Hearings of European Commissioners-designate

Věra Jourová

Justice, Consumers and Gender Equality

Hearing due to be held on Wednesday 1 October at 13.30 hours.

EP Committees responsible for the Hearing
Internal Market and Consumer Protection (IMCO)
Legal Affairs (JURI)
Civil Liberties, Justice and Home Affairs (LIBE)
Women's Rights and Gender Equality (FEMM)

Biography
Born in 1964, Vera Jourová studied law and headed the regional development department of the Vysočina region before working on European integration at the Ministry of Regional Development, and leading her country’s negotiating team on EU funds. Between 2006 and 2013, she was a consultant providing advice on EU matters to her own country, and to Russia, the Balkans and the Baltic states. Elected to the Czech parliament in October 2013, she became Minister for Regional Development in January 2014.

This is one of a set of Briefings designed to give Members of the European Parliament an overview of major issues of interest in the context of the hearings of the Commissioners-designate. A full set of such Briefings can be found at:
http://epthinktank.eu/commissioner_hearings
Background
This new portfolio assigned to Jourová comprises the following policy responsibilities: judicial cooperation in civil matters, including private international law and international civil procedure; consumer protection in general; harmonisation and unification of private law (excluding intellectual property); judicial cooperation in criminal matters, including the European Public Prosecutor; data protection; and gender equality. Commissioner Jourová’s portfolio will largely involve projects to be steered and coordinated by First Vice-President Frans Timmermans, who will have responsibility in particular for fundamental rights across the new Commission.

Civil justice
Within the Area of Freedom, Security and Justice (AFSJ), EU citizens and companies may have to deal with civil proceedings before a court in another Member State, or a case in their own country may involve a foreign element linked to a different Member State. Increasing use of the right of free movement inevitably leads to a growth in cross-border civil litigation. In order to guarantee the rights of citizens and firms in a cross-border context, the EU seeks to foster judicial cooperation in civil matters between courts, and establishes rules on mutual recognition of judicial decisions and on the regulation of conflicts of laws and jurisdictions, as well as creating EU-wide uniform civil procedures. EU involvement in civil justice is directly beneficial to the EU economy, as it facilitates cross-border debt collection, cross-border insolvency proceedings, and simplifications the enforcement of judgments in other Member States.

Consumer protection
EU consumer policy entails both adopting legislative acts directly aimed at protecting consumer interests, and mainstreaming consumer protection concerns into other EU policies. Most EU consumer legislation has in fact been adopted on the legal basis of internal market harmonisation, following the logic that consumer confidence in cross-border shopping can be boosted by ensuring the same minimum level of protection across the Union. Recently, however, there has been a tendency towards replacing this so-called 'minimum harmonisation', which allows Member States to retain a higher level of consumer protection, with 'maximum' or 'full' harmonisation. The latter means that Member States must implement exactly the same level of consumer protection as provided for by the relevant EU directive and may not enact more consumer-friendly rules at national level. The rationale behind maximum harmonisation is that businesses active across the EU will be able to adopt a more coherent approach, without the need to adapt their commercial practices separately to each and every Member State. However, maximum harmonisation is problematic in certain respects. First, it may mean that some Member States must scrap their consumer-friendly rules in order to fit the lower EU standard. Secondly, enacting maximum harmonisation legislation at EU level becomes more difficult, as many Member States are keen to retain their higher level of consumer protection.

Criminal justice
Judicial cooperation in criminal matters in the EU was originally inter-governmental, which meant that the possibilities for EU action were limited, not least due to the requirement for unanimity in the Council. The Lisbon Treaty finally abolished the pillarled structure of the Union, thus enhancing its powers in this domain, and allowing it to strengthen the criminal justice side of the AFSJ, thanks to the broader scope of matters subject to the ordinary legislative procedure. Judicial aspects of criminal law,
including the European Public Prosecutor’s Office, belong to the Justice, Consumers and Gender Equality portfolio, whilst police cooperation belongs to the Migration and Home Affairs portfolio.

**Gender equality**

Gender equality was included in the 1957 Treaty of Rome, applying to employment. The Court of Justice found this rule to be horizontally applicable, namely it is actionable in relationships between employees and employers. The first piece of secondary legislation in this field was the Equal Pay Directive of 1975 which prohibited discrimination on grounds of gender with regard to all aspects and conditions of remuneration. Currently the centrepieces of gender equality legislation are the recast Gender Directive of 2006 and the 2004 Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services.

**Data protection**

Protection of personal data is a human right enshrined in Article 8 of the Charter of Fundamental Rights, and the EU powers to regulate this field are explicitly recognised in the Lisbon Treaty (Article 16(2) TFEU). The current legal framework comprises a general Data Protection Directive, a Regulation on processing of personal data by the EU institutions and bodies and a Framework Decision on the protection of personal data in the context of criminal law enforcement. Since the enactment of the Data Protection Directive there have been significant changes in the practical aspects of processing of personal data, especially caused by the proliferation of online technology, an increase in the volume of data collection, and the globalisation of markets. These have made an update of the regulatory framework necessary.

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**Treaty base and EP powers**

Civil justice is covered by Articles 81(1) and (2) of the Treaty on the Functioning of the European Union (TFEU), to which ordinary legislative procedure (OLP) applies. Family law is covered by a special legislative procedure with the EP only consulted, under Article 81(3) TFEU. Criminal justice is covered by Articles 82 to 84 TFEU, with OLP applying; Eurojust is governed by Article 85 (OLP) and the European Public Prosecutor by Article 86 (consent of the EP). Internal market rules on approximation of laws are set out in Articles 114 and 115, and consumer protection in Articles 12 and 169 TFEU (OLP applies). Gender equality provisions are in Articles 2 and 3 TEU and Articles 8, 10, 19, and 157(1)(i) TFEU: OLP applies for all these except for anti-discrimination measures where Parliament must give consent to a unanimous decision of the Council.

In addition, in all these areas, specific provisions of the Charter of Fundamental Rights govern the actions of the EU institutions and Member States in legislating and implementing laws.

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**Recent developments**

**Legislation adopted in the seventh parliamentary term**

**Civil law, including consumer law**

Within the field of civil law, the past Parliament adopted the maximum harmonisation **Consumer Rights Directive**. This was initially intended to replace eight existing minimal harmonisation consumer directives, but in the end, due to difficulties between Member States, it replaced only two of them (on doorstep and distance selling). In addition, the old Directive on late payments in commercial transactions was replaced. Furthermore, in January 2014, after three years of negotiations, the **Mortgage Credit Directive** was adopted. It aims to create a genuine internal market for mortgages, simultaneously providing for a minimum level of consumer protection. Member States are allowed to retain or introduce a higher level of consumer protection.
Consumer redress
A new Directive on alternative dispute resolution (ADR) for consumer disputes was adopted, which allows consumers to submit, on a voluntary basis, complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures. The Directive is accompanied by a Regulation on online dispute resolution (ODR) for consumers. The ODR Regulation provides that, by January 2016, an EU-wide online platform will be set up for disputes arising from online transactions, linking all ADR entities from the Member States and available in all official EU languages.

International civil procedure and private international law
Four regulations were adopted within the area of international civil procedure. First, a Council Regulation was adopted on the law applicable to divorce and separation, which implemented enhanced cooperation between 14 Member States. The Succession Regulation was adopted to clarify which law applies and which courts may hear cases relating to successions, and to facilitate dealing with the estates of deceased persons where there are cross-border interests. The Brussels I Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters was recast in 2012. Finally, a Regulation on mutual recognition of protection measures in civil matters was adopted, applying to measures ordered with a view to protecting a person where there exist serious grounds for considering that that person’s life, physical or psychological integrity, personal liberty, security or sexual integrity is at risk (for instance as a result of gender-based violence).

Criminal procedure
Within the area of criminal proceedings, the seventh Parliament adopted three new directives: on the right to interpretation and translation in criminal cases, on the right to information on them, and on the rights of victims of crime.

Gender equality
With regard to gender equality, a new Council Directive on parental leave was adopted, replacing a previous directive, and a new Directive of the EP and Council on equal treatment of self-employed persons was enacted.

Pending legislation
Common European Sales Law (JURI)
One of the most significant pending proposals is the regulation on a Common European Sales Law. The proposal is intended to create a uniform set of contract rules available to traders and consumers entering into cross-border transactions in the internal market, however the EP has opted to narrow down its application to distance transactions only (including online ones). The proposal is now with the Council for its first reading.

Cross-border insolvency law (JURI)
Currently, insolvency law is not harmonised at EU level. However, the Insolvency Regulation lays down rules on jurisdiction, recognition and applicable law in the field in respect of cross-border insolvency. The Commission proposed its reform, enlarging its scope of application to debt adjustment and reorganisation, clarifying controversial issues and bringing about more coordination between national procedures. In February 2014 the EP adopted amendments to the Commission proposal, proposing to extend it to proceedings which promote the rescue of a debtor in severe financial distress in order to give a second chance to companies. The proposal is currently awaiting the Council’s first reading position.
Cross-border family law (JURI)
Two proposals within the field of cross-border family law, submitted by the Commission in 2011, are still pending, one regarding matrimonial property, and another on the property consequences of registered partnerships. The Parliament adopted legislative resolutions on both proposals in September 2013, and they are now awaiting a final decision by Council.

Consumer protection (IMCO)
In 2013, the Commission tabled a proposal for a consumer product safety regulation to replace the existing 2001 General Product Safety Directive. The proposed regulation concerns manufactured non-food consumer products which must be 'safe'; to this end it imposes a number of obligations on traders and establishes provisions for the development of safety standards. The product safety package also comprises a market surveillance regulation which would increase coordination of market surveillance across the Member States. The EP approved the package in April 2014, and it is now awaiting Council's first reading.

Criminal procedure
In 2013, the Commission submitted a number of proposals aimed at ensuring greater fairness in criminal trials – strengthening the presumption of innocence, safeguarding the rights of accused children, and guaranteeing legal aid to suspects and accused persons in European Arrest Warrant proceedings. Moreover, the Commission submitted a proposal for a regulation establishing the European Public Prosecutor's Office. Whilst currently only national authorities can investigate and prosecute EU fraud, the idea behind the EPPO is to create an EU authority which could investigate and prosecute crimes affecting EU financial interests.

Gender equality (JURI/FEMM)
In November 2012, the Commission submitted a proposal for a directive on gender balance on company boards, setting a minimum objective of a 40% quota for the under-represented sex among companies' non-executive directors. It would require companies with lower representation to introduce pre-established, clear, neutrally formulated and unambiguous criteria in selection procedures for those positions, in order to attain that objective. The EP adopted amendments in November 2013, and the text is now awaiting Council's position at first reading.

Horizontal anti-discrimination directive (LIBE)
The Commission's proposal for an anti-discrimination directive has been pending since 2008. The Parliament had adopted its legislative resolution during the sixth parliamentary term (in 2009), and during the seventh there have been on-going debates in the Council. Parliament has also sought to find elements for a compromise, and commissioned an Impact Assessment study, published in early 2014, addressing both the proposal and two of the major amendments adopted by the Parliament. During the most recent debate on it in Council, in December 2013, some delegations upheld their general reservations on the proposal, which they regard as infringing national competence and violating the principles of subsidiarity and proportionality. Other major controversial aspects include the legal certainty in the directive as a whole, the overall scope of the directive (some delegations are against including social protection and education) and the implementation deadlines.
Data protection (LIBE)
In January 2012, the Commission tabled a reform package comprising a general data protection regulation and a directive to replace the 2008 Framework Decision (on personal data used in law enforcement), whilst it did not propose to amend the 2000 Regulation on processing of data by the EU institutions. The proposed regulation would strengthen citizens’ rights (for instance with limits to online tracking and profiling, the right to be forgotten, right to data portability, principles of transparency and data minimalisation). In cross-border cases a ‘one-stop shop’ mechanism would apply, whereby the supervisory authority of the Member State in which the company dealing with personal data has its main establishment would be competent. The EP adopted its amendments in March 2014, and the texts are now awaiting Council’s first reading position. Following two recent judgments of the Court of Justice of the EU, one establishing the 'right to be forgotten', and another one annulling the Data Retention Directive, the package on data protection may need to be expanded and updated to reflect the changed legal situation.

Non-legislative initiatives of the outgoing Commission
Justice Scoreboard (LIBE-JURI)
In March 2013, the Commission published the first edition of the EU 'Justice Scoreboard', which is a document assessing the quality of the justice systems in the Member States. The Commission’s initiative falls within a broader set of reports and indicators aimed at evaluating justice systems and the rule of law, and draws directly on data gathered by the Council of Europe. The second Justice Scoreboard was published in March 2014.

Consumer protection
In the seventh parliamentary term, the Commission adopted a new Agenda for European Consumer Policy (2012) and the Consumer Programme 2014-20 (with a budget of €188.8 million over this period), which provide a policy framework and a financial instrument for consumer protection actions.

European Parliament
The Lisbon Treaty strengthened the powers of the EP in the field of justice. In particular, the former 'third pillar' was abolished, and provisions on judicial cooperation in civil and criminal matters were brought together under one single title on the 'Area of Freedom, Security and Justice' (Title V TFEU). In practice this means, that the ordinary legislative procedure (qualified majority in the Council and codecision with the EP) has become the rule in this area, and the standard types of legal acts (regulations, directives, decisions) are now used.

Judicial cooperation in civil matters has been subject to qualified majority and codecision since 1999, under the Treaty of Amsterdam. With Lisbon however, the exception of family law remains, while the 'passerelle clause' regarding this area has been modified. Whereas previously it enabled the Council acting unanimously, after consulting the EP, to switch family law matters to qualified majority and codecision, the Treaty of Lisbon has added the requirement that national parliaments be notified and each of them has a right of veto to be exercised within six months – so making any switch from special to ordinary legislative procedure less likely.

During the past legislature, the Parliament adopted three own-initiative reports in the area of judicial cooperation in civil matters: one on proposed interim measures for the
freezing and disclosure of debtors' assets in cross-border cases (adopted in plenary in May 2011), another on cross-border insolvency proceedings (adopted in plenary in November 2011), and a third one proposing to amend the Rome II Regulation so as to clarify which law is applicable to claims arising out of a violation of privacy or rights relating to the person, including defamation (adopted in plenary in May 2012). Another own-initiative report, on a **European Code of Private International Law**, was postponed to the next legislature for further work.


As regards **criminal matters**, the ordinary legislative procedure is now applicable (within the sphere of Jourová's portfolio) in the following areas:

- judicial cooperation strictly speaking (recognition of judgments, conflicts of jurisdiction, cooperation in criminal proceedings, enforcement) (Article 82 TFEU);
- substantive criminal law with regard to minimum rules defining a number of serious criminal offences of a cross-border character (Article 83 TFEU).

In the area of judicial cooperation in criminal matters, the Parliament adopted (in February 2014) an own-initiative report calling upon the Commission to table, within a year, proposals to amend the legal framework of the **European Arrest Warrant**, so as to rectify a number of weaknesses.

At the same time, a new so-called 'brake-accelerator' device has been provided for (Articles 82(3) and 83(3) TFEU). This consists of two elements: an 'emergency brake', whereby a Member State which considers that a draft legislative act 'would affect fundamental aspects of its criminal justice system' can bring the matter to the European Council, with the effect of freezing the procedure. If the European Council reaches consensus, the legislative procedure is unfrozen. The second element is the 'accelerator' – if the European Council does not reach a consensus within four months, a group of at least nine Member States may go for enhanced cooperation after notifying the EP, the Council and the Commission.

The Treaty of Lisbon has also provided for **enhanced democratic control** over the AFSJ, involving national parliaments is monitoring the observance of the subsidiarity principle in the area of judicial cooperation in criminal matters (Article 69 TFEU) and in evaluating EU policies in this area (Article 70 TFEU). The EP is also involved in these procedures.

During the seventh parliamentary term, the EP has played an active role in **strengthening European consumer protection legislation** through numerous own-initiative reports and resolutions. Some of its proposals have already prompted action: resolutions on universal service and the 112 emergency number (2011), on passenger rights in all transport modes (2012), and on a European approach to collective redress (2012). Other areas awaiting more specific proposals from the Commission include: own-initiative reports on the impact of advertising on consumer behaviour (2010); strengthening the rights of vulnerable consumers (2012) and misleading advertising practices (2013); a resolution on the application of the Unfair Commercial Practices Directive (2014); and an own-initiative report on the protection of consumers of public services (energy, telecommunications, postal services and public transport) (2014).

In the area of **gender equality**, the Parliament adopted two own-initiative reports, on the application of the principle of equal pay for male and female workers for equal work
or work of equal value (adopted in May 2012) and on combating violence against women (adopted in February 2014).

**Priorities and challenges**

In his mission letter to Commissioner Jourová, President-elect Jean-Claude Juncker indicated the following areas of priority:

- supporting First Vice-President Timmermans in the process of **acceding to the ECHR**, as well as ensuring that all Commission proposals conform with the Charter of Fundamental Rights;
- cooperating with the High Representative in **promoting EU values** abroad;
- seeking to unblock the **Horizontal Anti-Discrimination Directive**;
- contributing to the realisation of a **connected digital single market**, which includes both the **data protection** reform and **consumer rules** on online and digital purchases (in particular the **Common European Sales Law**);
- concluding negotiations on a comprehensive **EU-US data protection agreement** and reviewing the **Safe Harbour agreement**;
- assessing the **performance of Member States’ judiciaries** within the framework of the European Semester;
- coordinating the Commission’s activity in the field of **criminal law** and procedure;
- ensuring that a **European Public Prosecutor’s Office** is in place by 2016.

**Further reading**

- **Consumers**, European Commission website.

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