforcement of intellectual property rights.<sup>78</sup>

### *Procedural rights*

39. The adoption of measures from the procedural rights Roadmap for the protection of those suspected or accused of having committed a criminal offence was a significant development during the period covered by the programme. That Roadmap sought five legislative measures, concerning: the right to interpretation and translation; the right to information about rights and charges; the right to legal advice, before and at trial, and to legal aid; the right for a detained person to communicate with family members, employers and consular authorities; and the right to protection for vulnerable suspects. The Roadmap also recommended a Green Paper on pre-trial detention.<sup>79</sup>
40. A Directive on interpretation and translation was adopted in October 2010,<sup>80</sup> a Directive on the right to information in criminal proceedings was adopted in May 2012,<sup>81</sup> and a Directive to ensure that minimum standards on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest are applied throughout the participating EU Member States was adopted in October 2013.<sup>82</sup> The requested Green Paper was published in June 2011.<sup>83</sup>
41. In November 2013, the Commission brought forward a package of proposals on procedural rights concerning: the presumption of innocence and the right to be present at trial;<sup>84</sup> special safeguards for children and another on

<sup>76</sup> The proposed legislation on contract law is referred to as "a proposal on a common frame of reference".

<sup>77</sup> For example, developing a policy aimed at the establishment of agreements on international judicial cooperation with third countries of interest or within international organisations.

<sup>78</sup> *The Stockholm Programme, Op. Cit.*

<sup>79</sup> *Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*

<sup>80</sup> Directive 2010/64

<sup>81</sup> Directive 2012/13

<sup>82</sup> Directive 2013/48. This includes the right to communicate with a relative during the deprivation of liberty but only a right to have employers and consular authorities informed of an arrest.

<sup>83</sup> European Commission press release concerning the publication of that Green Paper is available from the Commission's website at [http://ec.europa.eu/justice/newsroom/criminal/opinion/110614\\_en.htm](http://ec.europa.eu/justice/newsroom/criminal/opinion/110614_en.htm)

<sup>84</sup> COM (2013) 821, *Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings*. The Stockholm Programme called upon the Commission to "examine further elements of minimum procedural rights for suspected and accused persons, and to assess whether other issues, for instance the presumption of innocence, needs to be addressed, to promote better cooperation in this area."

vulnerable persons suspected and accused in criminal proceedings;<sup>85</sup> and access to legal aid.<sup>86</sup> These measures have received considerable attention, and not all have been welcomed by certain national parliaments. The Roadmap envisaged a single proposal addressing all vulnerable criminal suspects but binding legislation has only been brought forward addressing vulnerable child suspects; an accompanying non-binding Recommendation addresses all vulnerable criminal suspects. Similarly, under the Roadmap, the proposal governing access to legal aid was foreseen as part of the proposal governing access to a lawyer but these matters were split into separate proposals. The Law Society of England and Wales took the view that “while the Commission may have decided to issue proposals in this field in any case, the Stockholm Programme encouraged work on the Roadmap as a priority issue, indicating that such proposals from the Commission would be welcomed by the Council”.<sup>87</sup>

### *Training*

42. The programme recommended increased training for judges, prosecutors and other judicial staff, as provided for by Articles 81 and 82 of the TFEU, in order to strengthen mutual trust. The Commission brought forward a Communication on such training in 2011, recognising the need for greater training through resources at local, national and EU level, and set itself a target of providing training to half of all legal practitioners in the EU by 2020.<sup>88</sup> This included arranging exchanges, making better use of technology and building on existing training. When this Communication was originally considered by this Committee, we supported the development of judicial training which respected the role of the Member States and the independence of the judiciary, but were sceptical that the objectives set out in the Communication could be achieved under existing financial arrangements.<sup>89</sup> The Law Society of England and Wales welcomed these efforts to improve training, commenting that “by participating in pan-EU training events English lawyers/judges are often able to explain and present the common law perspective on issues, thereby developing a greater understanding and awareness of our system in continental (civil law) Europe”.<sup>90</sup>

### *Victims package*

43. The Scottish Government judged that the Stockholm Programme, and previous programmes, had “led to considerable benefit for our citizens across a range of areas, from closer cooperation in combating organised crime, to better recognition of judgements in civil and commercial law”. It viewed the

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<sup>85</sup> COM (2013) 822, *Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings* proposed a directive in respect of children; C (2013) 8178 proposed a Recommendation concerning other vulnerable persons.

<sup>86</sup> COM (2013) 824, *Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings* proposed a Directive on the provision of legal aid and C (2013) 8179 proposed a Recommendation.

<sup>87</sup> The Law Society of England and Wales

<sup>88</sup> COM (2011) 551, *Building Trust in EU-Wide Justice: A New Dimension to European Judicial Training*

<sup>89</sup> Letters of 21 October 2011 and 24 November 2011 available from the correspondence with Ministers volume on our website.

<sup>90</sup> The Law Society of England and Wales

victims package, three pieces of legislation covering: minimum standards on the rights, support and protection of victims of crime; mutual recognition of protection measures in civil matters; and a protection order, as a key success of the programme.<sup>91</sup>

### *Accession to the European Convention on Human Rights*

44. Article 6(2) of the Treaty on European Union provides that the EU “shall accede” to the European Convention on Human Rights. Accession to the Convention was a goal of the Stockholm Programme<sup>92</sup> and significant progress has been made towards it. The Council of Ministers agreed a mandate for negotiations with the Council of Europe in June 2010, and the terms of an Accession Agreement have been provisionally agreed between the EU and the states of the Council of Europe. This has been referred to the Court of Justice for a formal opinion on its compatibility with the EU Treaties. Completion of the process of accession will require the unanimous agreement between the EU and the state parties to the Convention, as well as the consent of the European Parliament.

### *Recast Brussels I Regulation*

45. The programme recommended assessment of the safeguards needed to abolish intermediate formalities inhibiting the cross-border recognition and enforcement of civil judgments,<sup>93</sup> and an assessment of the scope for consolidation and simplification of EU civil law legislation in order to improve its consistency.<sup>94</sup> A proposal to recast the “Brussels I” Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was brought forward in 2010.<sup>95</sup> The objective of that Regulation was to make the enforcement of judgments in civil and commercial matters easier and faster within the Union. It was adopted in December 2012<sup>96</sup> and is another key achievement during the period covered by the Stockholm Programme.

### *Eurojust*

46. The programme emphasised the need to strengthen Eurojust in accordance with a 2009 Council Decision and the provisions of the Lisbon Treaty.<sup>97</sup> The programme identified “an opportunity for the further development of Eurojust in the coming years, including in relation to initiation of investigations and resolving conflicts of competence”, and consideration of possible future action such as giving additional powers to the Eurojust national members, reinforcement of the powers of the College of Eurojust and the establishment of a European Public Prosecutor.<sup>98</sup> In July 2013, the

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<sup>91</sup> Scottish Government

<sup>92</sup> *The Stockholm Programme, Op. Cit.*

<sup>93</sup> Such formalities are known as *exequatur*.

<sup>94</sup> *The Stockholm Programme, Op. Cit.*

<sup>95</sup> COM (2010) 748, *Proposal for a Regulation of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast)*

<sup>96</sup> Regulation 1215/2012

<sup>97</sup> Council Decision 2009/426/JHA, Article 85 TFEU

<sup>98</sup> *The Stockholm Programme, Op. Cit.*

Commission brought forward proposals concerning the establishment of a European Public Prosecutor's Office (EPPO),<sup>99</sup> and to reform and strengthen Eurojust.<sup>100</sup> We supported the reform and strengthening of Eurojust and recommended that the Government should opt-in to the proposal;<sup>101</sup> they did not. We did not support the EPPO proposal and produced a Reasoned Opinion setting out our concern that it did not comply with the principle of subsidiarity.<sup>102</sup> The Commission's initial response to the yellow card which was triggered by the 14 Reasoned Opinions from chambers of National Parliaments was hasty and dismissive. We do not consider it to have been an adequate or appropriate reaction to the widely shared concerns of many National Parliaments.<sup>103</sup>

### *E-justice*

47. The programme recommended further efforts in "e-justice" to increase confidence in the European area of justice among citizens.<sup>104</sup> A multi-annual e-justice action plan had been agreed prior to the programme's term. An e-justice portal was launched in June 2010 containing information on individual Member States' judicial systems and European procedures. The action plan recommended work to improve interoperability of justice systems, increased use of videoconferencing and greater availability of translation resources.<sup>105</sup> We have supported such efforts. In November 2013, the Council agreed a European e-justice strategy to further improve access to information for EU citizens and proposed that a new action plan would be developed in the first half of 2014.<sup>106</sup> The Government considered that work in this area had "gained momentum" since 2008. Other developments included the European Criminal Records Information System which became operational in 2012, to improve exchange of criminal record information between Member States. The Commission has also brought forward a proposal to extend the European small claims procedure, which includes provisions to extend the electronic service of documents and other electronic communications.<sup>107</sup> Further development of e-justice remains a Commission priority but it is clear that there has been considerable progress during the period covered by the Stockholm Programme.

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<sup>99</sup> COM (2013) 534, *Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office*

<sup>100</sup> COM (2013) 535, *Proposal for a Regulation on the European Union Agency for Criminal Justice Cooperation (Eurojust)*. The Stockholm Programme envisaged that on the basis of a thorough assessment of the working of the existing Eurojust Decision (2009/426) the possibility of strengthening Eurojust or the creation of an EPPO could be considered.

<sup>101</sup> European Union Committee, *The Eurojust Regulation: should the UK Opt-In?* (4th Report, Session 2013–14, HL Paper 66)

<sup>102</sup> European Union Committee, *Subsidiarity Assessment: The European Public Prosecutor's Office* (3rd Report, Session 2013–14, HL Paper 65)

<sup>103</sup> For further analysis see: European Union Committee, *The Role of National Parliaments in the European Union* (9th Report, Session 2013–14, HL Paper 151)

<sup>104</sup> *The Stockholm Programme, Op. Cit.*

<sup>105</sup> European Council, *European e-justice action plan*, 2008

<sup>106</sup> European Council, *Draft Strategy on European e-justice 2014–2018*, 2013

<sup>107</sup> COM (2013) 794, *Proposal for a Regulation amending Regulation (EC) No.861/2007 of the European Parliament and the Council of 11 July 2007 establishing a European Small Claims Procedure and Regulation (EC) No.1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure*



*Other measures*

48. Legislation has also been adopted on the following matters for which proposals were requested in the programme:
- the support for and protection of victims of crime;<sup>108</sup>
  - combating sexual abuse, sexual exploitation of children and child pornography.<sup>109</sup>
49. Finally, in a number of other areas, the programme envisaged measures which have been brought forward by the Commission but have not (at the time of writing) completed their journey through the legislative process:
- In response to the request for a proposal relating to contract law, the Commission has tabled a proposal for a common European sales law which would be available as an option in certain cross-border transactions.<sup>110</sup>
  - The Commission published its proposal for access to documents in April 2008.<sup>111</sup> Progress has since stalled.
  - In response to the request for an assessment of the need for protective measures to prevent the disappearance of assets before the enforcement of a claim, and for a proposal to improve the efficiency of enforcement of judgments in the Union regarding bank accounts, the Commission has made a proposal for a European Account Preservation Order.<sup>112</sup>

*Areas requiring further action**Exchange of criminal records*

50. The UK and Scottish Governments wanted to see action to improve the exchange of criminal records between Member States.<sup>113</sup> Sir Hugh Orde said that there had been considerable improvement in such exchanges over recent years, although he had heard concerns about the level of detail of information that could be made available at speed.<sup>114</sup> In their Command Paper concerning the UK's block opt-out, the Government said that the European Criminal Records Information System "allowed much more information to be obtained on EU offenders in the UK and on UK nationals convicted elsewhere in the EU" which had "allowed the police to build a fuller picture of offending by UK nationals and allowed the courts to be aware of the previous offending of EU nationals being prosecuted".<sup>115</sup>

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<sup>108</sup> Directive 2012/29. The option would be exercisable for cross-border contracts for the sale of goods, supply of digital content and the provision of related services.

<sup>109</sup> Directive 2011/92

<sup>110</sup> COM (2011) 635, *Proposal for a Regulation on a Common European Sales Law*

<sup>111</sup> COM (2008) 229, *Proposal for a Regulation regarding public access to European Parliament, Council and Commission documents*

<sup>112</sup> COM (2011) 445, *Proposal for a Regulation creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters*

<sup>113</sup> UK Government, Scottish Government

<sup>114</sup> Q 68

<sup>115</sup> HM Government: Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union, 9 July 2013 (Cm 8671)

### *European Arrest Warrant*

51. A review of the European Arrest Warrant (EAW) was recommended by Fair Trials International, Professor Steve Peers, University of Essex, Professor Spencer and the Bar Council of England and Wales.<sup>116</sup> Fair Trials International also called for EU-wide safeguards to prevent abuse of the EAW and to protect defence rights within its operation.<sup>117</sup>

### *Cross border proceedings and e-justice*

52. The Law Society of England and Wales identified a need to reduce time to serve proceedings and other legal documents on defendants domiciled in other Member States.<sup>118</sup> Similarly, the Bar Council of England and Wales wanted to see the quality of cross-border proceedings enhanced.<sup>119</sup> More work on e-justice was needed: Mike Kennedy called for efforts to improve the quality and admissibility of electronic evidence;<sup>120</sup> Sarah Garvey, a solicitor at Allen and Overy and member of the Law Society of England and Wales' EU Committee, wanted better organisation of and access to judgments made in other Member States;<sup>121</sup> and the Bar Council of England and Wales recommended "continuing investment and expansion".<sup>122</sup>

### *Other areas*

53. Ratification of the Hague Convention on Choice of Court Agreements 2005, which aims to ensure the effectiveness of choice of court agreements between parties to international commercial transactions, was supported by the Law Society of England and Wales and the Bar Council of England and Wales.<sup>123</sup> Professor Peers, Fair Trials International and Professor Spencer thought that pre-trial detention should receive further attention.<sup>124</sup> Professor Spencer wanted further action in the area of EU defence rights, as did the Bar Council of England and Wales.<sup>125</sup> Finally, we heard broad support for the completion of the Roadmap to improve procedural rights in criminal proceedings.<sup>126</sup>

## **Drugs**

54. The Stockholm Programme recommended a new EU drugs strategy to follow the 2005–2012 strategy which reflected the evaluation of that strategy's action plan. The programme said that the strategy should promote improved: coordination and cooperation, particularly with particular third

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<sup>116</sup> Fair Trials International, QQ 9-10, The Bar Council of England and Wales

<sup>117</sup> Fair Trials International

<sup>118</sup> Q 22, The Law Society of England and Wales

<sup>119</sup> The Bar Council of England and Wales

<sup>120</sup> Q 20

<sup>121</sup> Q 27

<sup>122</sup> The Bar Council of England and Wales

<sup>123</sup> The Law Society of England and Wales, The Bar Council of England and Wales. The Commission has now made a proposal for EU ratification, COM (2014) 46, *A European Strategy for more Growth and Jobs in Coastal and Maritime Tourism*

<sup>124</sup> Fair Trials International, QQ 9-10

<sup>125</sup> Q 9

<sup>126</sup> The Law Society of Scotland, Law Society for England and Wales, the Meijers Committee



counties and regions; mobilisation of civil society; and further research and data collection.<sup>127</sup> In our 2012 Report, *The EU Drugs Strategy*, we recommended that any future strategy should focus on: the need for collection, analysis and distribution of information among Member States; the importance of the role of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA); coordinating the fight against drug trafficking, in particular by legislating against money laundering and cooperating through Europol; and the use of the EU's public health obligations to further the inclusion of harm reduction measures in the national policies of Member States. We also recommended that any future strategy should have more tangible and precise goals than reducing the demand and supply of drugs.<sup>128</sup>

55. A new strategy was agreed in 2012 to cover the period 2013–20. We were pleased to see a focus on: improving data; the work of the EMCDDA; coordination and cooperation; consultation and collaboration with a broad group of partners; and fighting drug-trafficking through work to address money laundering and proceeds of crime.<sup>129</sup> In addition, during the period of the Stockholm Programme, a new Regulation was agreed concerning drug precursors to control trade between EU and non-EU countries of certain medicinal products,<sup>130</sup> and action plans to address strategic non-EU regions' handling of drugs were agreed.<sup>131</sup> A proposal was brought forward concerning regulation of new psychoactive substances (whilst we disagreed with a specific proposal to transfer decision-making power from Member States we agreed with the need for further EU-level action to address the problem of "legal highs").<sup>132</sup> The Stockholm Programme played a role in ensuring continued attention was paid to EU action to address illegal drugs.

### Asylum and migration

56. The political priorities of the Stockholm Programme included: access to Europe in a globalised world; a Europe of responsibility; and solidarity and partnership in migration and asylum matters. In particular, the programme called for:
  - integrated management of the external borders;
  - further developing the common visa policy;
  - establishment of a Common European Asylum System (CEAS) by 2012 to remain a key policy objective for the Union;
  - a common area of protection and solidarity in relation to asylum; and
  - a dynamic and comprehensive migration policy covering:

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<sup>127</sup> *The Stockholm Programme, Op. Cit.*

<sup>128</sup> European Union Committee, *The EU Drugs Strategy* (26th Report, Session 2010–12, HL Paper 270)

<sup>129</sup> European Council, *EU Drugs Strategy 2013–20*, 2012

<sup>130</sup> Commission Regulation (EU) No 225/2011 of 7 March 2011 amending Commission Regulation (EC) No 1277/2005 laying down implementing rules for Regulation (EC) No 273/2004 of the European Parliament and of the Council on drug precursors and for Council Regulation (EC) No 111/2005 laying down rules for the monitoring of trade between the Community and third countries in drug precursors

<sup>131</sup> For example, *European Council: EU-Central Asia Action Plan on Drugs (2014–2020)*, 2013

<sup>132</sup> European Union Committee, *Subsidiarity Assessment: New Psychoactive Substances* (6th Report, Session 2013–14, HL Paper 73)

- i. consolidation, development and implementation of the Global Approach to Migration (GAMM),
  - ii. migration and development,
  - iii. concerted policy in keeping with national labour-market requirements,
  - iv. proactive policies for migrants and their rights,
  - v. integration,
  - vi. effective policies to combat illegal immigration, and
  - vii. protecting unaccompanied minors.
57. It also emphasised the importance of the external dimension of the EU's policy in the AFSJ and underlined the need for the increased integration of these policies into the general policies of the EU.<sup>133</sup>
58. We considered many of these topics in our report *The EU's Global Approach to Migration and Mobility*<sup>134</sup>.

#### *Legal migration*

59. On legal migration, the Commission put forward proposals for Directives on the movement of seasonal workers, intra-company transfers, and admission of students and researchers.<sup>135</sup>

#### *European Asylum Support Office*

60. The European Asylum Support Office (EASO) became operational in June 2011 with its headquarters in Valletta, Malta, and is intended to help improve the implementation of the CEAS and strengthen practical cooperation among Member States.

#### *Refugees, asylum, readmission*

61. The European Parliament and the Council adopted the Joint EU Resettlement Programme in March 2012. The Programme aims to help EU Member States, on a voluntary and flexible basis, to find sustainable solutions for refugees. The EU has also sought to address the causes of migration and asylum-seeking outside its borders. It prolonged two existing Regional Protection Programmes in Eastern Europe and in Tanzania, and created two new programmes in 2010, one in the Horn of Africa (including

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<sup>133</sup> *The Stockholm Programme, Op. Cit.*

<sup>134</sup> European Union Committee, *The Global Approach to Migration (GAMM)* (8th Report, Session 2012–13, HL Paper 91)

<sup>135</sup> COM (2010) 378, *Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer*

COM (2010) 379, *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment*

COM (2013) 151, *Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing*

Kenya, Yemen and Djibouti), the other in Eastern North Africa (Egypt, Libya and Tunisia).<sup>136</sup> In December 2013, the Commission announced a Regional Development and Protection Programme for refugees and host communities in Lebanon, Jordan and Iraq, as part of its long-term development response to the Syrian refugee crisis. The Commission has also concluded a series of Readmission Agreements with Georgia, Turkey, Cape Verde, Armenia and Pakistan to facilitate the return of illegal immigrants to the EU from those countries.<sup>137</sup>

62. We heard different views from witnesses on the success of the Stockholm Programme in the areas of asylum and migration. Juan Fernando López Aguilar, Chairman of the European Parliament's Committee on Civil Liberty, Justice and Home Affairs (LIBE), argued that the Schengen and asylum packages had been successfully "Lisbonised"<sup>138</sup> during the Stockholm period, and that the next JHA programme would see the European Parliament playing a much more prominent role.<sup>139</sup> Elizabeth Collett, Director, Migration Policy Institute Europe, said that the economic crisis and the hardening political opinion towards immigration in many Member States, as well as the political instability in the Middle East and Northern Africa, had hampered the EU's progress in this area.<sup>140</sup> Director-General Manservigi agreed, and said that he believed that the EU did not have a common European migration policy; what it actually had was a set of instruments to deal with migration and asylum.<sup>141</sup>

*Dublin Regulations and solidarity in management of asylum-seekers*

63. Among the key developments in the area of asylum policy was the entry into force of the Dublin III Regulation in July 2013.<sup>142</sup> The new Regulation provides enhanced safeguards for asylum seekers, as well as greater clarity for Member States and EU agencies about their responsibilities. The agreement of the Regulation has become associated with the "completion" of the CEAS.
64. Elizabeth Collett and Director-General Manservigi said that the EU's asylum systems function on the basis of mutual trust, and that this trust had been placed under strain by the levels of immigration to the Southern Member States.<sup>143</sup> Central and Eastern Member States were also experiencing the challenges posed by immigration and integration of asylum seekers for the first time. For example, Bulgaria received 8,800 applications for asylum in 2013, which was far in excess of anything previously experienced.<sup>144</sup>

<sup>136</sup> Regional Protection Programmes are designed to enhance the capacity of non-EU countries in regions where many refugees originate or pass through in transit. They aim to improve refugee protection through EU financed practical actions, such as training on protection issues for those working with refugees.

<sup>137</sup> At the time of writing, the EU was negotiating a Readmission Agreement with Azerbaijan.

<sup>138</sup> "Lisbonise" is Brussels terminology for the repeal and replacement of former third pillar JHA legislation thereby bringing it within the full scope of the EU legal framework.

<sup>139</sup> Q 145, Q 148

<sup>140</sup> QQ 31–32, Migration Policy Institute Europe

<sup>141</sup> Q 105

<sup>142</sup> The Dublin III Regulation is based on the same principles as the previous two, namely that it is the first Member State that should be responsible for examining a person's asylum application.

<sup>143</sup> Q 38, Q 105, Q 108

<sup>144</sup> Q 33, Q 123

Elizabeth Collett and the Government said that there had been a regionalisation of opinion amongst Member States on the issue of migration in recent years. They pointed to a bloc of Northern European Member States arguing in favour of technical and financial support, and a bloc of Southern Mediterranean Member States arguing in favour of greater relocation and redistribution of asylum seekers, and more in-depth mechanisms for sharing burdens.<sup>145</sup> Given this difference of opinion, both Dr Philippe De Bruycker, Chair for European Law on Immigration and Asylum, European University Institute, and Juan Fernando López Aguilar argued that the debate on the management of asylum seekers in the EU “needed to be opened seriously”.<sup>146</sup> This suggests that solidarity has not been achieved; however, the Dublin Regulations have been useful steps towards a system within the common area.

### *Areas requiring further action*

#### *Focus on implementation, not on legislation*

65. There was a consensus among witnesses that further legislation on migration and asylum was not required. Elizabeth Collett and Professor Guild said that any future legislative proposals would require a very concrete goal if they were to be successfully negotiated, and that now was a time for consolidation and operationalisation of existing legislation and agencies.<sup>147</sup> The European Asylum Support Office (EASO) called for a focus on ensuring coherent and effective implementation of the CEAS. Within that, it argued for a greater role for itself in providing training to national agencies, coordinating joint fact finding missions, and providing evidence to the policy debate on implementing the EU *acquis*.<sup>148</sup> The Meijers Committee, Professor Guild and Dr De Bruycker argued that the completion of the EU Immigration Code could be helpful, but was not necessarily a priority matter.<sup>149</sup>
66. The Government were also very much in favour of consolidation of existing legislation rather than the development of new legislation.<sup>150</sup> Should new legislation be required, however, the Immigration Law Practitioners' Association (ILPA) felt that there was no role for the UK in determining its shape, or future actions in this area, given its “increasingly distant relationship” with the AFSJ.<sup>151</sup>

#### *A more holistic approach to migration*

67. Some witnesses spoke about the need for EU policy to take a more holistic and open-minded approach to migration because of demographic pressures. Dr Peter van Krieken, Professor of international law, human rights, refugees

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<sup>145</sup> Q 37, Q 173

<sup>146</sup> Q47, Q 148

<sup>147</sup> Q 10, Q 37

<sup>148</sup> The European Asylum Support Office (EASO)

<sup>149</sup> The Meijers Committee, Q 9, Q 47

<sup>150</sup> UK Government

<sup>151</sup> ILPA

and migration, Hague University and Webster, and Elizabeth Collett argued that the GAMM agenda of shoring up relationships with third countries would need to be broadened properly to integrate immigration policy with other policy portfolios, not least trade, education, agriculture and development. They argued that this type of system might help to mitigate the negative effects of “brain drain”.<sup>152</sup> Mobility partnerships had been a useful innovation in this regard, but would need to be embedded in broader dialogue in future.<sup>153</sup>

68. Morten Messerschmidt MEP argued against moving towards a “fair” redistribution of migrants and asylum seekers.<sup>154</sup> Likewise, the Government insisted that Member States should have the final say over the numbers of migrants and asylum seekers that they allowed to enter their territories.<sup>155</sup>

#### *Transfer of international protection*

69. The Meijers Committee recommended creating a framework for the transfer of beneficiaries of international protection when exercising their acquired residence rights under Union law.<sup>156</sup> Dr De Bruycker agreed that this should be possible, and that it was already provided for in EU legislation.<sup>157</sup> Elizabeth Collett said that such a system would be a logical conclusion of the implementation of the CEAS, and that the EU could play a greater role globally on giving protection to people in their country or place of origin and not focus specifically on numbers arriving in the EU, but the practical and political implications of doing that made it unlikely to happen.<sup>158</sup>

#### *European External Action Service*

70. Dr Pascouau and Elizabeth Collett said that the Commission and Member States should think about how the EEAS could be used to provide real-time information to Member States and to help in practice.<sup>159</sup> Elizabeth Collett suggested that an official mandate for the EEAS on migration issues in the next programme might help the organisation “find their feet in this particular regard.”<sup>160</sup>

### **Civil protection and disaster relief**

71. The Stockholm Programme identified natural and man-made disasters, such as forest fires, floods, and terrorist attacks, as threats to the safety and security of EU citizens. It therefore set out two main principles for disaster management in the EU: first, it acknowledged that each Member State is

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<sup>152</sup> Q 45, Q 50, Q 123, Q 135

<sup>153</sup> Q 43-44

<sup>154</sup> Q 159

<sup>155</sup> Q 173

<sup>156</sup> The Meijers Committee

<sup>157</sup> Q 47

<sup>158</sup> Q 38, Q 41

<sup>159</sup> Q 45, Q 131

<sup>160</sup> Q 45

responsible for preventing, preparing for and responding to the disasters occurring in its own territory; and secondly, when disasters overwhelm the response capacity of any country, including the strongest and richest, Member States should assist each other in overcoming the consequences.

72. Specifically, the Stockholm Programme called for:

- reinforcement of the Monitoring and Information Centre (MIC) to improve the coordination of Member States' assistance, to provide mapping and analytical support to the Member States for the further identification and registration of national and multinational civil protection teams, and to develop training and exercises in order to contribute to an efficient Union disaster response;
- the implementation of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European Critical Infrastructures, and regular reviews of its effectiveness thereafter;
- the implementation of the EU chemical, biological, radiological and nuclear Action Plan; and
- close cooperation with the UN and other international organisations in this area.<sup>161</sup>

Box 2 (below) provides further information about the EU Civil Protection Mechanism, Emergency Response Coordination Centre, and European Emergency Response Capacity.

## **BOX 2**

### **EU Civil Protection Mechanism, Emergency Response Coordination Centre, and European Emergency Response Capacity**

The EU first established a Civil Protection Mechanism in 2001 to facilitate cooperation in civil protection interventions in the event of major emergencies. Its membership comprises all the EU Member States, as well as the Former Yugoslav Republic of Macedonia, Iceland, Liechtenstein and Norway. Since its creation, the Mechanism has been activated more than 180 times to respond to disasters both within and outside the EU. It was activated, for example, to assist in extinguishing forest fires in Greece in 2012 and in response to typhoon Haiyan in the Philippines in 2013.

Article 222 of the TFEU introduced a “Solidarity Clause”, which obliges the EU and the Member States to assist each other should a Member State be attacked by terrorists or experience a natural or man-made disaster.<sup>162</sup> Affected Member States would not be obliged to seek or accept assistance, it would only be made available if they requested it. A Declaration agreed at the same time as the Solidarity Clause made it clear that Member States should continue to determine for themselves the most appropriate means of responding to a request for assistance.<sup>163</sup>

<sup>161</sup> *The Stockholm Programme, Op. Cit.*

<sup>162</sup> The Solidarity Clause was considered in the Committee's report on *The EU Internal Security Strategy* (17th Report, Session 2010–12, HL Paper 149).

<sup>163</sup> Declaration 37, TFEU



In the light of the Solidarity Clause, the Council and the European Parliament adopted a Decision in December 2013 to cover the financing and operational arrangements for the EU's Civil Protection Mechanism for the period 2014–2020<sup>164</sup>. The Commission opened the Emergency Response Coordination Centre (ERCC) on 15 May 2013 to serve as the main operational tool of the Mechanism.<sup>165</sup> It replaced and built on the experience of the MIC, and acts as a “one-stop-shop” providing an overview of the available civil protection assets and as a communication hub between the participating states, the affected country and dispatched field experts. Any country inside or outside the EU affected by a major disaster can make an appeal for assistance through the ERCC. In response, the ERCC matches offers of Member State assistance to a disaster-hit country. It is staffed by seconded national experts, European Commission officials, and staff from a contract provider.

The Council Decision of December 2013 also foresaw the creation of a European Emergency Response Capacity (EERC)—a voluntary pool of pre-committed response assets from Member States. Member States would retain command of any resources they commit to the pool. At the time of writing, this is still being established.

73. The Government considered that the objectives of the Stockholm Programme in this area had broadly been achieved. Individual measures had either been completed as a result of the programme or were now enabled by the new Civil Protection Mechanism.<sup>166</sup>

#### *Greater international engagement*

74. The EU's cooperation with the United Nations (UN) has become stronger in recent years following responsibility for civil protection within the European Commission being moved from the Directorate-General for Environment to the Directorate-General for Humanitarian Aid and Civil Protection, which already had close connections with the UN.<sup>167</sup> The EU has allowed the UN to request civil protection assistance from EU Member States through the Civil Protection Mechanism, which it did in response to the situation in the South Sudan. The EU has also maintained close links with the North Atlantic Treaty Organisation (NATO), although the EU has not made any direct request for NATO assistance in recent years, and it is less likely to do so in future as EU Member States develop closer military cooperation.<sup>168</sup>
75. The EU's regional programmes with candidate and neighbouring countries in the south and the east, such as the operational programme South East Europe and the Instrument for Pre-accession Assistance, as well as its cooperation arrangements with Russia, the Federal Emergency Management Agency (FEMA) in the United States, Australia, Ukraine, and the Republic of Moldova were also key outcomes of the Stockholm Programme. The EU

<sup>164</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism

<sup>165</sup> Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism

<sup>166</sup> Supplementary written evidence from the Government

<sup>167</sup> Q 87

<sup>168</sup> Q 99

seeks to collaborate with Asian countries through the Association of Southeast Asian Nationals (ASEAN) Regional Forum, and also has close links with the International Federation of Red Cross and Red Crescent Societies.<sup>169</sup>

76. Hans Das, Head of the Civil Protection Policy Unit, European Commission, said that there had been very clear improvements over the past few years in the coordination of relief efforts between non-governmental organisation, governments, and military authorities. However, large tragedies, such as the earthquake in Haiti in January 2010 would always be challenging and there was still room for improvement.<sup>170</sup>
77. During the period of the Stockholm Programme, the EU organised approximately 50 training courses annually for civil protection experts. The Government said that the UK's urban search and rescue services had benefitted from these EU training opportunities.<sup>171</sup> David Powell, Head of Emergency Planning, Lincolnshire County Council, said that the specialised training packages provided by the EU were helpful in clarifying to the Lincolnshire authorities what standards they required for flood rescue, for example, what a boat rescue team would look like, and what kind of equipment would be needed. He also said that an EU-funded professional visit to France to review its operation that dealt with the effects of the coastal storm Xynthia in 2010 helped to inform Lincolnshire County Council's response to recent flooding.<sup>172</sup>

#### *Greater financial provision*

78. The Multiannual Financial Framework (MFF) allocated €368 million for the period 2014–2020 for civil protection and disaster management activities, which was divided into approximately €223 million for activities inside the EU, and €144 million for activities outside the EU. This was a significant increase compared to funding allocated under the previous MFF. Both the Commission and the Government said that the Council Decision agreed in December 2013 “gives us all the basic tools to develop further European cooperation”<sup>173</sup> and that the funding allocated in the MFF was appropriate for the actions set out in the Council Decision.<sup>174</sup>

#### *Areas requiring further action*

79. Hans Das said that adoption by the Council of pending legislation was required to implement the Solidarity Clause. Aside from that, he thought the priority should be to “seek efficiency gains through proper implementation, for example, getting Member States to complete disaster prevention and risk assessments, and to participate in peer reviews”; and to achieve “a very strong international framework to guide and support these efforts at global level”. Both the Government and the Commission said that the UN Hyogo

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<sup>169</sup> Q 87, supplementary written evidence from the Government

<sup>170</sup> Q 88

<sup>171</sup> Supplementary written evidence from the Government

<sup>172</sup> QQ 88–89

<sup>173</sup> Q 100, supplementary written evidence from the Government

<sup>174</sup> Q 94, supplementary written evidence from the Government



Framework for Action<sup>175</sup> had been instrumental in that respect, but that the EU needed to take a leading role in ensuring that the successor to that framework would be robust and ambitious.<sup>176</sup>

#### *Sharing best practice*

80. Witnesses agreed on the value of sharing good practice. Simon Lewis, Head of Emergency Planning and Response, Red Cross, said that while the UK's civil protection arrangements were among the best in the world, the same could not be said for other countries in Europe. He considered that the legislation and guidance enacted as a result of the Stockholm Programme was vital to those Member States which experienced real challenges with civil protection.<sup>177</sup>
81. The UK could also learn from other EU Member States about mass evacuation recovery and community resilience. Simon Lewis argued that there was particular room for improvement in attending to the humanitarian needs of people made homeless by flooding.<sup>178</sup>

#### *Private and voluntary sector collaboration*

82. The British Red Cross highlighted examples of its effective private sector collaboration with Tesco and Land Rover. These examples showed how civil society organisations, the private sector and public authorities could share storage and distribution facilities to maximise the effectiveness of responses to a disaster.<sup>179</sup> The Government pointed to the establishment of a Voluntary Sector Civil Protection Forum (VSCPF) in the UK as proof of civil society engagement, but David Powell said the UK could learn from other countries' systems of incorporating volunteer organisations into official responses, for example, FEMA in the US, and Das Technisches Hilfswerk (THW)<sup>180</sup> in Germany.<sup>181</sup>

#### *Research and Innovation*

83. David Powell considered that the next programme should recommend the translation of findings from high level research into flood and sea defence management, weather forecasting and risk reduction, into practical and operational applications that could be used "on the ground".<sup>182</sup> Simon Lewis said that joint exercising was of considerable importance and that the operability of different communications systems in times of disasters merited further research and practice.<sup>183</sup>

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<sup>175</sup> A 10-year plan to build the resilience of nations and communities to disasters.

<sup>176</sup> Q 100, supplementary written evidence from the Government

<sup>177</sup> Q 87

<sup>178</sup> Q 95

<sup>179</sup> Q 98

<sup>180</sup> The THW comprises over 80,000 volunteers whose actions are organised by the German Ministry of the Interior. It provides a range of emergency services to those in need.

<sup>181</sup> Q 98

<sup>182</sup> Q 89

<sup>183</sup> Q 91, Q 101

84. **A number of significant developments in the area of freedom, security and justice were recommended by the Stockholm Programme, including:**
- **the internal security strategy;**
  - **increased use of Joint Investigations Teams;**
  - **action to tackle human trafficking;**
  - **efforts to combat cybercrime and to increase cybersecurity;**
  - **more effective use of COSI;**
  - **adoption of measures from the procedural rights Roadmap for those suspected or accused of having committed a criminal offence;**
  - **increased training for judges, prosecutors and other judicial staff;**
  - **adoption of the victims package;**
  - **progress towards access to the European Convention on Human Rights;**
  - **improved circulation of judgments in civil and commercial matters within the Union;**
  - **development of e-justice;**
  - **a new EU Drugs Strategy;**
  - **better mechanisms for managing asylum-seekers; and**
  - **development of civil protection and disaster relief, including closer cooperation with external bodies.**
85. Professor Peers identified the codification of immigration law and development of a police code as items not taken forward from the programme, although he did question whether they were necessarily desirable.<sup>184</sup> Françoise Le Bail, Director-General, Directorate-General for Justice, European Commission, estimated that approximately 95% of the programme had been acted upon.<sup>185</sup>
86. **We believe that a substantial proportion of the objectives set out in the Stockholm Programme have been achieved and have made a steadily increasing contribution to the joint efforts needed to deal with, for example, serious organised crime and the new international challenges the EU faces in the field of JHA, but the lamentable absence of a proper mid-term review makes it difficult to form a full evaluation.**
87. **We recommend that the new guidelines should make specific recommendations in relation to evaluation.**

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<sup>184</sup> Q 8

<sup>185</sup> Q 114

## CHAPTER 3: STRATEGIC GUIDELINES FOR THE NEXT PROGRAMME

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### The case for a new JHA programme

88. We heard overwhelming support for a fourth JHA programme, particularly in the interests of setting direction over a fixed period.<sup>186</sup> Europol, for example, saw a future programme as providing “a long-term vision for this policy field in the context of a continuously changing strategic environment” and Mike Kennedy argued that “it is always good to have some sort of business plan in order to set objectives about what you desire to do in a certain period of time”.<sup>187</sup>
89. We heard one contrary view. The ILPA considered that there was not a strong case for a new multi-annual programme when it came to the fields of border controls, immigration and asylum. It argued that as these fields had been subject to “substantial legislative measures” over the past 10 years a period of application and interpretation should follow.<sup>188</sup> We accept that a period of consolidation and implementation is now desirable, but do not see this as an argument against a future programme. Rather, as we explore in greater detail in Chapter 4, we recommend that effective evaluation should be a key priority of the next programme.
90. Although the Lisbon Treaty did not specify what form strategic guidelines should take we heard no compelling arguments for shortening or extending the five-year period that previous JHA programmes have covered. To extend strategic guidelines indefinitely would make it more difficult to review them, whereas a clear period for a programme means the guidelines can be updated regularly to reflect changing circumstances. A programme of one or two years would most likely not be sufficiently strategic in approach. Five year cycles are common in both business and policy strategic planning, and such a cycle is broadly in line with the terms of the European Parliament and of the European Commission. We see no reason to move away from five year JHA programmes.
91. **Article 68 of the TFEU gives the European Council a clear mandate to provide strategic guidelines in the area of freedom, security and justice. The expiration of the Stockholm Programme in December 2014 leads us to conclude that the European Council should agree new strategic guidelines in 2014.**
92. **We consider a new multi-annual JHA programme to be desirable in setting clear, time-bound objectives for the area of freedom, security and justice. We recommend that the European Council continue to agree guidelines in five year programmes to ensure that they are regularly revisited, updated and evaluated.**

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<sup>186</sup> The Law Society of England and Wales, the Law Society of Scotland, Professor Helen Xanthaki, the Northern Ireland (NI) Executive and Europol

<sup>187</sup> Q 16

<sup>188</sup> ILPA

### The shape, format and content of any new JHA programme

93. Many witnesses considered that the future programme should be more succinct than the Stockholm Programme, including the Government, the Law Society of England and Wales, the Law Society of Scotland, Europol and Claudio Matera, a researcher at the Asser Institute.<sup>189</sup> Europol argued the new programme should be more like the Tampere Conclusions in approach.<sup>190</sup> Professor Peers agreed that Tampere had been an especially strong programme, having a significant impact both on the AFSJ and in shaping the provisions for that area in subsequent Treaty changes.<sup>191</sup>
94. The Government said that they would like the programme to give strategic direction by setting out clear principles for JHA, rather than a list of specific measures.<sup>192</sup> Other Member States agreed, including Estonia, Finland, Hungary, The Netherlands, Slovenia and Sweden.<sup>193</sup> Professor Peers was also persuaded the programme should focus on principles: “it might be useful to have a programme that, like Tampere, is largely a 10-page statement of principle that says not very much about specific legislation but leaves it to the EU institutions to work out what legislation might be needed”.<sup>194</sup> Professor Estella Baker, Leicester De Montford Law School, agreed that brevity was preferable: “something a little more succinct and punchy might be better”.<sup>195</sup> The Law Society of Scotland, likewise, saw the value of a concise set of principles, to allow more detailed reflection on the details of any future action.<sup>196</sup> The EASO also wanted “policy orientations rather than a catalogue of actions”.<sup>197</sup>
95. Sajjad Karim MEP cautioned that “the Commission may interpret such a succinct document almost as a licence for them to use it as a blank canvas”.<sup>198</sup> The Bar Council of England and Wales argued that, in addition to principles, the European Council should set out “quite detailed plans about the types of measures, legislative and otherwise, that it wishes to see pursued in particular policy areas”, to avoid a flurry of Commission-initiated legislative activity, and to ensure that legislation was driven by need and prepared carefully.<sup>199</sup>
96. We acknowledge the risks of too vague and general a strategic approach but the carefully constructed balance of powers in the Treaty is clear: the European Council should give strategic direction, the Commission has a

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<sup>189</sup> UK Government, the Law Society of England and Wales, the Law Society of Scotland, Europol and Claudio Matera

<sup>190</sup> Europol

<sup>191</sup> Q 4

<sup>192</sup> UK Government

<sup>193</sup> Joint letters from The Netherlands, Sweden, Finland, United Kingdom, Hungary, Estonia and Republic of Slovenia to the Presidency and relevant Commissioners regarding general principles which could guide the future development of the EU's Justice and Home Affairs policies beyond 2014.

<sup>194</sup> Q 8

<sup>195</sup> Q 16

<sup>196</sup> The Law Society of Scotland

<sup>197</sup> EASO

<sup>198</sup> Q 138

<sup>199</sup> The Bar Council of England and Wales

right of legislative initiative,<sup>200</sup> and the Council and the European Parliament decide what should become Union law.<sup>201</sup>

97. The Government considered that the Stockholm Programme had focused on the specific legislative and practical measures to be delivered “at the expense of defining the overall direction of EU cooperation in this area”. They saw limited scope for further JHA legislation and argued that “the EU’s priorities over the years to come should be implementing existing measures effectively and developing more effective practical cooperation to deal with shared threats and genuine common problems”.<sup>202</sup> David Ford, Minister for Justice, Northern Ireland Executive, said: “one can’t help but wonder if it would be more beneficial to direct resources to ensuring a consolidated approach to existing proposals, before embarking upon further legislative proposals”.<sup>203</sup> The Scottish Government also wanted a focus on consolidation and implementation: “the EU should now place an emphasis on implementation, on quality and effectiveness of enforcement and on ways of consolidating the progress that has already been made”.<sup>204</sup> Claudio Matera gave two specific examples to support this argument for consolidation: instruments that have been repeatedly changed over the past years (such as the Frontex founding regulation which he suggested lack an official consolidated version) and so could be considered to be negatively affecting legal certainty; and existing legislative instruments adopted before the entry into force of the Lisbon Treaty which required amendment to reflect that Treaty.<sup>205</sup> As we explore in Chapter 4, we heard considerable agreement on the importance of effective evaluation and implementation of existing legislation, and a review of the legislative landscape of the AFSJ.
98. The Law Society of England and Wales thought that some legislative measures should be recommended in the new programme:

“On the one hand, some general principles could have a general value in guiding the work of the other European institutions, without being too prescriptive. On the other hand, a tangible list of measures contained in a future programme could present a greater chance of them coming to fruition. One option might be to combine the approaches suggested in the question by agreeing a set of principles and a non-exhaustive list of some key initiatives to be taken forward in relation to each principle”.<sup>206</sup>

Professor Helen Xanthaki, University of London, also argued that the programme should contain a mixture of legislative measures and principles:

“a combination of principles and precise measures would be ideal. Principles can finally reflect the super goal of the AFSJ, and demonstrate the objective and desired scope of the particular measures. It would make sense to use the particular measures in the list as case studies of the manner in which the EU intend to put the principles to effect”.<sup>207</sup>

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<sup>200</sup> Although not an exclusive right in the AFSJ.

<sup>201</sup> TFEU

<sup>202</sup> UK Government

<sup>203</sup> NI Executive

<sup>204</sup> Scottish Government

<sup>205</sup> Claudio Matera

<sup>206</sup> The Law Society of England and Wales

<sup>207</sup> Professor Helen Xanthaki

99. Europol agreed on the need for contain strategic guidelines, but also made the case for the programme proposing further cooperation and legislation where necessary. It suggested that in certain areas of police cooperation “an additional legislative underpinning may be required” to level the playing field for practitioners and eliminate unnecessary differences between jurisdictions.<sup>208</sup> We have mentioned a number of possible areas for future action in Chapter 2.
100. The Law Society of Scotland would welcome further EU legislative proposals and initiatives in the area of criminal law, but opposed a long and detailed set of initiatives in the future programme.<sup>209</sup> Professor Baker said “a shopping list is only useful if you know what recipe you are going to apply that shopping list to” and that lack of agreement on the future development of the AFSJ made another “shopping list” style programme undesirable.<sup>210</sup> Keith Bristow advocated full engagement of the Member States with existing legislation. He said: “I do not think that further legislation is required. It is commitment, energy and focus on cutting crime that is important”.<sup>211</sup>
101. **We are persuaded that the strategic guidelines for the next five years should concentrate on consolidation and implementation, including the transposition of existing legislation by all Member States.**
102. **The “shopping list” approach of the Stockholm Programme was clearly too detailed and too diffuse. The TFEU provides for “strategic guidelines” and we consider that the next JHA programme should focus on key principles and set a direction of travel. New legislation should only be considered when it is based on firm evidence, well thought out, and in full respect of the principles of subsidiarity and proportionality. To set out specific measures to include in the programme without the necessary evidence-base would, in our view, be counterproductive.**
103. We give further consideration to effective evaluation in the next Chapter.

### Completing consideration of unfinished business

104. Appendix 5 lists specific legislation recommended by the Stockholm Programme which has yet to be adopted. Several witnesses, including Timothy Kirkhope MEP, highlighted the importance of completing unfinished business before addressing future needs.<sup>212</sup>
105. Key items which fall into this category include the Passenger Name Record Directive, which we consider important for the prevention and detection of serious crime and terrorism, the Data Protection package, which we support as it strengthens data protection rights of citizens (although it must strike an appropriate balance between, on the one hand, sound data protection rights available to citizens and, on the other, increasing obligations and costs placed on businesses and public authorities), and the reform of Europol and Eurojust, which we view as crucial to the effective working of those

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<sup>208</sup> Europol

<sup>209</sup> The Law Society of Scotland

<sup>210</sup> Q 16

<sup>211</sup> Q 60

<sup>212</sup> Q 142

agencies.<sup>213</sup> The Commission Communications on the future of justice and home affairs acknowledge the desirability of completing unfinished business including the Fourth Money Laundering Directive, the Regulation and Directive regarding New Psychoactive Substances, the Passenger Name Record Directive, and the Data Protection Regulation and Directive. We were surprised that the Communications did not make reference to the reforms of Eurojust and Europol (which includes provision for increased parliamentary scrutiny of that body).<sup>214</sup>

106. **We recommend that the next set of guidelines should give priority to the completion of the negotiations on unfinished business from the Stockholm Programme, including, in particular, the Passenger Name Record Directive, the Data Protection package, and the reforms of Europol and Eurojust.**

### Flexibility

107. Several witnesses pointed to the need for the next set of guidelines to be sufficiently flexible to respond to changes in the political context. For example, the programme should provide the kind of flexibility that allowed the Task Force Mediterranean to be set-up to consider what action should be taken after a boat with around 500 migrants sank off the coast of Lampedusa in October 2013. Elizabeth Collett argued that “there is a greater understanding that these things will occur” and so “there needs to be a certain amount of flexibility to be able to accommodate events that we did not expect”.<sup>215</sup> Europol agreed that the programme ought to be “flexible enough to adapt to a fast moving environment and evolving societal challenges”.<sup>216</sup> Sarah Garvey argued that the length of programme period meant some flexibility had to be built-in.<sup>217</sup> The Commission Communication on the future of home affairs attaches importance to flexibility to address “new challenges”.<sup>218</sup>
108. **The strategic guidelines for the next programme must be sufficiently flexible to allow responsiveness to unforeseen developments or trends. This seems achievable given the approach likely to be taken.**

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<sup>213</sup> See the correspondence with Ministers volume on our website

<sup>214</sup> *An open and secure Europe: making it happen*, Op. Cit. and *The EU Justice Agenda for 2020*, Op. Cit.

<sup>215</sup> Q 31

<sup>216</sup> Europol

<sup>217</sup> Q 18

<sup>218</sup> *An open and secure Europe*, Op. Cit.

## CHAPTER 4: THE NEED FOR EFFECTIVE EVALUATION AND IMPLEMENTATION

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109. One of the major recurring themes in evidence to our inquiry was the need for effective evaluation and implementation. Such evaluation fell into five broad categories: evaluation of the efficacy of existing instruments; evaluation of the transposition of EU legislation into domestic law by Member States; evaluation of the AFSJ legislative landscape overall; evaluation of JHA Programmes; and evaluation underpinning future EU legislation.

### Evaluation of existing measures

110. Each measure has a cost attached to it and the EU must have a robust mechanism for ensuring that the measure has delivered on its goals and so represents good value for money. Director-General Le Bail strongly supported such rigorous evaluation of the impact of legislation as did Director-General Manservigi.<sup>219</sup> We have previously recommended clear evaluation strategies be built into mobility partnerships in the light of the difficulties associated with evaluation of the Moldova mobility partnership due to an absence of relevant data.<sup>220</sup> We have also expressed concern when the Commission proposed a new drug action plan before completing an evaluation of its predecessor.<sup>221</sup>
111. Europol wanted a “strengthening [of] the evaluation of JHA instruments and policies”. It suggested that this was best done by monitoring the implementation of existing rules, from a legal and practical perspective; by using Article 70 TFEU to conduct objective and impartial evaluations of the implementation of EU policies;<sup>222</sup> by following-up on the implementation of measures; and by assessing the cost of implementation.<sup>223</sup> Claudio Matera noted that the Stockholm Programme had directed the Commission to develop instruments and to pay greater attention to monitoring the implementation of AFSJ instruments, but also argued that the new programme should emphasise the need to develop accurate tools to monitor and evaluate application of legislation.<sup>224</sup> Mike Kennedy similarly argued for full assessment of implementation and efficacy of legislation.<sup>225</sup> The Meijers Committee also wanted the programme to focus on full and effective implementation, enforcement and evaluation of existing instruments, and said it should propose new initiatives for monitoring and implementation.<sup>226</sup>
112. We heard a number of specific examples of measures that required evaluation. The EASO recommended evaluation of the Regional Protection

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<sup>219</sup> Q 119, Q 103

<sup>220</sup> European Union Committee, *The Global Approach to Migration (GAMM)* (8th Report, Session 2012–13, HL Paper 91)

<sup>221</sup> *The EU Drugs Strategy, Op. Cit.*

<sup>222</sup> Article 70 provides for Member States and the Commission to “conduct objective and impartial evaluation of the implementation of” AFSJ policies, and for the results of these evaluations to be communicated to national parliaments and the European Parliament.

<sup>223</sup> Europol

<sup>224</sup> Claudio Matera

<sup>225</sup> Q 16

<sup>226</sup> The Meijers Committee



Programmes to ensure that they were sufficiently effective, flexible and address the key objective for which they were established, to improve protection.<sup>227</sup> Fair Trials International called for a review of the implementation of defence rights protection.<sup>228</sup> Dr De Bruycker said that the original Dublin Regulation, which had been functioning for 16 years, had not yet been assessed regarding its efficiency and was overdue review.<sup>229</sup> Morten Messerschmidt MEP suggested that the EU Data Retention Directive and the EAW required reviews to ensure that they achieved what was intended.<sup>230</sup> The Commission Communications on the future of JHA recommend evaluations of: current legislation on legal migration to identify gaps, improve consistency and assess the impact of the existing framework; the existing framework on temporary protection; firearms legislation; and consumer rights law.<sup>231</sup>

113. Professor Douwe Korff, Professor of international law, London Metropolitan University, recommended a review of the efficacy of mutual legal assistance treaties.<sup>232</sup> Rob Wainwright called for a review of JITs to consider their scope, ambition, and funding.<sup>233</sup> The Law Society of England and Wales said further review of the “Brussels I” regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters would help prevent some delays in legal proceedings (although it acknowledged the value of some Commission work on this already).<sup>234</sup> The Government were concerned that Europol and Eurojust reforms had been proposed by the Commission before thorough evaluations of these agencies’ efficacy had been completed.<sup>235</sup>

### Monitoring transposition

114. During our inquiry into the UK’s block opt-out decision on EU police and criminal justice measures, we were surprised to note that very few Member States had implemented the European Probation Order.<sup>236</sup> Professor Spencer said that there was a need to evaluate how far Member States had actually carried out their obligations under various instruments.<sup>237</sup> Mike Kennedy agreed that more attention needed to be paid to transposition of EU legislation in Member States.<sup>238</sup> Elizabeth Collett highlighted the failure of Greece to transpose, implement and interpret asylum application legislation as evidence of the need to evaluate transposition thoroughly.<sup>239</sup>

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<sup>227</sup> EASO

<sup>228</sup> Fair Trials International

<sup>229</sup> Q 47

<sup>230</sup> Q 156

<sup>231</sup> *An open and secure Europe, Op. Cit.* and *The EU Justice Agenda for 2020, Op. Cit.*

<sup>232</sup> Q 76

<sup>233</sup> Q 55

<sup>234</sup> The Law Society of England and Wales, Q 22

<sup>235</sup> UK Government

<sup>236</sup> European Union Committee, *Follow-up report on EU police and criminal justice measures: The UK’s 2014 opt-out decision* (5th Report, Session 2013–14, HL Paper 69)

<sup>237</sup> Q 7

<sup>238</sup> Q 16

<sup>239</sup> Q 33

115. The Treaties give the Commission power to assess transposition and bring infringement proceedings, if necessary. At the end of the transitional arrangements provided for in the Lisbon Treaty, in December 2014,<sup>240</sup> the Commission will be well placed to carry out such work in relation to a greater number of JHA measures. Recent reports, such as the Commission evaluation of implementation of the racism and xenophobia framework decision,<sup>241</sup> and our evidence sessions with the Directors-General,<sup>242</sup> suggest that the Commission is preparing to make use of these powers.
116. The weight of evidence to our inquiry was that evaluation of impact and transposition were of great importance and not currently given adequate attention. We are pleased that the Commission Communications on the future of Justice and Home Affairs place considerable emphasis on implementation and evaluation. The Commission recognises that monitoring and evaluation should be part of the policy cycle.<sup>243</sup>
- 117. The Commission is often considered to be more interested in proposing legislation than it is in evaluating the effect of legislation. We recommend that evaluation should be a key feature of the next set of strategic guidelines. The Commission should be asked to draw up a timetable for the evaluation of efficacy, transposition and implementation of all existing JHA legislation.**
- 118. Evaluation must be built in to any proposals for legislation. We recommend that the Commission and the Council build robust evaluation requirements and methods into all future proposals, based on measurable, stated objectives.**
- 119. We further recommend that the Commission produce regular, perhaps annual, scoreboards concerning Member State implementation of EU legislative actions in the JHA field.**

### Reviewing the AFSJ legislative landscape

120. Building up an accurate picture of the efficacy of individual measures would also inform a review of AFSJ measures *en masse*. The Scottish Government proposed a thorough assessment and mapping of both the current EU legislative and practical cooperation landscapes to determine whether there are gaps, duplication, or provisions which are now obsolete.<sup>244</sup> Professor Peers said there are “a lot of obsolete measures and a lot of obscure bits of law floating around from the pre-Lisbon era” and so consideration should be given to improving the quality of the legislative landscape.<sup>245</sup> Director-General Manservisi suggested there had been “over-legislation” and perhaps some “bad” legislation. He highlighted terrorism legislation as one area where there was room for consolidation and possible repeal.<sup>246</sup>

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<sup>240</sup> TFEU

<sup>241</sup> COM (2014) 27, *Report on the implementation of Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*

<sup>242</sup> Q 116, Q 103, Q 108

<sup>243</sup> *An open and secure Europe, Op. Cit.* and *The EU Justice Agenda for 2020, Op. Cit.*

<sup>244</sup> Scottish Government

<sup>245</sup> Q 8

<sup>246</sup> Q 108

121. The Government proposed that the programme contain a timeline for “tidying the European statute book”, reviewing all legislation to ensure that it was meeting its objectives, and to repeal or amend it if it was not. They observed that “having extant legislation over which Member States could be infracted, but which serves no useful purpose, is not a good practice”.<sup>247</sup> Professor Xanthaki supported such action.<sup>248</sup> Claudio Matera considered that a timeline for repealing and/or consolidation of existing JHA legislation would be “a welcome innovation”.<sup>249</sup> The Commission has begun such work through its “REFIT”, Regulatory Fitness and Performance, Programme which seeks to identify burdens, gaps and inefficient or ineffective measures including measures for simplification or repeal,<sup>250</sup> but progress remains slow. The Commission Communication on the future agenda for justice proposes exploring the codification of civil and commercial law (notably in the area of conflict of laws), the law on criminal procedural rights, and consumer rights law, for consistency and clarity.<sup>251</sup>
122. The Law Society of England and Wales did not agree that this was a priority issue: “while a timeline for repealing and/or consolidating JHA legislation would be useful, the Law Society does not regard this as a priority issue for solicitors with experience of cross-border cases in the civil or criminal justice field”. Europol expressed a stronger view: “given the likely nature of the next JHA programme it may not be the most suitable document to include a timeline for repealing or consolidating existing legislation”. They saw repeal as one part of the bigger issue of effective evaluation and implementation.<sup>252</sup> We view consolidation of existing legislation as an important part of effective evaluation, and necessary to ensure transparency of the law and legal certainty. Such consolidation must be undertaken as a technical and not a policy-driven exercise.
123. **We recommend that the next programme propose a review of the AFSJ legislative landscape to identify and, where appropriate, consolidate overlapping and repeal outdated legislation. Following a 15 year period of intense legislative activity and significant changes in the policy environment and the institutional framework such an approach is necessary. We recommend that the Commission commit themselves to a timetable for such a review of AFSJ legislation.**

### Mid-term review

124. The Stockholm Programme invited the Commission to produce a mid-term review, assessing progress in its implementation, before June 2012.<sup>253</sup> The Commission failed to do so; it said it did not have the time or resource to undertake the exercise.<sup>254</sup> Although the Cypriot Presidency produced a short

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<sup>247</sup> UK Government

<sup>248</sup> Professor Helen Xanthaki

<sup>249</sup> Claudio Matera

<sup>250</sup> SWD (2013) 401: *Regulatory Fitness and Performance Programme (REFIT): Initial Results of the Mapping of the Acquis*, 2013

<sup>251</sup> *The EU Justice Agenda for 2020*, Op. Cit.

<sup>252</sup> The Law Society of England and Wales

<sup>253</sup> *The Stockholm Programme*, Op. Cit.

<sup>254</sup> Q 109

mid-term report in late 2012,<sup>255</sup> and several European Parliament Committees agreed such a report in Spring 2014,<sup>256</sup> no comprehensive analysis of the value of what had been achieved and what was still outstanding has been undertaken.

125. The need for such a mid-point “stock take” of the next programme was clearly expressed in evidence, for example by Mike Kennedy and Professor Peers.<sup>257</sup> Witnesses in Brussels also saw such evaluation and consideration of “mid-course correction” as most desirable.<sup>258</sup> Director-General Manservigi was open to such a review as long as it was evidence-based and thorough, not a “box-ticking” exercise.<sup>259</sup> We agree that such an exercise is important and must be substantive.
126. Director-General Manservigi suggested that such a review could be linked to the mid-term review of the Home Affairs Funds of the multi-annual financial framework.<sup>260</sup> Director-General Le Bail indicated that linking such a review with justice funding was less feasible for Directorate-General Justice given its relatively small budget.<sup>261</sup> We see such an approach as useful but it could only form one part of evaluation of the next set of guidelines’ implementation.
127. **We recognise that the Commission, like all other public sector organisations, is operating under resource constraints but do not consider this to have been an acceptable reason for it not to produce a mid-term review of the Stockholm Programme. The Commission must commit to participating fully in such an exercise for the new programme, and to that exercise being evidence-led and informed by the views of stakeholders including practitioners, academics, national parliaments and Member State governments. Although tying the mid-term review of the guidelines to the mid-term review of the MFF would be beneficial in showing how funds have been spent in relation to priorities identified, this should only be one facet of such a review which must look at priorities as a whole and consider other forms of relevant data.**

### **Impact assessments underpinning future legislation**

128. The Government and Professor Xanthaki agreed that there was a need for rigorous impact assessments to underpin any future legislative proposals.<sup>262</sup> The Scottish Government said comprehensive impact assessments were necessary when legislation is deemed essential.<sup>263</sup> Other witnesses agreed.<sup>264</sup> We recently published a Reasoned Opinion relating to new psychoactive substances questioning the evidence-base to justify the Commission’s

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<sup>255</sup> European Council, *Stockholm Programme mid-term review*, 2012

<sup>256</sup> European Parliament, *Report on the mid-term review of the Stockholm Programme*, 2014

<sup>257</sup> Q 16, Q 7

<sup>258</sup> QQ 133–134

<sup>259</sup> Q 109

<sup>260</sup> Q 109

<sup>261</sup> Q 119

<sup>262</sup> UK Government, Profeser Xanthaki

<sup>263</sup> Scottish Government

<sup>264</sup> The Bar Council of England and Wales, Europol

proposals.<sup>265</sup> Effective legislation requires a clear understanding of problems to be addressed and comprehensive analysis of possible policy options. The Commission Communications on the future of JHA recognise the importance of evidence underpinning policymaking and new legislation complementing what already exists. We are pleased to note, for example, that the Commission recommends an evaluation of existing measures when it proposes exploring new legislation to reinforce civil procedural rights.<sup>266</sup>

129. **Legislation must be underpinned by clear data and a convincing rationale for EU-level action. It is for the Commission, ultimately, to ensure that all of its proposals are evidence-based; however, Member States must remain vigilant in identifying proposals that do not meet these criteria.**

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<sup>265</sup> European Union Committee, *Subsidiarity Assessment: New Psychoactive Substances* (6th Report, Session 2013–14, HL Paper 73)

<sup>266</sup> *An open and secure Europe, Op. Cit.* and *The EU Justice Agenda for 2020, Op. Cit.*

## CHAPTER 5: THE WORK OF EU AGENCIES

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130. EU agencies are separate legal entities from the EU's main institutions and provide support to both the institutions and Member States in specialist areas. They must not be overlooked when setting strategic guidelines, given their vital role and valuable operational intelligence.

### Europol

131. Europol is the European Union's agency for coordinating and supporting law enforcement. Its main goal is to help achieve a safer Europe for the benefit of all EU citizens. It does this by assisting the European Union's Member States in their fight against serious international crime and terrorism. Europol supports the work of Member States' law enforcement authorities by gathering, analysing and sharing information and coordinating operations. It has developed expertise in tackling cross-border drug trafficking, money laundering, fraud, cybercrime, human trafficking, and the forgery of money among other offences. We have conducted several inquiries into the work of Europol and taken evidence from its current Director, Rob Wainwright, on many occasions.<sup>267</sup>
132. We heard considerable evidence as to its effectiveness during our inquiry into the UK's block opt-out decision. Many witnesses considered it to be an invaluable agency; the Home Secretary, for example, thought that Rob Wainwright was doing a "very good job" as its Director. The increasing use made of Europol by UK law enforcement agencies is testimony to its value.<sup>268</sup> **We consider Europol's work crucial to fighting serious organised crime and terrorism in the UK and beyond; its work needs to be supported and strengthened by the strategic guidelines.**

### Eurojust

133. The EU's Judicial Cooperation Unit (Eurojust) supports and strengthens coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States. We published a report on its operation in 2004.<sup>269</sup> We concluded that Eurojust meets a "real and increasing need for assistance in facilitating the investigation and prosecution of complex cross-border criminal cases", as well as providing "a model of how to make progress in an area where the differences between national jurisdictions are so great that it would be unrealistic to aim for harmonisation. It is also an example of the sort of effective practical cooperation that an EU agency can provide, which is sometimes lost sight of in more ideological debates". We also highlighted a need for adequate resources to support it.<sup>270</sup>

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<sup>267</sup> See, for example, European Union Committee, *EUROPOL, Coordinating the fight against serious and organised crime* (29th Report, Session 2007–08, HL Paper 183)

<sup>268</sup> European Union Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159)

<sup>269</sup> European Union Committee, *Judicial Co-operation in the EU: the role of Eurojust* (23rd Report, Session 2003–04, HL Paper 138)

<sup>270</sup> *Ibid.*



134. During the course of our inquiry into the UK's block opt-out decision, many witnesses told us Eurojust was a useful agency. Kier Starmer QC, Director of Public Prosecutions in the UK, said that the UK's involvement in Eurojust provided many benefits with the coordination meetings being the most important. He also considered Eurojust to be good value for money, costing the UK approximately £360,000 per year and provided examples of where Eurojust had been of practical benefit to the Crown Prosecution Service. The Rt. Hon. Frank Mulholland QC, The Lord Advocate of Scotland, considered Eurojust to be very beneficial in terms of encouraging a coordinated approach to cross-border investigations.<sup>271</sup> **We consider the work of Eurojust to be valuable and so have recommended that the UK opt in to the new Eurojust Regulation and seek to re-join the 2009 Eurojust Council Decision following the UK's block opt-out of police and criminal justice measures. Its future work needs to be supported in the new programme.**

### European Asylum Support Office

135. The EASO aims to enhance practical cooperation on asylum matters and help Member States fulfill their European and international obligations to give protection to people in need. It provides support to, and facilitates, coordinates and strengthens practical cooperation between, Member States.<sup>272</sup> The EASO has only been operational since 2011 but in that time has been considered to have had “a tremendous impact”, for example in improving asylum support arrangements in Greece.<sup>273</sup> During our inquiry into the GAMM, Claude Moraes MEP suggested that the relatively small size of the EASO might limit its potential.<sup>274</sup> The agency told us that it required more resources in order to fulfil its potential.<sup>275</sup> It also argued it should be given a mandate to provide evidence to underpin policymaking in this field.<sup>276</sup> **We welcomed the agency's establishment in our 2012 report on *The Global Approach to Migration (GAMM)*<sup>277</sup> and believe it should be evaluated for a first time during the period of the next programme.**

### European Monitoring Centre for Drugs and Drug Addiction

136. The EMCDDA exists to provide the EU and its Member States with a factual overview of European drug problems and a solid evidence base to support the drugs policies of Member States. In spite of early concerns about its efficacy in the 1990s, witnesses to our inquiry into *The EU Drugs Strategy* were unanimous about the value of its recent work.<sup>278</sup>
137. Professor Cindy Fazey, University of Liverpool, considered that the EMCDDA was “one of the most successful European institutions in the

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<sup>271</sup> *The UK's 2014 opt-out decision, Op. Cit.*

<sup>272</sup> EASO

<sup>273</sup> *Global Approach to Migration, Op. Cit.*

<sup>274</sup> *Ibid.*

<sup>275</sup> *Ibid.*

<sup>276</sup> EASO

<sup>277</sup> European Union Committee, *The Global Approach to Migration (GAMM)* (8th Report, Session 2012–13, HL Paper 91)

<sup>278</sup> *The EU Drugs Strategy, Op. Cit.*



drugs field, if not the most successful”, and argued for its expansion. Professor Alex Stevens, Professor in Criminal Law and Justice at the University of Kent, agreed on the value of the EMCDDA, and its strength and contribution to the field. Other organisations also thought highly of the agency.<sup>279</sup> **We share the view of many that the EMCDDA is to be held in high esteem. We have previously argued that the Government should seek to protect the agency’s budget during MFF negotiations. Agencies must be adequately resourced if they are to carry out their functions effectively.**

### European Union Agency for Network and Information Security

138. The European Union Agency for Network and Information Security (ENISA)’s mission is to achieve a high and effective level of Network and Information Security within the European Union. We considered its work in our report on *Protecting Europe against large-scale cyber-attacks*.<sup>280</sup>
139. The Payments Council was “highly supportive” of ENISA, believing that it has the potential to be a powerful force for good in promoting the development of Computer Emergency Response Teams in Europe. Andrew Cormack, Chief Regulatory Adviser of JANET (Joint Academic Network) (UK), was also supportive and Symantec said: “since its creation in 2004, ENISA has played a valuable role in bringing together government, industry and academia to share experience, knowledge and good practice”.<sup>281</sup> **We consider that ENISA plays a useful role in a field of growing importance.**

### Reviewing agencies

140. We heard mixed views about the desirability of the guidelines recommending a review of those agencies. Mike Kennedy considered the new programming phase to be an “ideal opportunity to review” Eurojust and Europol.<sup>282</sup> Keith Bristow thought a comprehensive review of Europol would not be useful at that point in time.<sup>283</sup> Rob Wainwright said:
- “I think we are rather review weary. We last had a major review according to a specific requirement in our legislation in 2012, and we are in effect going through another review of our competencies and effectiveness right now in the elaboration of the new Europol regulation, so to a certain extent we are looking forward to a period of regulatory calm over the next five years, even if, as I recognise, the landscape is changing very quickly and we should certainly be alive to every opportunity to improve the effectiveness of the organisation”.<sup>284</sup>

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<sup>279</sup> *Ibid.*

<sup>280</sup> European Union Committee, *Protecting Europe against large-scale cyber-attacks* (5th Report, Session 2009–10, HL Paper 68)

<sup>281</sup> *Ibid.*

<sup>282</sup> Q 28

<sup>283</sup> Q 66

<sup>284</sup> *Ibid.*

Elizabeth Collett argued that it was “a little too early” to review the operation of EASO as it had “really only started functioning in the last couple of years”.<sup>285</sup>

141. **We are persuaded that all agencies should be reviewed at regular intervals; however, there have recently been significant legislative upheavals in relation to some of these agencies, and others are relatively new, which leads us to conclude that an overall review would not be the right approach.**
142. **The work of these EU agencies is vital to the effective operation of justice and home affairs policies and we recommend that the Council acknowledge this in the new programme. Agencies must be properly resourced, well managed and subject to light-touch Parliamentary scrutiny by a combination of European Parliament and national parliament representatives.**

## CHAPTER 6: CONCLUDING REMARKS

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143. **No-one who offered written evidence to our inquiry and none of the witnesses who appeared before us suggested that the substantial increase in cooperation between Member States and in EU legislation on justice and home affairs matters which has taken place over the last fifteen years was other than a necessary and proportionate response to the rapid internationalisation of many different forms of criminal activity and to the increasing interdependence of our societies. So, if we were to offer a single strategic guideline for the next JHA programme, it would be “steady as she goes”.**
144. In 2013 we published two Reports into the UK's block opt-out, under a provision of the EU Treaties which allowed the UK to opt-out of pre-Lisbon Treaty police and criminal justice measures *en bloc*, and to seek to rejoin specific measures which would then be subject to CJEU jurisdiction and Commission enforcement powers.<sup>286</sup> One of the major concerns we heard during those inquiries was the risk to the UK's position of active influence in shaping EU policies in the fields of justice and home affairs.<sup>287</sup>
145. The Government chose to exercise the block opt-out, despite our view that the case for doing so was not convincing. Their decision makes UK constructive engagement in justice and home affairs all the more vital if the UK is to maintain its important role in shaping EU policies in these fields which the UK has exercised from the outset. The Scottish Government saw potential for negotiations over the strategic guidelines to improve the UK's standing: “constructive engagement on strategic priorities for the coming 5 years represents a welcome opportunity for the UK to project a positive future profile”.<sup>288</sup> We share their assessment. **It is important and in our national interest that the UK remains a key player and has influence in the fields of justice and home affairs. Constructive engagement with the development of the strategic guidelines will affect the UK's future standing in these fields. We urge the Government to continue to participate fully and constructively in the discussions to achieve political agreement of the EU's next JHA programme.**

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<sup>286</sup> Report and follow-up Report on the UK's 2014 block opt-out decision, *Op. Cit.*

<sup>287</sup> The evidence to that inquiry is available from our website

<sup>288</sup> Scottish Government

## CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS

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### Chapter 1: Introduction

146. This is the first full application of Article 68 of the Treaty on the Functioning of the European Union (TFEU) which provides that the European Council shall set strategic guidelines for the area of freedom, security and justice (AFSJ). As such, it is important that it is handled well as the next justice and home affairs (JHA) programme is likely to set a precedent for future multi-annual JHA programmes (paragraph 19).

### Chapter 2: The Stockholm Programme

147. We agree with this advice [industry must see value in participating in partnerships with law enforcement authorities] and recommend that the strategic guidelines for the next JHA Programme should place particular emphasis on the need for closer cooperation between the private and public sectors in the fight against cybercrime (paragraph 34).
148. A number of significant developments in the area of freedom, security and justice were recommended by the Stockholm Programme, including:
- the internal security strategy;
  - increased use of Joint Investigations Teams;
  - action to tackle human trafficking;
  - efforts to combat cybercrime and to increase cybersecurity;
  - more effective use of COSI (the Standing Committee on Operational Cooperation on Internal Security);
  - adoption of measures from the procedural rights Roadmap for those suspected or accused of having committed a criminal offence;
  - increased training for judges, prosecutors and other judicial staff;
  - adoption of the victims package;
  - progress towards access to the European Convention on Human Rights;
  - improved circulation of judgments in civil and commercial matters within the Union;
  - development of e-justice;
  - a new EU Drugs Strategy;
  - better mechanisms for managing asylum-seekers; and
  - development of civil protection and disaster relief, including closer cooperation with external bodies (paragraph 84).
149. We believe that a substantial proportion of the objectives set out in the Stockholm Programme have been achieved and have made a steadily increasing contribution to the joint efforts needed to deal with, for example, serious organised crime and the new international challenges the EU faces in the field of JHA, but the lamentable absence of a proper mid-term review makes it difficult to form a full evaluation (paragraph 86).

150. We recommend that the new guidelines should make specific recommendations in relation to evaluation (paragraph 87).

### **Chapter 3: Strategic guidelines for the next programme**

#### *The case for a new JHA programme*

151. Article 68 of the TFEU gives the European Council a clear mandate to provide strategic guidelines in the area of freedom, security and justice. The expiration of the Stockholm Programme in December 2014 leads us to conclude that the European Council should agree new strategic guidelines in 2014 (paragraph 91).
152. We consider a new multi-annual JHA programme to be desirable in setting clear, time-bound objectives for the area of freedom, security and justice. We recommend that the European Council continue to agree guidelines in five year programmes to ensure that they are regularly revisited, updated and evaluated (paragraph 92).

#### *The shape, format and content of any new JHA programme*

153. The strategic guidelines for the next five years should concentrate on consolidation and implementation, including the transposition of existing legislation by all Member States (paragraph 101).
154. The “shopping list” approach of the Stockholm Programme was clearly too detailed and too diffuse. The Treaty provides for “strategic guidelines” and we consider that the next JHA programme should focus on key principles and set a direction of travel. New legislation should only be considered when it is based on firm evidence, well thought out, and in full respect of the principles of subsidiarity and proportionality. To set out specific measures to include in the programme without the necessary evidence-base would, in our view, be counterproductive (paragraph 102).

#### *Completing consideration of unfinished business*

155. We recommend that the next set of guidelines should give priority to the completion of the negotiations on unfinished business from the Stockholm Programme, including, in particular, the Passenger Name Record Directive, the Data Protection package, and the reforms of Europol and Eurojust (paragraph 106).

#### *Flexibility*

156. The strategic guidelines for the next programme must be sufficiently flexible to allow responsiveness to unforeseen developments or trends. This seems achievable given the approach likely to be taken (paragraph 108).

### **Chapter 4: The need for effective evaluation and implementation**

#### *Monitoring transposition*

157. The Commission is often considered to be more interested in proposing legislation than it is in evaluating the effect of legislation. We recommend

that evaluation should be a key feature of the next set of strategic guidelines. The Commission should be asked to draw up a timetable for the evaluation of efficacy, transposition and implementation of all existing JHA legislation (paragraph 117).

158. Evaluation must be built in to any proposals for legislation. We recommend that the Commission and the Council build robust evaluation requirements and methods into all future proposals, based on measurable, stated objectives (paragraph 118).
159. We further recommend that the Commission produce regular, perhaps annual, scoreboards concerning Member State implementation of EU legislative actions in the JHA field (paragraph 119).

#### *Reviewing the AFSJ legislative landscape*

160. We recommend that the next programme propose a review of the AFSJ legislative landscape to identify and, where appropriate, consolidate overlapping and repeal outdated legislation. Following a 15 year period of intense legislative activity and significant changes in the policy environment and the institutional framework such an approach is necessary. We recommend that the Commission commit themselves to a timetable for such a review of AFSJ legislation (paragraph 123).

#### *Mid-term review*

161. We recognise that the Commission, like all other public sector organisations, is operating under resource constraints but do not consider this to have been an acceptable reason for it not to produce a mid-term review of the Stockholm Programme. The Commission must commit to participating fully in such an exercise for the new programme, and to that exercise being evidence-led and informed by the views of stakeholders including practitioners, academics, national parliaments and Member State governments. Although tying the mid-term review of the guidelines to the mid-term review of the multiannual financial framework (MFF) would be beneficial in showing how funds have been spent in relation to priorities identified, this should only be one facet of such a review which must look at priorities as a whole and consider other forms of relevant data (paragraph 127).

#### *Impact assessments underpinning future legislation*

162. Legislation must be underpinned by clear data and a convincing rationale for EU-level action. It is for the Commission, ultimately, to ensure that all of its proposals are evidence-based; however, Member States must remain vigilant in identifying proposals that do not meet these criteria (paragraph 129).

### **Chapter 5: The work of EU agencies**

#### *Europol*

163. We consider Europol's work crucial to fighting serious organised crime and terrorism in the UK and beyond; its work needs to be supported and strengthened by the strategic guidelines (paragraph 132).

*Eurojust*

164. We consider the work of Eurojust to be valuable and so have recommended that the UK opt in to the new Eurojust Regulation and seek to re-join the 2009 Eurojust Council Decision following the UK's block opt out of police and criminal justice measures. Its future work needs to be supported in the new programme (paragraph 134).

*European Asylum Support Office (EASO)*

165. We welcomed the agency's establishment in our 2012 report on *The Global Approach to Migration (GAMM)*<sup>289</sup> and believe it should be evaluated for a first time during the period of the next programme (paragraph 135).

*European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)*

166. We share the view of many that the EMCDDA is to be held in high esteem. We have previously argued that the Government should seek to protect the agency's budget during MFF negotiations. Agencies must be adequately resourced if they are to carry out their functions effectively (paragraph 137).

*European Union Agency for Network and Information Security (ENISA)*

167. We consider that ENISA plays a useful role in a field of growing importance (paragraph 139).

*Reviewing agencies*

168. All agencies should be reviewed at regular intervals; however, there have recently been significant legislative upheavals in relation to some of these agencies, and others are relatively new, which leads us to conclude that an overall review would not be the right approach (paragraph 141).
169. The work of these EU agencies is vital to the effective operation of justice and home affairs policies and we recommend that the Council acknowledge this in the new programme. Agencies must be properly resourced, well managed and subject to light-touch Parliamentary scrutiny by a combination of European Parliament and national parliament representatives (paragraph 142).

**Chapter 6: Concluding remarks**

170. No-one who offered written evidence to our inquiry and none of the witnesses who appeared before us suggested that the substantial increase in cooperation between Member States and in EU legislation on justice and home affairs matters which has taken place over the last fifteen years was other than a necessary and proportionate response to the rapid internationalisation of many different forms of criminal activity and to the increasing interdependence of our societies. So, if we were to offer a single strategic guideline for the next JHA programme, it would be "steady as she goes" (paragraph 143).

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<sup>289</sup> European Union Committee, *The Global Approach to Migration (GAMM)* (8th Report, Session 2012–13, HL Paper 91)



171. It is important and in our national interest that the UK remains a key player and has influence in the fields of justice and home affairs. Constructive engagement with the development of the strategic guidelines will affect the UK's future standing in these fields. We urge the Government to continue to participate fully and constructively in the discussions to achieve political agreement of the EU's next JHA programme (paragraph 145).

## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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The Members of the Sub-Committee that conducted this inquiry were:

Baroness Benjamin  
 Lord Blencathra  
 Viscount Bridgeman  
 Lord Faulkner of Worcester  
 Lord Hannay of Chiswick (Chairman)  
 Lord Judd  
 Lord Morris of Handsworth  
 Baroness Prashar  
 Lord Sharkey  
 Earl of Stair  
 Lord Tomlinson  
 Lord Wasserman

### Declarations of Interest

Lord Hannay of Chiswick (Chairman)  
*Chair, Senior European Experts Group*  
*Member, Advisory Board of the Centre for European Reform*  
*Member, The Future of Europe Forum, the proactive advisory board for the Centre for British Influence through Europe*

Baroness Benjamin  
*No relevant interests declared*

Lord Blencathra  
*No relevant interests declared*

Viscount Bridgeman  
*No relevant interests declared*

Lord Faulkner of Worcester  
*Commissioner and chairman-elect Alderney Gambling Control Commission*  
*Trustee, Science Museum Group*  
*Secretary, British-Norwegian All Party Parliamentary Group*

Lord Judd  
*Member, All Party Parliamentary Group on Human Rights*  
*Member, All Party Parliamentary Group on Penal Affairs*  
*Member, All Party Parliamentary Group on Police*  
*President, Hospice at Home West Cumbria*  
*Trustee, Saferworld*

Lord Morris of Handsworth  
*No relevant interests declared*

Baroness Prashar  
*Member of the Committee appointed to consider UK's involvement in Iraq*  
*Governor and Member of Management Committee, Ditchley Foundation*  
*Deputy Chair, British Council*  
*Patron, Runnymede Trust*  
*Trustee, Cumberland Lodge*  
*President, Royal Commonwealth Society*  
*President, Community Foundation Network*  
*Vice Chair, All-Party Parliamentary Group for the Commonwealth*

*President, UK Council for International Student Affairs*  
*Member, All Party Parliamentary Group on Migration*

Lord Sharkey

*Governor, Institute for Government*

Earl of Stair

*No relevant interests declared*

Lord Tomlinson

*No relevant interests declared*

Lord Wasserman

*Member, All Party Parliamentary Group on Police*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Bowness

Baroness Corston

Baroness Eccles of Moulton

Lord Foulkes of Cumnock

Lord Hannay of Chiswick

Lord Harrison

Lord MacLennan of Rogart

Lord Marlesford

Baroness O'Cathain

Baroness Quin

The Earl of Sandwich

Baroness Scott of Needham Market

Lord Tugendhat

Lord Wilson of Tillyorn

During consideration of the report the following Members declared an interest:

Lord Bowness

*Solicitor and Notary Public (Non-practising)*

A full list of Members' interests can be found in the Register of Lords Interests:

<http://www.publications.parliament.uk/pa/ld/ldreg.htm>

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at [www.parliament.uk/hleuf](http://www.parliament.uk/hleuf) and available for inspection at the Parliamentary Archives (020 7219 5314)

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \* gave both oral evidence and written evidence. Those marked with \*\* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

*	QQ 1–14	Professor Elspeth Guild, Queen Mary University London and Immigration Law Practitioners' Association
**		Professor Steve Peers, University of Essex
**		Professor John Spencer, University of Cambridge and President, European Criminal Law Association UK
**	QQ 15–28	Professor Estella Baker, Leicester De Montford Law School
**		Mike Kennedy
*		The Law Society of England and Wales (Sarah Garvey)
**	QQ 29–51	Migration Policy Centre (Dr Philippe De Bruycker)
*		Migration Policy Institute Europe (Elizabeth Collett)
**	QQ 52–72	National Crime Agency (Keith Bristow, Director-General)
**		Association of Chief Police Officers (Sir Hugh Orde, President)
*		Europol (Rob Wainwright, Director)
**	QQ 73–85	Professor Douwe Korff, London Metropolitan University
**		Charlie McMurdie
**		European Union Agency for Network and Information Security (Steve Purser)
**	QQ 86–101	British Red Cross (Simon Lewis)
*		Civil Protection Unit, European Commission (Hans Das)
**		David Powell, Lincolnshire County Council and co-chair of the DEFRA sponsored East Coast Flood Group
*	QQ 102–112	Stefano Manservigi, Director-General for Home Affairs, European Commission
*	QQ 113–121	Françoise Le Bail, Director-General for Justice, European Commission
**	QQ 122–135	European Policy Centre (Dr Yves Pascouau)
**		Professor Peter van Krieken, Hague University

- ★★ Polish Institute of International Affairs (Dr Roderick Parkes)
- ★★ QQ 136–144 Sajjad Karim MEP
- ★★ Timothy Kirkhope MEP
- ★★ QQ 145–151 Juan Fernando López Aguilar MEP
- ★★ Judith Sargentini MEP
- ★★ QQ 152–160 Morten Messerschmidt MEP
- \* QQ 161–178 James Brokenshire MP, Security Minister, Home Office  
Shailesh Vara MP, Parliamentary Under-Secretary of State, Ministry of Justice

### Alphabetical list of all witnesses

- ★★ Association of Chief Police Officers (QQ 52–72)
- ★★ Professor Estella Baker, Leicester De Montford Law School (QQ 15–28)
- The Bar Council of England and Wales
- ★★ British Red Cross (QQ 86–101)
- \* James Brokenshire MP, Security Minister, Home Office (QQ 161–178)
- \* Civil Protection Unit, European Commission (QQ 86–101)
- The European Asylum Support Office (EASO)
- ★★ European Policy Centre (QQ 122–135)
- ★★ European Union Agency for Network and Information Security (ENISA) (QQ 73–85)
- \* Europol (QQ 52–72)
- Fair Trials International
- \* Professor Elspeth Guild, Queen Mary University London and Immigration Law Practitioners' Association (QQ 1–14)
- Matthew Heenan
- Immigration Law Practitioners' Association (ILPA)
- ★★ Sajjad Karim MEP (QQ 136–144)
- ★★ Mike Kennedy (QQ 15–28)
- ★★ Timothy Kirkhope MEP (QQ 136–144)
- ★★ Professor Douwe Korff, London Metropolitan University (QQ 73–85)
- \* The Law Society of England and Wales (QQ 15–28)
- The Law Society of Northern Ireland
- The Law Society of Scotland
- \* Françoise Le Bail, Director-General for Justice, European Commission (QQ 113–121)

- ★★ Juan Fernando López Aguilar MEP (QQ 145–151)
- ★ Stefano Manservigi, Director-General for Home Affairs,  
European Commission (QQ 102–112)  
Claudio Matera, Asser Institute
- ★★ Charlie McMurdie (QQ 73–85)  
The Meijers Committee
- ★★ Morten Messerschmidt MEP (QQ 152–160)
- ★★ Migration Policy Centre (QQ 29–51)
- ★ Migration Policy Institute Europe (QQ 29–51)
- ★★ National Crime Agency (QQ 52–72)  
Northern Ireland Executive
- ★★ Professor Steve Peers, University of Essex (QQ 1–14)
- ★★ Polish Institute of International Affairs (QQ 122–135)
- ★★ David Powell, Lincolnshire County Council and co-chair of the  
DEFRA sponsored East Coast Flood Group (QQ 86–101)
- ★★ Judith Sargentini MEP (QQ 145–151)  
Scottish Government
- ★★ Professor John Spencer, University of Cambridge (QQ 1–14)
- ★★ Professor Peter van Krieken, Hague University (QQ 122–135)
- ★ Shailesh Vara MP, Parliamentary Under-Secretary of State,  
Ministry of Justice (QQ 161–178)  
Professor Helen Xanthaki, Institute of Advanced Legal Studies

### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords EU Home Affairs, Health and Education Sub-Committee, chaired by Lord Hannay of Chiswick, is launching an inquiry into the EU's five year agenda for justice and home affairs (JHA) activity for the period 2015–2019, which will succeed the Stockholm Programme. The agenda may become known as the 'Rome Programme' as it is likely to be agreed during the Italian Presidency of the EU. We invite you to contribute evidence to this inquiry. Written evidence is sought by **Wednesday 16 October 2013**.

#### Background

EU Member States, with the input of the European Parliament and the Commission, have in the past agreed three five-year JHA programmes: the Tampere Programme covering the period 2000–2004; the Hague Programme covering the period 2005–2009, and the Stockholm Programme covering the period 2010–2014.

The European Council is likely to begin formally discussing the strategic priorities for the next JHA Programme in June 2014 before reaching a decision on its content by December 2014. To feed into this process EU Member State ministers for justice and the interior began discussing this matter at an informal JHA Council meeting on 18–19 July 2013 and the Commission is also expected to contribute to this process in due course.

The content of the next JHA Programme may touch upon the following policy areas:

- Asylum and immigration
- Schengen area, borders and visas
- Internal security
- Organised crime and human trafficking
- Disaster relief and crisis response
- Police cooperation
- Criminal justice
- Civil justice
- Data protection/privacy/retention (incl. revision of existing legislative proposals)
- Drug control policy
- Relations with third countries on JHA matters
- Counter-terrorism
- Online pornography



**Particular questions raised to which we invite you to respond are as follows (there is no need for individual submissions to deal with all of the issues)**

- (1) Should there be a fourth JHA programme? If so what should its content, focus and purpose be, with reference to the previous programmes and evaluations thereof?
- (2) What is the relevance of the political context? For example, how relevant will the debates and controversies surrounding the free movement of persons, privacy (the Prism programme in the US, as well as similar programmes in some Member States) and the negotiation of a US-EU free trade agreement be?
- (3) What lessons from the application of the Stockholm Programme could usefully be reflected in the next JHA Programme? Did the Stockholm Programme involve too much or too little legislation and what were its tangible outputs? How successful have some of these outputs, such as the Standing Committee on Operational Cooperation on Internal Security (COSI), been and are they working as intended?
- (4) Should the EU's focus be on consolidating existing JHA cooperation before embarking upon further EU legislative proposals and initiatives? The UK Government, in particular, has emphasised in the past that the EU should focus on practical cooperation, which does not necessarily require a legislative underpinning.
- (5) Should the Programme include a timeline for repealing and/or consolidating existing JHA legislation where necessary?
- (6) What should be the format of the next JHA Programme? For example, should it comprise a concise set of principles or contain a longer, and more detailed, set of initiatives as per the previous programmes?
- (7) What role should the European Parliament and national parliaments play, if any, in defining the content of the next JHA Programme?
- (8) Is the funding allocated to JHA activity in the Multiannual Financial Framework for the period 2014–2020 sufficient to achieve existing aims?
- (9) What are the potential implications of further EU Treaty change for JHA cooperation, including the position of the UK?
- (10) What form could or should the UK's future participation in JHA matters take beyond the 2014 opt-out decision? What are the priority areas for potential cooperation in this respect, assuming that the UK will end up participating less in this area than it does at present? Will exercising the opt-out undermine the UK's ability to influence the content of the next JHA Programme?

## APPENDIX 4: ABBREVIATIONS AND ACRONYMS

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AFSJ	Area of freedom, security and justice
ASEAN	Association of Southeast Asian Nationals
CEAS	Common European Asylum System
COREPER	Permanent Representatives Committee
COSI	Standing Committee on Operational Cooperation on Internal Security
EASO	European Asylum Support Office
EAW	European Arrest Warrant
ECRIS	European Criminal Records Information System
EEAS	European External Action Service
EERC	European Emergency Response Capacity
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
ENISA	European Union Agency for Network and Information Security
EPPO	European Public Prosecutor's Office
ERCC	Emergency Response Coordination Centre
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Police Office
FEMA	Federal Emergency Management Agency
GAMM	Global Approach to Migration and Mobility
ILPA	Immigration Law Practitioners' Association
JHA	Justice and home affairs
JIT	Joint Investigation Team
MEP	Member of the European Parliament
MFF	Multiannual Financial Framework
MIC	Monitoring and Information Centre
NATO	North Atlantic Treaty Organisation
REFIT	Regulatory Fitness and Performance Programme
TFEU	Treaty on the Functioning of the European Union
THW	Das Technisches Hilfswerk
UN	United Nations
VSCPF	Voluntary Sector Civil Protection Forum

**APPENDIX 5: JHA LEGISLATION RECOMMENDED BY THE STOCKHOLM PROGRAMME BUT NOT YET ADOPTED<sup>290</sup>**

<b>Commission Document Number</b>	<b>Description</b>
COM (2010) 378	Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer
COM (2011) 126	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes
COM (2011) 127	Proposal for a Council Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships
COM (2011) 137	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents
COM (2011) 32	Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime
COM (2011) 335	Proposal for a Regulation of the European Parliament and of the Council on European statistics on safety from crime
COM (2011) 445	Proposal for a Regulation of the European Parliament and of the Council creating a European Account Preservation Order to facilitate cross border debt recovery in civil and commercial matters
COM (2011) 635	Proposal for a Regulation of the European Parliament and of the Council on a Common European Sales Law
COM (2011) 750	Proposal for a regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa
COM (2011) 751	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund

<sup>290</sup> Adapted from Laboye, H and De Bruckeyr, P. *Towards the negotiation and adoption of the Stockholm Programme's successor for the period 2015-2019*, 2013.

Commission Document Number	Description
COM (2011) 752	Proposal for a regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management
COM (2011) 753	Proposal for a regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management
COM (2011) 881	Proposal for a Council Directive on consular protection for citizens of the Union abroad
COM (2011) 904 908 909 911 912 915 916 917	Proposals for Council Decisions on the declaration of acceptance by the Member States, in the interest of the European Union, of the accession of Albania, Andorra, Armenia, Gabon, Morocco, the Russian Federation, Seychelles and Singapore to the 1980 Hague Convention on the Civil Aspects of International Child Abduction
COM (2011) 910	Proposal for a Council Regulation extending to non-participating Member States the application of Regulation (EU) No .../2012 establishing an exchange, assistance and training programme for the protection of the euro against counterfeiting (the “Pericles 2020” programme)
COM (2012) 10	Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data (General Data Protection Regulation)
COM (2012) 11	Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)
COM (2012) 35	Proposal for a Council Regulation on the Statute for a European Foundation (FE)
COM (2012) 363	Draft Directive on the fight against fraud to the Union's financial interests by means of criminal law.

Commission Document Number	Description
COM (2012) 650	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No.539/2001 listing third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement
COM (2012) 744	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1346/2000 on insolvency proceedings
COM (2013) 821	Proposal for a Directive of the European Parliament and of the Council on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings
COM (2013) 822	Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings
COM (2013) 824	Proposal for a Directive of the European Parliament and of the Council on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings
COM (2013) 151	Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of research, studies, pupil exchange, remunerated and unremunerated training, voluntary service and au pairing
COM (2013) 161	Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 207/2009 on the Community trade mark
COM (2013) 162	Proposal for a Directive of the European Parliament and of the Council to approximate the laws of the Member States relating to trade marks (Recast)
COM (2013) 173	Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA
COM (2013) 197	Proposal for a Regulation of the European Parliament and of the Council establishing rules for the surveillance of the external sea borders in the context of operational cooperation coordinated by the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union

Commission Document Number	Description
COM (2013) 42	Proposal for a Directive of the European Parliament and of the Council on the protection of the euro and other currencies against counterfeiting by criminal law, and replacing Council Framework Decision 2000/383/JHA
COM (2013) 45	Proposal for a Directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
COM (2013) 534	Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office
COM (2013) 96	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)
COM (2013) 97	Proposal for a Regulation of the European Parliament and of the Council establishing a Registered Traveller Programme
COM (2013) 45	Proposal for a Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing