

# Stockholm Programme and the way in which it influenced the adoption of new rules of criminal procedure

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***Abstract:** From the very beginning, the European Union and its authorities have been involved in strengthening cooperation between the Member States, on the one hand, and between these countries and other third parts, as non-European Union ones, on the other hand, in order to diminish as much as possible, or better, to stop the phenomenon of organized crime, including the transnational one, and terrorism. Having into consideration the efforts made by these authorities as well as the action plan they proposed on this topic, the consequences have to be encouraging for both parties and, not in the last time, for the society in its whole dimension. In this paper, I would like to analyze and discuss some of the criticisms stated at the address of the Stockholm Programme and also to the other documents the European authorities adopted in this purpose. I will also point out the way in which some measures are viewed as being restriction of the citizens' rights, but not guarantees of their fundamental rights and freedoms.*

***Keywords:** Stockholm Programme; criminal procedure; action plane; judicial cooperation; criminal matters.*

## **Introduction**

In that context, in order to stop the transnational criminal phenomenon, the Stockholm Programme was discussed by the ministers of justice and home affairs of the European Union Member States on 30<sup>th</sup> of November and 1<sup>st</sup> of December 2009 and adopted within the EU Council Meeting of the 10<sup>th</sup> – 11<sup>th</sup> of December 2009. This Programme offers to the European Union and its Member States a new framework for the asylum policy, immigration visa controls as well as for the police and justice cooperation for 2010 – 2014. Thus, it could be appreciated that “*new European Union agenda in the area of liberty, security and justice for a five year period, called “Stockholm Programme”, aims at transformation of Europe in a safer area, guarantying, at the same time, the united Europe citizens rights*” [Nelu Niță, 2013, p. 91].

In accordance with the Stockholm Programme, entitled a “wide and safe Europe serving the citizens and also for their protection”, the states of the European Union have to create an unique common area, in which the fundamental rights and freedoms are protected and the private life of the citizens is guaranteed beyond the national frontiers, including data protection.

## **1. Stockholm Programme: Surveillance state in waiting**

Called as the “*child of the Lisbon Treaty and the Future group*”, the Stockholm Programme was appreciated within the European Union institutions since its launching by 2009, due to the fact that “*it has to keep a close eye on Europeans*” [Jose Manuel Barroso, p. 3]. Actually, the Stockholm Programme is the third in a series of five-year plans preparing the European Union's agenda in the field of justice and home affairs. The program was planned by the “Future group”, which is a committee known as the Informal High-Level Advisory Group of the Future of European Home Affairs Policy of the European Union and which was organized by the European Commission on Justice. Nevertheless, the European Union Member State with the

best track record on justice, the United Kingdom, had no say in what the committee did. London only had an observer on it.

Unlike the previous programme, it is carried out to become the first European Union domestic security policy, as the commissioner on the problems of justice and security, Jacques Barrot, affirmed on 9<sup>th</sup> of June 2009 that the programme's aims were to "*develop a domestic security strategy for the EU*". He added that "*national frontiers should no longer restrict our activities*" [Bruno Waterfield, 2009].

At the moment, it is still very important to know how the programme is working within the general framework of the Lisbon Treaty. Basically, the Lisbon Treaty gives new legal powers to the European institutions over, among other things, cross-border police cooperation, counterterrorism, immigration, asylum and border controls. Thus, "*one of the major challenges of the next years, after the Lisbon Treaty refers to setting up of a Europe of the citizens and a Europe of rights, due to the fact that the protection of the fundamental rights and freedoms, established in the EU Charter of fundamental rights, is an essential value of the European Union*" [Nelu Niță, 2013, p. 91]. In other words, the Stockholm Program outlines how the Commission on the field of Justice will implement these new legal powers for the next five years.

However, even if several groups of officials have opined their consideration to the programme's provisions, there is a voice came from Brussels that has formulated a couple of criticisms on its content. One of these refers to the citizens' surveillance and it was opined by the European Civil Liberties Network on its own behalf [ECLN, 2009]. This means that, without ambiguities, the European authorities has adopted discretely legislation on the mandatory fingerprinting that have to apply to the EU passport, all of these, visa and residence permit holders and the mandatory retention, in a particular law enforcement purpose. Moreover, it also becomes mandatory in the matter of telecommunications data, which includes telephone, e-mail and Internet usage records, and the air traveller data on passengers across Europe.

In this regard, some observations were expressed during the "First Annual Forum for Decision Makers on Surveillance: Ethical Issues, Legal Limitation and Efficiency", held in Brussels on 24<sup>th</sup> of September 2012. On that occasion, the experts took into account both the positive and negative aspects of the surveillance and the consequences it produces in private. In these circumstances, in a "Europe of citizens" and a "Europe of the rights", the surveillance is viewed as "the death of privacy", having implication upon the methods used in commercial surveillance. At the same time, "Big Brother is watching you" came from George Orwell's since 1984 knowing that drones are used for surveillance as CCTV cameras used to detect an abnormal behaviour. However, systematic monitoring of persons, the flows of information or the types of surveillance technologies and, last but not least, the ethical issues exert a real prevention function. According to this comment, the information security supposes respecting some principles, such as: information security as confidentiality, availability, authenticity and control to which other ones are added: monitor hazardous event, development of technologies, efficiency of surveillance catalysing engineering and activation of equipment. The last ones are called as documented technologies.

Another opinion was expressed with reference to idea of security as foundation for the societal resilience viewed in perception of surveillance and the security infrastructure of prevention, protection and incident response. On this topic, the UK perspective of the realignment of surveillance came as a model for other states referring in particular to the realignment of law enforcement which increases collection of private data. Even if, generally speaking, this kind of methods is regularly used within the domestic courts, they can have consequences in cross-jurisdictional opportunities for an independent assessment or a common judicial oversight.

On the other hand, in the most general lines of the programme's essence, the same organization warned on the fact that, under the national laws reserve of implementing the European Union legislation, the

national authorities of the Member States have begun to carry out “*a previously unimaginably detailed profile*” of the private and public life of their citizens. It most of time happened in the absence of any standards of personal data protection or without a real judicial control. Even before its publishing, the ECLN opined that the situation will be further worse.

Moreover, Ms. Mary Ellen Synon explained how this programme will work inside the framework of the Lisbon Treaty: “*The commission claims the program covers policy on ‘freedom, security and justice serving the citizen. Look closer and you will see it actually covers policy for restrictions on the citizen, surveillance by the European state - yes, your fingerprints, credit card charges, e-mail traffic and health records are now going to be available from Galway to Bucharest - and the destruction of British judicial independence by the European institutions*” [Ed West, 2009].

Upon this issue, a very large controversy has been already stated by several experts on the European Union institutions and their mechanism of approaching the current problem. Looking for a better understanding of the area of the consequences of Stockholm Programme in criminal matters, I would like to emphasize the procedural aspect both of theoretical and practical issues as they will be pointed out below.

In the matter of fact, its contents disturbed so much the civil society whose representatives have stated what standards are proposed by the Future Group report, published on 10 June 2009 and these are “*the clear aims of creating the surveillance society and the database state. Future generations, for whom this will be a fully developed reality, will look back at this era and rightly ask, Why did you not act to stop it ?*”, said Tony Bunyar after reading the report published on 10<sup>th</sup> of June 2009.

Moreover, The ECLN predicts that, within the next five years, there will be “*an EU ID card and population register, ‘remote’ (online) police searches of computer hard drives, Internet surveillance systems, satellite surveillance*” as well as “*EU-funded detention centres and refugee camps, more power for EU agencies, and interlinking of national police systems, among other things*” [Tony Bunyar, 2009].

## **2. Vision upon a new procedural rules**

Being interested in developing the criminal justice system over Europe and implementing new mechanisms serving the citizen, as I stated above, new items of criminal procedure law were taken into consideration by the European authorities in order to be adopted and implemented by the Member States. They would come to cover the efforts made in front of the biggest threat of Europe: the organized crime and terrorism, especially in a transnational dimension, which seem to be hardly developed. For this reason and also from a strategic point of view, the law enforcement agencies reacted in finding solutions. One of these was highlighted in June 2010 and calls the European Investigation Order. It refers to the proposal 9288/10 ADD1 for a Directive of the European Parliament and the Council regarding the European Investigation Order in criminal matters launched in Brussels on 3 June 2010 by the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden.

The newest item of the European criminal procedure law would cover all of the criminal investigation measures in order to obtain evidence in close cooperation with Joint Investigation Teams. The main aim of the proposed directive is to create a single and efficient instrument for obtaining evidence in criminal matters from other Member States and completing other similar rules in the matter of criminal investigation procedure at the European Union level [Council Framework Decision 2008/978/ JHA].

Actually, the Stockholm Programme directed to Commission to elaborate a decision on gathering evidence in criminal cases having a transnational dimension between the Member States and explore the issue

of evidential admissibility [Debbie Sayers, 2001, p.7]. Thus, it means the first and main step in individualizing a set of the common rules adopted and implemented in criminal matters in particular in the area of investigation of crimes transnationally over the European Union. This is because, the provisions adopted till now, even in substantive criminal law or in procedural one, do not cover unitary whole kind of procedures required by a transnational investigation in criminal matters. Moreover, from its very beginning, the European authorities were looking for simplified but efficient measures to solve the criminal investigation in a reasonable time.

In the beginning of 2011, the Hungarian Presidency of the European Union launched some changes of the rules regarding the Directive on the European Investigation Order discussed earlier. Mainly, these modifications were related to the area of legal remedies, provisions regarding the costs and confidentiality, transfer of evidence and deadline of execution. At the moment, the main way of obtaining evidence abroad is by using the “commission rogatoires” [Debbie Sayers, 2001, p. 1].

On the other hand, some observations were addressed by Eurojust, whose experts stated that a common set of standardised legal assistance system would be more efficient in this matter and another one fragmented cannot simplify the procedure and will have a low level of flexibility and efficiency for the next future. Thus, its scope is viewed as one that covers all the investigative measures in criminal matters at European level bringing together the European Union Member States and their prerogative in strengthening cooperation in criminal matters too.

Then, in the mid of 2011, the Justice and Home Affairs European Council agreed with the proposed principles in the area of European Investigation Order. The main discussions were given on the following topics: the legal remedies are equivalent as in a similar home case and will be provided by issuing and executing states together; it is applied both to criminal and administrative procedures having a criminal dimension; a precise deadline was stated at 90 days in which the investigative measures should be carried out. In the chapter IV it is stipulated that *“This instrument provides a single regime for obtaining evidence. Additional rules are however necessary for some types of investigative measures which should be included in the EIO. Most of these measures have been dealt with in various articles of the 2000 EU MLA Convention and the 2001 EU MLA Protocol. These articles have been used as a basis for this new instrument. The objectives of integrating these rules in the instrument are mainly to provide more details than for the general regime. Some derogations to the general regime are also provided in the terms of additional grounds for refusal”*.

Despite this inconvenience, the core of the new instrument was stated within the following framework: simplification of the procedure and creation of a single instrument for obtaining evidence, limitation the possibilities of refusing to recognise the European Investigation Order by another Member States, acceleration of the criminal procedure. The proposed directive of 2010 offers us a definition of the European Investigation Order.

In the Chapter III entitled “Procedures and safeguards for the executing state” it is recognised that *“the executing authority shall recognise an EIO ... without any further formality being required, and shall forthwith take the necessary measures for its execution in the same way and under the same modalities as if the investigative measure in question had been ordered by an authority of the executing State...”*. This means that the definition clarifies which the applicable legislation is.

## **Conclusion**

In accordance with the Stockholm Programme, entitled “*a free and safe Europe serving the citizens and for their protection*”, the Member States of the European Union have to create an unique common area, in which the fundamental rights and freedoms are protected and the citizens’ private life is guaranteed beyond the national frontiers, including data protection [Nelu Niță, 2013, p. 91]. In this way, I am considering that the conclusions of the Tampere European Union Council of 1999 meant a strong political message to reaffirm the European Union’s wish stop the difficulties with prosecuting all forms of transnational crimes at European level, while protecting the freedom and the individuals’ rights and also the economic operators.

Since the Belgian presidency of the European Union in the second part of 2001, the law enforcements’ attention was focused on further common efforts to approach the challenges by transnational criminality [Antonio Vitorino, 2002, p. 15] both in Europe and all over the world. At that time, it was discussed about the benefit of globalization in an increasingly border free world in opposition with other interests in money laundering and in “*the roam the electronic environment of computer network with the help of sophisticated technologies*” [Antonio Vitorino, 2002, p. 15]. Setting up an area of justice for Europeans is also one of the main priorities of the European Union officials meeting on the occasion of the Tampere EU Council.

Basically, this issue has focused on four principles conducting to an area of freedom, security and justice.

Firstly, taking care of *the individuals’ protection* was one of the main principles, which takes into consideration for strengthening this purpose. The greatest advantage of this goal is that it was looking for a way in which *the nationals’ rights to be protected* by a common set of values and legal institutions indifferent in which jurisdiction their case is being heard.

Secondly, another issue refers to creating *a common area of justice*, in which the criminal behaviour that does not correspond with the European Union protected values will be sanctioned by criminal law into force within the European Union area.

Thirdly, the Tampere Council regulations provided that establishing *common definitions, incriminations and sanctions* will be taken into account for a limited number of the particular area of transnational crimes [Antonio Vitorino, 2002, p. 16].

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