



BULLETIN

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Stockholm Program: New EU Proposals in Area of Freedom, Security and Justice

by Radosław Kołatek

In the new proposals from the Swedish Presidency on cooperation in the areas of justice and home affairs the focus is on the strengthening of the protection of fundamental rights, the harmonization of criminal and civil law and the improvement of internal security. Thus a long-term vision of the EU's policy has been supplemented with schemes aimed at augmenting the external dimension of the area of freedom, security and justice and improving coherence in this sphere. The challenge for the EU member states will be to develop a common migration management strategy.

At the European Council on 10–11 December 2009, the member states decided to adopt a Swedish presidency-proposed “Stockholm Program” (SP), which identifies four main development areas for their cooperation in law enforcement and home affairs in 2010–2014. This is the third agenda for enhancing the functioning of the European Union in the area of freedom, security and justice (FSJA). The first EU-wide agenda for action in the third-pillar (known as the Tampere Program), developed in 1999, made possible the development of the foundations of a common asylum and immigration policy, the drafting of uniform border protection standards, and the improvement of police cooperation. The Hague Program of 2004 emphasized the combating of terrorism and the removal of controls at internal borders with the new EU members while—unlike its predecessor, the Tampere document—being less concerned with the protection of fundamental rights. That issue has now become the focal point of the Stockholm Program.

Protection of Fundamental Rights. Having regard to the fact that FSJA is to become a single area of safeguarding the fundamental rights, the presidency is of the opinion that the EU's earliest possible accession to the Council of Europe Convention on the Protection of Human Rights and Fundamental Freedoms is necessary to strengthen the FSJA. By doing so the EU member states will have also discharged their commitment undertaken in the course of work on the institutional reform of the EU and written down in Article 6 of the TEU, as amended by the provisions of the Lisbon Treaty. Another way to strengthen the protection of fundamental rights is to have in place a system for strict monitoring of compliance of draft legislation with the Charter of Fundamental Rights (CFR); any legislation drafted by the European Commission should be assessed for compatibility with the Charter. Yet another step will cover the improvement of personal data protection. In this connection the presidency recognizes the importance of conducting a review all of instruments forming an EU-wide personal data protection system and supplementing it, if and as necessary. Additional regulations to govern the transmission of personal data to third countries must be adopted, as should a mandate to negotiate with the United States an agreement on mutual transmission of personal data.

Creating a European Judicial Area (EJA). The harmonization of criminal and civil law aimed at improving the efficiency of enforcement across the EU was the first stage of building the EJA. Under the SP the next step will be to extend the principle of mutual recognition by the EU member states of final decisions of national courts to all types of criminal, civil and administrative tribunals. Furthermore, new regulations to be adopted in the area of criminal law in accordance with the SP are meant to further judicial cooperation that will include the setting up of common EU measures to protect

witnesses and victims of crime. The furthest-going goal of the program in the area of *ius criminalis* is to repeal the 2008 framework decision on the European evidence warrant and to replace it with a cohesive system that will facilitate the obtaining of evidence for purposes of criminal proceedings in cross-border cases.

To facilitate the conduct of economic activity in the single market is one of the recognized goals of the EJA. To this end, the SP provides for the adoption by the Council of regulations to ensure extended access to information on debtors' assets by law enforcement authorities of the EU members. The Council is also to adopt mechanisms for more effective enforcement of judicial rulings on executions against bank accounts. In civil and business cases, the abolishment of the *exequatur* procedure (a national court issues a final decision in the matter of enforcement of a judgment given by a foreign court) will help expedite enforcement as, with this procedure no longer in effect, fewer legal proceedings will be required to have judgments by foreign courts pronounced final and binding and the time of waiting for the enforcement of the judgments in an EU member state will be shortened.

Internal Security Strategy (ISS). Developing the ISS will be one of the priority tasks of the Standing Committee on Internal Security to be set up under Article 71 of the TFEU. Legislation to be adopted with a view to implementing the ISS should precisely outline the division of responsibilities between national authorities and EU institutions and the principles of cooperation among EU police and judicial cooperation agencies: the European Police Office (Europol), the European Union's Judicial Cooperation Unit (Eurojust) and the European Police College (CEPOL).

Two instruments will supplement the ISS. The first, an EU strategy on the processing of personal data in information systems, is to lead to the adoption of an EU legislation that will define protection regimes in respect of the data concerned. The legislation to be adopted should enable efficient functioning of the FSJA, subject to the protection of fundamental rights, and it should ensure that the information systems are interoperable and guarantee to all users mutual access to services available therein. The data stored in the systems are meant to enable the member states' law enforcement agencies to deal in a coordinated manner with cross-border crime.

The other new ISS instrument is an agency overseeing large-scale information projects operating within the FSJA. This is the SP's response to comments from the European Commission which called for the setting up of an entity to oversee information systems of relevance to the effectiveness of the FSJA, in particular the second generation Schengen Information System (SIS II), which allows checking whether persons or things crossing the border of the Schengen zone or already present therein are not wanted. Supplementing the system is the Visa Information System (VIS) for the exchange of visa data between member states and the European fingerprint data base for identifying asylum seekers (EURODAC).

External Borders, Immigration, Asylum. As a part of the development of a common integrated border management system, the SP provides for the completion of work on a European Border Surveillance System (EUROSUR), a computerized network for information-sharing by the EU states and institutions responsible for the protection of external borders. Input data for the EUROSUR will come from monitoring by EU member states of their national sections of the EU external borders.

These instruments for the protection of the external EU borders are designed to supplement a common European asylum system (CEAS), which is in the process of being developed. The CEAS will serve the approximation of the different EU members' national legislative arrangements concerning refugees and asylum seekers. So far, in the absence of uniform requirements for obtaining forms of protection which give those entitled to benefit under them the right to stay in the territory of the EU, the same persons can file for asylum in different member states.

Conclusions for Poland. To develop a common EU-wide migration management strategy will be the greatest challenge confronting the SP, because this issue is a strictly reserved domain of state sovereignty.

Furthermore, the proposed extended application of the principle of mutual recognition of judicial decisions and judgments to administrative decisions could be challenged on the grounds that in proceedings before administrative agencies the protection of procedural rights of suspected and accused persons is lower than in criminal court proceedings. The enforcement of an administrative decision (e.g. a fine for a traffic offense) is largely automatic and the scope for challenging it is limited.