

# **AREA OF FREEDOM, SECURITY AND JUSTICE**

This part of the Welcome Pack for Members, drafted by the Policy Departments, provides a brief analysis of the policy areas of your parliamentary committee. The analysis details possible future policy challenges facing the European Parliament during the eighth legislative term.

Article 3(2) of the Treaty on European Union (TEU) sets out the EU's key objectives of the area of freedom, security and justice (AFSJ): 'The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.'

The Lisbon Treaty attaches greater importance to the creation of an area of freedom, security and justice. It introduces some important new features: a more efficient and democratic decision-making procedure that comes in response to the abolition of the old pillar structure; increased powers to the Court of Justice of the European Union; and a new role for national parliaments. Basic rights are strengthened by the Charter of Fundamental Rights that is now legally binding on the EU.

The objectives for the AFSJ are laid down in Article 67 TFEU:

- 'The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
- It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.
- The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.
- The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters'.

## 1. The decision-making process

The Lisbon Treaty abolished the former third pillar (police cooperation and judicial cooperation in criminal matters), which was based on intergovernmental cooperation, thus generalising the community method in the AFSJ. As a rule, legislative proposals are now adopted under the ordinary legislative procedure set out in Article 294 TFEU with qualified majority voting in the Council and full co-legislative powers of the European Parliament.<sup>1</sup> The powers of the European Commission in the area of infringement proceedings and the full competence of the Court of Justice become applicable to the existing *acquis* of the third pillar legislation five years after the entry into force of the Treaty of Lisbon, i.e. as of 1 December 2014 (Protocol 36).

## 2. The European Council's planning role

Following the Tampere programme of 1999 and the Hague programme of 2004, a new multi-annual programme in the AFSJ for the period 2010-2014, the Stockholm Programme, was approved by the European Council in December 2009. This multiannual programme aims to further strengthen the area of freedom, security and justice with actions focusing on the interests and needs of citizens. Debates on the follow-up to the Stockholm programme are currently ongoing<sup>2</sup>. The European Council has announced its intention to hold a discussion at its June 2014 meeting to define the strategic guidelines for legislative and operational planning within the AFSJ, in accordance with Article 68 TFEU.

## 3. The establishment of the European agencies

Various agencies have been set up to help oversee policies in a number of important areas of the AFSJ: Europol for police cooperation; Eurojust for judicial cooperation in criminal matters; the EU Fundamental Rights Agency; the European Monitoring Centre for Drugs and Drug Addiction; Frontex, which is responsible for coordinating external border control; the European Asylum Support Office; and, very recently, the EU Agency for the management of large-scale IT systems (eu-LISA). The agencies vary considerably in terms of powers and resources. The establishment reflects, however, the EU institutions' wish to surround themselves with highly specialised bodies possessing in-depth expertise to deal with complex issues.

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<sup>1</sup> See LIBE section, point 4

<sup>2</sup> See Policy Department C study, *Towards the Negotiation and Adoption of the Stockholm Programme's Successor for the Period 2015-2019*, PE 493.015; European Parliament resolution on the mid-term review of the Stockholm Programme (2013/2024(INI)); Commission Communication on The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union (COM(2014) 144); Commission Communication: An open and secure Europe: making it happen (COM(2014) 154)

## 4. Particular emphasis on the use of directives, framework decisions and international agreements

The directive – or the framework decision, which is a similar legal instrument of the former third pillar – is particularly important in the sectors covered by the AFSJ.<sup>1</sup> The use of directives, which like framework decisions *'shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'*<sup>2</sup>, raises the issue of ensuring that its substance is properly incorporated into the different national legal systems, along with the associated monitoring of transposition and control of its quality.

In addition to the above-mentioned legal instruments, the EU also concludes different types of international agreements<sup>3</sup> with third countries in the AFSJ – these require consent from the European Parliament. An issue of concern regarding the conclusion of international agreements is the obligation to inform the European Parliament regularly on ongoing negotiations, especially if those agreements affect the fundamental rights of EU citizens (Article 218 TFEU). The information-sharing deficits that sometimes exist between the Commission or Council and the European Parliament may limit the role of the European Parliament as 'policy setter and maker'.

## 5. The role of the European Parliament

The European Parliament has a range of tools and powers that enables it to perform its role to the full<sup>4</sup>:

- legislative powers to the extent that, following the entry into force of the Lisbon Treaty, the European Parliament generally acts as co-legislator, including former third-pillar matters where its involvement used to be confined to delivering advisory opinions;
- budgetary powers, the European Parliament being jointly responsible, with the Council, for laying down the EU budget;
- supervisory powers, such as setting up committees of inquiry to look into violations of EU law by Member States or granting discharge to the agencies in the AFSJ;
- the power to bring proceedings for annulment before the Court of Justice<sup>1</sup>;

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<sup>1</sup> Examples include Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States and the June 2002 framework decision on the European arrest warrant

<sup>2</sup> Article 288 TFEU

<sup>3</sup> Financial Messaging Data for the purposes of the Terrorist Finance Tracking Programme; the EU-Japan on mutual legal assistance in criminal matters; the Agreement between the European Community and the Islamic Republic of Pakistan on the readmission of persons residing without authorisation and the EU-Ukraine Agreement on the facilitation of the issuance of visas

<sup>4</sup> The Policy Department C published a study on 9.7.2013 on 'The "Lisbonisation" of the European Parliament – Assessing Progress, Shortcomings and Challenges for Democratic Accountability in the Area of Freedom, Security and Justice', PE 493.012

- the power of political initiative, which the European Parliament exercises by adopting 'own-initiative' reports and resolutions on such subjects as it might choose to address<sup>2</sup>;
- the option of sending delegations to the Member States in order to identify problems and to verify how legislation adopted at EU level is being implemented<sup>3</sup>.

## **6. Current European and global challenges in the AFSJ and potential European responses**

With a view to ensuring sincere cooperation between the institutions involved in the legislative process and improving the implementation of the Lisbon Treaty provisions, the main challenges in the AFSJ can be summed up as follows:

- enhancing the recognition of the growing importance of the AFSJ in the context of the EU's development;
- aligning all existing legal acts of the former third pillar in the field of police and judicial cooperation in criminal matters with the Lisbon Treaty so as to enable the European Parliament to play its full democratic role;
- maintaining a proper balance between protection of citizens' fundamental rights and security and counterterrorism requirements;
- ensuring full parliamentary oversight of the EU's Justice and Home Affairs agencies;
- strengthening the protection of fundamental rights in all AFSJ policies, in particular through the application of the legally binding EU Charter of Fundamental Rights and the establishment of the Fundamental Rights Agency providing an effective source of expertise;
- reinforcing the external dimension of the area of freedom, security and justice.

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<sup>1</sup> See for example Case C-355/10, European Parliament v Council of the European Union

<sup>2</sup> See LIBE section, point 4 c

<sup>3</sup> See LIBE section, point 10

## 7. Fundamental rights

While the EU is going through a period of economic and financial crisis, the European Parliament has repeatedly called for a mechanism to secure the regular assessment of Member States' compliance with the fundamental values of the EU<sup>1</sup>, as set out in Article 2 TEU. The mechanism should provide a basis for an early warning tool with appropriate interventions should systematic breaches of the principles of democracy and rule of law occur, and should the appropriate checks and balances fail to function in a Member State.<sup>2</sup>

The accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms, as provided for by Article 6(2) TEU, will strengthen even further the protection of fundamental rights in the Union, as guaranteed by the Charter of Fundamental Rights and the case law of the Court of Justice. It will provide citizens with protection in the context of Union action similar to that which they already enjoy in the context of action by individual Member States.

## 8. Asylum and immigration

The increasing number of migrants fleeing the Arab Spring turmoil since 2011 and the deaths in the Mediterranean Sea confirm the need for a common European asylum and immigration policy. The Commission must monitor the correct implementation of the recently adopted Common European Asylum System instruments by the Member States as from the date of application. MEPs have underlined the importance of the principles of solidarity and fair responsibility-sharing in the field of asylum, as laid down in Article 80 TFEU<sup>3</sup>, and recommended the creation of a mechanism to reduce the pressure on those Member States receiving higher numbers of asylum seekers<sup>4</sup>.

The European Parliament has regretted the limited progress made in the adoption of legislation in the field of legal migration. Common rules defining conditions and procedures for seasonal workers, intra-corporate transferees or researchers entering the EU should help to respond to demographic challenges, labour market needs and provide alternatives to irregular migration in the future.

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<sup>1</sup> European Parliament resolution of 27.2.2014 on the situation of fundamental rights in the European Union (2012) (2013/2078(INI)), P7\_TA(2014)0173

<sup>2</sup> A proposal for a new mechanism to assess fundamental rights protection in the EU was presented in a study carried out by Policy Department C of 15.10.2013 – 'The Triangular Relationship between Fundamental Rights, Democracy and Rule of Law in the EU – Towards an EU Copenhagen Mechanism', PE 493.031

<sup>3</sup> The scope and implications of Article 80 TFEU were assessed in a study published by Policy Department C on 15.4.2011 – 'The Implementation of Article 80 TFEU – on the Principle of Solidarity and Fair Sharing of Responsibility, Including its Financial Implications, between the Member States in the Field of Border Checks, Asylum and Immigration', PE 453.167

<sup>4</sup> European Parliament resolution of 11.9.2012 on enhanced intra-EU solidarity in the field of asylum (2012/2032(INI)), P7\_TA(2012)0310

## 9. Border management and visa policy

Parliamentarians consider the absence of controls at internal borders to be one of the major achievements of European integration and firmly reject all attempts to limit the freedom of movement of persons. The European Commission must play its role as guardian of the Treaty and avoid any situation that could endanger the functioning of the Schengen area. The European Parliament has repeatedly called for the enlargement of the Schengen area to include Bulgaria and Romania<sup>1</sup>.

While new systems including the migration to the Schengen Information System II, the continued roll-out of the Visa Information System and the setting-up of the agency eu-LISA for their operational management now need to stand the test of everyday use, MEPs have requested that new border management instruments, such as the Registered Traveller Programme and the Entry/Exit System proposed by the Commission in February 2013, should not be launched until the existing tools are fully operational and reliable.

## 10. Judicial cooperation in criminal matters

To fight transnational crime in an area without internal borders, the EU is developing a single area of criminal justice, where there is mutual trust and support among national law enforcement and judicial authorities. Instruments in the field of mutual recognition of judicial decisions in the EU Member States, including the review of the European Arrest Warrant<sup>2</sup>, continue to play an important role in this respect.

Planned improvements in the field of criminal justice, which will determine the future work of the European Parliament in the legislative process, include a more coherent approach to criminal law<sup>3</sup>; strengthening the role of Eurojust, the EU agency for criminal justice cooperation; the creation of a European Public Prosecutors' Office (EPPO); reinforcing the fight against fraud to the Union's financial interests by means of criminal law, improved efforts to tackle corruption; stronger procedural rights for suspects and accused persons and more efficient help to victims of crime.

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<sup>1</sup> European Parliament resolution of 13.10.2011 on the accession of Bulgaria and Romania to Schengen, P7\_TA(2011)0443

<sup>2</sup> European Parliament resolution of 27.2.2014 with recommendations to the Commission on the review of the European Arrest Warrant (2013/2109(INL)), P7\_TA(2014)0174

<sup>3</sup> See European Parliament resolution of 22.5.2012 on an EU approach to criminal law (2010/2310(INI)), P7\_TA(2012)0208

## 11. Internal security

Despite progress made by the Member States and the European Commission in the context of the Internal Security Strategy (ISS) and the EU policy cycle on organised and serious international crime, the Union will need to step up its efforts in the fields of counter-terrorism, cybercrime, drugs, trafficking of human beings, child pornography, CBRN<sup>1</sup> threats and money laundering, to continue to ensure an adequate level of protection for its citizens, while protecting their fundamental rights.

As the current ISS will come to an end in 2014, MEPs have called on the Commission to start preparing a new ISS for the period 2015-2019 which takes account of the entry into force of the Treaty of Lisbon and the incorporation of the Charter of Fundamental Rights into Union law<sup>2</sup>. The European Parliament is now a fully-fledged institutional actor in the field of security policies, and is therefore entitled to participate actively in determining the priorities of the ISS. It has called for a future-oriented vision on how to shape law enforcement data sharing in the EU while guaranteeing a robust level of data protection<sup>3</sup>.

## 12. Protection of personal data

Given the challenges resulting from globalisation and rapid technological developments in the digital world, including social networking sites and cloud computing, the modernisation of the EU legal framework for the protection of personal data remains a key priority for the European Parliament. This includes the adoption and implementation of the EU data protection reform package. A single set of rules is supposed to eliminate the current fragmentation and the costly administrative burdens, whilst ensuring a high level of data protection in all areas.

While confirming its ongoing support for transatlantic efforts in the fight against terrorism and organised crime, the European Parliament has expressed serious concern over recent revelations of use of mass surveillance programmes. Following an in-depth inquiry into the matter, MEPs have made a list of recommendations to ensure the protection of personal data in the framework of transatlantic cooperation<sup>4</sup>. These include the adoption of an EU-US framework agreement on the protection of personal data when transferred and processed for law enforcement purposes and the suspension of the terrorist finance tracking programme (TFTP) agreement between the EU and the USA.

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<sup>1</sup> Chemical, biological and radio-nuclear threats

<sup>2</sup> European Parliament resolution of 12.9.2013 on the second report on the implementation of the EU Internal Security Strategy (2013/2636(RSP)), P7\_TA(2013)0384

<sup>3</sup> European Parliament resolution of 10.8.2013 on strengthening cross-border law-enforcement cooperation in the EU: the implementation of the 'Prüm Decision' and the European Information Exchange Model (EIXM) (2013/2586(RSP)), P7\_TA(2013)0419

<sup>4</sup> European Parliament resolution of 12.3.2014 on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs (2013/2188(INI))



The European Parliament has welcomed the Court of Justice judgment of 8 April 2014, which declared Directive 2006/24/EC on data retention to be invalid on account of its serious interference with the fundamental rights to respect for private life and to data protection. This will have a significant effect on national legislation and on future legislative texts and agreements relating to data retention.





