

CONFERENCE OF SPEAKERS OF EUROPEAN UNION PARLIAMENTS

6-8 April 2014, Vilnius

BACKGROUND NOTE

Session IV – Interparliamentary Cooperation in the Area of Freedom, Security and Justice

Legal and political context

The area of freedom, security and justice (AFSJ) was created to ensure the free movement of persons and to offer a high level of protection to citizens. It covers policy areas that range from the management of the European Union's external borders to judicial cooperation in civil and criminal matters. It includes asylum and immigration policies, police cooperation, and the fight against crime (terrorism, organised crime, trafficking in human beings, drugs, etc.).

The creation of the AFSJ derives from Title V of the Treaty on the Functioning of the European Union (TFEU). The Treaty of Lisbon significantly transformed this policy area abolishing the pillar structure of the EU's institutional set-up, under which *Police and Judicial Co-operation in Criminal Matters* was previously dealt with largely in an intergovernmental manner.

Since 2009 AFSJ matters are treated under the same kind of rules as those of the single market¹. Consequently, EU and national measures in this area have become subject to judicial review by the Court of Justice of the EU. At the same time, they have moved away from the principle of unanimity in the Council of the EU and only a consultative role for the European Parliament to the ordinary legislative procedure with qualified majority voting in the Council and full co-legislative powers for the European Parliament.

National Parliaments have also been granted new powers that stem mainly from Article 12 of the Treaty on European Union as well as Protocol 1 (on the role of the national parliaments in the European Union) and Protocol 2 (on the application of the principles of subsidiarity and proportionality) of the Treaty of Lisbon. Moreover, Articles 85 and 88 of the TFEU stipulate that the European Parliament and the national Parliaments will jointly establish and implement procedures for the scrutiny of Eurojust's and Europol's activities. Procedures for the parliamentary scrutiny of Europol were proposed by the European Commission in its draft regulation on Europol on 27 March 2013². The European Parliament passed a legislative resolution on the matter on 25 February 2014³ stipulating that "a specialised Joint Parliamentary Scrutiny Group is to be established within the competent committee of the

¹ It should be noted that according to Protocol 36 of the Treaty of Lisbon, transitional provisions apply to certain areas of cooperation in the AFSJ until the end of 2014.

² <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0173:FIN:EN:PDF>

³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0121+0+DOC+XML+V0//EN&language=EN>

European Parliament, comprising the full members of the competent committee of the European Parliament and one representative of the competent committee of the national Parliament for each Member State and a substitute. Member States with bicameral parliamentary systems may instead be represented by a representative from each chamber”.

Once created, the European Public Prosecutor's Office (EPPO) will also be subject to such joint scrutiny by the European Parliament and the national Parliaments. It should be recalled that 14 chambers from 11 national Parliaments (achieving 19 of the total 56 votes) raised their objection to the initiative in 2013 triggering the so-called “yellow card” procedure and signalling a breach of the principle of subsidiarity. The European Commission has nevertheless decided to move forward with the EPPO proposal⁴. The initiative is also supported by the European Parliament and by a number of national Parliaments. The idea of creating the EPPO through enhanced cooperation is being seriously considered in the Council.

Brief history of the multiannual programmes

Issues related to the AFSJ first appeared in the EU remit with the Maastricht Treaty in 1992. The first multiannual programme for the years 1999-2004, the Tampere programme, was built on four pillars: common EU asylum and migration policy (including achieving the first phase of a Common European Asylum System - CEAS), a genuine European area of justice, the Union-wide fight against crime and stronger external action.

The Union had already been enlarged when the Hague programme (for the years 2004-2009) was adopted. Its adoption coincided with a shift to more efficient decision-making procedures for border, asylum and certain migration-related measures. The Hague programme focused not only on legislation but also on sharing responsibility and establishing stronger solidarity measures, including specific financing instruments.

The current Stockholm programme (for the years 2009-2014) witnessed the entry into force of the Treaty of Lisbon and the recent finalisation of the second phase of the CEAS. The Stockholm programme put strong emphasis on the interests and needs of citizens. The main challenge during the period of the programme has been to ensure the respect for fundamental rights and freedoms and the integrity of the person while guaranteeing security for European citizens. The following have been the six priority areas:

1. Citizenship and fundamental rights (focus on citizens' rights)
2. A Europe of law and justice (focus on judicial cooperation)
3. A Europe that protects (focus on security)
4. Access to Europe in a globalised world (focus on borders and visas)
5. A Europe of responsibility, solidarity and partnership in migration and asylum matters (focus on immigration and asylum policies)
6. The role of Europe in a globalised world (focus on the external dimension of the policy)

As a consequence of the achievements of the last 15 years, the Union has been able to develop not only legislation, but also its own expertise and know-how, especially through the European agencies (Frontex, Europol, Eurojust, CEPOL, EASO, LISA, etc.). These agencies provide

⁴ http://ec.europa.eu/justice/newsroom/criminal/news/131127_eppo_en.htm

often vital practical support to the competent authorities of Member States and contribute to the creation and sharing of professional knowledge and awareness about the different judicial systems and standards that exist in other Member States, thus facilitating judicial cooperation.

The way forward

2014 will be a decisive year not only because of the end of the transitional provisions foreseen in the Treaty of Lisbon, but also because the Stockholm programme will expire. 2014 will therefore be the year when the new post-Stockholm priorities in the AFSJ will be decided. In line with the decision of the European Council taken on 27-28 June 2013,

"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."

EU Parliaments are also expected to play an active role in the debate on which priorities of the AFSJ should be included in the new post-Stockholm programme. Efforts by the Hellenic Parliament to hold the Meeting of Chairpersons of the Committees on Justice and Home Affairs on 16-17 February 2014 in Athens and the Joint Committee Meeting together with the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (*Priorities for 2014-2019 in the field of Civil liberties, Justice and Home Affairs*) on 19 March 2014 in Brussels are therefore welcome.

The Conference of Speakers of EU Parliaments to be held on 6-8 April 2014 in Vilnius is also expected to make a contribution in light of the upcoming European Council meeting in June. Below are several of the key questions that EU Parliaments will have to tackle in order to play a constructive role in shaping the future of the Union's AFSJ policy.

Questions for debate

1. It is widely agreed that the Stockholm programme encompassed very broad policy priorities. Should the new programme be similarly wide in scope or should it be targeted towards more specific priorities?
2. Considering that after the end of the transitional period in December 2014, matters of the ASFJ will be dealt with under the ordinary legislative procedure, is there a need for a separate multi-annual programme, which was previously designed to guide intergovernmental cooperation forward?
3. What should the optimal model of joint parliamentary scrutiny of Eurojust and Europol be? Does the model of a specialised Joint Parliamentary Scrutiny Group foreseen in the European Parliament resolution on Europol, meet the expectations of national Parliaments?
4. Should economic considerations guide the formulation of the new priorities in the AFSJ? If so, which should be the main elements of AFSJ that could potentially contribute most to Europe's growth and economic prosperity?
5. What are the next steps for the establishment of the EPPO? Should Parliaments adopt a more pro-active approach in the process? What should be the optimal structure of governance of the EPPO?