



Statewatch analysis

The EU's JHA agenda after the Irish referendum

Professor Steve Peers
University of Essex

19 October 2009

Following the result of the second Irish referendum on the Treaty of Lisbon, it now seems more likely - although still not certain - that the Treaty will come into force. This is therefore an opportune moment to update the previous analyses of the EU's JHA agenda for 2009, with a focus on what would happen to particular proposals if and when the Treaty comes into force.

If the Treaty is ratified, this would 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 rush to agree and adopt JHA legislation before the end 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. The following analysis therefore indicates whether or not the EP has already voted on outstanding JHA proposals (obviously it has not yet voted on proposals which have not yet been made), and also when the EP plans to vote on proposals, where it has not yet done so.

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). This analysis also sets out the currently applicable voting rules, and assesses whether the legislation could be adopted before the Treaty of Lisbon is ratified (on the assumption that *if* the Treaty is ratified, it will enter into force as from 1 January 2010). It specifies in **bold/underline** where the **Treaty of Lisbon would alter the decision-making rules**.

Secondly, the analysis lists all pending JHA measures which have already been proposed, and which are under active discussion as of 19 October 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 December 2009 - the Stockholm programme - to replace the current Hague Programme.

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: 21 Oct. 2009

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

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

Date: 21 Oct. 2009

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

Legal Migration

1. Directive on seasonal workers

Date: fourth quarter 2009

- *comment*: unanimity and consultation; **change to QMV and co-decision if the Treaty of Lisbon is ratified**; very unlikely to adopt before the Treaty of Lisbon comes into force; on advance agenda of Nov. 2009 JHA Council

2. Directive on intra-corporate transferees

Date: fourth quarter 2009

- *comment*: unanimity and consultation; **change to QMV and co-decision if the Treaty of Lisbon is ratified**; very unlikely to adopt before the Treaty of Lisbon comes into force; on advance agenda of Nov. 2009 JHA Council

Visas and Borders

1. Proposal on Regulation concerning valid travel documents

Date: Sep. 2009 [date missed]

- *comment*: QMV and co-decision already; just about possible to adopt the text before Lisbon is ratified; on advance agenda of Nov. 2009 JHA Council

Civil law

1. 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; on advance agenda of Nov. 2009 JHA Council

Criminal law and policing (third pillar)

- no planned proposals until end of 2009

Annex II

Proposals still outstanding as of 19 Oct 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; unlikely to agree before Lisbon ratification; on advance agenda of Nov. 2009 JHA Council

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; unlikely to agree before Lisbon ratification; on advance agenda of Nov. 2009 JHA Council

3. Regulation on Eurodac (COM (2008) 825, 3 Dec. 2008; amended version COM (2009) 342, 10 Sep. 2009)

- EP first-reading vote in May 2009; EP will now hold first reading again; under discussion in Council; QMV and co-decision already; unlikely to agree before Lisbon ratification; on advance agenda of Nov. 2009 JHA Council
4. Proposal for Regulation to establish European Asylum Support Office (COM (2009) 66, 18 Feb. 2009)
 - EP first-reading vote in May 2009; Council/EP co-decision talks underway; QMV and co-decision already; likely to agree before Lisbon ratification; on advance agendas of Oct. and Nov. 2009 JHA Councils
 5. Proposal to amend European Refugee Fund (COM (2009) 67, 18 Feb. 2009)
 - EP first-reading vote in May 2009; under discussion in Council; Council/EP co-decision talks underway; QMV and co-decision already; likely to agree before Lisbon ratification
 6. Proposal on EU resettlement programme (COM (2009) 456, 2 Sep. 2009)

Date: 2 Sep. 2009

 - *comment*: QMV and co-decision already; unlikely to adopt before Lisbon comes into force; on advance agenda of Nov. 2009 JHA Council

Legal Migration

1. Directive applying long-term residents' Directive to refugees and beneficiaries of subsidiary protection (COM (2007) 298, 6 June 2007)
 - discussion suspended in Council; EP has voted; unanimity and consultation; would change to 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; not mentioned on Swedish presidency advance agendas of JHA Councils
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; EP has voted; unanimity and consultation; would change to QMV and co-decision if Treaty of Lisbon is ratified; possible to agree and adopt before Treaty of Lisbon is ratified; on advance agenda of Nov. 2009 employment Council
3. Directive on migrant workers' rights - COM (2007) 638, 23 Oct. 2007
 - under discussion in Council; EP has voted; unanimity and consultation; would change to QMV and co-decision if Treaty of Lisbon is ratified; possible to agree and adopt before Treaty of Lisbon is ratified; not on any advance future JHA Council agendas

Visas and Borders

1. Regulation codifying Regulations establishing EC visa list (COM (2008) 761, 28 Nov. 2008)
 - EP has not voted yet; before election; discussion suspended 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**
2. Regulation codifying Regulations establishing EC visa format (COM (2008) 891, 19 Dec. 2008)
 - EP has not voted yet; 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 on long-stay visas (COM (2009) 90, 27 Feb. 2009)
 - EP has not voted yet; 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
4. Regulation on long-stay visas (COM (2009) 91, 27 Feb. 2009)
 - EP has not voted yet; no EP vote scheduled yet; under discussion in Council; QMV and co-decision already; possible to adopt before Lisbon ratification
5. Regulation on Schengen evaluation process (COM (2009) 102, 4 Mar. 2009)
 - EP did not vote before election; EP plenary due to vote on 20 Oct. 2009; under discussion in Council; QMV and consultation; Lisbon Treaty would not change decision-making; possible to adopt before Lisbon ratification; on advance agenda of Nov. 2009 JHA Council
6. Proposal to establish agency to operate SIS II, VIS and Eurodac (COM (2009) 293, 24 June 2009)
 - QMV and co-decision; no EP vote scheduled yet; slim chance to adopt the text before the Treaty of Lisbon comes into force; there is a parallel third pillar proposal (see below); decision-making would not change if the Treaty of Lisbon comes into force; on advance agenda of Nov. 2009 JHA Council
7. Proposal to amend visa list - re Western Balkans (COM (2009) 366, 15 July 2009)
 - QMV and consultation; **would change to QMV and co-decision if the Treaty of Lisbon enters into force**; EP plenary due to vote in Nov. 2009; likely to adopt the text before the Treaty of Lisbon comes into force
8. Proposal to amend Reg. on immigration liaison officers (COM (2009) 322, 8 July 2009)

- QMV and co-decision already; some possibility to adopt the text before the Treaty of Lisbon comes into force; EP plenary vote scheduled for Dec. 2009; under discussion in Council

9. Proposal for Regulation on 'migration' of the current SIS to SIS II (COM (2009) 508, 29 Sep. 2009)

- QMV and consultation; would probably not change if the Lisbon Treaty enters into force; likely to be adopted before the Treaty comes into force; no EP vote scheduled yet

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 has not responded yet to the invitation to make a proposal to launch enhanced cooperation; the enhanced cooperation process would be altered by the Treaty of Lisbon

2. Proposal for Regulation on wills and inheritance (COM (2009) 154, 14 Oct. 2009)

- QMV and co-decision already, but this may be challenged on the grounds that the measure relates to 'family law'; highly unlikely to adopt the text before Lisbon ratification; under discussion in Council; no EP vote scheduled yet

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 and replacing the Convention establishing a Customs Information System, and its Protocols (OJ 2009 C 29/6)

- discussion in Council working group; largely agreed within Council; EP plenary scheduled to vote in Nov. 2009; 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; would be subject to QMV and co-decision if the Lisbon Treaty enters into force**

2. 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; likely to be adopted before Treaty of Lisbon is ratified;

proposed by Commission; on advance agenda of Oct. 2009 JHA Council for adoption; **would be subject to QMV and co-decision if the Lisbon Treaty enters into force**

3. Framework decision on passenger name records (COM (2007) 654, 6 Nov. 2007)
 - discussion in Council suspended by Swedish presidency; EP has not voted; very unlikely to agree and adopt proposal before Treaty of Lisbon is ratified; proposed by Commission; **would probably be subject to QMV and co-decision if the Lisbon Treaty enters into force**
4. Framework decision on prevention and settlement of conflicts of jurisdiction in criminal matters (OJ 2009 C 39/2)
 - Council: agreed in April 2009; EP vote already; good chance of adoption before Treaty of Lisbon is ratified; could not be adopted post-Lisbon as it was proposed by five Member States only; on advance agenda of Nov. 2009 JHA Council for adoption; **would be subject to QMV and co-decision if the Lisbon Treaty enters into force**
5. Proposal to amend and replace Framework Decision (FD) on trafficking in persons (COM (2009) 136, 25 March 2009)
 - unanimity and consultation; EP vote not scheduled yet; **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; on advance agenda of Oct. 2009 JHA Council; under discussion within Council working group
6. Proposal to amend and replace FD on sexual offences (COM (2009) 135, 25 March 2009)
 - unanimity and consultation; EP vote not scheduled yet; **would be subject to QMV and co-decision if the Lisbon Treaty enters into force**; unlikely to adopt the text before the Treaty of Lisbon comes into force; proposed by Commission; on advance agenda of Nov. 2009 JHA Council; under discussion within Council working group
7. Decision on Schengen evaluation system (COM (2009) 105, 4 March 2009)
 - unanimity and consultation; EP plenary due to vote in Oct 2009; 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; on advance agenda of Nov. 2009 JHA Council; under discussion within Council working group
8. Framework Decision on forensic laboratories (Council doc. 10964/09, 16 June 2009) (OJ 2009 C 174/7)
 - unanimity and consultation; would probably 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 Spain and Sweden; on advance agenda of Nov. 2009 JHA Council for adoption; EP vote scheduled for Nov 2009; **could not be adopted if Treaty of Lisbon is ratified**, as it was proposed by only two Member States; under discussion within Council working group; on agenda of Oct 2009 JHA Council for 'general approach'

9. Framework Decision on the transfer of criminal proceedings (Council doc. 11119/09, 30 June 2009) (OJ 2009 C 219/7)
 - unanimity and consultation; EP plenary vote scheduled for Dec. 2009; **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; on advance agendas of Oct. and Nov. 2009 JHA Councils; initiative of over ¼ of Member States; under discussion within Council working group
10. Decision on IT agency to manage SIS II and VIS (COM (2009) 294, 24 June 2009)
 - unanimity and consultation; no EP vote scheduled yet; **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; on advance agenda of Nov. 2009 JHA Council
11. Proposal for Framework Decision on suspects' rights (COM (2009) 338, 8 July 2009)
 - unanimity and consultation; **would change to QMV and co-decision if the Lisbon Treaty enters into force**; some chance to adopt the text before the Treaty of Lisbon comes into force; on agenda of Oct. 2009 JHA Council for 'general approach'; EP plenary due to vote in Dec. 2009; proposed by Commission
12. Proposal for Decision to give police forces access to Eurodac data (COM (2009) 344, 10 Sep. 2009)
 - unanimity and consultation of EP; **would change to QMV and co-decision if the Treaty of Lisbon comes into force**; unlikely to adopt before Lisbon comes into force; on advance agenda of Nov. 2009 JHA Council; proposed by Commission; no EP vote scheduled yet
13. Proposal for Decision on 'migration' of current SIS to SIS II (COM (2009) 509, 29 Sep. 2009)
 - unanimity and consultation; **would probably be subject to QMV if the Lisbon Treaty enters into force**; on advance agenda of Nov. 2009 JHA Council; proposed by Commission; no EP vote scheduled yet; possible to adopt before Treaty of Lisbon enters into force
14. Swedish initiative to amend Decision on crime prevention network (OJ 2009 C 222/2)

- unanimity and consultation; **would be subject to QMV and co-decision if the Lisbon Treaty enters into force**; some possibility to adopt before the Treaty enters into force; on agenda of Oct. 2009 JHA Council for 'general approach'; EP plenary due to vote in Nov. 2009; initiative of over ¼ of Member States