



Parliamentary Scrutiny in the Area of Freedom, Security and Justice, specifically in that which concerns data protection

On 7 April 2015 the Portuguese Assembleia da Republica submitted a request to the ECPRD network concerning parliamentary scrutiny in the Area of Freedom, Security and Justice, with special focus on measures concerning data protection. The purpose of the inquiry was to gather information and evaluate the ways in which National Parliaments take advantage of the prerogatives the Lisbon Treaty has provided in the Area of Freedom of Security and Justice. Within the framework of the Area of Freedom, Security and Justice (AFSJ), in particular, the Treaty invites National Parliaments to take part in the evaluation mechanisms for the implementation of European Union policies in that area, and to be involved in the political monitoring of the activities carried out by Europol and Eurojust. A quarter of National Parliaments may also request that a legislative proposal on AFSJ issues be reviewed on the grounds of non-compliance with the subsidiarity principle (Article 7(2) of Protocol N° 2). The information contained in chapter 3 concerning the use of political dialogue with the European Commission was supplemented with information from the IPEX and Connect databases.

1. Actions taken by National Parliaments to monitor Europol and Eurojust

Out of the 27 Parliamentary Chambers which responded to this inquiry, the majority (14 out of 27) acknowledged exercising various forms of scrutiny procedures over Europol and Eurojust by their respective Chambers. Some of them have established formalised procedures which take place on a regular basis, at differing time intervals, while others approach the subject on a rather ad-hoc basis.

The different sets of regularised procedures carried out by the various Parliaments, in order to monitor and scrutinise Eurojust and Europol entail:

- Formal discussions within the European Affairs Committees on the activities carried out by the two aforementioned agencies, as detailed in their yearly reports or in other relevant documents (the Czech Republic, Estonia, Lithuania, Greece, France);
- Periodic reporting from the responsible ministries, such as the Ministry of the Interior and the Ministry of Justice (Belgium, Finland, Hungary);
- Hearings of the National Representatives of the respective Member States on the Eurojust and Europol Boards (Spain, Italy);
- Direct contact between the Parliaments and the two agencies via study visits (France, German Bundesrat and Bundestag);
- Discussion of particular legislative bills through the European Affairs Committees, representing a form of ex-ante scrutiny (German Bundesrat, Hungary, France);
- The European Scrutiny Committee of the UK's House of Commons has reported on Europol and Eurojust on a number of occasions, while the House of Lords Committee working on Extradition Law invited the President of Eurojust for a Q&A session.

Parliamentary scrutiny over the protection of data in the exchanges of information among Member States (MS) and the transfer of data to non-EU third countries

Most of the respondent Parliaments clearly stated that they have not taken any measures to control the transfer of personal data to third countries or international organisations, which may have occurred as a result of activities carried out by Europol or Eurojust. In some cases, as in Spain for example, any transfer of personal data has to be authorised by the Spanish Data Protection Authority in accordance with national legislation, thus this competence lies within the government.

However, some Parliaments do monitor this aspect, such as the French National Assembly EU Affairs Committee where on 12 November 2013 a resolution was adopted on the democratic control of Europol. Two of the points in this resolution deal directly with the topic of data protection.

In the UK, there is a specialised body, the Europol Joint Supervisory Body, mandated to ensure that Europol complies with data protection. The UK has a special status as it has an opt-out from all pre-Lisbon police and criminal measures, although now it is trying to opt back in, particularly as the protection of personal data in the framework of police and judicial co-operation in criminal matters has become increasingly important.

2. Participation in inter-parliamentary cooperation and exchanges of information in the field of AFSJ, particularly with regard to data protection

The participation in the Inter-parliamentary Committee Meetings (ICM) organised by the European Parliament were cited most often as the sole form of participation in multilateral cooperation on AFSJ matters (Austria, Belgium, German Bundestag, Poland, Slovakia, Spain).

Other forms of formal inter-parliamentary cooperation mentioned were: through the exchange of reasoned opinions on the IPEX platform, participation in Conferences of Chairpersons responsible for sector-specific parliamentary committees, participation in the Conference of EU Speakers, participation in COSAC and quite often, participation in the conferences organised by the country holding the EU Presidency (Italy organised several conferences that touched on this topic as part of its Presidency). Participation in a conference organised by the French National Assembly on this topic was brought up by several Parliaments.

More precisely, in September 2014 the French National Assembly Committee of European Affairs organised an inter-parliamentary meeting aimed at discussing data protection in the context of the European Public Prosecutor's Office. This was a one-off initiative. Similarly, the French Senate recently organised an inter-parliamentary conference for all MS who had been affected by terrorist attacks, which led to a common declaration touching on, among other topics, the issue of data protection.

The Parliaments in the Czech Republic, Hungary, Poland and Slovakia collaborate in the Visegrad¹ Group with a view to harmonising their positions in the EU. Similarly, the French National Assembly spoke of similar common televised conferences taking place with the EU Affairs Committee of the German Bundestag, in the context of the Weimar triangle².

The UK mentioned the use of tripartite meetings on these topics, more precisely meetings comprising national MPs from both Chambers and British MEPs. The Finnish Eduskunta stated that they did not see much added value from inter-parliamentary cooperation in the field of AFSJ.

3. Use of political dialogue on AFSJ with the European Commission in the framework of Protocol II of the Lisbon Treaty

In order to avoid discrepancies and inaccuracies, the answers of the National Parliaments on this section were compared with the information and data offered by [IPEX](#) and [Connect](#) as regards the subsidiarity checks by the National Parliaments. As a matter of fact, the Parliaments that responded positively to having used "Political dialogue" tools, mostly referred to the adoption of reasoned opinions covered under the Protocol II of the Lisbon Treaty. In this framework, the "yellow card" procedure was triggered twice since the entry into force of the Lisbon Treaty, one of which in regard to the Commission's proposal for a Council Regulation on the European Public Prosecutor's Office (also called the "EPPO-proposal") - COM(2013) 534³. In several other occasions National Parliaments issued reasoned opinions concerning draft legislative proposals in relation with the Area of Freedom, Security and Justice although the threshold to trigger the procedure was not reached. Notable examples are, inter alia, the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances⁴;

In the framework of the Political Dialogue with the EU Institutions, the attention of several Chambers went, among others, to the Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime⁵, to the Proposal for a Regulation of the European Parliament and of the Council on the European

¹ Cooperation framework including the Czech Republic, Hungary, Poland and Slovakia.

² The term "Weimar Triangle" refers to a loose grouping of Poland, Germany and France. The group is intended to promote co-operation between the countries in crisis zones.

³ COM (2013) 534 final. As the proposal was submitted within the AFSJ, a total of 14 votes (1/4 of the 56) were required to trigger the yellow card procedure. By the expiry of the deadline, the Commission had received reasoned opinions corresponding to 18 votes from 14 chambers namely the Cyprus Parliament, Czech Senate, the Dutch Chamber, the Dutch Senate, the French Senate, the Hungarian National Assembly, the Irish Parliament, the Maltese Parliament, the Slovenian Assembly, the Romanian Chamber, the Swedish Riksdag and the UK House of Commons and House of Lords. It also received contributions from the Croatian Sabor, the Finnish Eduskunta, the French Assembly, the German Bundestag and Bundesrat, the Italian Senate, the Polish Senate, the Portuguese Assembly, the Romanian Senate, the Spanish Parliament. After careful examination of the reasoned opinions, the Commission adopted on 27 November 2013 a Communication – COM (2013) 851 final – in which it concluded that the proposal complied with the subsidiarity principle and decided to maintain the proposal.

⁴ COM (2011) 560. The proposal saw the adoption of reasoned opinions by the French National Assembly, both Chambers of the Slovak Parliament, the Romanian Senate, both Chambers of the Dutch Parliament as well as the Parliament of Portugal and Sweden. Contributions were issued by the Lithuanian Seimas, both Chambers of the Italian Parliament, the Polish Senate, the Czech Senate and the Romanian Chamber of Deputies.

⁵ COM (2011) 32. Contributions were issued by the German Bundesrat, the Bulgarian Parliament, the Italian Senate, the Romanian Senate, the Austrian Nationalrat, the Portuguese Assembly of the Republic, the Czech Senate and the Dutch Senate.

Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA⁶, to the Proposal for a Regulation of the European Parliament and of the Council establishing a touring visa and amending the Convention implementing the Schengen Agreement and Regulations (EC) No 562/2006 and (EC) No 767/2008⁷.

As far as **data protection issues** are concerned, the Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) was the object of several reasoned opinions and contributions⁸. The Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties and the free movement of such data⁹ gathered significant attention by National Parliaments.

Taking this into account, the responding Chambers which submitted reasoned opinions in the area of AFSJ are: the Austrian Bundesrat and Nationalrat, the Belgian Chamber of Representatives, the Czech Chamber of Deputies and the Senate, the French National Assembly and Senate, the German Bundesrat, the Greek Vouli ton Ellinon, the Hungarian National Assembly, the Italian Chamber of Deputies, the Lithuanian Seimas, the Polish Senate, the Slovak National Council, the Slovenian National Assembly, The Swedish Riksdag, the UK House of Commons and House of Lords.

Besides, the Swedish Riksdag mentioned an instance in which an MP from the Committee on Justice attended an informal consultation meeting with the Commission where, inter alia, the Commission's Communication on Europol was discussed. Furthermore, the Riksdag's Committee on Justice has issued a statement following the debate of the Commission's Communication to the European Parliament and the Council regarding the procedures for the scrutiny of Europol's activities by the European Parliament together with National Parliaments (COM(2010) 776).

4. Other scrutiny activities and initiatives in the field of AFSJ regarding data protection

The **Belgian House of Representatives** held a joint hearing in May 2015, where both its Justice Committee and its Privacy Committee discussed the Draft Regulations on Protection of Personal Data.

The **Belgian Senate** has witnessed, in its Federal Advisory Committee on European Affairs, a recurrence of data protection on its agendas, in the context of meetings with the Prime Minister on the results of the European Council.

The **Czech Republic Senate** sent a delegation of the European Affairs Committee to Europol and Eurojust in 2014 and discussed the activities of both bodies and possible changes of the legal framework with their representatives.

The **French National Assembly** organised several initiatives as concerns data protection:

- A communication and debate on the legislative package "personal data" in May 2014;
- Hearings on the evolution and monitoring of these texts, including with the president of the National Commission on Information Technology and Freedoms (CNIL);
- The Committee on European Affairs participated in the conference on 8 December 2014, organized by the Working Party "Article 29"¹⁰ and by UNESCO in Paris, on the surveillance and protection of personal data;
- A mission to the U.S. on the negotiations concerning the "umbrella agreement"¹¹, Safe Harbour and the Transatlantic Partnership for Trade and Investment (TTIP).

⁶ COM(2013) 173 Received reasoned opinions from the German Bundesrat, the Belgian Chamber of Representatives and the Spanish Parliament and was the object of contributions or other from the Portuguese Assembly, the Romanian Chamber, the Italian Senate and Chamber, the Czech Senate, the Lithuanian Seimas and the Dutch Senate. Furthermore it was the object of an "avis" by the French Assembly.

⁷ COM (2014) 163 was the object of contributions from the Spanish Cortes, the Polish Senate, the Portuguese Assembly, the Latvian Saeimas, the Italian Senate and the Czech Senate.

⁸ COM (2012) 11. Reasoned opinions were issued by the French Senate, the Belgian Chamber of Representatives, the Swedish Parliament, the Italian Chamber of Deputies and the German Bundesrat. It also inspired the contributions of the Portuguese Assembly, the Czech Senate, the Italian Senate, the Estonian Riigikogu, the French National Assembly and the Romanian Chamber of Deputies.

⁹ COM (2012) 10. The draft received reasoned opinions from the German Bundesrat and the Swedish Riksdag and was the object of Contributions from the Portuguese Assembly, the Belgian Chamber, the Czech Senate, the Estonian Riigikogu, the French Assembly, the Italian Senate and the Spanish Parliament. It was also considered in an "opinion" from the Romanian Chamber.

¹⁰ Working group comprising of: a representative from the supervisory authority of each MS, a representative from the European Commission and representatives of the authority established for the EU institutions. This working group was established through Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the **protection of individuals** with regard to the processing of personal data and on the free movement of such data.

The **French Senate** passed a resolution on the Proposal for a Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data (COM (2012)10). It also debated on the protection of personal data organized at the request of the Legal Committee of the laws and of the European Affairs Committee of the Senate on 17 October 2013.

The **German Bundestag** held debates in the relevant committees and in the plenary. Besides, the Committee on Internal Affairs organised two expert hearings on the European Commission's proposals to reform the EU's data protection provisions.

The **Greek Vouli ton Ellinon** receives an annual report from the Hellenic Data Protection Authority (DPA). Additionally, there are constant and timely information flows, exchange of opinions and reports as well as occasional public discussions in joint meetings.

The Committee on EU Affairs of the **Hungarian National Assembly** holds an annual meeting with the Minister of Justice who provides detailed information on Justice Affairs carried out within the Council, including on the data protection package. Furthermore, the Committee on Justice discusses the account of the President of the Hungarian National Authority for Data Protection and Freedom of Information about the activity of the Authority on a yearly basis. State Secretaries of the Ministry of Justice also provide information to the Committee on an ad hoc basis. The implementation of the Stockholm Programme was debated by the Committee on 21 May 2013. An *'in camera'* meeting is convened prior to each European Council meeting by the Speaker of the Hungarian National Assembly where the Prime Minister presents the official position of the Government.

In July 2014, the President of the **Italian Chamber of Deputies** established a Study Committee on Internet Rights and Duties. On 8 October 2014, the Committee presented a first Draft Declaration of Internet Rights. A public consultation was then opened and was completed on 31 March 2015. In the meantime, the Committee carried out some hearings.

Members of the **Polish Sejm** and experts from the in house Bureau of Research take part in committee meetings, conferences and seminars dedicated to the subject and hold public discussions. Experts from the Bureau of Research are also involved in the national legislative process and in the scrutiny process of EU documents regarding the AFSJ.

The **Polish Senate** organised several seminars and committee meetings on the topic of data protection, with the participation of government officials, and in close cooperation with the Polish Inspector General for Personal Data Protection.

The **Spanish Congress** has frequently invited the Director of the Spanish Agency on Data Protection to appear before the Committee on Constitutional Affairs, the Committee on Legal Affairs, and the Committee on Internal Affairs – Sub-committee on the Study of Social Networks.

The **Swedish Riksdag**, in addition to the meetings with representatives from the Commission, the Council and the European Parliament, the Committee on Justice, organized a public hearing by reason of the Court of Justice of the European Union's judgment regarding the Data Retention Directive¹². Furthermore, its Committee on Justice has a close dialogue with the Government in order to monitor matters and to express its views. The Riksdag highlighted the existence of a network of contact points within national parliaments receiving and disseminating information from FRA, the European Union Agency for Fundamental Rights.

Directorate Relations with National Parliaments - Institutional Co-operation

www.europarl.europa.eu/relnatparl

Author, contact: Paolo Atzori, paolo.atzori@ep.europa.eu



¹¹ Since 29 March 2011, the European Union has been negotiating with the United States government an international framework agreement (so-called 'Data Protection Umbrella Agreement') in order to protect personal data transferred between the EU and the U.S. for law enforcement purposes.

¹² Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.