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Convener
Justice Committee
The Scottish Parliament
EDINBURGH
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Dear Christine,

JUSTICE COMMITTEE EU PRIORITIES 2015-16

Thank you for your letter of 3 February to the Cabinet Secretary for Justice setting out the Committee's EU priorities for 2015-16. Mr Matheson has asked me to reply on his behalf, given my portfolio responsibilities include attendance at Justice and Home Affairs Council.

By way of introduction, Justice Ministers greatly value the opportunity to raise Scotland's international profile and will be seeking to do so, particularly in the EU, over the coming year. Therefore, the Committee's interest in EU Justice and Home Affairs is both timely and welcome.

In general terms, the Scottish Government will seek to continue to deepen its engagement with the Council, Commission and European Parliament, whilst pursuing horizontal objectives to: promote Scotland as a positive contributor to Europe; to develop good practice exchanges with our European partners; and to develop the Scottish Government's institutional capacity to engage with European issues and specifically in relation to justice and home affairs.

Action Plan Refresh

The Scottish Government is currently in the process of refreshing its Action Plan on European Engagement. This will remain the key mechanism through which we capture our EU purpose and narrative and describe our activities under each Presidency of the Council of the EU. The Action Plan will become an online platform which can be easily consulted and regularly updated with key information, with the framework for the Plan going live before the end of this month. The Justice Committee will be provided with a link to this framework when it is available.

With regard to the priorities you have identified I am happy to provide the following information to the Committee.

EU e-Justice and the Scottish Government's Justice Digital Strategy

EU e-Justice describes the partnership between Member States to provide better access to justice systems throughout the EU using electronic means. The EU [e justice strategy](#) and associated [Action Plan](#) share common objectives with the Justice Digital Strategy – to have modern, user-focused justice systems which use digital technology to delivery simple, fast and effective justice at best cost.

The Scottish Government has established strong relations with the UK Ministry of Justice lead team and Scottish officials have already attended a number of formal and informal EU working groups driving forward this work at a European level. We have also begun to establish constructive relationships with counterparts in EU Institutions and other Member States on common priorities. Examples include the EU e Justice Portal, which will help improve public access to justice information across the EU; and the cross border videoconferencing project, which will help increase the use of videoconferencing across justice organisations domestically and across European borders.

Scotland benefits from this engagement in a number of ways. In practical terms, for example, through Scottish Government gaining access to meetings, papers and technical developments which will help enable increased cross-border co-operation in the future with other Member States and which could potentially lead to operational savings domestically. There are also reputational benefits in terms of Scotland acting, and being seen to act, as a modern, proactive and responsible EU partner.

The Scottish Government is currently carrying out an exercise to identify the European e-Justice actions that will best help us achieve Justice Digital Strategy objectives. We are specifically focussing on the actions that already have or could potentially benefit most from Scottish input; and the actions that will help us deliver progress against tasks across the four main JDS projects - Digital Platform; Justice Portal; Justice Communications; and Legal. A further update to the Committee, including a list of these tasks, will be provided in the coming months.

Criminal procedure dossiers and the EPPO

These measures are still subject to negotiation, and assessments are consequently provisional. With regard to implications for the Criminal Justice (Scotland) Bill, subject to Parliamentary approval, the Bill is intended to have passed and come into force prior to the date when the EU measures are likely to require to be implemented, should the UK ultimately decide to opt in. On current projections the implementation deadlines are likely to be 2017, at the earliest. But where applicable, I am nonetheless happy to seek to assist your assessments by providing commentary with regard to potential interfaces between the Bill and the EU measures.

Scots law and practice appears to be largely compliant with the current draft of the Directive on [Presumption of Innocence](#). Nonetheless, proposed provisions with regard to non co-operation, and in particular the general prohibition of any inference being drawn from the acts of suspect/accused persons, may conflict with current domestic practice, where in certain circumstances inferences can be drawn from the refusal to co-operate.

In view of the limited justification provided for it by the Commission on publication, the Scottish Government agreed with the subsidiarity concerns raised by Justice Committee at that time.

The Criminal Justice (Scotland) Bill touches on the right to silence and states that a person is under no obligation to answer any question, other than to give certain information (such as name, date of birth and address). The proposed Directive does not conflict with any of the Bill's provisions.

With regard to Children's Rights in Criminal Proceedings, there is some divergence between the draft and domestic provisions. Of particular note is the definition of a child. In Scotland, in criminal proceedings, a child is generally defined as someone who is under 16, unless they are subject to a Compulsory Supervision Order, whereas the Directive defines a child as someone under the age of 18. There is also some divergence from domestic proposals on how 16 and 17 year olds are to be treated when they are detained by the police. The Criminal Justice (Scotland) Bill will give greater discretion to 16 and 17 year olds than to those under 16. They are to be given the choice whether or not anyone is contacted following their arrest, and, if they wish someone contacted, who that person should be. By contrast, the Directive treats all those under 18 in the same manner and does not allow for any degree of discretion.

Given the breadth of existing Scottish provision for publicly-funded legal assistance throughout criminal procedure from the earliest stages, the proposed Legal Aid Directive in its current form seems unlikely to have a significant impact on Scots law in relation to legal aid.

Under the proposed Regulation the European Public Prosecutor's Office (EPPO) would be responsible for investigating, prosecuting and bringing to judgement the perpetrators of offences against the EU's financial interests and would exercise the functions of prosecutor in the courts of participating Member States. It is envisaged that the EPPO would consist both of a centralised team and delegated prosecutors in each Member State, who would be directed by the EPPO and exclusively responsible to it when dealing with crimes within its jurisdiction, for which it would have EU wide exclusive competence, including for certain ancillary offences. Negotiations have been under way since its publication in draft in July 2013, and appear likely to continue for some time further. The legal base for the EPPO requires unanimity amongst those Member States which are currently participating.

The UK Government Coalition Agreement states that the UK will not participate in this measure and, in view of the potential to undermine the position of the Lord Advocate at the head of the systems of prosecution and investigation of crime, the Scottish Government supports this position. The Scottish Government also agrees with subsidiarity concerns previously raised by the Justice Committee.

Discussions on all the foregoing measures are continuing and the Scottish Government will seek to work constructively with UK Government and EU counterparts to represent Scottish interests in the negotiations.

The European Agenda on Migration

The Committee has asked about the potential impact of this dossier on the Human Trafficking and Exploitation (Scotland) Bill. Substantive details on the European Agenda on Migration have yet to be published by the Commission, although it announced on 4 March that the College of Commissioners has had an orientation debate on the possible constituent

elements. Four main areas were identified for possible future action, namely (a) a Common Asylum System; (b) a new policy on legal migration; (c) fighting irregular migration and human trafficking more robustly; (d) securing Europe's external borders.

With regard to fighting irregular migration and human trafficking the Commission statement of 4 March indicated that it would not be seeking to bring forward new legislation but would rather look to build on existing measures. The Scottish Government believes that the Human Trafficking and Exploitation (Scotland) Bill will create a robust legal framework, provide police and prosecutors with clear powers to detect and prosecute those responsible, and ensure that relevant agencies work together and provide clear rights for victims to access support, in line with the current EU legislation referred to by the Commission, the 2011 Directive on preventing and combating trafficking in human beings.

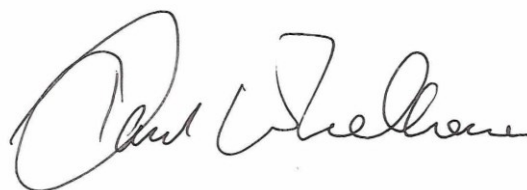
Further details are expected from the Commission in May, but our assessment at this time on the basis of the information provided on 4 March is that there will be no implications for the Human Trafficking and Exploitation (Scotland) Bill per se.

Justice and Home Affairs Agenda 2015-20

The next 5 year plan for the area of Justice & Home Affairs was agreed at the European Council held on 27 June 2014. In contrast to the previous Stockholm Programme, this agenda is a short, concise, high level document which sets out the key priority areas for the EU. The overall priority is the implementation and consolidation of existing legislation, which also fits with the new Commission's stated desire to have less, but more focused legislative action.

Specific areas which the agenda focuses on include: a stated desire to adopt a new EU General Data Protection framework by 2015; developing an efficient and well managed migration, asylum and borders policy – the agenda sets out a number of elements on which migration policy and Border policy must focus; tackling serious organised crime, including developing an effective EU counter terrorism policy – again there are a number of specific actions set out; and developing a sound EU justice policy to contribute to economic growth. This strategic agenda will set the parameters for EU action over the next five years. I have included a copy of the Guidelines with this correspondence for information.

I hope the foregoing is of assistance to the Committee and I am happy to seek to provide any further clarifications you may require.



Paul Wheelhouse

I. FREEDOM, SECURITY AND JUSTICE

1. One of the key objectives of the Union is to build an area of freedom, security and justice without internal frontiers, and with full respect for fundamental rights. To this end, coherent policy measures need to be taken with respect to asylum, immigration, borders, and police and judicial cooperation, in accordance with the Treaties and their relevant Protocols.
2. All the dimensions of a Europe that protects its citizens and offers effective rights to people inside and outside the Union are interlinked. Success or failure in one field depends on performance in other fields as well as on synergies with related policy areas. The answer to many of the challenges in the area of freedom, security and justice lies in relations with third countries, which calls for improving the link between the EU's internal and external policies. This has to be reflected in the cooperation between the EU's institutions and bodies.
3. Building on the past programmes, the overall priority now is to consistently transpose, effectively implement and consolidate the legal instruments and policy measures in place. Intensifying operational cooperation while using the potential of Information and Communication Technologies' innovations, enhancing the role of the different EU agencies and ensuring the strategic use of EU funds will be key.
4. In further developing the area of freedom, security and justice over the next years, it will be crucial to ensure the protection and promotion of fundamental rights, including data protection, whilst addressing security concerns, also in relations with third countries, and to adopt a strong EU General Data Protection framework by 2015.
5. Faced with challenges such as instability in many parts of the world as well as global and European demographic trends, the Union needs an efficient and well-managed migration, asylum and borders policy, guided by the Treaty principles of solidarity and fair sharing of responsibility, in accordance with Article 80 TFEU and its effective implementation. A comprehensive approach is required, optimising the benefits of legal migration and offering protection to those in need while tackling irregular migration resolutely and managing the EU's external borders efficiently.
6. To remain an attractive destination for talents and skills, Europe must develop strategies to maximise the opportunities of legal migration through coherent and efficient rules, and informed

by a dialogue with the business community and social partners. The Union should also support Member States' efforts to pursue active integration policies which foster social cohesion and economic dynamism.

7. The Union's commitment to international protection requires a strong European asylum policy based on solidarity and responsibility. The full transposition and effective implementation of the Common European Asylum System (CEAS) is an absolute priority. This should result in high common standards and stronger cooperation, creating a level playing field where asylum seekers are given the same procedural guarantees and protection throughout the Union. It should go hand in hand with a reinforced role for the European Asylum Support Office (EASO), particularly in promoting the uniform application of the *acquis*. Converging practices will enhance mutual trust and allow to move to future next steps.
8. Addressing the root causes of irregular migration flows is an essential part of EU migration policy. This, together with the prevention and tackling of irregular migration, will help avoid the loss of lives of migrants undertaking hazardous journeys. A sustainable solution can only be found by intensifying cooperation with countries of origin and transit, including through assistance to strengthen their migration and border management capacity. Migration policies must become a much stronger integral part of the Union's external and development policies, applying the "more for more" principle and building on the Global Approach to Migration and Mobility. The focus should be on the following elements:
 - strengthening and expanding Regional Protection Programmes, in particular close to regions of origin, in close collaboration with UNHCR; increase contributions to global resettlement efforts, notably in view of the current protracted crisis in Syria;
 - addressing smuggling and trafficking in human beings more forcefully, with a focus on priority countries and routes;
 - establishing an effective common return policy and enforcing readmission obligations in agreements with third countries;
 - fully implementing the actions identified by the Task Force Mediterranean.
9. The Schengen area, allowing people to travel without internal border controls, and the increasing numbers of people travelling to the EU require efficient management of the EU's common external borders to ensure strong protection. The Union must mobilise all the tools at its disposal to support the Member States in their task. To this end:

- Integrated Border Management of the external borders should be modernised in a cost efficient way to ensure smart border management with an entry-exit system and registered travellers programme and supported by the new Agency for Large Scale IT Systems (eu-LISA);
- Frontex, as an instrument of European solidarity in the area of border management, should reinforce its operational assistance, in particular to support Member States facing strong pressure at the external borders, and increase its reactivity towards rapid evolutions in migration flows, making full use of the new European Border Surveillance System EUROSUR;
- in the context of the long-term development of Frontex, the possibility of setting up a European system of border guards to enhance the control and surveillance capabilities at our external borders should be studied.

At the same time, the common visa policy needs to be modernised by facilitating legitimate travel and reinforced local Schengen consular cooperation while maintaining a high level of security and implementing the new Schengen governance system.

10. It is essential to guarantee a genuine area of security for European citizens through operational police cooperation and by preventing and combating serious and organised crime, including human trafficking and smuggling, as well as corruption. At the same time, an effective EU counter terrorism policy is needed, whereby all relevant actors work closely together, integrating the internal and external aspects of the fight against terrorism. In this context, the European Council reaffirms the role of the EU Counter Terrorism Coordinator. In its fight against crime and terrorism, the Union should back national authorities by mobilising all instruments of judicial and police cooperation, with a reinforced coordination role for Europol and Eurojust, including through:

- the review and update of the internal security strategy by mid 2015;
- the improvement of cross-border information exchanges, including on criminal records;
- the further development of a comprehensive approach to cybersecurity and cybercrime;
- the prevention of radicalisation and extremism and action to address the phenomenon of foreign fighters, including through the effective use of existing instruments for EU-wide alerts and the development of instruments such as the EU Passenger Name Record system.

11. The smooth functioning of a true European area of justice with respect for the different legal systems and traditions of the Member States is vital for the EU. In this regard, mutual trust in one another's justice systems should be further enhanced. A sound European justice policy will contribute to economic growth by helping businesses and consumers to benefit from a reliable business environment within the internal market. Further action is required to:
- promote the consistency and clarity of EU legislation for citizens and businesses;
 - simplify access to justice; promote effective remedies and use of technological innovations including the use of e-justice;
 - continue efforts to strengthen the rights of accused and suspect persons in criminal proceedings;
 - examine the reinforcement of the rights of persons, notably children, in proceedings to facilitate enforcement of judgements in family law and in civil and commercial matters with cross-border implications;
 - reinforce the protection of victims;
 - enhance mutual recognition of decisions and judgments in civil and criminal matters;
 - reinforce exchanges of information between the authorities of the Member States;
 - fight fraudulent behaviour and damages to the EU budget, including by advancing negotiations on the European Public Prosecutor's Office;
 - facilitate cross-border activities and operational cooperation;
 - enhance training for practitioners;
 - mobilise the expertise of relevant EU agencies such as Eurojust and the Fundamental Rights Agency (FRA).
12. As one of the fundamental freedoms of the European Union, the right of EU citizens to move freely and reside and work in other Member States needs to be protected, including from possible misuse or fraudulent claims.
13. The European Council calls on the EU institutions and the Member States to ensure the appropriate legislative and operational follow-up to these guidelines and will hold a mid-term review in 2017.