



Statewatch analysis

The EU's JHA agenda under the Swedish Presidency

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The Swedish Presidency of the Council has now taken office for the second half of 2009. This is an opportune moment to update the previous analyses of 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; the Swedish Presidency has already released two proposals of its own.

Due to the need to reconstitute parliamentary committees following the recent 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. 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).

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 includes an initiative which the Swedish Presidency has announced. 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 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 3 July 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.

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: 7 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: 7 Oct. 2009

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

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

Date: 8 July 2009

- *comment*: QMV and co-decision on first pillar proposal; there will also be a parallel third pillar proposal (see below); unlikely to be adopted before Treaty of Lisbon enters into force; on advance agenda of Nov. 2009 JHA Council

4. Proposal on EU resettlement programme

Date: 2 Sep. 2009

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

Legal Migration

1. Directive on seasonal workers

Date: 22 July 2009

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

2. Directive on corporate trainees and transferees

Date: 22 July 2009

- *comment*: unanimity and consultation; **change to QMV and co-decision if the Treaty of Lisbon is ratified**; 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: July 2009

- *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

2. Proposal to amend visa list - re Western Balkans

Date: 14 July 2009

- *comment*: QMV and consultation; **would change to QMV and co-decision if the Treaty of Lisbon enters into force**; some possibility to adopt the text before the Treaty of Lisbon comes into force

3. Proposal to amend Reg. on immigration liaison officers

Date: third quarter 2009

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

4. Proposal for Regulation on 'migration' of the current SIS to SIS II

Date: Sep. 2009

- *comment*: probably QMV and consultation; would probably not change if the Lisbon Treaty enters into force; some possibility of adoption before the Treaty comes into force

Civil law

1. Proposal for Regulation on wills and inheritance

Date: Oct 14 2009

- *comment*: probably 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

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; on advance agenda of Nov. 2009 JHA Council

Criminal law and policing (third pillar)

1. Proposal for Framework Decision on suspects' rights

Date: 8 July 2009

- *comment*: unanimity and consultation; **would change 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; on advance agenda of Oct. 2009 JHA Council

2. Proposal for Decision to give police forces access to Eurodac data

Date: 8 July 2009

- *comment*: unanimity and consultation of EP; **would change to QMV and co-decision if the Treaty of Lisbon comes into force**; difficult

to adopt before Lisbon comes into force; on advance agenda of Nov. 2009 JHA Council

3. Proposal to amend Decision on synthetic drugs

Date: 18 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.

4. Proposal for Decision on 'migration' of current SIS to SIS II

Date: Sep. 2009

- *comment*: unanimity and consultation; **would probably be subject to QMV and if the Lisbon Treaty enters into force**; on advance agenda of Nov. 2009 JHA Council

4. Swedish initiative to amend Decision on crime prevention network

Date: probably July 2009

- *comment*: unanimity and consultation; **would probably 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 advance agendas of Sept. and Oct. 2009 JHA Councils

Annex II: Proposals still outstanding as of 3 July 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; 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; possible to agree before Lisbon ratification; on advance agenda of Nov. 2009 JHA Council

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; 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; under discussion in Council; 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; 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 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; on advance agenda of Sep. 2009 JHA Council

Visas and Borders

1. 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**
2. 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**
 3. 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; on advance agenda of Oct. 2009 JHA Council
 4. 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; on advance agenda of Oct. 2009 JHA Council
 5. 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; 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; just about possible 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

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. 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
3. 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 and replacing the Convention establishing a Customs Information System, and its Protocols (OJ 2009 C 29/6)
 - discussion in Council working group; EP did not vote before 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; on advance agenda of Oct. 2009 JHA Council for adoption
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
3. Framework decision on passenger name records (COM (2007) 654, 6 Nov. 2007)

- under discussion in Council; EP has not voted; unlikely to agree and adopt proposal before Treaty of Lisbon is ratified; proposed by Commission
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 did not vote before election; 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; on advance agenda of Nov. 2009 JHA Council for adoption
 5. 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; on advance agendas of Sep and Oct. 2009 JHA Councils
 6. 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; on advance agenda of Nov. 2009 JHA Council
 7. 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; on advance agenda of Nov. 2009 JHA Council
 8. Framework Decision on forensic laboratories (Council doc. 10964/09, 16 June 2009)
 - 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; could not be adopted if Treaty of Lisbon is ratified, as it was proposed by only two Member States

9. Framework Decision on the transfer of criminal proceedings (Council doc. 11119/09, 30 June 2009)
 - unanimity and consultation; no EP action before elections; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; difficult to adopt the text before the Treaty of Lisbon comes into force; on advance agendas of Oct. and Nov. 2009 JHA Councils; initiative of Sweden but it is not yet known whether other Member States will co-sponsor it
10. Decision on IT agency to manage SIS II and VIS (COM (2009) 294, 24 June 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; on advance agenda of Nov. 2009 JHA Council

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.

Statewatch European Monitoring and Documentation Centre (SEMDOC):
monitors and tracks the progress of these measures and all new proposals.

<http://www.statewatch.org/semDOC/>

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