

EUROPEAN UNION



Committee of the Regions

CONST-IV-025

**81st Plenary Session
5 and 7 October 2009**

**DRAFT OPINION
of the
Committee of the Regions
on
THE STOCKHOLM PROGRAMME: CHALLENGES AND
OPPORTUNITIES IN VIEW OF A NEW MULTI-ANNUAL
PROGRAMME ON THE EU AREA OF FREEDOM, SECURITY AND
JUSTICE**

Rapporteur: **Anna Terrón i Cusí** (ES/PES)
Secretary for European Union Affairs, Government of Catalonia (the Generalitat)

This document is being sent to members in accordance with Rule 15(4) of the Rules of Procedure.

Deadline for tabling amendments:

Thursday 24 September 2009, 3 p.m. (Brussels time) to: const@cor.europa.eu

Number of signatures required: 6

DOCUMENT SUBMITTED FOR TRANSLATION: 8 September 2009

CdR 201/2009 rev.1 EN-ES/HR/ms

Reference document:

Communication from the Commission to the European Parliament and the Council - An area of freedom, security and justice serving the citizen
COM(2009) 262

Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Justice, Freedom and Security in Europe since 2005: An evaluation of the Hague Programme and Action Plan
COM(2009) 263

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS,

General recommendations

1. welcomes the Commission's initiative, which aims to continue the work on establishing a genuine area of freedom, security and justice serving the citizen, and points out the importance of this in an increasingly mobile world;
2. welcomes the Commission's initiative, which aims to establish a new multi-annual EU programme laying down priorities for the next five years in fields related to the area of freedom, security and justice; notes, however, that the Commission Communication makes no reference to relevant changes that would be made by the Lisbon Treaty;
3. considers that the new programme should be sufficiently ambitious to guarantee significant progress in these areas, but that it should also focus greater attention on evaluating initiatives proposed over the last ten years in order to increase their effectiveness and ensure that they achieve their objectives;
4. reiterates its concern that the Commission once again does not pay sufficient attention to the role played by local and regional authorities in the areas of freedom, security and justice;
5. points out that local and regional authorities have a special interest in the areas dealt with in the Communication, as they have a direct impact on the everyday life of people living in the European Union and on the duties of local and regional authorities;
6. reiterates the fact that, as the political assembly representing local and regional authorities, the Committee of the Regions is one of the appropriate forums for serving the interests of citizens and ensuring the implementation of the rights and obligations arising from European citizenship;
7. considers that the Committee of the Regions should be involved in the area of Freedom, Security and Justice and therefore directly involved in the application and development of the Stockholm Programme and its Action Plan, as well as in the design and implementation of the evaluation mechanisms and instruments referred to in it, in so far as its remit is concerned;
8. affirms its intention to promote a system of multilevel protection of fundamental rights and welcomes the fact that progress made on the establishment of an area of freedom, security and justice places citizens at the centre of the project;

9. reiterates the need to bring the issues of security and protection of fundamental rights and freedoms together in a balanced way, by implementing coherent instruments in the field of freedom, security and justice;
10. feels that progress has not matched expectations, and reminds the Member States that slowing down progress towards the establishment of an area of freedom, security and justice could affect the rights and freedoms of European citizens;
11. shares the Commission's view that ensuring the effective application of legislation is key to the development of an area of freedom, security and justice, and therefore shares concerns about divergences in the implementation of directives and calls on the Commission to design new measures to ensure that the spirit and letter of laws and policies adopted at European level are reflected in national legislation;
12. points out that freedom of movement is a key aspect of European citizenship, and calls on the Commission to adopt measures to ensure the correct implementation of the relevant legislation;
13. points out that, as the level of government closest to the grassroots, local and regional authorities can play a major role in evaluation instruments and mechanisms; therefore asks, in line with the recommendation made by the High-Level Advisory Group on the Future of European Justice Policy, to be involved in establishing these arrangements so that the practical experiences of local and regional authorities can be better taken into account;
14. proposes that the external dimension of European domestic policy be covered in a consistent manner by the Stockholm programme action plan, which could deal specifically with common interests relating to legal and illegal migration such as asylum, cooperation on border protection matters, combating crime and terrorism, setting geographical priorities for individual topics, framework conditions for exchanges of information, guarantees for basic and human rights protection, transparency and freedom to access information, data protection and concomitant legal protection guarantees for citizens of the Union and third country nationals;
15. believes that policies developed in the fields of justice and internal affairs should be coordinated and integrated with other Union policies, and highlights the need for better coordination of the issues of justice, security and internal affairs with the European Union's economic policy, social policy and external policy, with a view to reinforcing this policy's effectiveness and coherence;
16. agrees with the political priorities of the new programme, and points out that the participation of local and regional authorities is a key element of the process of building a citizens' Europe, conferring greater democratic legitimacy on the process;

17. shares concerns about the assignment of financial resources to political priorities, and highlights the need to ensure the participation of local and regional authorities in the drawing up of budget instruments in areas in which these authorities are competent;
18. notes the fact that, because it is so broad in nature, the Communication does not pose any problem for compliance with the principles of subsidiarity and proportionality, and urges that the Action Plan to be adopted in December 2009 ensure maximum compliance with these principles;
19. calls for special attention to be paid to guaranteeing the principle of subsidiarity, as Member States sometimes succumb to the temptation of using it as an excuse for repatriating powers in areas related to police cooperation or immigration at national level;

A Europe of rights

20. welcomes the European Union's planned accession to the European Convention on Human Rights, and points out that the protection of fundamental rights must be the basis for any action by the Union and its Member States;
21. points out that the European Union's Charter of Fundamental Rights recognises rights which are applicable to any person, independently of his or her nationality or administrative residence status in the European Union, and stresses the importance of the residence principle for local and regional authorities with a view to guaranteeing social cohesion and peace;
22. stresses that the application of the directive on the free movement of persons is of key importance in guaranteeing the right of Europeans and their families to move and reside freely in the Member States, and points out that the directive has not been fully implemented by any Member State ¹;
23. points with concern to the restrictions on the entry and residence of family members who are nationals of third countries, and calls for particular vigilance to guard against any discrimination based on nationality or ethnic origin;
24. lends its support to any initiative aimed at combating discrimination, racism, anti-semitism, xenophobia or homophobia, calls for swift adoption of the Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008) 426), and stresses the major role which local and regional authorities can play in preventing and detecting xenophobic and racist attitudes, as well as the role they play in educating people in democratic principles; believes, moreover, that the European Year for Combating Poverty and Social Exclusion

¹ See the Communication on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313/4.

(2010) is an opportunity for fresh impetus in drawing up and implementing policies to combat discrimination against vulnerable social groups;

25. agrees that there is a need to establish a comprehensive system of data protection based on the fundamental right to privacy and protection of personal data, incorporating instruments appropriate to its objectives maintaining a high level of protection;
26. expresses its concern at the exponential growth of digital information on private individuals resulting from the development of information and communication technologies, stresses the importance that Europeans attach to the protection of data and privacy², and considers that the Stockholm Programme and the subsequent Commission Action Plan should pay more attention to the development of a strategic approach based on "privacy by design" and "privacy-aware" technologies³;
27. expresses its concern at the low turnout at the European elections and regrets that the Commission has not come up with any really innovative ideas to increase participation in the democratic life of the Union⁴;
28. encourages the Commission to seek ways of promoting new forms of participation based on new technologies and to emphasise the value of e-government and initiatives like e-participation with a view to strengthening people's civic and political involvement;
29. considers that it is necessary to strengthen information mechanisms, enabling Europeans to have a better understanding of their rights, particularly with regard to diplomatic and consular protection in third countries in which their country is not represented;
30. takes note of the need to improve the system of common training in the field of civil protection, and endorses the proposal of the final report of the Future Group that networking be promoted in relation to training and that common definitions of standards be drawn up⁵;

2 Eurobarometer: Data Protection in the European Union. Citizens' perceptions. Analytical Report", February 2008.

3 Opinion of the European Data Protection Supervisor on the Communication from the Commission to the European Parliament and the Council on an Area of freedom, security and justice serving the citizens, http://www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Opinions/2009/09-07-10_Stockholm_programme_EN.pdf

4 In this connection the Commission is encouraged to consult the study entitled Participation in the European Project: how to mobilize citizens at local, regional, national, and European levels being drawn up by the Institute for European Studies-VUB and the Danish Technological Institute on behalf of the Committee of the Regions, which will be presented in Gödöllo on 16 October.

5 Freedom, Security, Privacy – European Home Affairs in an open world. Report of the Informal High Level Advisory Group on the Future of European Home Affairs Policy (The Future Group), June 2008. <http://www.statewatch.org/news/2008/jul/eu-futures-jha-report.pdf>.

31. regrets that greater emphasis is not placed on the role of local and regional authorities in connection with mechanisms to strengthen civil protection, given that these authorities play a key role in prevention and the mobilisation of human and material resources in case of need;

A Europe of law and justice

32. reaffirms the importance of a European legal area and the need to eliminate existing obstacles with a view to guaranteeing Europeans the full exercise of their rights and the effective operation of internal market instruments;
33. recognises the difficulties of dealing with 27 different legal systems, but calls for a coherent and effective cross-border judicial cooperation on the basis of mutual recognition, mutual confidence and respect for the principle of subsidiarity; underlines that this should be accompanied by a minimum degree of harmonisation of criminal procedures, as well as minimum standards for civil procedures;
34. believes that access to justice is key to guaranteeing a Europe of rights, and welcomes the Commission's general proposals, particularly with regard to e-justice, which should be implemented in such a way as to guarantee data protection;
35. considers that the potential for using new technologies in the field of judicial cooperation should be explored to the full;
36. considers that the mechanisms for applying judicial cooperation instruments in the field of family law should be strengthened, particularly where the rights of minors are concerned;
37. calls for greater efforts to guarantee the correct implementation of European law in the field of justice, as well as to prevent the effectiveness of legal instruments from being undermined;
38. agrees that there is a need to bring about mutual recognition of disqualification decisions, particularly those relating to occupations involving minors, but calls on the Commission to be vigilant in guaranteeing data protection when information is exchanged and to guard against abuses;
39. agrees that training and skills are key elements in building a Europe of justice which respects diversity and promotes cooperation, and encourages the Commission to develop exchange programmes between professionals from different countries;
40. acknowledges the need to approximate national legislation in the field of civil law on particularly serious cross-border offences, in order to boost the development of cross-border activity and to afford better protection to citizens' rights, which is one of the aims of establishing the European area of justice;

A Europe that protects

41. welcomes the Commission's efforts to base security and justice policies on respect for the fundamental rights of citizens, but reiterates the need to guarantee consistency and balance between the issues of security and protection of rights and freedoms when seeking to establish an internal security strategy;
42. agrees that there is a need to create a common culture among security professionals and welcomes the initiative aimed at promoting mechanisms for the exchange of experience and good practice; in this context, it is vital to stress the importance of prevention policies as compulsory preliminary part of the whole process of combating crime;
43. regrets that only national players are mentioned, as the establishment of a common security culture ought also to involve players from local and regional government;
44. recommends examining to what extent the codification of European police law could facilitate cross-border police operations within the EU;
45. adds that, without questioning the internal allocation of powers of each Member State, there should be mechanisms allowing local and regional institutions involved in the effective application of Community security and police legislation to have reasonable and regulated access to the cooperation and information mechanisms established by the Union⁶;
46. considers it necessary to step up the use and effectiveness of technological tools for guaranteeing the security and freedom of persons in the exercise of their right of mobility, but acknowledges people's concerns about the rapid development of these systems without sufficient evaluation;
47. acknowledges the need to reflect on an architecture for information systems with a view to improved efficiency and effectiveness, minimisation of costs and maximisation of benefits;
48. points out that professionals from local and regional authorities should be involved when discussing research and development in relation to security and the possible establishment of an internal security fund;
49. considers that, when tackling issues which affect people's security such as terrorism, organised crime, especially people trafficking, drug trafficking or the sexual exploitation of minors, prevention is just as important as prosecution, and reminds the Commission of the crucial role played by local and regional actors in developing crime prevention strategies;

⁶

It is particularly important that there be rapid and guaranteed access to the databases referred to in Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

50. supports stepping up the effectiveness of police and judicial cooperation in Europe, and considers that local and regional authorities should play a major role in the fight against organised cross-border crime, given the ever-closer links between local criminality and international organised crime;
51. stresses that any progress in combating crime should go hand-in-hand with efforts to protect the right to legal defence, with common minimum judicial guarantees for defendants, particularly with regard to issues such as the presumption of innocence and police custody;
52. acknowledges that protecting the EU's external borders is crucial for guaranteeing security and freedom of movement within the Union, and endorses the reference to absolute respect for human rights and international protection when developing the European strategy for integrated border management, but expresses its concern at the Communication's lack of detail on the subject and calls for recognition of the fact that Europe is an area of freedom and rights when moving forward on this issue;
53. calls on the Commission to establish mechanisms for an independent evaluation of operational cooperation between Member States (FRONTEX) as well as relevant cooperation with third countries, in particular on intervention affecting EU citizens' and third country nationals' fundamental rights, before introducing any new instruments;
54. reminds the Member States that the control and monitoring of sea borders must not mean neglect of fundamental maritime rescue obligations;
55. considers that existing information systems (SIS II, VIS) should be fully developed and evaluated before introducing changes or establishing new instruments, and expresses its concern at the Communication's lack of information on revision and monitoring mechanisms for the use of biometric data in these systems;
56. expresses its concern at the establishment of an electronic system for recording entry to and exit from Member States' territory and the possible development of a European system for the collection of advance information on individuals wishing to enter a Member State of the European Union, which could be prejudicial to fundamental rights, especially the protection of personal data;
57. points out that there is a need to boost cooperation strategies for promoting the interchange of information and cooperation between police forces and customs authorities;
58. adds that any new instrument contemplated, such as the common European Schengen visa, must be developed in an effective and efficient way, taking account of data protection and guarantees of the right to privacy;

59. supports efforts to improve cooperation between Europol and Eurojust with a view to making progress on the investigation of cross-border organised crime activities;
60. echoes the Commission's concern at the threats identified and stresses the role which local and regional authorities can play in identifying and detecting criminal practices of this kind;
61. urges the Commission to draw up specific action plans for combating people trafficking and to integrate this campaign into relations with third countries;
62. expresses its concern at the increase in offences connected with the sexual exploitation of children and child pornography⁷ on the Internet, and points out that punitive measures must be accompanied by public awareness-raising and educational measures relating to these offences;
63. stresses the role which local and regional authorities can play in developing preventive approaches aimed at safeguarding the dignity and rights of minors, especially abandoned or unaccompanied minors⁸;
64. recognises the need to make progress on combating economic and computer crime, and the need to improve coordination and cooperation mechanisms in these fields, where crimes are not always investigated in the country in which they were committed;
65. reminds the Commission of the role which the local and regional authorities can play in combating corruption and counterfeiting, and in the development of the European Union's anti-drugs strategy;
66. considers the terrorist threat to be one of the main concerns of Europeans, and regrets that the Communication does not mention the role of the local and regional authorities in reducing this threat, particularly with regard to combating violent radicalisation;
67. fears that the preventive measures listed in the Communication will only serve to criminalise ethnic or religious groups while failing to tackle the root causes of terrorist activity;
68. proposes that political, social and economic factors which may contribute to the rise in political violence emanating from various groups should be taken into consideration before

⁷ In the light of its concern at the sexual exploitation of children and child pornography, the Committee of the Regions will in the coming months be issuing an opinion on Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

⁸ See the CoR opinion on Local and regional cooperation to protect children and young people from abuse and neglect in the European Union (CdR 225/1999 fin) and the opinion entitled Towards an EU strategy on the rights of the child (CdR 236/2006 fin).

focusing on its national, ethnic or religious origins, which could give rise to increased racism and xenophobia;

A Europe of solidarity with regard to immigration and asylum

69. reiterates that the European Union must adopt a genuine European immigration policy, while maintaining the existing division of powers, as well as making full use of its powers on this field, and respecting the subsidiarity principle;
70. points out that the local and regional authorities are in the front line with regard to the implementation of immigration and asylum policies and have to be the first to react to the economic and social impact of migratory flows in their areas;
71. calls on the EU Member States to share responsibilities for hosting and integrating refugees and establish a mechanism for redistribution between Member States;
72. calls on the Commission to ensure improved coordination of the various existing instruments for laying down areas of action on immigration and asylum, and points out that these must be based on respect for fundamental rights and freedoms;
73. welcomes the priority assigned to the global approach to immigration, and endorses the emphasis on promoting a genuine and balanced partnership with countries of origin and transit in order to manage migratory flows in an organised manner;
74. reminds that the EU should better match economic migration with Member States' labour market needs and calls on a common flexible admission system whereby Member States can determine the numbers of NON-EU nationals to be admitted;
75. expresses its concern at the fact that greater solidarity is restricted to a utilitarian and selective approach based on meeting perceived needs by admitting highly qualified immigrants who are in demand on European labour markets;
76. agrees that there is a need for greater coordination between the Union's immigration and external policies and considers that , cooperation with third countries is necessary to both combat illegal immigration and focus on legal migration; investing in the economy of these third countries is a more efficient tool to help people who intend to migrate for economic reasons;
77. considers that local diplomacy should be strengthened by developing the action plan for an area of freedom, security and justice, as local and regional authorities can make a substantial contribution to improving relations and living conditions in cities and regions of origin and transit;

78. agrees that there is a need to use migration policy instruments coherently, and calls for evaluation of initiatives like the partnerships for mobility and their conditions and consequences in countries of origin before entering into new agreements;
79. agrees that there is a need for improved management of economic immigration throughout the European Union and calls for the further development of a strategy – based on the European Platform for Dialogue – which includes local, regional and national stakeholders in the Union and which respects the right of Member States to determine the volume of admissions of nationals of third countries in the light of labour market conditions, guaranteeing these individuals decent working conditions⁹;
80. notes with interest the proposal to establish an observatory to analyse and promote understanding of migratory phenomena, and stresses the need to ensure that this initiative does not conflict with existing initiatives. There is an increasingly urgent need to organise and optimise existing instruments in this area;
81. believes that the proposed immigration code needs to be analysed carefully, particularly in view of the pending adoption of the Council Directive on a single application procedure for a single permit for non-EU Member Country nationals to reside and work in the territory of a Member State and on a common set of rights for Non-EU Member Country workers legally residing in a Member State. The development of new and different legislative instruments relating to the rights of non-European citizens could create confusion and undermine the existing system of rights and guarantees for nationals of third countries resident in the European Union;
82. is pleased that the Commission recognises the role which local and regional authorities play in integrating immigrants¹⁰ and recognises the need to launch a major debate on integration in Europe; stresses once again in this context that integration policy must not be an immigration control tool in disguise, influencing family reunification in particular, but must be designed to enable social, economic, cultural and civic integration of immigrants to take place once they settle in a Member State;
83. considers essential the participation of the local and regional authorities and of the Committee of the Regions in setting out the annual and multiannual priorities of the European Integration Fund, as well as guarantees that the Member States will implement and distribute the Fund's resources to the local and authorities correctly;

⁹ See opinion on A global approach to migration: developing a European policy on labour immigration in conjunction with relations with third countries (CdR 296/2007 fin).

¹⁰ See the conclusions of the Committee of the Regions' seminar on *The role of the cities and regions in integrating immigrants* (Athens, 16 October 2008) (CdR 323/2008 fin).

84. encourages the Member States to include the local and regional authorities in the next interministerial conference on integration, to be held under the Spanish presidency in early 2010, and calls for improved mechanisms for cooperation with platforms like the future ARLEM on migration issues;
85. agrees with the Commission that illegal work and people trafficking are key contributors to the existence of irregular immigration in Europe, and calls on the Member States to seek shared strategies to combat these problems;
86. recognises that the concerns aroused by the adoption of the return directive make it doubly important to monitor the directive's effective application, and urges the Commission to ensure that the return directive coming into force in December 2010 is implemented in accordance with the Charter of Fundamental Rights;
87. points out that it is impossible to speak of a voluntary return unless mechanisms for dialogue with countries of origin are established, ensuring that the return is viable and that no new migration project is initiated;
88. calls for greater attention to be paid to unaccompanied immigrant minors and to the need to establish protocols for action ensuring their protection, and encourages the Commission to propose more stringent punitive measures for people trafficking networks which exploit minors;
89. calls on the Commission to ensure that asylum systems in the Member States keep pace with the progress made on the establishment of a common European asylum system based on the Geneva Convention and other related international instruments, and warns against signing new readmission agreements with countries which are not signatories to the Geneva Convention;
90. recommends, given that the proportion of asylum applications accepted differs widely between Member States, reviewing the European common asylum system to make processing an asylum application the responsibility of the country in which the asylum applicant files their application, whilst ensuring solidarity between Member States;
91. calls on the Commission to work to ensure that the European Asylum Support Office operates correctly and to involve the local and regional authorities in its activities, as well as the Committee of the Regions when the local and regional dimension of issues so requires;
92. recognises the importance for local and regional authorities of the integration of refugees and beneficiaries of international protection, and calls for local and regional authorities to be able to participate in the establishment of a mechanism for internal resettlement;

93. calls for progress on analysing the viability of the common handling of asylum applications, and agrees with the Commission on the need to re-examine the European Refugee Fund, which should involve local and regional authorities more closely;
94. stresses that the Member States, in compliance with the principle of subsidiarity, must involve the local and regional authorities in drawing up policies relating to the establishment of a European area of freedom, security and justice.

Brussels,

III. PROCEDURE

Title	– Communication from the Commission to the European Parliament and the Council - An area of freedom, security and justice serving the citizen - Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Justice, Freedom and Security in Europe since 2005: An evaluation of the Hague Programme and Action Plan
References	COM(2009) 262, COM(2009) 263
Legal basis	Optional referral, Article 265, first paragraph
Procedural basis	-
Date of Commission letter	1 April 2009
Date of President's decision	20 April 2009
Commission responsible	Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice (CONST)
Rapporteur	Anna Terrón i Cusí (ES/PES), Secretary for European Union Affairs, Government of Catalonia (the Generalitat)
Analysis	DI CdR 21/2009
Discussed in commission	7 September 2009
Date adopted by commission	7 September 2009
Result of the vote in commission	Majority
Date adopted in plenary	Scheduled for 5-7 October 2009
Previous Committee opinions	Opinion on the Communication from the Commission to the Council and the European Parliament - the Hague Programme: ten priorities for the next five years - the Partnership for European renewal in the field of freedom, security and justice COM(2005) 184 final ¹¹

¹¹ OJ C 192, 16.8.2006, p. 25.