

---

## The area of Freedom, Security and Justice: a New Horizon for European Integration (ARI)

*Charles Powell and Alicia Sorroza\**

**Theme<sup>1</sup>:** The entry into force of the Lisbon Treaty has opened up new perspectives in the area of Justice and Home Affairs.

**Summary:** The entry into force of the Lisbon Treaty, after a tortuous ratification process, has opened up new vistas, marked by two factors that will affect the Trio Presidency (Spain, Belgium and Hungary) with regard to Justice and Home affairs (JHA). First, the application of the Lisbon Treaty; second, the completion of the Hague Programme will give way to a new project, namely the Stockholm Programme. Another challenge to be tackled by the Trio Presidency will be to ensure the coherence and unity of the internal and external dimensions of the JHA field.

### **Analysis:**

#### *Justice and Home Affairs: deepening and integration*

The creation of the 'third pillar' in the Maastricht Treaty (1992) and the introduction of the main elements of the area of Freedom, Security and Justice (AFSJ) in the Amsterdam Treaty (1997) were key turning-points in the development of the European integration process as regards Justice and Home affairs. The AFSJ brought together, in terms of institutions and regulations, matters such as police cooperation, immigration, border control, visas and judicial cooperation, including the Schengen acquis. The overall aim of the AFSJ was to ensure the free circulation of persons in an internal market, which is ultimately what determines and drives many of the EU's competences.

There is little doubt, however, that the original driving force – the need to establish a common public space, primarily for economic reasons – has been displaced and supplemented by the internal development of the European integration process itself. Over the past few years, the changing international and security context has prompted the EU to take on competences in the field of internal security and to express a clear commitment to guaranteeing the fundamental rights of citizens, in an increasingly restrictive environment marked by the need to ensure the maintenance of security.

This new scenario is reflected in the Lisbon Treaty, which made it one of the EU's prime objectives to offer its citizens an AFSJ that has now become a hallmark of the European project. Although considerable progress has been made in this field – such as the mutual recognition of judgments and court rulings that has given rise to the European arrest

---

\* *Charles Powell, Deputy Director, Elcano Royal Institute.*

*Alicia Sorroza, Analyst, Elcano Royal Institute.*

<sup>1</sup> This ARI was originally written as a chapter of the book 'Think Global - Act European II' devoted to the Spanish, Belgian and Hungarian Trio Presidency and focused on the changing role of the rotating Presidency and the trio itself. It was published by Notre Europe, Egmont, GKI and the Elcano Royal Institute.

---

warrant; the creation of the Judicial Cooperation Unit (Eurojust) and, more recently, the adoption of a common approach to immigration and the creation of Frontex – these are merely elements that must be built on – ensure that freedom, security and justice become the new frontier of European integration.

#### *Challenges facing the Trio Presidency*

The entry into force of the Lisbon Treaty, after a tortuous ratification process, has opened up new vistas, marked by two factors that will affect the Trio Presidency (Spain, Belgium and Hungary) with regard to Justice and Home affairs (JHA). First, the application of the Lisbon Treaty has set off the complex process of implementing the measures included in it, which will hopefully contribute to the consolidation of the AFSJ as incorporated in Title V of the Treaty establishing the European Community. Second, the completion of the Hague Programme will give way to a new project, presented by the Swedish Presidency, namely the Stockholm Programme. This sets out the priorities for the next five years and requires the adoption of an action plan, which will have to be negotiated under the Spanish Presidency during the first semester of 2010 if the EU wants the political and institutional goals, agreed to under the Swedish Presidency, to become a reality for Europe's citizens.

Another challenge to be tackled by the Trio Presidency will be to ensure the coherence and unity of the internal and external dimensions of the JHA field. It is widely recognised that all spheres of action have an external dimension and that the cooperation of third countries is increasingly necessary. This is more than evident in issues such as the war against terrorism and the management of both legal and illegal immigration. Internal European coordination is equally necessary to ensure that both sectoral and general objectives are met. In this context it is essential that the new Stockholm Programme and its future action plan are provided with adequate means to ensure the coordination of all the policies directly or indirectly related to these matters.

In this context, the Spanish Presidency can only be praised for seeking to improve the EU's coordination of its JHA policies with third countries, most notably the United States and Russia.

#### *The Lisbon Treaty and the Area of Freedom, Security and Justice*

Now that doubts surrounding the Lisbon Treaty's implementation have been dispelled, the Trio Presidency (Spain, Belgium and Hungary) – and the Spanish Presidency in particular – will be responsible for setting its institutional innovations in motion. Furthermore, it must also overcome the added difficulty of multiple unresolved issues: the need to avoid decisions capable of hindering the ratification process led to the freezing of all controversial innovations that might have raised objections among those least favourable to a further deepening of European integration.

The Lisbon Treaty introduces a number of significant innovations in the field of Justice and Home affairs. Firstly, the EU has finally been recognised as an international organisation with its own legal status, an apparently technical novelty that could nevertheless contribute significantly to its credibility as a global actor. Furthermore, the Lisbon Treaty has done away with the existing three-pillar structure, with the result that in the future the entire contents of the Treaty establishing the European Community on AFSJ will be subject to the control of the Court of Justice of the European Communities in Luxembourg. However, the jurisdiction of the Court of Justice and the powers of the Commission to open proceedings for non-compliance against member states will have no

---

direct effect until the expiration of the five-year transitional period applicable once the Lisbon Treaty comes into force.

Second, it can be said that the reasons for furthering the AFSJ have evolved and have effectively been decoupled from the internal market. It could even be argued that the AFSJ has overtaken the internal market in importance, judging by the order in which they are ranked in the list of EU objectives set out in the Treaty (article 3, Title 1). According to this text, the EU's second major objective (with precedence over the establishment of the internal market) is that "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".

Third, under the terms of the Lisbon Treaty, the ordinary legislative procedure will only require a qualified majority in Council and co-decision with the European Parliament for issues such as the right of asylum, border management and control, visas, immigration, and the like. Nevertheless, unanimity will still be necessary for sensitive issues such as passports, identity cards, family law with cross-border implications, and police cooperation.

Fourth, the European Commission has reinforced its role in Justice and Home affairs, having strengthened its right of initiative and gained the ability to initiate proceedings against member states for non-compliance with European rules, something that was impossible under the framework of the third pillar. This could prove a very significant novelty, which could help to overcome one of the main problems that currently hinder the implementation of measures agreed at the European level but inadequately applied at the national level, thereby undermining their coherence and effectiveness.

Fifth, the aim of the Treaty is to foster cooperation on specific issues between member states, with the possibility of establishing enhanced cooperation as regards police and judicial-penal matters.

Finally, and although this is not an exhaustive listing of the improvements and the novelties introduced in JHA in the Lisbon Treaty, it is important to highlight the creation of a Standing Committee on Internal Security within the Council "in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union" (article 71, TEU). Nonetheless, the Treaty still specifically says that "national security remains the sole responsibility of each member state" (article 4.2 TEU). Another significant institutional novelty will be the creation of the position of European Public Prosecutor, to act under the auspices of Eurojust. Although it is stipulated that he / she is to act in affairs of financial crime, the future prosecutor could have an impact on cases of transnational crime such as international terrorism and drug trafficking as well.

One of the Spanish Presidency's main challenges will be to implement most of the institutional and political novelties introduced in Lisbon, ranging from the President of the European Council to the new European Public Prosecutor, and to establish the groundwork for the Standing Committee on Internal Security, among other tasks. But it will also have to negotiate the criteria for the Stockholm Programme's action plan, thereby helping to set the agenda for the next five years on all matters relating to Justice and Home affairs. Hence, the Spanish Presidency, and subordinately the Trio Presidency, will be of prime importance in establishing the procedures and coordination guidelines for the new EU to arise from the Lisbon Treaty.

---

*The Stockholm Programme's action plan: an immediate and unavoidable goal for the Trio Presidency*

The Stockholm Programme, adopted in December 2009, will set out the Union's priorities regarding JHA for the next five years. The previous multiannual programmes, adopted at Tampere and The Hague, aimed to provide political direction in an area that had come up against significant resistance from national governments because it impinged on the so-called 'hard core' of state sovereignty. For this reason, the Stockholm Programme follows its predecessors, including all those initiatives that are recognised as fundamental to the EU's actions but which are carried out by its member states. This in no way implies that the programme does not include novel initiatives, but rather that in addition to them it must strive to rationalise those that are already in place. In short, it must devise the mechanisms whereby political consensus can be translated into concrete measures that can then be adequately implemented.

The lofty proposals that generate such high expectations among Europe's citizens come into collision with the fact that their implementation, dependent on each member state, can often be proved difficult, and that numerous obstacles must be overcome before the man in the street can actually perceive the benefits deriving from the mere existence of an AFSJ. For this reason, the Commission and member states like Spain have pressed for a Stockholm Programme whose priorities focus on the citizens' general interests.

The overall aim of the programme is to make progress in protecting fundamental rights, and to this effect the Spanish Presidency will carry out preparatory work for a swift endorsement of the European Convention for the Protection of Human Rights. As regards data protection, in the first semester of 2010, efforts will be made to reach the consensus necessary to approve a European Information Management Strategy and thereby establish the international legal basis for the use of personal data.

The Stockholm Programme aims to establish an effective European area of Justice with the aim of overcoming the current state of fragmentation in this area. It is therefore incumbent on the EU to provide the necessary means to progress in the application of mutual recognition in civil and criminal procedures. More specifically, the Spanish Presidency is analysing a proposal to create a European Investigation Supervision Order while reinforcing the operational efficiency of the existing joint investigation teams.

The Spanish Presidency will also aim to enhance the protection of Europe's citizens by reinforcing the security aspects of the AFSJ. With this in mind, it will seek to define a sustainable European Internal Security Model to give greater coherence and efficiency to the various mechanisms and actors operating in the field, especially as regards the fight against international terrorism. It will also strive to promote operational cooperation in the prevention of crime, especially in assisting victims of gender-based violence, thereby reflecting one of the primary concerns of the Rodríguez Zapatero government. The adoption of the Internal Security Strategy during the Spanish Presidency, despite the criticism it is receiving, is a step forward.

Another key issue on the European agenda is the consolidation of an immigration and asylum policy based on solidarity between the member states and implemented in close cooperation with third parties, namely the countries of origin and transit. In this respect, both the Stockholm Programme and the Trio Presidency must focus their efforts on the enforcement and evaluation of the European Pact on Immigration and asylum – a French initiative supported by Spain – that has succeeded in addressing three fundamental

issues: the management of legal immigration, the fight against irregular immigration, and the commitment to long-term development processes.

At the same time, they must also make progress on the external dimension of this policy, and initiate cooperation with other countries to ensure a comprehensive approach towards an issue that can only be managed from a global perspective. In this respect, one of the Spanish government's priorities will be to deal with the problem of 'unaccompanied immigrant minors', which is of particular concern to the EU's Mediterranean member states. Finally, over the next 18 months the Trio Presidency will have to improve the structures and resources currently available to Frontex.

## Conclusions

### *Looking ahead*

Spain's semester will be a 'transitional presidency', since it will have to deal with the implementation of the Lisbon Treaty and the move towards what will hopefully become a stronger and more credible EU, equipped with a better array of instruments with which to face up to the challenges of a highly complex European and international scene.

Spain has traditionally championed a greater EU involvement in Justice and Home affairs and the consolidation of the AFSJ. While it is true that Madrid's leadership in these matters has, in general terms, declined somewhat over the past few years, they are still very much at the heart of its European ambitions.

The other major issue that should figure prominently in the Trio Presidency Programme, given its medium-term objectives, is the consolidation of the EU's immigration policy from a comprehensive perspective, with a special emphasis on the management of external frontiers – a matter of special interest for both Spain and Hungary – that includes strengthening the resources available to Frontex and improving its day-to-day operation. It is equally important to step up the negotiations for signing cooperation agreements with third countries on the subject of migration.

Spain should take full advantage of the double opportunity offered by its six-month presidency in 2010. On the one hand, it will be the last time that the country holding the rotating presidency will be able to shape the EU agenda to this extent, since the appointment of a President of the European Council and a High Representative for Foreign affairs and Security Policy will inevitably limit the role of national governments in future. On the other, Spain will also have the opportunity to influence the way in which many of the novelties incorporated in the Lisbon Treaty are implemented. As regards JHA, it would be advisable to adopt a stance that focuses on the tangible benefits that the AFSJ can secure for the Union's citizens overall, thereby helping to reduce the opposition of those national governments that still harbour doubts about this crucial dimension of the European project.

*Charles Powell, Deputy Director, Elcano Royal Institute*  
*Alicia Sorroza, Analyst, Elcano Royal Institute*