



## GENERAL SECRETARIAT OF THE COUNCIL OF THE EU

### ~BACKGROUND~

# The Lisbon Treaty's impact on the Justice and Home Affairs (JHA) Council: More co-decision and new working structures

December 2009

The [Treaty on the Functioning of the European Union](#) introduces a number of new provisions in the field of Justice and Home Affairs (JHA)<sup>1</sup>. They mainly concern:

1. changes in the legal framework and the legislative procedures applicable in several areas,
2. the possibility to create a European Public Prosecutor's Office,
3. a new Council standing committee on internal security (COSI), and
4. transitional provisions on the 3rd pillar 'acquis'.

### **1. Legal framework and legislative procedures: More areas subject to QMV / "co-decision"**

The Lisbon Treaty abolishes the 'pillar structure' of EU legislation. Matters which were previously dealt with under the third pillar, such as judicial cooperation in criminal matters and police cooperation, will be treated under the same kind of rules as those of the single market. Consequently, EU and national measures in these areas will be subject to the judicial review of the Court of Justice.

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<sup>1</sup> Title V: Area of freedom, security and justice ([Art. 67-89 TFEU](#)); Title XXIII: Civil protection ([Art. 196 TFEU](#))

## P R E S S

At the same time, many JHA areas move from the consultation procedure with unanimity in the Council and only consultation of the European Parliament (EP) to the ordinary legislative procedure with qualified majority voting (QMV) in the Council and full co-legislative powers of the EP (formerly co-decision procedure).

*Which main areas move to QMV / "co-decision"?*

The main areas which move from unanimity to QMV in the Council and the ordinary legislative procedure are:

Part of the rules on short-stay visas and residence permits (namely, the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement as well as a uniform format for visas) (Art. 77 TFEU)

Legal immigration (Art. 79 TFEU)

Judicial cooperation in criminal matters (Art. 82-86 TFEU)

Eurojust (Art. 85 TFEU)

Non-operational police cooperation (Art. 87 TFEU)

Europol (Art. 88 TFEU)

Civil protection (Art. 196 TFEU)

*Which other main areas were already subject to QMV / "co-decision"?*

Part of the rules on short-stay visas and residence permits (Art. 77 TFEU)

Asylum policy (Art. 78 TFEU)

Illegal immigration (Art. 79 TFEU)

Judicial cooperation in civil matters (except for family law) (Art. 81 TFEU)

*Which areas stay subject to unanimity in the Council (with the EP only being consulted)?*

Passports and identity cards (Art. 77 TFEU)

Family law (Art. 81 TFEU)

Operational police cooperation (Art. 87 TFEU)

In addition to that and for the purpose of creating a European Public Prosecutor's Office, the Council shall act unanimously after obtaining the *consent* of the EP (Art. 86 TFEU).

*Who has the right of initiative in JHA matters?*

As to the right of initiative, the EU's general rule is also valid in the field of JHA: It is up to the European Commission to propose new legislative acts. The Lisbon Treaty introduces, however, the possibility that an initiative can also come from a quarter of EU member states. This is the case in three areas (Art. 76 TFEU):

judicial cooperation in criminal matters,  
police cooperation and  
administrative cooperation.

## **2. European Public Prosecutor's Office (Art. 86 TFEU)**

*When and how will it be established?*

The setting-up of a European Public Prosecutor's Office is not an obligation, but a possibility. The treaty writes that the Council "may establish" the office acting unanimously and after obtaining the consent of the EP.

*What will be the office's main task?*

The main task of the European Public Prosecutor's Office will be to combat crimes affecting the financial interests of the EU. It will be responsible for investigating such crimes, where appropriate in liaison with Europol, as well as prosecuting and judging suspects in the competent courts of the EU member states. The European Council can extend the office's powers to also cover serious crime having a cross-border dimension.

## **3. COSI: A new Council standing committee on internal security**

"A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union." (Art. 71 TFEU)  
The abbreviation chosen for this new standing committee is COSI.

*What are the main tasks of COSI?*

COSI's main objective is to facilitate, promote and strengthen coordination of operational actions between EU member states in the field of internal security. This coordination role will concern, among other things, police and customs cooperation, external border protection and judicial cooperation in criminal matters relevant to operational cooperation in the field of internal security. The committee shall regularly report on its activities to the Council which, in return, shall keep the EP and national parliaments informed.

COSI will also be responsible for evaluating the general direction and efficiency of operational cooperation with the goal to identify possible shortcomings and adopt recommendations to address them. It can also invite representatives from EUROJUST, EUROPOL, FRONTEX and other relevant bodies to its meetings and is supposed to help ensure consistency of action by these bodies.

COSI is also mandated - along with the Political and Security Committee (PSC) - to assist the Council in accordance with the so-called 'Solidarity clause' (Art. 222 TFEU). The 'Solidarity clause' provides that the EU "shall mobilise all the instruments at its disposal" to help a member state that is the object of a terrorist attack or the victim of a natural or man-made disaster.

COSI will neither be involved in preparing legislative acts nor in conducting operations. As to legislative acts, COREPER, the meeting of the member states' ambassadors to the EU, remains solely responsible for preparing legislative acts with the help of the different Council working groups.

*Who is representing EU member states in COSI?*

Given its operational role, members of COSI will be based at and sent from national ministries. Each member state will decide whether it has a single representative for all subject matters or different representatives. However, the number of delegates will be limited in order to ensure the efficiency of the committee's work.

COSI delegates will be supported by member states' permanent representations to the EU in Brussels and the Council Secretariat. JHA Counsellors from these permanent representations will meet as required between main meetings of COSI.

*Does COSI affect the work of other Council committees?*

With the creation of COSI, two other Council committees will come under review:  
the Article 36 Committee (CATS) and  
the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA).

Before 1 January 2012, COREPER will re-evaluate the work of CATS and SCIFA taking into account the efficiency and coherence of Council working structures. In the meantime, both committees will focus their discussions on strategic issues where COSI would not be able to contribute and meet as necessary. Besides that, they will be involved, when deemed appropriate, in legislative work, but COREPER will remain solely responsible for preparing legislative acts.

*Are there other Council preparatory bodies in the JHA area affected by the re-structuring?*

Yes. The most prominent novelties are:

- the creation of the Working Party on Terrorism: a single, overarching working group to deal with all cross cutting aspects of terrorism and to consolidate the different terrorism related action plans, and
- the JAI-RELEX Working Party which is the permanent version of the previous JAI-RELEX Ad Hoc Support Group.

#### **4. Transitional provisions on the 3rd pillar 'acquis'**

According to [Art. 10 of Protocol 36](#) on transitional provisions, the full powers of the Court of Justice and the Commission become applicable to the existing 'acquis' of the 3rd pillar legislation five years after the entry into force of the Treaty of Lisbon, i.e. 1 December 2014.

At the latest six months before the end of that transitional period, the United Kingdom can decide still not accept the powers of the EU institutions regarding that part of EU legislation.