

Area of Freedom, Security and Justice (AFSJ) 2007

European Parliament resolution of 25 September 2008 on the annual debate on the progress made in 2007 in the Area of Freedom, Security and Justice (AFSJ) (Articles 2 and 39 of the EU Treaty)

The European Parliament,

- having regard to Articles 2, 6 and 39 of the EU Treaty and Articles 13, 17 to 22, 61 to 69, 255 and 286 of the EC Treaty, which form the main legal basis for the development of the EU and the Community as an area of freedom, security and justice,
 - having regard to Oral Questions B6-0006/2008 and B6-0007/2008,
 - having regard to Rule 108(5) of its Rules of Procedure,
- A. whereas Member States have prime responsibility for ensuring freedom, security and justice for their citizens; whereas, however, following the entry into force of the Treaty of Maastricht and, even more so, that of the Treaty of Amsterdam, the Union is required to contribute to the achievement of those same objectives, bearing in mind the expectations of citizens of the Union as regards the protection of fundamental rights and the application within the Union of the principles of the rule of law and loyal and effective cooperation between Member States;
- B. whereas the ratification of the Treaty of Lisbon is an essential and urgent precondition for ensuring that the Union is an area of freedom, security and justice (AFSJ), as it contains fundamental improvements to the legitimacy and effectiveness of EU action,
- C. whereas the comments made both at the preparatory meeting of 26 November 2007 with the national parliaments and during the most recent debate in plenary on 31 January 2008 underlined the importance of laying thorough groundwork for the transition to the new legal framework that will result from the ratification of the Treaty of Lisbon, signed on 13 December 2007, which will amend the EU Treaty and establish a Treaty on the Functioning of the European Union (TFEU),
- D. whereas, however, the establishment of a genuine AFSJ is far from having been completed and still faces major difficulties and obstacles, as confirmed in the Communication from the Commission of 2 July 2008 entitled "Report on Implementation of the Hague Programme for 2007" (COM(2008)0373),
- E. whereas, as that Report stresses and notwithstanding the adoption of a number of major measures, the programme established by the Hague European Council in 2004 is seriously behind schedule and, in particular,
- there is still a serious lack of mutual trust and, above all, solidarity between Member States, especially as regards policies on legal and illegal immigration and police and judicial cooperation in criminal matters,
 - these problems also affect the phase of transposition of the few measures adopted since

“an insufficient level of achievement was evident in the following areas: Visa Policy, Sharing of Information among Law Enforcement and Judicial Authorities, Prevention of and the Fight against Organised Crime, Management of Crises within the European Union, Police and Customs Cooperation and Judicial Cooperation in Criminal Matters”,

- F. whereas the Member States themselves mention these problems in the context of their preparatory work for the future AFSJ programme for the period 2010-2014, recognising that the *acquis* in the field of Home Affairs, which was developed step by step, is necessarily unstructured and therefore difficult to explain to citizens of the Union; whereas it is sometimes hard even for specialists to understand and some of the instruments overlap and the legal basis for some actions can be found in different acts; whereas, finally, it is becoming increasingly difficult and time-consuming to monitor the proper implementation of EC directives by as many as 27 Member States,
- G. whereas Parliament is convinced, however, like the Council, that the Union has no other choice but to insist on implementing the AFSJ, which touches the core of the national constitutional orders, and that Member States have a special interest in maintaining a dialogue with each other as much as with the European institutions,
- H. whereas, in this transitional phase pending the conclusion of the ratification of the Treaty of Lisbon, it is necessary to adopt before the end of 2009 certain general measures which, while drawing their inspiration from the Treaty of Lisbon, could still be adopted under the existing Treaties in full compliance with Article 18 of the Vienna Convention on the Law of Treaties, and which could reduce the adverse effects of the problems mentioned above; whereas these would include measures to:
- take account of the institutions' procedures, structures and decisions, and of the principles and objectives set out in the Charter of Fundamental Rights of the European Union, proclaimed in Strasbourg on 12 December 2007¹,
 - promote decision-making transparency at Union and national level, in particular in connection with the AFSJ, in accordance with the recent judgment of the Court of Justice of the European Communities (ECJ) on legislative transparency (Turco case²),
 - effectively involve national parliaments in the establishment and implementation of the AFSJ, including as regards assessment of these policies in the other Member States and by European Union agencies,
 - ensure respect for the primacy of Community law over EU law (Article 47 of the EU Treaty) in the conclusion of international agreements, especially in the case of sanctions affecting nationals of third countries or where citizens of the Union are liable to be discriminated against (visa waiver); Parliament should systematically be associated with the conclusion by the EU of international agreements relating to police and judicial cooperation in criminal matters,
 - strengthen loyal cooperation and solidarity between Member States in implementing policies and measures taken by the Union by strengthening and democratising the

¹ JO C 303, 14.12.2007, p. 1.

² Judgment of 1 July 2008 in Joined cases C-39/05 P and C-52/05 P Kingdom of Sweden and Maurizio Turco v Council of the European Union.

mutual assessment mechanisms already provided for as part of Schengen cooperation and in the fight against terrorism,

- initiate enhanced cooperation under the first pillar where the required unanimity is impossible to achieve (see the debate concerning the proposal from the Commission of 17 July 2006 for a Council Regulation amending Regulation (EC) No 2201/2003 as regards jurisdiction and introducing rules concerning applicable law in matrimonial matters (COM(2006)0399)),
- go beyond the as yet embryonic and uncertain nature of initiatives conducted by the agencies set up by the Union and cooperation with national administrations,
- set up a genuine communication policy enabling citizens of the Union to be better informed about initiatives established at Union and national level and to become familiar with the relevant Union and national authorities which they can contact without prejudice to court action with regard to aspects liable to affect citizens' fundamental rights,

I. whereas, during this transitional period, it is all the more important, in the interests of the citizens of the Union, to take account of the improvements which the Treaty of Lisbon will bring in terms of:

- the protection of fundamental rights, as laid down in the Charter of Fundamental Rights of the European Union,
- the judicial control exercised by the ECJ, including over legislation pertaining to police and judicial control,
- the democratic control resulting from the extension of codecision by Parliament and from the involvement of national parliaments in the Union's law-making process and in the assessment of its impact, including with regard to AFSJ-related policies

J. whereas, under the existing Treaties, the means of redress for citizens of the Union in relation to AFSJ measures are still more limited than in other areas of EU activity, whereas the ECJ's powers are limited, in particular in the area of police and judicial cooperation in criminal matters and whereas, in addition, some Member States still restrict dialogue between the EU courts and national courts in this area; whereas the Council should postpone the adoption of any measure which might affect fundamental rights until the Treaty of Lisbon has been ratified,

1. Calls on the European Council, the Council and the Commission to:

- (a) initiate forthwith the process of determining priorities for the forthcoming AFSJ multiannual programme for the period 2010-2014, on the basis of an ambitious and coherent approach, going far beyond ministerial thinking, and drawing its inspiration from the objectives and principles laid down in the Charter of Fundamental Rights of the European Union;
- (b) join Parliament in its dialogue with national parliaments on the priorities for the period 2010-2014, taking into account the problems encountered in implementing the Tampere and Hague Programmes, the work carried out within the Council and the European

Council's initial strategic indications regarding immigration, asylum and integration; with a view to completing this initial phase of dialogue at Parliament's annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice and with a view to a Commission communication subsequently being issued, on the understanding that it will be for the newly elected Parliament and the European Council to adopt the final programme at the appropriate time;

- (c) agree with Parliament a list of texts or proposals that could or should be adopted as a matter of priority before the Treaty of Lisbon enters into force and, at any rate, before the end of the current Parliamentary term;
 - (d) make progress in negotiations on proposals for police and judicial cooperation (which will be subject to codecision) by seeking a political agreement with Parliament, and ensure that, once agreement is reached:
 - either their formal adoption is postponed until the entry into force of the Treaty of Lisbon,
 - or the Council adopts the decisions or framework decisions in question under the EU Treaty as it currently stands, while agreeing to re-adopt them under the EU Treaty as amended by the Treaty of Lisbon, which would enable the ECJ to exercise full judicial control; should a political agreement already have been reached, Parliament could agree not to re-open negotiations on the substance, as is the case in the adoption procedure for official codification¹;
2. Proposes the following as priorities regarding areas subject or to be subject to codecision/ assent during the transition period:

In the area of fundamental rights and citizenship

- defining more transparent criteria at Union level, in particular where EU measures might undermine guarantees protected under the constitutions of the Member States (Article 52 of the Charter of Fundamental Rights of the European Union and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)) and revising EU measures censured by the ECJ (see Cases T-228/02 *Organisation des Modjahedines du peuple d'Iran v Council*, T-47/03 *Sison v Council*, T-253/04 *KONGRA-GEL and Others v Council*, T-229/02 *PKK v Council*, on black lists),
- systematically taking account of the impact on fundamental rights of EU legislation and national implementing measures, in particular with regard to the fight against terrorism, taking account of the replies recently sent to the Commission in this area by the Member States,
- initiating the preparatory dialogues for the negotiating mandate for the EU's accession to the ECHR (Article 6(2) of the EU Treaty),
- revising the programme of activities of the European Union Agency for Fundamental Rights, taking account of the priorities indicated by the institutions, and in particular by

¹ Paragraph 4 of the Interinstitutional Agreement of 20 December 1994 on the accelerated working method for official codification of legislative texts (OJ C 102, 4.4.1996, p. 2).

Parliament, in the area of police and judicial cooperation and respect for EU principles (Article 7 of the EU Treaty) (see the interinstitutional declaration adopted at the time of adoption of Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights¹),

- putting forward a legislative proposal to restrict direct and indirect discrimination affecting the movement of citizens of the Union, access to justice in a country other than the country of origin and consular and diplomatic protection in third countries (Article 20 of the TFEU),
- submitting a proposal concerning the transparency and confidentiality of information and documents handled by the EU institutions,
- submitting a proposal concerning data protection (providing for the consolidation of measures that currently vary according to which pillar is concerned), in response to concern about the rapid erosion of data protection standards in the Union, with particular reference to inadequate standards for the protection of transatlantic data transfers, and urging the Council to adapt the Framework Decision on Data Protection in the third pillar in line with Parliament's recommendations,
- strengthening the internal structures of institutions responsible for protecting fundamental rights in the Union, in particular within the Council (conversion of the Council's Ad hoc Working Party on Fundamental Rights and Citizenship into a Standing Working Party, as proposed by the Slovenian Presidency),
- strengthening, through administrative cooperation (Article 66 of the EC Treaty), the dialogue between the Member States, mutual knowledge of legal systems, the activation of the dialogue procedure to involve national parliaments and Parliament, in particular where difficulties arise in the implementation of EU strategies and measures affecting the AFSJ;

Regarding the European judicial area

- revising the legislative proposal on the rights of individuals in criminal procedure (Article 69 A TFEU),
- submitting a proposal on the rights of victims of crime and terrorism (Article 69 E TFEU),
- improving mutual recognition among the Member States both of measures taken in absentia and of evidence (Article 69 E TFEU),
- interconnecting criminal records,
- revising the status of Europol, Eurojust and the European Judicial Network in the light of the new legal basis,

Regarding border protection

- adopting appropriate measures to ensure the full entry into use of the second generation

¹ OJ L 53, 22.2.2007, p. 1.

Schengen Information System (SIS II) and the entry into force of the decisions linked to the Prüm Treaty¹,

- strengthening Frontex and assessing the impact of the Commission's new proposals for border controls,
- strengthening Frontex's information on the agreements which it has signed with third countries and on the evaluation reports on joint operations, and ensuring that border checks are respectful of human rights; amending Frontex's mandate to include sea rescue operations,
- establishing structured cooperation between Frontex and the United Nations High Commissioner for Refugees (UNHCR) to simplify the operations involved, taking into account the protection of human rights;

Regarding migration and asylum

- swift and ambitious action by the Commission and the Council to drive the Union's forward-looking strategy on:
- legal migration: the forthcoming legal migration package (Blue Card Single Application procedure, seasonal workers, and the Intra-Corporate Transferees and remunerated trainees proposal as well as others),
- illegal migration: proposals including sanctions and an EU resettlement scheme,
- asylum: implementation of Phase II, including revision of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status² and Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted³, and the establishment of a European Asylum Support Office,
- development of a Community policy on migration and asylum based on the opening up of channels for legal migration and on the definition of common standards for the protection of migrants' and asylum seekers' fundamental rights in the Union,
- inclusion, within EC decisions and framework decisions, of all the provisions laid down by the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted by the UN General Assembly on 18 December 1990,

3. Welcomes the proposal for the completion of the anti-discrimination package and urges Council to act in the spirit of the Treaty of Lisbon and incorporate Parliament's

¹ Treaty of 27 May 2005 between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration.

² OJ L 326, 13.12.2005, p. 13.

³ OJ L 304, 30.9.2004, p. 2.

recommendations;

4. Considers that, from now on, national parliaments and civil society should be involved in a structured manner in drafting these legislative measures and in evaluating these policies in the Member States; asks the Commission and the Council, with this aim in mind, to re-examine with Parliament the networks, agencies and instruments that would assess the impact of AFSJ policies and to aid closer interaction with European civil society;
5. Stresses that the Treaty of Lisbon will recognise Parliament's role in the conclusion of international agreements concerning AFSJ policies; asks, in this context:
 - to be consulted in good time on all agreements with third countries that have not been concluded by 31 December 2008,
 - to receive regular updates on the negotiations under way,
 - as a matter of urgency, that a debate be held on the external dimension of the AFSJ, as the Union is creating *de facto* police and judicial cooperation with third countries, notably the US, by means of bilateral agreements on a range of issues, thereby circumventing formal democratic decision-making procedures and Parliamentary scrutiny;
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6. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States, and to invite those parliaments to submit their comments, suggestions and proposals by 15 November 2008, in time for the December 2008 annual debate on the progress made in 2008 in the Area of Freedom, Security and Justice.