



Statewatch analysis

The EU's JHA agenda after the EP elections

Professor Steve Peers
University of Essex

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The European Parliament (EP) has just completed its last session before breaking for elections in June 2009. This is an opportune moment to update the previous analysis on the EU's JHA agenda for 2009:

<http://www.statewatch.org/analyses/eu-sw-analysis-2009-jha-agenda.pdf>

The Commission has already proposed several JHA measures in 2009, but has plans to release more, even though this is the final year of the current Commission's mandate (a new Commission must be appointed to take office from November 2009). Furthermore, Member States can make proposals too as regards policing and criminal law; it is not known whether any of them are planning to do later this year.

Due to the EP elections, the EP will now be playing a limited legislative role until at least October. So there were efforts to agree measures between the EP and the Council (where the co-decision procedure applies), or to encourage the EP to vote on proposals (where the consultation procedure applies) by the end of the parliamentary term in May. These efforts were partly successful.

Also, the Irish government has pledged to hold a second referendum on the Treaty of Lisbon before the end of October 2009. If the Treaty is ratified, this will have implications for JHA measures, in particular as regards decision-making rules, the EU's competence over JHA acts, the legal effects and type of measure adopted (as regards policing and criminal law) and opt-outs for the UK, Ireland and Denmark. These changes might lead to a second rush to agree and adopt legislation in the autumn of this year, to 'beat' the legal effect of the new rules.

Of course, conversely the EP has an incentive to hold up decision-making so that it can exercise its new powers; and the issue is only relevant if the new Treaty is in fact ratified.

This analysis first of all lists all of the proposals which the Commission has announced for the rest of 2009, by topic and by the date proposed by the Commission (although sometimes the Commission delays its proposals by months or years). It sets out the applicable voting rule, and assesses whether the legislation

could be adopted before the EP elections or the Treaty of Lisbon (on the assumption that *if* the Treaty is ratified, it will enter into force as from 1 January 2010). It specifies where the Treaty of Lisbon would alter the decision-making rules.

Secondly, the analysis lists all pending measures which have already been proposed, and which are under active discussion as of 7 May 2009, and also assesses the same issues in respect of these proposals.

The analysis does not examine non-legislative acts such as the negotiation and conclusion of treaties, the adoption of implementing measures, or the release of discussion papers. It should be recalled that the EU aims to agree a new multi-year JHA programme in 2009 - the Stockholm programme - to replace the current Hague Programme, see: Statewatch's Observatory on the "Stockholm Programme": <http://www.statewatch.org/stockholm-programme.htm>

Annex I

Planned Commission proposals for legislation

Asylum

1. Proposal to amend Directive 2004/83 on the qualification as a refugee or for subsidiary protection

Date: 24 June 2009

- *comment*: QMV and co-decision already; unlikely to adopt before Lisbon ratification

2. Proposal to amend Directive 2005/85 on asylum procedures

Date: 24 June 2009

- *comment*: QMV and co-decision already; unlikely to adopt before Lisbon ratification

3. Proposals to amend Eurodac Regulation to give police access to Eurodac

Date: 18 June 2009

- *comment*: QMV and co-decision on first pillar proposal; a parallel third pillar measure would be subject to unanimity and consultation of EP, but then to QMV and co-decision if Lisbon comes into force; difficult to adopt before Lisbon comes into force

4. Proposal on EU resettlement programme

Date: July 2009

- *comment*: QMV and probably co-decision; possible adoption before Lisbon comes into force

Legal Migration

1. Directive on seasonal workers

Date: second quarter 2009

- *comment*: unanimity and consultation; QMV and co-decision if the Treaty of Lisbon is ratified; just about possible to adopt before the Treaty of Lisbon comes into force

2. Directive on corporate trainees and transferees

Date: second quarter 2009

- *comment*: unanimity and consultation; QMV and co-decision if the Treaty of Lisbon is ratified; just about possible to adopt before the Treaty of Lisbon comes into force

Visas and Borders

1. Proposals to establish agency to operate SIS II, VIS and Eurodac

Date: May 2009

- *comment*: probably QMV and co-decision; just about possible to adopt the text before the Treaty of Lisbon comes into force; parallel third pillar text would be subject to unanimity and consultation, or QMV and co-decision if the Treaty of Lisbon comes into force

2. Proposal on Regulation concerning valid travel documents

Date: May 2009

- *comment*: QMV and co-decision; just about possible to adopt the text before Lisbon is ratified

3. Proposal to amend visa list - re Western Balkans

Date: Sep. 2009

- *comment*: QMV and consultation; would be QMV and co-decision if the Treaty of Lisbon enters into force; not very likely to adopt the text before the Treaty of Lisbon comes into force

4. Proposal to amend Reg. on immigration liaison officers

Date: third quarter 2009

- *comment*: QMV and co-decision; possible to adopt the text before the Treaty of Lisbon comes into force

Civil law

1. Proposal for Regulation on wills and inheritance

Date: spring 2009

- *comment*: probably QMV and co-decision already, but this may be challenged on the grounds that the measure relates to ‘family law’; not very likely to adopt the text before Lisbon ratification

2. Proposal to amend ‘Brussels’ Regulation on jurisdiction and recognition of civil and commercial judgments

Date: Dec. 2009

- *comment*: QMV and co-decision already; could not adopt before Lisbon ratification

Criminal law and policing (third pillar)

1. Proposal for FD on suspects’ rights

Date: 1 July 2009

- *comment*: unanimity and consultation; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; not likely to adopt the text before the Treaty of Lisbon comes into force

2. Proposal to amend FD on crime victims’ rights

Date: Sep. 2009

- *comment*: unanimity and consultation; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; not likely to adopt the text before the Treaty of Lisbon comes into force

5. Proposal to amend FD on attacks on information systems

Date: Sep. 2009

- *comment*: unanimity and consultation; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; not likely to adopt the text before the Treaty of Lisbon comes into force

6. Proposal to amend Decision on synthetic drugs

Date: 16 Sep. 2009

- *comment*: unanimity and consultation; would probably be subject to QMV and co-decision if the Lisbon Treaty enters into force; not likely to adopt the text before the Treaty of Lisbon comes into force

Other

1. Proposal to amend Directive on compensation of crime victims

Date: Sep. 2009

- *comment*: unanimity and consultation; would probably remain so if the Lisbon Treaty enters into force

Annex II

Proposals still outstanding as of May 7 2009

Asylum

1. Directive on reception conditions for asylum-seekers (COM (2008) 815, 3 Dec. 2008)
 - EP first-reading vote in May 2009; under discussion in Council; QMV and co-decision already; possible to agree before Lisbon ratification
2. Regulation on responsibility for asylum applications (COM (2008) 820, 3 Dec. 2008)
 - EP first-reading vote in May 2009; under discussion in Council; QMV and co-decision already; possible to agree before Lisbon ratification
3. Regulation on Eurodac (COM (2008) 825, 3 Dec. 2008)
 - EP first-reading vote in May 2009; under discussion in Council; QMV and co-decision already; possible to agree before Lisbon ratification
4. Proposal for Regulation to establish European Asylum Support Office (COM (2009) 66, 18 Feb. 2009)
 - EP first-reading vote in May 2009; under discussion in Council; QMV and co-decision already; likely to agree before Lisbon ratification
5. Proposal to amend European Refugee Fund (COM (2009) 67, 18 Feb. 2009)
 - EP first-reading vote in May 2009; under discussion in Council; QMV and co-decision already; likely to agree before Lisbon ratification

Legal Migration

1. Directive applying long-term residents' Directive to refugees and beneficiaries of subsidiary protection (COM (2007) 298, 6 June 2007)
 - under discussion in Council, but Czech Presidency suspended discussions; EP has voted; unanimity and consultation; would be QMV and co-decision if Treaty of Lisbon is ratified; only one MS opposed proposal still at Nov. 2008 JHA Council; possible to agree and adopt before Lisbon is ratified, if discussions are resumed in Council

2. Regulation extending Regulation 883/2004 on social security for EU citizens to third-country nationals who move within the EC (COM (2007) 439, 23 July 2007)
 - under discussion in Council, and nearing agreement; EP has voted; unanimity and consultation; would be QMV and co-decision if Treaty of Lisbon is ratified; likely to be agreed and adopted before Treaty of Lisbon is ratified
3. Directive on admission of highly-skilled workers (Blue Card) - COM (2007) 637, 23 Oct. 2007
 - agreed by JHA Council, Oct. 2008; EP has voted; unanimity and consultation; would be QMV and co-decision if Treaty of Lisbon is ratified; highly likely to be adopted officially by summer 2009
4. Directive on migrant workers' rights - COM (2007) 638, 23 Oct. 2007
 - under discussion in Council; EP has voted; unanimity and consultation; would be QMV and co-decision if Treaty of Lisbon is ratified; likely to be agreed and adopted before Treaty of Lisbon is ratified

Illegal immigration

1. Directive on sanctions for employers of irregular migrants (COM (2007) 249, 15 May 2007)
 - deal between EP and Council, Dec. 2008; QMV and co-decision apply already; EP vote on deal in Feb. 2009; highly likely to be adopted officially before Lisbon is ratified

Visas and Borders

1. Regulation establishing visa Code (COM (2006) 403, 19 July 2006)
 - deal between EP and Council; QMV and co-decision apply; EP voted for deal in April 2009; highly likely to be adopted officially before Lisbon is ratified
2. Regulation codifying Regulations establishing EC visa list (COM (2008) 761, 28 Nov. 2008)
 - EP did not vote before election; under discussion in Council; QMV and consultation; the proposal does not alter the existing text; would be subject to QMV and co-decision under Treaty of Lisbon
3. Regulation codifying Regulations establishing EC visa format (COM (2008) 891, 19 Dec. 2008)
 - EP did not vote before election; under discussion in Council; QMV and consultation; the proposal does not alter the existing text; would be subject to QMV and co-decision under Treaty of Lisbon

4. Regulation on long-stay visas (COM (2009) 90, 27 Feb. 2009)
 - EP did not vote before election; under discussion in Council; unanimity and consultation; would be subject to QMV and co-decision under Treaty of Lisbon; possible to adopt before Lisbon ratification
5. Regulation on long-stay visas (COM (2009) 91, 27 Feb. 2009)
 - EP did not vote before election; under discussion in Council; QMV and co-decision already; possible to adopt before Lisbon ratification
6. Regulation on Schengen evaluation process (COM (2009) 102, 4 Mar. 2009)
 - EP did not vote before election; under discussion in Council; QMV and consultation; Lisbon Treaty would not change decision-making; possible to adopt before Lisbon ratification

Civil law

1. 'Rome III' Regulation on choice of law and jurisdiction in divorce proceedings (COM (2006) 499, 17 July 2006)
 - JHA Council could not agree; Commission asked to start 'enhanced cooperation' process; EP has voted; unanimity and consultation; the Commission does not want to make a proposal to launch enhanced cooperation; the enhanced cooperation process would be altered by the Treaty of Lisbon
2. Amendment of Decision on judicial network (COM (2008) 380, 23 June 2008)
 - first-reading deal between EP and Council; EP has voted; JHA Council approved deal in Nov. 2008; nearly certain to be adopted officially by summer 2009
3. Regulation on Member States' negotiation and conclusion of external treaties relating to maintenance, divorce and parental responsibility (COM (2008) 894, 19 Dec. 2008)
 - EP voted and Council has agreed text in principle, May 2009; nearly certain to be adopted officially by summer 2009; unanimity and consultation, but this would not be amended by Treaty of Lisbon
4. Regulation on Member States' negotiation and conclusion of external treaties relating to conflict of laws as regards contractual and non-contractual obligations (COM (2008) 893, 23 Dec. 2008)
 - first-reading deal between EP and Council; EP voted in May 2009; nearly certain to be adopted officially by summer 2009; QMV and co-decision apply already

Criminal law and policing (third pillar)

All these measures are currently subject to unanimity and consultation. A large majority, possibly all, of them would be subject to QMV and co-decision if the Treaty of Lisbon comes into force. It should also be noted that the new Treaty would require measures in this area to be proposed either by the Commission or by one-quarter of Member States, whereas at present measures can be proposed either by the Commission or any *single* Member State.

1. Decision amending the Decision establishing a network for the protection of public figures (OJ 2008 C 330/2)
 - discussion in Council working group; EP has voted; chance of adoption before EP election; higher chance of adoption before Treaty of Lisbon is ratified; could not be adopted post-Lisbon as it was proposed by a single Member State only
2. Decision amending and replacing the Convention establishing a Customs Information System, and its Protocols (OJ 2009 C 29/6)
 - discussion in Council working group; EP refused to vote; no chance of adoption before EP election; some chance of adoption before Treaty of Lisbon is ratified; could not be adopted post-Lisbon as it was proposed by a single Member State only
3. Framework decision on mutual recognition of pre-trial supervision orders (COM (2006) 468, 29 Aug. 2006)
 - agreed by JHA Council, Nov. 2008; EP has voted, and then voted on reconsultation; could be adopted before EP election, but in any case likely to be adopted before Treaty of Lisbon is ratified; proposed by Commission
4. Framework decision on passenger name records (COM (2007) 654, 6 Nov. 2007)
 - under discussion in Council; EP has not voted; possible to agree and adopt proposal before Treaty of Lisbon is ratified; proposed by Commission
5. Framework decision on prevention and settlement of conflicts of jurisdiction in criminal matters (OJ 2009 C 39/2)
 - Council: agreed in April 2009; EP refused to vote; some chance of adoption before Treaty of Lisbon is ratified; could not be adopted post-Lisbon as it was proposed by five Member States only
6. Proposal to amend and replace Framework Decision (FD) on trafficking in persons (COM (2009) 136, 25 March 2009)
 - unanimity and consultation; no EP action before elections; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; just about possible to adopt the text before the Treaty of Lisbon comes into force; proposed by Commission

7. Proposal to amend and replace FD on sexual offences (COM (2009) 136, 25 March 2009)

- unanimity and consultation; no EP action before elections; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; just about possible to adopt the text before the Treaty of Lisbon comes into force; proposed by Commission

8. Decision on Schengen evaluation system (COM (2009) 105, 4 March 2009)

- unanimity and consultation; no EP action before elections; would probably be subject to QMV and consultation if the Lisbon Treaty enters into force; just about possible to adopt the text before the Treaty of Lisbon comes into force; proposed by Commission

Other

1. Directive on criminal penalties for shipping pollution (COM (2008) 134, 11 Mar. 2008)

- first-reading deal between EP and Council, April 2009; EP vote May 2009; very likely to be adopted officially before Treaty of Lisbon is ratified

To keep up-to-date on the progress of measures see the Statewatch European Monitoring and Documentation Centre on Justice and Home Affairs in the EU:
<http://www.statewatch.org/semDOC/index.html>

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