

Working Group Workpackage IV

Area of Freedom, Security and Justice (Paul Luif)

Agenda

Thursday 6 June 2013

14.00 – 15.30 h

Fondation Universitaire, Rue d'Egmont 11

Salle B

„The Area of Freedom, Security and Justice: The Implementation of the Changes Brought by the Lisbon Treaty”

Justice and Home Affairs is arguably the area with the most significant changes introduced by the Treaty of Lisbon. 3.5 years after the coming into force of the Treaty, the implementation of these changes is reflected in some key developments. First, following the inclusion of the “Third Pillar” into the mainstream EU decision-making, the institutional balance has shifted: the European Parliament has become a player at eye level with the Council and a proponent of fundamental rights. In a similar vein, the new status of the Charter of Human Rights has given more visibility to the formerly rather declaratory catalogue of values championed by the EU. Secondly, links between the fields of internal security and external security have become closer, also reflected in the growing role of agencies such as Frontex. While the legislative process itself has emerged more or less unchanged from the Lisbon reforms, the operational side has thus become more dynamic.

- How have these developments impacted on the relationship between security and fundamental rights in EU legislation?
- Which of the Lisbon changes have produced the intended results, where can we identify unexpected consequences?
- What are main areas where further reform is needed, and what are the prospects for future treaty change in these areas?

The Working Group aims to discuss these questions from the perspective of both academics and practitioners.

Chair:

Paul Luif, Austrian Institute of International Affairs Vienna

Panelists:

Wouter van de Rijt, Head of Sector, General Secretariat of the Council, Directorate-General D – Justice and Home Affairs, Brussels

Discussion

Report

The working group on “The Area of Freedom, Security and Freedom: The Implementation of Changes brought by the Lisbon Treaty” was chaired by *Paul Luif* (Austrian Institute for International Affairs). *Wouter van de Rijt* (General Secretariat of the Council) acted as discussant.

Paul Luif started the session with a brief historic overview, pointing out that issues of the AFSJ were purely intergovernmental at the beginning and only put forward by enhanced cooperation by groups of countries. He mentioned Schengen as the most prominent example in that area. Since the Maastricht Treaty these efforts by the member states had been streamlined in the third pillar. The Treaty of Amsterdam transferred some parts into the first pillar. The Lisbon Treaty finally abandoned the pillar structure and introduced the ordinary legislative procedure for almost all topics in the AFSJ. Subsequently, Paul Luif presented the changes introduced by the Lisbon Treaty, citing the extension of Qualified Majority Voting as well as the establishment of rules for enhanced cooperation as major changes. Furthermore, he dealt with the standing committee for internal security (COSI), consisting of the national police chiefs, which he described as relatively unknown among the public. He argued that the ever increasing influence of the European Parliament in all matters concerning the AFSJ could once again be observed after the Lisbon Treaty. Though there were still areas where the EP has no say, it had established itself as the guardian of human and civil rights.

Wouter van the Rijt provided the panel with his view as a practitioner, working in the General Secretariat of the Council. He stressed the introduction of a President of the European Council and the establishment of the European External Action Service (EEAS). According to his view, the European Council served as something akin to a monthly government of the EU due to its 6-8 meetings a year. Therefore, he considered the role of the President, who could set the agenda and provide continuity, as very important. He continued by arguing that especially in times when several EU member states closed their embassies owing to financial reasons, the EEAS gained more and more influence. Nevertheless he considered that the structure of the EEAS already needed an overhaul because it could not fulfil its tasks properly. In that regard Wouter Van de Rijt noted that cooperation between the Political and Security Committee (PSC) and the COSI could be improved, also given that justice and home affairs had always had an external dimension. His assessment of the trio-presidency concept was rather negative. While the intention had been to create more consistency over the course of several presidencies, in reality the two countries that had already held the presidency oftentimes showed little enthusiasm in participating. Accordingly, he argued in favour of restructuring the trio-presidency system.

On the result of the Lisbon Treaty for the AFSJ, Wouter van de Rijt recommended the mid-term report on the Stockholm programme which was available upon request. He went on to illustrate his own experience with the co-decision procedure by using the example of the extremely complicated negotiations of the Multi-Annual Financial Framework. He described the mechanism of co-decision as a dialogue between the European Parliament, the European Commission and the Council presidency, and outlined a number of peculiar features that had

emerged over time. For example, he noted that at the end of a term of a Council presidency, the incoming presidency took part as well. Another example was that the rapporteur of the EP acted as the host which naturally made him the chairperson. Overall, in terms of effectiveness, this *modus vivendi* left room for improvement.

The general discussion focused mostly on the developments regarding Schengen, its roots in the BENELUX countries which already had established an area of free movement before the single market was established, and the takeover of responsibilities by the European Union.

After summarizing the discussion, Paul Luif announced that Ronald Holzacker and himself were in the process of publishing a book on the AFSJ that was based on an earlier LISBOAN workshop.

Sebastian Reiter (University of Cologne)