



CONSULTATIVE FORUM OF PROSECUTORS GENERAL AND DIRECTORS OF PUBLIC PROSECUTION

GUIDELINES FOR A FUTURE MANDATE

1. Background

The Council's Internal Security Architecture document of 2006 outlined a process for the establishment of a reference framework for EU Internal Security, including four steps:

- (1) Assessment of the threats affecting the security of the EU, on the basis of the Organized Crime Threat Assessment (OCTA) and similar reports;
- (2) Definition by the Council of the EU political priorities in the fight against crime,
- (3) Implementation of the priorities by the EU Member States and other actors involved and, on the basis of their reports,
- (4) Evaluation of the implementation by the Presidency and Commission.

Throughout the consideration of EU Internal Security, the active participation of the law enforcement authorities and the judicial authorities of the EU Member States, with the support of Eurojust and Europol, and in liaison with the internal bodies of the Council, was highlighted. In particular:

- (1) Regarding the first step (assessment of the threats), the Council called for further clarification about the subjects and planning of the existing threat assessments, so that they could be made (more) complementary and aligned in time. It also stated that a methodology should be set out, adapted to the subject, in case it was decided to draw up more assessments: *“In order to do that efficiently, and ensure the necessary coordination, the different actors should meet, on a bilateral and multilateral basis and whenever and as often as necessary”*.



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- (2) Concerning the second step (adoption by the Council of the political priorities), the Internal Security Architecture stated that, during the preparation of this file by the normal preparatory bodies of the Council, relevant partners should be associated to the discussion “by devoting the necessary time to the subject and gathering the relevant experts, both from the Member States and from the concerned agencies and bodies”. “*When necessary, the meetings could take place with those responsible in the Member States for setting out national criminal policies (judicial authorities), and such coordination meetings between those responsible in the Member States for setting out the relevant security plans and national criminal policies and the relevant agency could be organized and coordinated by the relevant agency (Eurojust for judicial authorities)*”.
- (3) Although the third step (implementation of priorities) is a matter for Member States, it was suggested that the internal bodies of the Council kept awareness of priorities high on the agenda of all relevant actors, in order to improve their implementation.
- (4) In relation to the fourth step (evaluation of priorities), an evaluation mechanism should be drawn up, “*allowing to permanently follow and adjust the process, developing indicators and measuring instruments*”, with the guiding principle that it should be “*clear and simple and not impose unnecessary burdens on Member States or EU bodies*”.

This approach has been confirmed by the Internal Security Strategy adopted by the Council in February 2010. Among the strategic guidelines for action was included a need to enhance a horizontal dimension of a wide and comprehensive approach to internal security by involving judicial cooperation as one of the sectors to be taken into account. The guidelines emphasized the need to “*realize the potential synergies between law-enforcement and border agencies and judicial authorities in preventing cross-border crime*”. The coordinating role of the COSI (Standing Committee on Operational Cooperation on Internal Security) is also stressed, and the possibilities for interacting with it should be taken into consideration by the participants in this meeting.

The Stockholm Programme also emphasizes the need to move forward in this direction, when stating that where appropriate, networks of prosecutors, among others, “*should also be informed of the work of the Internal Security Committee, or be able to take part in the*



development of the Organised Crime Threat Assessment and other strategic tools of the Union. Such networks should primarily meet using existing structures, such as Europol, Eurojust and Frontex, or at the invitation of the Presidency as host country". The fact that the Forum is not intended to become a new network should not prevent us from considering the benefits that such a Forum could bring, in line with the aims set out by the Stockholm Programme.

According to the Action Plan implementing the Stockholm Programme, *"an Internal Security Strategy, based upon the full respect of fundamental rights and on solidarity between Member States, will be implemented with care and firm resolve to face the growing cross-border challenges"*. Such Internal Security Strategy *"implies a coordinated approach to police cooperation, border management, criminal justice cooperation and civil protection"*.

In addition, the Action Plan implementing the Stockholm Programme states that *"a criminal justice strategy, fully respecting subsidiarity and coherence, should guide the EU's policy for the approximation of substantive and procedural criminal law"*.

The role and possible contribution of the Prosecutors General and Directors of Public Prosecution to the process of EU Internal Security have been discussed for a long time, namely at the meetings of the 'Eurojustice Forum' (Portoroz 2007, Ljubljana 2008, Edinburgh 2008 and Tallin 2009), and at both meetings (Informal CATS in Paris, meeting in The Hague at Eurojust premises) organized in the second semester of 2008 by the then French Presidency of the Council of the EU. A Meeting of Prosecutors General and Directors of Public Prosecution took place on 20 May 2010 in Madrid, with the purpose of moving the discussion forward, on the basis of a document distributed to the participants in advance, which proposed the setting up of an informal Consultative Forum on Public Prosecution Policy able to contribute to the different steps of the cycle of Internal Security of the EU, in close cooperation with the internal bodies of the Council and with the support of Eurojust. The report of the Meeting is attached.

The present document is a revised version of the "Guidelines for a Future Mandate", following the discussion that took place in Madrid.



2. Objectives

On the basis of the previous discussions referred above, and within the new legal framework comprising the Treaty on the Functioning of the EU (TFEU), the Stockholm Programme, the Internal Security Strategy adopted by the Council at its JHA Meeting on 25 February 2010 and the Action Plan of the Commission implementing the Stockholm Programme, the Prosecutors General and Directors of Public Prosecution wish to promote the reinforcement of the judicial dimension of the EU Internal Security by setting up an informal Forum bringing together the authorities responsible in each Member State for national policy on public prosecution, with a view to their participating in the different stages of the process, namely:

- (1) By presenting a common contribution, on the basis of their own experiences and with the support of Eurojust, about the threats affecting the security of the EU, to be included in OCTA and/or other threat assessment reports.**

For this purpose, a methodology for receiving and compiling the information and for drawing up the report should be established, in close cooperation with the internal bodies of the Council, Eurojust and Europol. The results of current projects (e.g., Harmony Project, discussions in COSI) for a better coordination (or integration) of the existing threat assessment reports should be considered.

- (2) By being associated with the discussions in the internal bodies of the Council,** before the adoption of the EU priorities, by either facilitating written comments or attending the meetings organized for this purpose.

A methodology should be established, to ensure that the contribution of the Consultative Forum is aligned with the activities of the internal bodies of the Council.

- (3) By promoting the discussion about common difficulties in the fight against specific criminal phenomena and the drawing up of common recommendations and good practices to tackle these phenomena** when implementing the priorities at national level,;
- (4) By participating in the evaluation of the implementation of the EU priorities in the fight against crime** at a later stage, when a methodology has been established according to Article 70 TFEU.



In addition to these objectives, and as suggested by the Commission at the Madrid Meeting, the Consultative Forum could contribute with its experience in relation with new legislative initiatives, in particular, those related to the principle of mutual recognition in criminal matters, possible harmonization of specific forms of crime and further developments of Articles 85 and 86 TFEU; and, eventually, could also actively **participate in the “impact assessment”** launched by the European Commission in view of the preparation of new legislative initiatives.

3. Draft Mandate

In the framework of EU Internal Security, the main objectives of the Forum would be:

In relation to the Internal Security of the EU:

- To contribute regarding the threats affecting the security of the EU;
- To be associated with the discussions at the internal bodies of the Council before the adoption of the EU priorities in the fight against crime;
- To analyse common difficulties in the fight against specific criminal phenomena and draw up common recommendations and good practices to tackle these phenomena.

In the future, the Consultative Forum could consider participation in the evaluation of the practical application of the legal instruments of judicial cooperation in criminal matters, according to the mechanism established in Article 70 TFEU.

In relation to the Criminal Justice Strategy:

- To contribute with its experience to new initiatives based on the principle of mutual recognition in criminal matters, harmonization of specific forms of crime or further developments of Articles 85 and 86 TFEU; including the possibility to actively participate in the “impact assessments” launched by the European Commission.



4. Format

The Forum must be and remain an informal structure. It cannot and shall not substitute any existing Working Group or other structure. It shall not constitute a new network or similar group.

It shall not deal with concrete cases or operations.

The Consultative Forum would not require any secretariat and should not entail any specific costs from the Member States.

The Prosecutors General and Directors of Public Prosecution are invited to nominate a contact person to ensure that the necessary proceedings are established at national level, for the appropriate execution of the objectives of the Consultative Forum.

The contact points will be particularly involved in the two first steps of the Internal Security of the EU and in the collaboration with the Commission of the “impact assessment” of new legislative initiatives.

Eurojust will, subject to availability of financial resources, support the work of the contact points and consider the possibility of organizing an annual meeting, in particular, for the discussion of the draft of the Council about the political priorities of the EU in the fight against crime (step two).

The Meetings of the Consultative Forum (e.g., of the Prosecutors General and Directors of Public Prosecution integrating the Consultative Forum) will be called by the Presidency of the EU, preferably during the process of implementation at national level of the political priorities established by the Council (step 3).

Eurojust could be consulted as to possible involvement in support and coordination as regards the information received from the various prosecution services, and with regard to hosting the meetings.

The role and contribution of the Forum should be distinct and separate from that corresponding to Eurojust in the various areas concerned (internal security and criminal justice



strategy). The Prosecutors General and Directors of Public Prosecution will decide on the points to be included in the Agenda of the meetings (both of the contact points and of the Consultative Forum), and on the conclusions and results of the Forum's meetings.

5. Next Steps

5.1. As agreed on the Meeting in Madrid, the Spanish Prosecutor General submitted the revised version of the Guidelines for a Draft Mandate to the Prosecutors General and Directors of Public Prosecution, for their comments.

On the basis of the comments of the Prosecutors General and from the College of Eurojust, this final version of the Guidelines for a Future Mandate has been prepared by the Spanish General Prosecutor's Office, in close cooperation with the rotating Presidency of the EU and Eurojust.

5.2. This final version of the Guidelines for a Future Mandate will be submitted by the Spanish Presidency of the EU to the Article 36 Committee, with a view to its considering, at its Meeting of 24th June 2010, the possibility of supporting the objectives and activities of the Consultative Forum.

COSI will be invited to take note of the final version of the Guidelines for a Future Mandate at its meeting of 25th June 2010.

5.3. In the Framework of the Trio, the Spanish Presidency of the EU could draw up a possible calendar and methodology for the next activities of the Consultative Forum, including the role of the contact points, with particular attention to the fact that a new cycle of EU Internal Security will (possibly) start in January 2011, with the preparation of the next OCTA Report.

Madrid, June 2010

The Prosecutors General and Directors of Public Prosecution of the EU Member States.