



Statewatch analysis

The EU's JHA agenda for 2009

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The Commission recently released its full agenda for 2009. Although this is the final year of the current Commission's mandate (a new Commission must be appointed to take office from November 2009), the Commission is still planning to propose over 20 pieces of legislation next year concerning JHA matters. In fact, a large majority of the major new legislative proposals (referred to as 'strategic' or 'priority' initiative) planned for 2009 concern JHA matters. And it should not be forgotten that Member States can make proposals too as regards policing and criminal law; it is not known whether any of them are planning to do so next year.

The legislative process in 2009 will be complicated by two issues. First of all, there will be elections to the European Parliament (EP) in June 2009. This means that after the EP's session(s) in May 2009, the EP will be playing a very limited legislative role until at least October. So there will be a great effort 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 May at the latest.

Secondly, the December EU summit meeting (European Council) agreed to address certain issues raised by the Irish government as regards the Treaty of Lisbon, and the Irish government has announced an intention to hold a further referendum on the Treaty. The timing of this referendum is not certain, but in the summit conclusions the Irish government commits itself to seeking ratification of the treaty by the end of the term of the current Commission - so by October at the latest. The summit conclusions refer to the Treaty entering into force by the end of 2009.

The Treaty of Lisbon would be highly relevant to many JHA legislative proposals. It would alter the decision-making rules regarding many JHA measures so that a qualified majority vote (QMV) in Council and co-decision of the EP would apply, in place of unanimity in Council and mere consultation as at present. Measures concerning policing and criminal law (the 'third pillar') would have to be adopted in the form of EC acts (Regulations, Directives, etc) rather than 'third pillar' acts (such as Framework Decisions). The Court of Justice would have wider jurisdiction over JHA matters; as regards policing and criminal law, this wider jurisdiction would, for a five-year transitional period, only apply to measures adopted or amended after the new Treaty enters into force (the Court's older, narrower third pillar jurisdiction would continue to apply to pre-existing measures during that time). The opt-outs for the UK, Ireland and Denmark would be extended and

modified. These changes might lead to a second rush to agree and adopt legislation next year - on the assumption that a new Irish referendum is not held until the autumn - 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 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 November 2009). 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 16 December 2008, 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 for Regulation to establish European Asylum Support Office

Date: 18 Feb. 2009

- *comment*: QMV and probably co-decision; just about possible to adopt the text before the EP elections
2. Proposal to amend Directive 2004/83 on the qualification as a refugee or for subsidiary protection

Date: 21 April 2009

- *comment*: QMV and co-decision; not possible to adopt the text before the EP elections
3. Proposal to amend Directive 2005/85 on asylum procedures

Date: 21 April 2009

- *comment*: QMV and co-decision; not possible to adopt the text before the EP elections

4. 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

5. Proposal on EU resettlement programme

Date: July 2009

- *comment*: QMV and probably co-decision

Legal Migration

1. Directive on seasonal workers

Date: 24 March 2009

- *comment*: unanimity and consultation; QMV and co-decision if the Treaty of Lisbon is ratified; not possible to adopt the text before the EP elections; just about possible to adopt before the Treaty of Lisbon comes into force

2. Directive on corporate trainees and transferees

Date: 24 March 2009

- *comment*: unanimity and consultation; QMV and co-decision if the Treaty of Lisbon is ratified; not possible to adopt the text before the EP elections; just about possible to adopt before the Treaty of Lisbon comes into force

Visas and Borders

1. Amendment to visa list

Date: 21 Jan. 2009

- *comment*: QMV and consultation; QMV and co-decision if the Treaty of Lisbon is ratified; just about possible to adopt the text before the EP elections, or failing that, possible to adopt the text before the Treaty of Lisbon comes into force.

2. Amendment of Schengen evaluation system

Date: 21 Jan. 2009

- *comment*: probably QMV and co-decision; just about possible to adopt the text before the EP elections, or failing that, 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

3. Proposals to establish agency to operate SIS II, VIS and Eurodac
Date: Jan. 2009
- comment: probably QMV and co-decision; just about possible to adopt the text before the EP elections, or failing that, 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
4. Proposal on Regulation concerning valid travel documents
Date: March 2009
- comment: QMV and co-decision; just about possible to adopt the text before the EP elections
5. 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 possible to adopt the text before the Treaty of Lisbon comes into force
6. Proposal on amendment of VIS Regulation, to take account of EU visa code
Date: third-quarter 2009
- comment: QMV and co-decision; this proposal should not in fact be necessary, since the latest drafts of the visa code in any event contain a list of relevant amendments to the VIS Regulation
7. Proposal to establish false documents system in EC law
Date: fourth-quarter 2009
- comment: probably QMV and co-decision

Civil law

1. Proposal for Regulation on wills and inheritance
Date: 24 March 2009
- comment: probably QMV and co-decision, but this may be challenged on the grounds that the measure relates to 'family law'; not possible to adopt the text before the EP elections
2. Proposal to amend 'Brussels' Regulation on jurisdiction and recognition of civil and commercial judgments
Date: Dec. 2009

- *comment*: QMV and co-decision

Criminal law and policing (third pillar)

1. Proposal to amend and replace Framework Decision (FD) on trafficking in persons

Date: 10 March 2009

- *comment*: unanimity and consultation; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; just about possible to adopt the text before the EP elections, or failing that, possible to adopt the text before the Treaty of Lisbon comes into force

2. Proposal to amend and replace FD on sexual offences

Date: 10 March 2009

- *comment*: unanimity and consultation; would be subject to QMV and co-decision if the Lisbon Treaty enters into force; just about possible to adopt the text before the EP elections, or failing that, possible to adopt the text before the Treaty of Lisbon comes into force

3. 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 possible to adopt the text before the Treaty of Lisbon comes into force

4. 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 possible 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 possible 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 possible 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 Dec. 16 2008

Asylum

1. Directive on reception conditions for asylum-seekers (COM (2008) 815, 3 Dec. 2008)

- no Council or EP action yet; QMV and co-decision; would be difficult to agree in time before EP election

2. Regulation on responsibility for asylum applications (COM (2008) 820, 3 Dec. 2008)

- no Council or EP action yet; QMV and co-decision; would be difficult to agree in time before EP election

3. Regulation on Eurodac (COM (2008) 825, 3 Dec. 2008)

- no Council or EP action yet; QMV and co-decision; would be difficult to agree in time before EP election

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; 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

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 be QMV and co-decision if Treaty of Lisbon is ratified; likely to be agreed and adopted before EP elections or 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 in early 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 EP elections or Treaty of Lisbon is ratified

Illegal immigration

1. Directive on sanctions for employers of irregular migrants (COM (2007) 249, 15 May 2007)

- under discussion between EP and Council; QMV and co-decision apply; likely to be agreed and adopted before EP election

Visas and Borders

1. Regulation on visa application centres (COM (2006) 269, 31 May 2006)

- under discussion between EP and Council; QMV and co-decision apply; likely to be agreed and adopted before EP election

2. Regulation establishing visa Code (COM (2006) 403, 19 July 2006)

- under discussion between EP and Council; QMV and co-decision apply; good possibility it will be agreed and adopted before EP election

3. Regulation amending Regulation 2252/2004 on passport security measures (COM (2007) 619, 18 Oct. 2007)

- under discussion between EP and Council; QMV and co-decision apply; apparent first-reading deal, so very likely to be agreed and adopted before EP election

4. Regulation codifying Regulations establishing EC visa list (COM (2008) 761, 28 Nov. 2008)

- no EP or Council action yet; QMV and consultation; the proposal does not alter the existing text, so very likely to be agreed and adopted before EP election; would be subject to QMV and co-decision under Treaty of Lisbon

Civil law

1. Regulation on maintenance obligations (COM (2005) 649, 15 Dec. 2005)

- JHA Council agreement, Oct. 2008; EP has voted

- unanimity and consultation; highly likely to be adopted officially in Dec. 2008 or early in 2009
2. '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 proposal could likely be agreed and adopted before the EP election if the Commission makes a proposal to launch enhanced cooperation, but the issue is not on the 2009 agenda; the enhanced cooperation process would be altered by the Treaty of Lisbon
 3. 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 early in 2009

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.

1. Decision establishing Europol (COM (2006) 817, 20 Dec. 2006)
 - political agreement at April 2008 JHA Council; EP has voted; nearly certain to be adopted officially in Dec. 2008 or early in 2009
2. Decision implementing the Framework Decision on the exchange of criminal records (COM (2008) 332, 27 May 2008)
 - political agreement at Oct. 2008 JHA Council; EP has voted; likely to be adopted before EP election or at least before Treaty of Lisbon is ratified
3. Decision amending the Decision establishing a network for the protection of public figures (Council doc. 15036/08, 31 Oct. 2008)
 - discussion in Council working group; no EP action yet; chance of adoption before EP election; higher chance of adoption before Treaty of Lisbon is ratified
4. Decision amending and replacing the Convention establishing a Customs Information System, and its Protocols (Council doc. 15036/08, 31 Oct. 2008)
 - discussion in Council working group; no EP action yet; chance of adoption before EP election; higher chance of adoption before Treaty of Lisbon is ratified
5. Framework decision on European evidence warrant (COM (2003) 688, 14 Nov. 2003)

- agreed by JHA Council, June 2006; EP has voted; likely to be adopted before EP election or at least before Treaty of Lisbon is ratified
6. Framework decision on criminal record exchange (COM (2005) 690, 22 Dec. 2005)
 - agreed by JHA Council, June 2007; EP has voted; likely to be adopted before EP election or at least before Treaty of Lisbon is ratified
 7. 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; will be reconsulted; could be adopted before EP election, but in any case likely to be adopted before Treaty of Lisbon is ratified
 8. 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 EP election or at least before Treaty of Lisbon is ratified
 9. Framework Decision on ‘in absentia’ trials (OJ 2008 C 52/1)
 - agreed at June 2008 JHA Council; EP has voted; very likely to be adopted before EP election or at least before Treaty of Lisbon is ratified
 10. Framework decision on prevention and settlement of conflicts of jurisdiction in criminal matters (not yet published)
 - Council: working group discussion to begin in Jan. 2009; no EP action yet; outside chance of adoption before EP election; slightly higher chance of adoption before Treaty of Lisbon is ratified

Other

1. Directive on criminal penalties for shipping pollution (COM (2008) 134, 11 Mar. 2008)
 - discussions underway between EP and Council; very likely to be adopted before EP election or at least before Treaty of Lisbon is ratified

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

will monitor and track the progress of these measures and all new proposals.

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