**The Future of AFSJ: The House of Lords proposals on the European Area of Freedom, Security and Justice**

**ECLA Seminar: 20 October**

**“Steady as she goes” was the title which the House of Lords Committee I then chaired gave to the report it wrote in the early months of 2014setting out the approach it considered the European Union should take when the Council came that summer to set the strategic guidelines for the development if the Area of Freedom, Security and Justice over the next five years, 2015-2019. Broadly speaking that was the view too of the government when it responded to our report, even if it did put more emphasis on the “steady” and less on the “going”, not perhaps too surprising for a coalition government which had just emerged from a bruising battle with its own Eurosceptic back-benchers over the handling of the block opt-out decision under Protocol 36 of the Lisbon Treaty. And that too could be said to be the leitmotif of the decisions taken by the European Council when it set the strategic guidelines in June 2014, although no one should expect that body to opt for the sort of snappy title which we had chosen. If nothing else, this sequence could be seen as a good example of the value of parliamentary scrutiny, at least as it is practiced by the House of Lords.**

**But there was more to the report than just tactical positioning. We noted two major, and potentially contradictory, long term trends. The first was the rapid internationalisation and proliferation of criminal activity right across Europe and more widely than that. This meant that effective law enforcement could no longer be practiced, principally if not exclusively, within national boundaries; and that new areas of criminal activity, drugs, terrorism, cyber, human trafficking were all ones which were crying out for an EU response, It was this trend, and not the pipedreams of mad federalists in Brussels, which had driven the rapid development of Justice and Home Affairs legislation activity from its inception in the 1990’s to the present day. But the second trend was that this burst of legislative activism had rather outrun the ability ad willingness of member states to implement measures already on the EU statute book; and that some at least of the legislation had been hastily drafted and enacted – that a more measured approach to future legislation may pay dividends, It is worth recalling that the AFSJ has developed over a much shorter time-span than other major areas of EU policy like the Single Market and the Common Commercial Policy, We also felt that too much emphasis had been put on drawing up new legislation and too little on the functioning and resourcing of the EU’s agencies such as Europol, Eurojust and the EMCDDA and their vital interface with national policy and law enforcement activities.**

**We also pointed out in our report that this more measured approach over the next five years in no sense implied a standstill in legislative activity, given the considerable number of proposals already in the pipeline and requiring complex ad time-consuming negotiation between the Council, the European Parliament and the Commission. The reforms of Europol and Eurojust, the latter somewhat complicated by the proposal for a European Public Prosecutor’s Office which will only be subscribed to by a limited number of member states of which the UK will certainly not be one are cases in point, Most substantial is the necessary, but fiendishly complex and politically high sensitive, set of proposals on data protection. Here the Council and the Commission on the one hand and the European Parliament on the other do not see eye to eye; and the recent ruling of the Court of Justice to strike down the existing safe harbour arrangements between the EU and the US makes an already complex situation even more difficult to resolve. Much is at stake in these negotiations as the EU struggles to find the right balance between increasing security concerns and the right to individual privacy and also to choose between an approach which builds on the European Union’s tradition of openness and freer trade and one which could cut right across these objectives. The issue will not be easy to resolve and it will take up much high level political attention and effort.**

**Naturally a report as ours cannot, nor should it hope to, prescribe everything which will be needed in the form of policy responses over the next five years. Indeed one of the themes we developed, which has been accepted in the Council’s approach, was to avoid drawing up a long list of future legislative projects, as had so often been the practice in the past as you can see if you look at the Tampere and Stockholm programmes. But Harold Macmillan’s wise adage of “events, dear boy, events” driving much of any policy agenda is being borne out in the field we are considering by the urgent need to find a European response to the humanitarian emergency arising from the influx of asylum seekers and economic migrants Europe is currently experiencing. So far there has been as much discord as harmony. What is sure is that that issue will dominate the AFSJ agenda for the foreseeable future.**

**What can one say of the UK’s role in all this? My own view was that the then coalition government came out of the Protocol 36 negotiations with a reasonable result. The key areas of European cooperation, including the European Arrest Warrant, remained intact. It might have been better if the question had never been posed in the way it was, but that was a procedure set out in the Treaty, over which the government had no control. The government’s response so far to the humanitarian emergency of recent months has been, in the words of the Archbishop of Canterbury, “thin”, and that in my view applies both to the number of genuine refugees to whom we are prepared to give asylum as well as to our refusal to help at all with those who fall into that category and who have already reached Europe. It would be good if our policy evolved flexibly in the months ahead.**

**What is not in doubt is that all these issues I have covered will be with us whether we remain inside or decide to leave the European Union; and that, in the latter event, they will be infinitely more difficulties to handle and to resolve. The UK needs to be, as it so often has been in the past, an active and constructive player in shaping the content of the EU’s AFSJ agenda; and it can only be that from within and not from the outside.**