



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Civil Liberties, Justice and Home Affairs*

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13.5.2013

## **WORKING DOCUMENT**

on the Mid-term review of the Stockholm Programme

Committee on Civil Liberties, Justice and Home Affairs

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## I. Introduction

*"The Stockholm Programme - an open and secure Europe serving and protecting citizens"* endorsed by the European Council of December 2009 for the period 2010-14 is the 3rd multiannual strategic document governing the activities towards the creation of an area of freedom, security and justice (AFSJ) - after the programmes of Tampere and The Hague.

It is now appropriate to start evaluating the achievements made so far and to identify the missing elements. This is all the more important as the Stockholm Programme is the first programme after the entry into force of the Lisbon Treaty which enhanced the powers of Parliament but also preserved certain "pre-Lisbon" elements such as the five year transitional period for the application of the ordinary regime to the former "3rd pillar" measures. Although the Commission has been tasked in the programme "to submit a mid-term review before June 2012" it did not do so. Commissioners Malmström and Reding provided, however, overviews of what has been done by the Commission and attended LIBE meetings on the matter. The Council also started its own evaluation and held a debate in December 2012.<sup>1</sup>

This document sets out some horizontal objectives which could be pursued by LIBE in its evaluation and covers progress of the parts of the programme under its competence. It aims to provide input for a debate in LIBE. The draft report will be jointly presented at a later stage with the co-rapporteurs of AFCE and JURI (according to rule 51).

## II. Possible LIBE objectives for the evaluation

### A. *Placing the individual at the centre*

As the committee responsible for the protection of fundamental rights, it is crucial for LIBE to assess the programme from the view point of citizens, their rights and obligations in the AFSJ. This is also the yardstick of the now legally binding Charter which *"places the individual at the heart of [the Union's] activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice."* (Preamble)

Special focus should thus be put on the way citizens have been affected, their rights protected and the degree to which tangible benefits have been delivered to them. Measures adopted under the former 3rd pillar and not yet modified since the entry into force of the Lisbon Treaty will require a particularly close assessment of their impact on citizens.

Focusing on individuals will also require a greater emphasis on judicial training. Following the adoption of an increasing number of EU instruments it is crucial that appropriate training takes place for all legal practitioners.

### B. *Promoting public debate*

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<sup>1</sup> See Council doc 15921/12

As the committee responsible for legislation on transparency it is suggested to promote a wide and public debate on the AFSJ - contrary to the Council whose discussion on the evaluation of the programme took place behind closed doors.

This is also needed as the Treaty in its very first article requires that "*decisions are taken as openly as possible and as closely as possible to the citizen.*" (Art. 1 TEU). This is why all the EU institutions, European Council included, should "*give citizens and representative associations the opportunity to make known and publicly exchange their views*" and "*maintain an open, transparent and regular dialogue with representative associations and civil society*". (Art. 11 TEU)

A more direct association of national parliaments is also required not only because of their mission to "*contribute actively to the good functioning of the Union*" (Art. 12 TEU) but also because of their enhanced evaluation role in the AFSJ<sup>1</sup> and their role in implementation.

### *C. Fostering a coherent EU policy*

The Rapporteur considers it necessary to prepare the ground for a successor programme. Bearing in mind that the transitional period for the measures dealing with police and judicial cooperation in criminal matters will end in 2014 the time has come to redefine the European and national public policies in the AFSJ in more coherent way. Based on a public debate and with the citizens in the centre of focus ideas for the future could be developed.

### **III. Progress made so far: a LIBE perspective**

The below outline shows that one year before the end of the legislative term many actions still remain to be undertaken or completed. In this context the delay of many Commission proposals is regrettable.

#### "Promoting citizens' rights: a Europe of rights"

The chapter on fundamental rights is particularly ambitious. It appears, however, that progress has been limited so far and that special efforts are necessary in this field, in particular to address the so-called "Copenhagen dilemma", i.e. the fact that the EU remains very strict with regard to fundamental rights standards of candidate countries but lacks tools once countries have joined.

Many actions were indeed proposed by the Commission but could not yet be concluded for various reasons. This includes the *enlargement of the Schengen area* to Bulgaria and Romania and the revision of the *access to documents legislation*. The *data protection package* proposed last year will also still require a certain amount of time before adoption. Discussions on a *general agreement on data protection with the US* have progressed little even if the EU has already met the US requests on exchange of PNR and SWIFT data. Negotiations on the *accession of the EU to the European Convention on Human Rights* could finally be

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<sup>1</sup> See Art. 69, 70, 71, 81, 85, 88 TFEU

concluded.

The new *multiannual framework of the Fundamental Rights Agency* could at last be adopted by Council but it is deeply worrying that it did not agree to include police and judicial cooperation in criminal matters in the framework and thereby does not live up to the commitments entered into with the Lisbon Treaty.

A number of policy documents were also presented including the *Agenda for the rights of the child*, the *Action plan on unaccompanied minors*, the *Framework for national Roma integration strategies* and a first report on their implementation, while others are still missing such as the *report on racism and xenophobia*.

### "A Europe of Law and justice"

In the field of criminal law cooperation progress was made with the *roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings* although much remains to be done: the *Directive on the right to information* (Dir. 2012/13) and the *Directive on the right to interpretation and translation* (Dir. 2010/64) were adopted, proposals were made on the *right of access to a lawyer and on the rights to communicate upon arrest* but important proposals such as for example on *legal aid and vulnerable suspects* are outstanding.

### "A Europe that protects"

As foreseen an *internal security strategy* was adopted but a coherent and comprehensive approach is lacking.

Some progress was made with regards to the necessary tools. *Cross-border police cooperation* including cooperation between Europol and national law enforcement authorities seems to improve. Problems remain with respect to the exchange of information and the best way to combine security with protection of fundamental rights like data protection. The Commission has made a proposal for an *EU PNR* system and an *agreement with Australia* could be reached whilst an agreement with *Canada* now seems within reach. Negotiations were also concluded on the *Directive on attacks against information systems*. Recently presented proposals include the *Cyber Security Package* as well as the proposal merging *Europol and CEPOL*.

A number of highly important texts were adopted, in particular the revised *Directive establishing minimum standards on the rights, support and protection of victims of crime* (Dir. 2012/29), the *Directive on combating the sexual abuse and sexual exploitation of children and child pornography* (Dir. 2011/92) and the *Directive on preventing and combating trafficking in human beings and protecting its victims* (Dir. 2011/36) while a proposal on *crime statistics* was rejected by Parliament.

For the fight against terrorism an agreement was reached on the *marketing and use of explosives precursors* and on the *EU/US agreement on the Terrorist Finance Tracking*

*Programme*. Work on *drugs precursors* and on the *confiscation of the proceeds of crime* continues. A new *drugs strategy 2013-20* was adopted.

For the *protection of critical infrastructure* hardly any progress was made.

#### "Access to Europe in a globalised world"

Schengen remains a field under development which could with the proposals of the *smart borders package* reach a new dimension. A comprehensive blueprint is, however, still missing.

So far a revision of the *Frontex Regulation* was adopted (Reg. 1168/11) and its role further developed while a debate on its long-term development has yet to take place. The *Eurosur proposal* is currently being negotiated and a proposal on the *rules on surveillance of the sea external borders* has just been presented.

The *Schengen Governance Package* is still under negotiations while the *SIS II* has now finally become operational. Since 2011 *VIS* has been operating successfully in North Africa and is successively rolled-out in further regions. The management of these systems as well as that of Eurodac is being taken over by the *IT Agency* (Reg. 1077/11).

Concerning visa policy the annexes of *Reg. 539/01* were amended in particular with regard to Western Balkan countries and a further proposal was submitted. The Commission also proposed a revision of the *reciprocity mechanism* of *Reg. 539/01* and the introduction of a *suspension mechanism* which are under negotiation while situations of non-reciprocity especially for some of the new Member States persist. A number of *visa facilitation agreements* were also approved while others are in various preparatory stages.

A debate on the further development of the common visa policy has been initiated by the *communication on the economic impact of the visa policy* while one on possibilities for a *common European issuing mechanism* is expected next year.

#### "A Europe of responsibility, solidarity and partnership in migration and asylum matters"

A concrete result could be achieved regarding legal migration with the adoption of the *Directive on the single permit* (Dir. 2011/98). Work continues on the proposals on *seasonal workers* and *intra-corporate transferees*. The proposal on *conditions of entry and residence for students and researchers* was presented.

The *Global approach to migration* is being pursued further.

Otherwise work in this field is very much focussed on debate and the exchange of best practices. This is particularly the case with regard to *integration*.

As part of the fight against irregular migration work on *readmission agreements* continued and the Commission presented an *evaluation of them*.

Major progress was achieved by completing all negotiations on the *Common European Asylum System* (CEAS). Following the adoption of the *qualifications directive* (Dir. 2011/95) agreement has also been reached on the revised *Dublin and Eurodac regulations* as well as on the *directives on reception conditions and on asylum procedures*. The external dimension was strengthened by the adoption of the *joint EU resettlement programme* (Dec. 281/2012).

Following the establishment of the *European Asylum Support Office* (Reg. 439/10) it becomes increasingly able to provide practical support.

Focus in this area will now move to implementation, to concrete provision of *solidarity* (based on Article 80 TFEU) and further debates as a number of policy documents such as on *accession to the Geneva Convention*, on *joint processing* or on *relocation* are outstanding.

#### **IV. Towards evaluating the progress made**

We will discuss in the coming months how we evaluate the progress made so far. Questions for discussion could include:

- What positive developments, particularly for citizens, should be highlighted and what is still missing?
- If objectives were not reached why has this been the case? Is there enough political will? Is there a lack of tools and particularly resources? Was the time horizon too short? What is the impact of the delays of Commission's initiatives? What are reasons for blockages in the Council? Is the "interinstitutional machinery", especially the trilogue system, working?
- Has the Parliament been adequately involved in the different actions? Has it been able to adjust its working methods to its new powers?
- What initiatives do we consider necessary in the future?