

Vergaderjaar 2009–2010

23 490

Ontwerpbesluiten Unie-Verdrag

Nr. 572

BRIEF VAN DE MINISTERS VAN JUSTITIE, VAN BINNENLANDSE ZAKEN EN KONINKRIJKSRELATIES EN DE STAATSSECRETARIS VAN JUSTITIE

Aan de Voorzitter van de Tweede Kamer der Staten-Generaal

Den Haag, 7 oktober 2009

Mede namens de Staatssecretaris voor Europese Zaken, bieden wij U hierbij het Nederlandse position paper «Dutch priorities for the Stockholm Programme» aan.

Op uitnodiging van het Zweedse Voorzitterschap is dit paper op 18 september jl. formeel aangeboden. Ten behoeve van het Voorzitterschap is het position paper in het Engels opgesteld. Het position paper is gebaseerd op het kabinetsstandpunt inzake de Nederlandse visie op een toekomstig JBZ-meerjarenbeleidskader 2010–2014 (Stockholm Programma) dat op 20 mei 2009 aan Uw Kamer is aangeboden (kamerstuk 23 490, nr. 557). Het position paper is in vergelijking met het kabinetsstandpunt op enkele punten geactualiseerd en aangescherpt, waarbij de reflecties uit de brief van de Commissie Meijers van 4 september jl. zijn meegewogen.

Graag zijn wij bereid om met Uw Kamer over het Nederlandse position paper van gedachten te wisselen.

De minister van Justitie,
E. M. H. Hirsch Ballin

De minister van Binnenlandse Zaken en Koninkrijksrelaties,
G. ter Horst

De staatssecretaris van Justitie,
N. Albayrak

Dutch priorities for the Stockholm Programme

The Netherlands fully supports the main priorities identified in the European Commission's Communication on the Stockholm Programme: a Europe of rights, a Europe of justice, a Europe that protects and a Europe of solidarity. The Netherlands is of the opinion that the cornerstone of the new programme needs to be «building a citizen's Europe». The Netherlands, together with Belgium and Luxembourg, has already contributed to the preparation of the Stockholm Programme by sending three memorandums on the subject to the European Commission.

In addition to these three Benelux memorandums, the Netherlands would like to elaborate on the subjects mentioned below. This document sets out several objectives for the Stockholm Programme, which the Netherlands believes should be accomplished by 2014. It is based on memorandums sent by the government of the Netherlands to the Dutch parliament.¹

Justice

Strengthening mutual trust through additional evaluation in criminal matters

JHA policy is based on trust: trust between the EU member states and between the citizens of the Union, trust in each other's legal systems and judiciaries and in the European legal order, between authorities, agencies and politicians, and between the European institutions themselves. Establishing and maintaining that foundation of trust requires hard work and close contact. Measures must be taken to preserve and reinforce that trust, particularly in the light of the far-reaching cooperative mechanisms in JHA that have been (or will be) agreed.

The recent Commission Communication on the Stockholm Programme rightly mentions the need to improve existing evaluation practices, in addition to adopting legislation (e.g. a framework decision on procedural rights in criminal proceedings) and exploring educational and exchange possibilities for legal professionals. We trust that the Swedish Presidency would also be willing to include the following principles and proposals:

- besides improving existing evaluation practices, an **additional system of monitoring** and evaluation, which moves beyond the mere evaluation of implementation, needs to be introduced in the context of **judicial cooperation in criminal matters**;
- the purpose of (additional) evaluation should be to not only facilitate a better understanding of national systems, but also **strengthen mutual trust**;
- additional evaluation should focus thematically on selected aspects of the quality (effectiveness and efficiency), integrity and equity of national legal systems that have repeatedly stood in the way of cooperation and hamper the proper functioning of the European judicial area. Those obstacles should be relevant and relate to the implementation and application of **existing mutual recognition instruments**;
- the starting point of an additional evaluation mechanism is **strengthening without burdening**. Duplication and overlap with already existing evaluation needs to be avoided;
- therefore, the findings of earlier EU evaluations and other relevant information, including evaluation outcomes of other international organisations, such as the Council of Europe, should form the basis for additional evaluation;
- the resultant general or member-state-specific recommendations should be accompanied by **a robust, cyclical follow-up system**.

¹ Parliamentary Papers, House of Representatives 2008/09, 23 490, no. 557.

In order to arrive at a more developed proposal for additional evaluation that complements and elaborates further on the relevant paragraph in the Commission Communication, the Netherlands is currently working with Germany and France on a common text proposal for the Stockholm Programme which will take account of the common position reached on this subject by the Informal Council in Stockholm in July.

Confiscating proceeds of crime

To understand international crime, we have to «**follow the money**». Financial investigation is crucial in cases involving crimes such as human trafficking and drug trafficking, as it enables law enforcement officials to understand the structure, size and hierarchy of criminal networks and the links with financial and economic crime. To effectively combat financial and economic crimes, especially money laundering, corruption and fraud, we have to use and **combine all available instruments in tax, civil and criminal law**.

The recent Commission Communication on the Stockholm Programme rightly mentions the need to strengthen the EU network of asset recovery offices. We trust that the Swedish Presidency is willing to include the following principles and proposals:

- a general and **explicit recognition** of financial investigation as an effective instrument in the fight against serious cross-border (organised) crime;
- the central principle of criminal law policy in the member states and the EU as a whole must be that **criminal assets** (and assets of unexplained origin) **should be seized** in the most effective way possible, on the basis of criminal law or whatever other channels are most expedient (tax law, civil law, forfeiture order);
- the policies of the member states and the EU as a whole must treat **money laundering** as an independent, transnational phenomenon and **dismantle the infrastructure** supporting financial and economic crime;
- the need for more international cooperation in the **exchange of information** between law enforcement agencies and asset recovery offices is vital. Member states and national agencies must work together to seize criminal assets and combat money laundering and other forms of financial and economic crime. **Cross-border law enforcement practices have to be refined. This can be done by improving transparency, enhancing communication** between national enforcement agencies, and **registering** international confiscation cases;
- exploring the legal and practical options for introducing a reverse burden of proof in confiscating proceeds of crime;
- ensuring that the early **seizure** of criminal assets becomes common practice in the course of criminal investigations;
- further developing the principle of mutual recognition in this field, particularly in relation to **seizing goods formally belonging to a third party** and, eventually, to recognizing and executing confiscation decisions, regardless of their legal basis;
- promoting public-private partnership in tracing proceeds of crime, and
- exploring possibilities for **asset sharing** between member states.

Fighting cybercrime

European and international cooperation are essential if we are to fight cybercrime effectively. This encompasses:

- a greater understanding of the extent and mechanisms of international cooperation in Europe (also with third countries) in the fight against

- cybercrime, so that more joint investigations and **joint teams** can be set up (where appropriate, with the help of Europol and Eurojust);
- more cooperation in **filtering and blocking** websites containing pornographic images;
 - developing public-private partnerships, including with financial institutions;
 - eliminating possible obstacles to effective cross-border investigations of cybercrime (e.g. **cross-border searches, surveillance, infiltration**). Concerted efforts should be made to list possible obstacles. This may entail rethinking current frameworks.

Cybercrime and the external dimension

The Netherlands attaches great importance to furthering cooperation with **third countries** in preventing and tackling cybercrime and supports the development of an appropriate legal framework for dealing with these issues. The Council of Europe **Convention on Cybercrime** could serve as a basis for this. The Union should engage in a dialogue with third countries about **cracking down on providers** that host illegal content.

Elimination and Prevention of female genital mutilation

The phenomenon of female genital mutilation (FGM) is a severe violation of human rights, specifically those of women and girls. The elimination and prevention of FGM must be high on the European agenda. This way, Europe sends out a clear signal to communities engaging in the practice, whether within or outside EU borders, to **abandon FGM**.

At European level, knowledge sharing on FGM between states has a fundamental value. The development and exchange of best practices in the fight against FGM would contribute greatly to this. Furthermore, the mutual exchange and **transfer of knowledge of EU member states with non-EU countries** is vital to eliminating and preventing FGM.

At national level, the actors involved should approach this problem in a multidisciplinary way and step up mutual cooperation. States should take firm action against FGM in the areas of prevention, education, social measures and awareness raising. National studies on the prevalence on FGM are necessary to establish the effectiveness of these measures. In order to ensure comparison of national studies between EU member states, the **data and indicators used should be harmonised** as much as possible.

The practice of FGM must be made illegal in all EU member states so perpetrators can be punished. EU member states that already have legislation in place should continue to effectively enforce national laws. European cooperation in the field of criminal justice could, in some instances, prevent perpetrators from crossing borders to avoid punishment.

EU member states should define **a national strategy and action programme** addressing, among other things, some of the themes listed below:

- effective law enforcement,
- awareness raising and prevention,
- knowledge sharing,
- (measures in) migration policy,
- European cooperation,
- prevalence study.

Applying the principle of mutual recognition to mutual assistance in criminal cases

Although our guiding principle is the consolidation of adopted instruments based on mutual recognition, the current system governing mutual assistance calls for certain refinements. On the one hand it became clear that the European Arrest Warrant is frequently issued merely to interrogate suspects, which is not desirable. On the other hand the European Evidence Warrant, which only deals with certain specific types of evidence, has given rise to an unfortunate situation whereby two evidence-gathering regimes now exist for the kind of information that is most needed. For that reason further steps need to be taken.

To facilitate intra-Union cooperation in the investigation and prosecution of criminal offences, the principle of mutual recognition should be gradually applied to mutual assistance in criminal matters, starting with the types of legal assistance most sorely needed: the **interviewing of suspects, witnesses and experts by rogatory commissions** following their transfer, particularly by video conference, as well as the procedure for search and seizure.

This entails:

- increasing the **admissibility of evidence** by promoting the compliance with procedural rules of the issuing member state to the greatest possible extent, recognising that evidence collected in the territory of the executing member state should be admissible under the law of the issuing member state, without limiting the role of the judge/jury to assess such evidence when produced in a specific trial; and
- ensuring that these new instruments guarantee that the procedural safeguards of the parties involved are equivalent to those in place for national proceedings.

Civil law cooperation

Consolidation of civil law

The many instruments that have recently emerged in the area of civil procedural law and the often subtle differences between them can be confusing for citizens who are trying to understand their options for legal redress. To make the law more accessible to ordinary citizens, it is necessary to **consolidate and harmonise existing instruments and remove as much discrepant terminology as possible**.

*A more uniform approach to procedural questions in **civil law**, in instruments meant for areas besides JHA*

The Committee on Civil Law Matters should have a more prominent role in the creation of procedural rules in other European instruments to **prevent the further fragmentation** of such rules. The Committee should be put in a position to contribute to a uniform approach to issues related to civil procedural law (e.g. information gathering and disclosure, evidence or collective redress of mass claims) in **instruments in areas besides JHA**.

Civil law cooperation and the external dimension

Regarding external cooperation in the area of civil law, the Netherlands feels that **third countries** should become party to existing international treaties, including the Hague Conference on Private International Law, and

implement their provisions accordingly. If necessary, the Union can assist these countries in the implementation and enforcements of these treaties. In other words, in matters of civil law, multilateral cooperation is preferable to bilateral cooperation between the EU and third countries. The Netherlands believes it would be ill-advised for the EU to engage in dialogue about civil law cooperation with third countries whose legal systems are not based upon the rule of law. If a decision is made to draft European legislation, it should **complement** existing or planned **multilateral treaties** in this area.

In addition, the Netherlands is pursuing improved information-sharing practices with regard to **international adoption** between the EU and its member states and the Hague Conference on Private International Law, on the basis of the Hague Adoption Convention of 1993.

Home Affairs

Internal security strategy

The Netherlands supports the development of an Internal Security Strategy, as set out in the Commission's communication, and would like to make an active contribution to this goal. The Dutch aims with regard to the substance of the strategy are as follows:

- The strategy must cover the **entire security domain**, meaning not only the fight against organised crime, but also any threat to the internal security of the EU («**all-hazard approach**»). Under this view, counterterrorism and crisis management (for both intentional and non-intentional crises) also have a place in the security strategy.
- In line with the Commission's communication, the EU security strategy will have to address **improving operational cooperation**, at both **EU and regional level**, for example within the framework of cross-border cooperation. Obstacles that may arise to accomplish a cross border approach for security issues should be removed.
- The strategy must focus on a **multidisciplinary approach to crime**. Not only the police and the criminal justice authorities, but **other government partners** like the Tax and Customs Administration and the municipalities can play a role in fighting crime. For this reason we should aim to achieve an internally coherent mix of preventive, administrative and criminal law measures.
- It is important to identify regional risks using EU-wide risk analyses, such as OCTA (for organised crime) and TE-SAT (for counterterrorism). Civil protection should be part of any internal security strategy.
- **Strengthening civil protection** in the EU by:
 - making civil protection part of the internal security strategy;
 - conducting an EU-wide risk analysis designed to identify regional and generic risks (all-hazard approach), developing scenarios and coordinating capacities;
 - strengthening regional cooperation between member states (prevention as response) for regional risks;
 - establishing a stronger coordinating role for the EU in relation to generic risks (e.g. MIC, module system, expert group).*(If this paragraph does not fall under the heading of internal security strategy, the Netherlands believes that this should be a separate section of the Stockholm Programme, see Plan B).*
- The strategy must devote sufficient attention to the role of European agencies like **Europol, Eurojust and Frontex** and to certain mechanisms, especially OCTA.

Plan B: civil protection

The current system for working together on matters of civil protection will have to be further enhanced and expanded in the years ahead. The Stockholm Programme offers the EU the opportunity to develop a joint, integrated vision of civil protection, in addition to improving existing instruments. In this connection, the Netherlands is in favour of:

- an «all-hazard» approach to civil protection that covers not only natural disasters, but also other socially disruptive risks, like energy shortages, pandemics and the degradation of vital infrastructure;
- an EU-wide risk analysis designed to identify regional and generic risks, followed by the development of scenarios and coordination of capacities;
- a stronger regional cooperation between member states on the basis of the risk analysis (both prevention and response) and a stronger coordinating role for the EU with respect to generic risks.

Administrative approach

Combating and preventing organised crime requires an integrated approach on the part of the competent authorities. The use of instruments over and above those afforded by criminal law is chiefly effective in preventing and eliminating links between the «upperworld» and the underworld. With this in mind, the Netherlands would urge that the following principles be set down in the Stockholm Programme.

- The European arsenal of police and criminal justice instruments to combat organised crime should be augmented by a category of **administrative instruments**, including screenings and the option to reject a permit or grant application.
- In addition to law enforcement agencies, other authorities (such as those at **local level**) should actively lend a hand in the fight against organised crime. These partners and their various roles should be described in detail.
- OCTA must include an overview of factors and government measures which individuals abuse to engage in criminal acts.
- Partly on the basis of the aforementioned overview, agreements should be made by the JHA Council, when it comes time to set European priorities, about erecting barriers between the upperworld and underworld.
- To ensure that government decisions do not inadvertently facilitate criminal acts, it should be possible to **screen applicants for permits and grants** under European law. If sufficient grounds are found, it should be possible to reject their applications.
- There will be increased **monitoring of legal persons**.
- To be able to screen both natural and legal persons, member states should be able to have access to each other's information. The regulations governing such exchanges are set down at European level.

Counterterrorism and the prevention of radicalisation

Monitoring

It is important to **monitor the implementation of the EU Strategy and Action Plan to Combat Terrorism**, and to assess its effectiveness. The emphasis should be on the continuity of the efforts, the multidisciplinary approach to fighting terrorism, the operational dimension and the cooperation between EU member states, with EU bodies like Europol and Eurojust, and with key third countries and international organisations like the UN.

Prevention and deradicalisation

Further **implementation of the EU Strategy and Action Plan** on Radicalisation and Recruitment is essential. The initial focus should be on the **prevention and detection** of radicalisation at an early stage: through a well-balanced, local preventive approach, community policing, a close association of the various players within civil society and a well-balanced EU communication strategy that would highlight the actions taken by the Union in the field of human rights, crisis management, development aid and technical assistance, and in offering «alternative narratives» and making proactive use of the internet.

The need to **strengthen the local approach to radicalisation** should be explicitly included in the Stockholm Programme, with reference to the following points:

- A **network** of local professionals should be set up by 2010. Within this network, quality standards will be developed for training courses.
- A **European manual of good practices** for tackling radicalisation should be drawn up by member states and updated annually.
- In 2009 the Netherlands is organising the first «**Cities Conference**», a forum for sharing experiences on the local approach to radicalisation. It would be useful to hold similar conferences every year (with an alternating host country).
- Knowledge and capacity need to be developed to limit crises and social upheaval as a result of terrorist attacks.
- The Union and its member states should put an extra effort into **supporting projects** aimed at **de-radicalising** extremist individuals or groups and exchanging best practices. In this respect it should be stressed that other actors (like local community leaders) could play a useful role as intermediaries.
- Finally, it is of crucial importance to share good practices and develop measures aimed at preventing the **use of the internet for terrorist purposes**, such as radicalisation. Special attention should be paid to public-private partnerships and the enhancement of industry self-regulation, in order to erase unwanted content on the internet.

SitCen and Europol

It is vital to ensure a common understanding of the phenomenon of terrorism, in particular through the analysis produced by SitCen. Ensuring a proper follow-up to the SitCen analysis, especially from the point of view of its policy implications, is of utmost importance. The collection, transmission and analysis of information should remain the core business of Europol in the years ahead. In addition:

- Europol should strengthen its position as a centre of excellence on technical and non-technical aspects of the modus operandi of criminal and terrorist activities.
- Once Europol becomes more adept at handling its current range of duties, it is worth considering whether that body should be given more powers over the long run.
- **Cooperation between Europol and SitCen** should be enhanced (e.g. through joint strategic analyses and a better follow-up to the analysis products), and between Europol and Frontex (e.g. through joint risk analysis, joint operations, a better follow-up on the information and products of each organisation).

Counterterrorism and the external dimension

Strengthening the external action of the EU in the area of counterterrorism is of great importance. Essential elements are: contributing to prevention; dealing with radicalisation, de-radicalisation and reintegration in key third countries; promoting technical assistance, and reflecting on a coherent EU external policy that integrates CT aspects, in order to effecti-

vely combat terrorism and radicalisation. In addition, media diversity should be supported in certain high-risk countries.

The **protection of human rights** should remain an integral part of all counterterrorism policies. Finally, the Union should continue to promote the implementation of the UN counterterrorism strategy and the adoption of the UN counterterrorism convention.

Evaluation

Since 2001 many new legal instruments and policies have been agreed in the field of counterterrorism. The Union should assess whether these new legal instruments and policies are still **up to date, effective and proportional** and whether these need to be continued or improved. In order to **increase public support** for its counterterrorism policies and to enhance transparency, the Union and its member states should look into whether documents which are currently classified can be **made public**.

Asylum and migration

Return in EU external policy

In the Netherlands' view, the **return of third-country nationals** to their countries of origin or to transit countries should be a **precondition** in EU external policy for financial, economic, security-related and development cooperation with these countries. The EU's **economic and political weight** should be used more effectively by the Commission in negotiations on return and **readmission agreements**. More effective use should also be made of the good relations that certain member states have with certain countries of origin, by involving those member states more **prominently** in such negotiations. The **progress** of these negotiations should be discussed regularly in the Council.

Internal and external solidarity

In the current situation, in which the Common European Asylum System (CEAS) is not yet complete and the asylum systems in some member states are under great strain, **solidarity among member states** is crucial.

- The Netherlands favours **practical, operational cooperation** between member states in the enforcement of the existing asylum acquis, including capacity building in asylum procedures, repatriation and the reception of asylum seekers. These forms of cooperation build member states' **confidence** in one another's asylum systems and promote further **harmonisation**. The European Asylum Support Office (EASO), GDISC and the existing solidarity funds have a major role to play in this respect.
- At this stage the Netherlands views **voluntary, intra-EU relocation** of recognised refugees as another way of giving temporary support to member states that are facing a major burden from asylum seekers. In the interests of all member states, however, care should be taken that this relocation does not attract new waves of asylum seekers or illegal immigrants.
- In the longer term, after the CEAS has been established and evaluated, **mutual recognition of asylum decisions** and the need for a more **permanent** form of intra-EU relocation may be considered.
- At the same time **external solidarity** should be extended to transit countries and countries of origin. This external solidarity, too, should involve **practical cooperation and capacity building** in these countries, in the areas of border control, repatriation and the design of asylum procedures and reception centres.

- In third countries (regions of origin), external solidarity should also include **improvements to refugee protection** and such **lasting solutions** as return, local integration and resettlement.
- The Netherlands **does not support** the Commission's proposed procedures for protected entry and the issue of humanitarian visas at embassies.
- **? Cooperation** with international organisations like **IOM and UNHCR**, on matters like the implementation of a European resettlement policy, and the **ratification and implementation of the Refugee Convention and Protocol** also fall, where relevant, under the heading of external solidarity.
- In this connection, the Netherlands would urge that the two studies on the feasibility of **internal and external processing** proposed in the Hague Programme still be conducted.

Incident reporting mechanism

An integrated approach to monitoring the EU's external borders means that **incidents** that occur during operations coordinated by Frontex will be fully **investigated** by the competent authorities. To this end, the Netherlands attaches great importance to including a **mechanism** in the **Frontex Regulation** on gathering information on such matters and reporting it to the relevant authorities (e.g. the European Commission, as guardian of Community law). The reporting mechanism would also help increase **public support** for participation in Frontex operations, by demonstrating that incidents will be tackled in a satisfactory manner.

Abuse and fraud in family reunification/family migration

The Netherlands feels that the family reunification directive should do more to combat **abuse and fraud** by migrants and sponsors, as well as such undesirable aspects of family migration as **polygamy, forced marriages and honour-related violence**.

- To this end, **in addition to** existing requirements regarding sponsors for family migration, it should be possible to impose other requirements related to **public order**, especially concerning **domestic violence**, so as to avoid subjecting migrants to coercion or violence or consigning them to a position of inequality or dependence on their admission to or arrival in the EU.
- The Netherlands also attaches importance to ensuring that migrants are **sufficiently** equipped to take part in society, in the Netherlands or elsewhere in Europe, and do not immediately find themselves in a position of inequality or dependence once they arrive. This demands an **effort** from the **host society**, and certainly the migrant and his or her **partner** in the Netherlands. The requirements for integration set out in the family reunification directive should do more to help ensure that migrants and their partners have an adequate level of education and are thus capable of playing an independent part in society.

Asylum/migration and the external dimension

The general framework for the external dimension of asylum and migration is provided by the **Global Approach to Migration**.

The Netherlands supports the development of EU programmes that:

- combat **brain drain** and promote **brain gain**;
- encourage the **diaspora**, migrant organisations and the use of **remittances** to boost the development of countries of origin;
- promote **good governance** and the **economic development** of countries of origin and transit countries.

The Union should be more **vigorous** in using its **political and economic weight** in negotiating with third countries over matters of return and readmission.

Greater attention should also be given to **resettlement, mobility partnerships** and multi-year **regional protection programmes**, for the purpose of providing protection, stimulating development and supporting countries of origin. In raising the level of protection given to refugees in the region, it is crucial to involve the **various EU policy areas** (development cooperation, humanitarian aid and foreign policy) and to enhance their mutual coherence.

Finally, in its dealings with third countries, the Union has a responsibility to actively convey the importance of acceding to and implementing the **Refugee Convention Protocol**.

Protection/Common European Asylum System

As the Netherlands sees it, the **purpose** of creating the CEAS (to be up and running by 2012) is to ensure that the member states' asylum systems are set up in such a way that a person seeking international protection within the EU can be **assured of the same outcome from any member state**. With this end in mind, besides completing and implementing this second phase of the harmonisation of asylum legislation, we will also need to step up our **practical, operational cooperation**, thereby encouraging more confidence in national asylum systems and allowing **EASO** to foster member states' convergence on the basis of practice. **GDISC** can also continue to play a major role in this regard. Finally, **Eurodac** should become not only a supporting tool for the Dublin Regulation, but for the entire CEAS.

European resettlement policy

The Netherlands trusts that the Swedish Presidency is in favour of including an **ambitious** section on a **European resettlement policy** for refugees recognised by the member states, as a demonstration of solidarity with third countries, along the lines of the Commission Communication of 3 September on this subject. **After the CEAS has become operational**, the Netherlands would be interested in exploring the possibility of eventually introducing a **European quota**. Within the Union, it will also be necessary to reach agreements and work together on such issues as joint selection missions, joint pre-departure activities and a joint clearinghouse function.

Borders

The Netherlands supports a European **border control process** that uses the latest **technology**, such as **automatic border passage**, along with **integrated** risk inventories and assessments. This will ensure a system that is both effective and efficient, promoting the mobility of **bona fide** travellers, halting **illegal immigration**, setting the stage for close cooperation with countries on the EU's eastern borders and around the Mediterranean Sea, and contributing to the overall **security** of the Schengen area.

Free movement of persons

The Netherlands joins the Commission in stressing the importance of the right of the free movement of EU citizens as well as the principle that this right also entails certain **obligations** for these citizens. We would

welcome a **study** of not only the scope of the definition and the applicability of the concept «public policy» in the relevant **directive 2004/38/EC**, but also the options for **tightening** external border controls in connection with EU citizens who may pose a danger to public policy and national security. The Netherlands would also be in favour of a **system of registration and notification** between member states that would allow them to ascertain if certain individuals are abusing the legal opportunities available under Community law. Finally, the Netherlands would like to see an investigation of problems related to immigration and integration that have been caused by intra-EU mobility.

Horizontal issues

Optimising information-sharing

In the interests of combating crime, terrorism and illegal migration, the Netherlands attaches importance to optimising the conditions for information-sharing on legislation, procedures and ICT systems among EU member states' investigative and law enforcement agencies. To this end, we propose including the following objectives in the Stockholm Programme.

- Reciprocal access to each other's information, based on the principles of mutual recognition, availability and convergence, should be **developed and fleshed out step-by-step and bottom-up**.
- The Swedish Framework Decision and the Prüm Council Decision provide opportunities for direct exchanges of information between organisational units on the lower level of the different EU countries' national contact points. The Netherlands attaches importance to the development of EU measures to ensure that this actually takes place. An initial precondition for this is the promotion of the relevant governmental organisations' professionalism in the area of international cooperation, for instance by means of **certification**.
- It must also be made possible to use existing European central databases, such as **VIS, Eurodac and FIDE, for law enforcement purposes**. This will require extending and deepening the ways in which these databases can be used.
- Europol should be positioned as the preferred channel for exchanges, and following its evaluation the Maritime Analysis and Operations Centre – Narcotics (MAOC-N) should be given a more structural role in the Europol organisation.
- Use should be made of existing European ICT standards and facilities, such as s-Testa, Europol/SIENA and the European interoperability framework.

The Netherlands aims at the adoption of a systematic approach to optimising information-sharing, so as to avoid a proliferation of legal instruments, procedures and ICT systems. For this reason, we support the Swedish Presidency's development of the Information Management System (IMS). We also favour the development of a European information model as part of the IMS, as the Commission proposes. The Netherlands attaches importance to:

- the attainment of short- and long-term goals within the IMS framework;
- linkages of the European information model, on the one hand, to existing and new technologies as well as to enhanced confidence and professional expertise at EU level, on the other;
- the extension of the IMS to **the full range of JHA issues**, so that the IMS covers not only combating crime, terrorism and **illegal immigration** but also **customs and border controls**;
- the facilitation of the extension of data linkages where necessary;

- provision by the IMS of **scope for bi- or multilateral initiatives** that are in conformity with IMS principles;
- increased interoperability by means of **standardisation**, particularly through the development of common standards.

In the Netherlands' view, **data protection** is an **essential part of the IMS project** for information-sharing between member states. The Netherlands attaches great importance to the provision of **dual protection – protection of both public safety and of privacy** – by the systems that are developed. The best way to provide this dual protection in making decisions about information-sharing is by **subjecting use of this information to adequate safeguards**. The safeguards should comprise, among other things, adequate procedures for supervision, monitoring and legal protection. At the same time, they will also depend on the establishment of appropriate systems and on the technologies available for data protection.

The Netherlands also supports the **promotion of intelligence-led law enforcement** (investigation, border controls and maintenance of public order and safety) in EU countries and the further development of joint intelligence-led law enforcement at EU level (**ECIM, Europol and OCTA**). Achieving this goal demands:

- encouraging exchanges of more criminal intelligence between EU countries in the service of national analyses; and
- **more joint analyses and threat assessments at EU level or within subsets of the EU**. The Netherlands also supports the further development of joint counterterrorist analyses. It is important that these analyses where appropriate **include proposals for policy follow-up**.

One instrument for intelligence-led law enforcement is **profiling** (the use of information to facilitate targeted searches for people or objects that fit a given risk profile), especially in the **fulfilment of monitoring and control tasks**. This instrument should be further developed at EU level. In some countries Passenger Name Records (PNR) are used to profile passengers who may be involved (either as traffickers or victims) in drugs or human trafficking. With regard to the use of this instrument, the Netherlands attaches great importance to due weight being given to proportionality, protection of privacy, care in the use of information, and limited duration of data storage for profiling purposes.

Information-sharing and the external dimension

The Netherlands supports the development of an **adequate EU framework** for efficient, secure information-sharing for law enforcement purposes between the Union, EU bodies and EU member states, on the one hand, and third countries, on the other hand, on the basis of transparent, sound arrangements for the protection of privacy. In this connection, the expected conclusion of an **EU-US agreement** on the sharing and protection of information in the field of law enforcement is a major step in the right direction. The **standards** that will be included in that agreement could possibly also play a role in assessing the level of data protection in other third countries, and could possibly serve as an example in concluding similar agreements with other third countries. Creating the EU framework mentioned above would have the additional advantage of **facilitating Europol and Eurojust's work** in concluding such agreements with third countries.

Fighting trafficking in human beings

The Netherlands believes that the **fight against trafficking in human beings** (THB) should be an **EU priority** and should be approached in a **multidisciplinary way**. Cooperation against THB should be improved both between member states and between the EU and third (source and transit) countries.

The Council will **adopt a new EU Strategy to fight THB** in early 2010, based on a proposal from the Commission. On the basis of this Strategy, an Action Plan will be drafted detailing what actions need to be taken at European level to fight THB. The fight against THB calls for a **multidisciplinary approach**, involving policies on visa and migration, prevention, administrative measures, law enforcement, protection of victims and JHA external relations. All these policy areas should be reflected in the strategy. It should also include a passage on looking into ways of improving information-sharing between EU member states in order to match **police and migration data** with **data in public registers**, such as those of chambers of commerce, municipalities and customs.

Fighting trafficking in human beings and the external dimension

The strategy will be complemented by the Action-Oriented Paper on tackling THB, which also needs to be implemented in the years ahead. The Netherlands very much welcomes the Swedish initiative to draft such an **Action-Oriented Paper**, which will be helpful in **improving cooperation with source and transit countries**.

Combating drugs and the external dimension

The fight against drugs production and trafficking needs to be stepped up. Closer cooperation with **source and transit countries (outside the EU)** is necessary. West African countries that are increasingly involved in transit should be supported in tackling the problem. This demands effective coordination and cooperation among member states and with third countries and other relevant international partners.

A coherent EU external policy that fully embraces JHA issues

EU external policy in the dimension of Freedom, Security and Justice has expanded enormously since the adoption of the Treaty of Amsterdam. Partly as a result of globalisation, increased mobility and the fight against international terrorism, external cooperation has been stepped up substantially in recent years.

In the Netherlands' view, none of the internal objectives that have been posed as part of the Stockholm Programme can be attained without making use of European Union's external policy instruments intended for this purpose. For this reason, we favour **including in the Stockholm Programme a new, updated strategy for JHA/External Relations**. In general, the Netherlands supports **integrating the external dimension of JHA policy into a coherent general EU external policy**. In this way, in cooperation with third countries, the rule of law can be advanced; illegal immigration, transborder crime and terrorism can be more effectively combated (for example by minimising the factors that contribute to terrorism and radicalisation); and policy on migration and development can be structurally embedded. In addition, a coherent international legal order is conducive to better understanding and use of that legal order by governments and citizens. Supplementing the external aspects of the various topics discussed above, the Netherlands would also like to emphasise the following themes.

Coherence

The strengthening of JHA policy coherence that the Netherlands considers necessary should be manifested in several distinct areas.

- Firstly, **better coordination** is needed **between JHA and other European policy areas**. For example, before other EU policies are adopted with external implications or effects (in the fields of e.g. development cooperation, agricultural and fisheries policy, environmental policy and trade policy), the possible impact of those new policies on JHA – e.g. the possibility of their fostering crime or leading to undesirable migration flows – should be examined. Ways should also be considered of bringing about more synergy between the objectives aimed at in **providing EU external aid** and those aimed at by JHA policies, as in the areas of promoting the rule of law, regulating migration and combating crime and terrorism.
- Secondly, the increased institutional complexity of JHA policy demands **better coordination** between the external activities of the European Commission, the Council formations and such agencies as Europol, Eurojust, Frontex, Cepol and the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA).
- It is also advisable for the member states and EU to **coordinate their approaches** as much as possible in negotiations in international forums with third countries. Sending **third countries a common message** strengthens the EU's position as a global partner.
- Finally, the principle of coherence implies that the EU should urge third countries to accede to existing agreements when adequate forms of multilateral international cooperation are available under the auspices of e.g. the UN, the Council of Europe or the Hague Conference for Private International Law, rather than creating new instruments.

Human rights

The Netherlands is endeavouring to bring about further improvements to European human rights policy, and will support EU initiatives to raise the profile of Union human rights interventions. We will make a special effort to promote, at national and multinational level as well as through joint EU lobbying, the implementation of EU guidelines that have been adopted. We support an **EU human rights policy that complements the already existing Council of Europe instruments**, and are devoting ourselves to promoting closer cooperation between these two organisations on specific human rights programmes. The EU's anticipated accession to the ECHR is a major step forward.

Promotion of the rule of law and respect for human rights should be a general principle underlying all aspects of EU external policy. Third countries with which the EU concludes agreements should be spurred on where necessary to accede to appropriate international human rights conventions and the corresponding monitoring mechanisms.

The Union should provide these countries assistance as necessary with implementing these conventions. Wherever third countries fall short with regard to the rule of law and respect for human rights, the Union should in principle limit itself to non-operational cooperation aimed at building capacity in the field of and reinforcing the rule of law.

Geographical priorities

In the Netherlands' view, while different priorities should be set in different policy areas, the EU's Eastern partners, third countries in the Mediterranean region, the candidate countries, the Western Balkans, West Africa, the United States and the Russian Federation are in general the geograp-

hical priority areas. This does not mean that a full-fledged JHA partnership is advisable with every priority country. As said before, we consider it in principle inadvisable for the EU to discuss future cooperation in the areas of criminal or civil law with third countries that do not have legal systems founded on the rule of law.

The Netherlands proposes that a **schematic overview** be drawn up, on the basis of a thorough analysis, of what partnerships and instruments already exist on which JHA issues with which third countries and regions; of what their results have been in practice; and where these partnerships could be modified or extended. Such an overview could then provide a basis for considering the desirability of deepening the EU's JHA relationships with China, India and the Latin American countries. It could also be a basis for considering the possibility of making new partnership agreements with other countries. In adopting **partnership agreements with third countries**, as much use as possible should be made of **standard texts** and clauses. The Stockholm action plan should include a more detailed version of such an analysis.

The Netherlands also believes that the existing JHA provisions in the many agreements that the EU has concluded with third countries could be used to better advantage. In the dialogues with third countries under these agreements, partner countries should be more sharply called to account about the JHA commitments they have made.