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MOTION FOR A RESOLUTION

further to Oral Questions B5-0098/2002 and B5-0099/2002

pursuant to Rule 42(5) of the Rules of Procedure

by Baroness Sarah Ludford

on behalf of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on progress in 2002 in implementing an area of Freedom, Security and Justice (Articles 2 and 39 of the EU Treaty)

European Parliament resolution on progress in 2002 in implementing an area of Freedom, Security and Justice (Articles 2 and 39 of the EU Treaty)

The European Parliament,

- having regard to Article 2 of the Treaty on European Union, which aims to maintain and develop the Union as an area of freedom, security and justice in which the free movement of persons is guaranteed in conjunction with appropriate measures on external border controls, asylum, immigration and the prevention and combating of crime, and to Article 39 of the Treaty on European Union, which provides for an annual debate on the progress made in the implementation of this area of freedom security and justice,
- having regard to the conclusions of the Seville European Council of June 2002 and, in particular, the timetable laid down for achieving the measures foreseen by the special European Council held at Tampere in October 1999,
- taking note of the Commission's latest 'scoreboard' reviewing progress in the creation of an area of freedom, security and justice in the European Union, the Council's regularly updated 'roadmaps' on asylum, immigration and border control for the follow-up to the Seville European Council and of a European Union action plan to combat terrorism,
- having regard to the Conclusions of the Copenhagen European Council opening the way to the signature of the Treaties of Accession of the applicant countries at the Athens European Council in April 2003, and noting the acceptance on the part of the applicant countries of the *acquis communautaire* including in JHA matters,
- noting the operational programme of the Council for 2003 submitted jointly by the Greek and Italian Presidencies and hoping that they fulfil the commitment expressed therein to accord highest priority to the full and rapid implementation of the decisions taken by the Seville European Council,¹
- recalling the recent European Parliament report on the situation regarding fundamental rights in the European Union and the conclusions therein,²
- welcoming the work of the Convention on the Future of Europe, in particular the conclusions of Working Group X on freedom, security and justice and notably its call for co-decision to be the norm, and the call by Working Group II for the Charter of Fundamental Rights to be enshrined in EU basic law,
- welcoming the coming into force of the Treaty of Nice on February 1st 2003, especially the reinforced provisions on ensuring respect for human rights and the move towards more

¹ Operational programme of the Council for 2003 submitted by the Greek and Italian Presidencies 20/12/02

² Swiebel report on the situation regarding fundamental rights in the EU A5-0451 adopted 15/01/2003

streamlined and democratic decision-making,

- having regard to the European Parliament's plenary debate February 2003 and the responses of the Council and the Commission to the oral questions presented to them,
- A. noting, as characteristics of 2002, a high degree of activity and results, but a lack of balance, coherence and democratic accountability, in addition to delays and a limited global vision as regards the timetables and programmes envisaged,
- B. whereas, in contrast to the scant progress made in previous years, the year 2002 witnessed considerable activity in justice and home affairs, with both the Spanish and the Danish Presidencies putting forward ambitious programmes such that numerous legislative decisions, political agreements and common positions were reached or are shortly to be adopted in 2003; noting, however, the need to speed up the work – mainly by bringing the Council negotiations forward – and to increase the coherence and balance of the results, with a view to meeting the deadlines and objectives laid down in the Amsterdam Treaty and by subsequent European Councils,
- C. noting that in 2002 developments have been somewhat disjointed and reactive (including the proliferation of new 'road maps' and 'action plans') instead of a steady and disciplined implementation of the strategic priorities laid down in the Treaties, the various European Council conclusions and the Commission 'scoreboards'; and believes that transparent planning and co-ordination including the proper provision of financial and human resources is the soundest basis on which coherent progress can be assured,
- D. judging in particular that Member States' use of the co-right of initiative with the Commission in the field of justice and home affairs has undermined coherence and clarity because initiatives have been driven too often by domestic political considerations and media agendas; and considers that more rigorous assessment by individual Justice and Interior Ministers as to the justification for new proposals would be helpful,
- E. taking the view that, while priority has in the wake of September 11th 2001 been given to generally welcomed measures aimed at guaranteeing security, an imbalance has been created in that complementary measures called for by the Parliament designed to guarantee fundamental rights and comprehensive respect for justice throughout the European Union have not been adopted,
- F. considering that the adoption and imminent application of measures such as the framework decision on the European arrest warrant and the framework decision on sanctions in the area of terrorism are essential instruments in the fight against such crime, but fearing that the absence of any measures to guarantee fundamental rights could undermine reciprocal confidence in the justice systems of the Member States; and in that context noting the reservations expressed in the European Parliament and some national parliaments, as well as by representatives of civil society, regarding the adoption and subsequent implementation of the framework decision on the European Arrest Warrant, and encouraged by the view of the Greek and Italian Presidencies that the question of minimum standards under criminal procedural law 'is closely linked to the whole programme on mutual recognition and is, to a certain extent, a condition of its success',

- G. noting that whilst stating their commitment to fulfilling the Tampere programme as a whole, both Presidencies in 2002 were able to engineer much swifter agreement on measures relating to repressive measures of migration control than on the elements of a common EU asylum policy or on a policy towards legal migrants, notably the conferring of legal, social and political rights on long-term residents third country nationals; and that even when political agreement had been reached in the Council negotiations were on several occasions reopened resulting in a significant alteration not only of the Commission's original proposal but of the prior agreement itself,
- H. accepting that the process of approximating complex legislation among Member States with very different traditions and national legal systems is immensely difficult and sensitive; but noting that this has not represented an insurmountable obstacle in reaching agreement on measures intended to strengthen the fight against illegal immigration and terrorism, sees no reason why national difficulties and constitutional conflicts should not be overcome in other areas of EU justice and home affairs policy as well,
- I. having regard to the fact that trafficking in human beings is an abhorrent and worrying phenomenon involving coercive sexual exploitation and labour exploitation in conditions akin to slavery, welcomes the progress made through finalising the Framework Decision to combat trafficking in human beings.¹ In addition, urges the Council and the Commission to continue the fight with improved international coordination and information exchange between relevant agencies to secure criminal convictions of traffickers, improved funding from governments and a commitment to tackling the root causes of the problem, thereby enacting the commitments made in the Brussels Declaration at the European Conference on Preventing and Combating Trafficking in Human Beings – Global Challenge for the 21st Century organised by the IOM and the European Commission. This should become the main instrument for future policy making in this field and be followed by the European Parliament, European Commission and the Council,
- J. deploring the fact that there has continued to be an unacceptably low level of democratic legitimacy, in that the Parliament is merely consulted on legislation relating to measures in the field of justice and home affairs, and that the Council while technically fulfilling the Treaty obligation to consult the European Parliament has often done so in a way which is no more than a request to 'rubber stamp' political agreements already reached,
- K. regretting that the Council apparently even selected certain procedures and treaty bases precisely so measures would fall within CFSP rather than JHA competence in order to avoid consultation; and asserts that in matters such as fighting terrorism and EU-US agreements on extradition and judicial cooperation in criminal matters this is not only democratically unacceptable but (noting that national parliaments are also marginalised) counter-productive if the essential support of citizens is to be assured; in particular condemns the December 2001 Common Positions on fighting terrorism as a flagrant circumvention of the obligation to consult the European Parliament under Title VI TEU,

¹ 2002/629/JHA: Council Framework Decision of 19 July 2002 on combating trafficking in human beings

- L. observing that the democratic control of Europol, Eurojust and the other EU agencies needs to be improved, since hitherto it has been indirect, fragmented and insufficient limited both on a national and European Union level,
 - M. regretting that the meetings of the Council are still not transparent and points out that this lack of public accessibility, together with the lack of democratic control, is leading to an unacceptable restriction of the principle of democracy, which calls into question the legal legitimacy of Council measures with a bearing on constitutional law,
 - N. regretting that the Commission and the Council were so late in recognising the need for joint responsibility for protecting the external borders and the creation of a new generation of SIS, so that these mechanisms cannot come into operation until long after the enlargement to the east,
1. Calls for a more balanced set of measures to advance the area of freedom, security and justice, such that the aims of guaranteeing liberty and fundamental rights are given as much weight as that of ensuring security in EU laws:
- (a) in the sphere of criminal law there must be a concrete and effective system of rights and safeguards for citizens and residents, based on the principle of non-discrimination pursuant to Article 13 of the EC Treaty, to accompany the heightened cooperation between law enforcement agencies, mutual recognition of judicial decisions in criminal matters, the European Arrest Warrant and extensive approximation of criminal and anti-terrorist legislation, on all of which there was considerable progress in 2002;
 - (b) Insists that national security concerns, albeit legitimate, must not compromise the principles on which the Union is founded, including democracy, equality and human rights, and that anti-terrorism measures must not applied so as to undermine fair asylum policies or dilute the application of refugee laws; calls for the Convention on the Future of Europe to include recommendations for joint and united representations by EU consular authorities to protect European citizens from injustice in third countries so as to make a reality of European citizenship, and demands that EU Member States require the United States to stop holding their citizens in limbo in Camp Delta in Guantanamo Bay without charge and contrary to international law, and points out that following their release from Camp Delta the EU citizens can be tried in their home countries on charges of belonging to a terrorist organisation;
 - (c) calls for the early submission and adoption of adequate legislative proposals such that guarantees of basic rights are in place by the date of accession of the new Member States and at least by June 2004, and in particular urges the Commission to finalise, as soon as possible, a framework decision on procedural safeguards for suspects and defendants in criminal proceedings throughout the European Union; also calls for a 'EuroRights' body of independent defence practitioners in criminal law to be set up under the aegis of the European Parliament to monitor the observance of legal and fair trial rights across the EU, including the Charter of Fundamental Rights, and to advise the Commission, Parliament and Council on development of new EU measures;

- (d) points out that combating terrorism in the European Union is still a priority and hence calls on the Member States to transpose and implement as soon as possible the entire body of legislation adopted to combat this crime; Furthermore considers it essential that people found guilty of collaborating or taking part in terrorist crimes should serve their sentences in full and that, if necessary, the possibilities of obtaining remission should depend on the seriousness of the crime committed and remain subject to the prisoner repenting and co-operating with the judiciary. Once again points out the irreparable harm and enormous suffering which terrorism inflicts on its victims and their families and therefore calls on the Commission and the Council to set up a European Compensation Fund for the victims of terrorism;
- (e) while recognising the need to equip law enforcement authorities with the tools to gain evidence to pursue and incriminate major law-breakers and terrorists, asserts that it is unjustified to grant sweeping data retention powers through a blanket EU instrument, and demands that the collection and transfer of personal data in all measures relating to judicial and police cooperation be carried out according to sound data protection rules; calls on the Commission, therefore, to come forward as soon as possible with, and the Council to prioritise adoption of, a binding legal instrument relating to data protection in measures taken in the context of the 'Third Pillar' to provide guarantees equivalent to those inherent in Directive 95/46/EC. Calls also on the Council to transfer the various data banks of the SIS, the CIS, Eurodac and the Europol Convention to the 'first pillar' and subject them to uniform data protection rules;
- (f) urges the Greek and Italian Presidencies to reach agreement as soon as possible on the key measures of a common EU asylum policy which fully respect international refugee and human rights law and harmonise on 'best practice' rather than on the lowest common denominator; calls on the Council and Member States in constructing EU and national immigration policies to focus on the possibilities of legal migration and the imperative of integration for legal migrants based on equality of rights compared with EU citizens as much as on tackling illegal migration; and warns the Council and Member States of the danger of an overwhelming obsession with illegal entrants;

2. Greater efficiency and coherence, including an overhaul of the current legislative system for justice and home affairs matters taking account of the conclusions of the Convention's Working Group X on freedom, security and justice

- (a) calls for the adoption, with strict respect for the principle of subsidiarity, of a multi-annual plan for EU legislative and operational activity in the field of freedom, security and justice to be adopted on a proposal by the Commission by the European Council and European Parliament in co-decision after consulting the national parliaments; this should be drawn up on the basis of input from the relevant national and EU (Europol, Eurojust, OLAF) agencies and institutions and with regard to the fulfilment of international obligations, and be the subject of an annual evaluation in the course of a debate in the European Parliament in which members of national parliaments could be involved;
- (b) Calls for the removing of procedural impediments to the achievement of a coherent

and strategic European justice and home affairs policy by streamlining and strengthening the initiating and decision-making process at EU level, especially through making qualified majority voting the rule in the Council and reinforcing democratic scrutiny and full partnership with the European Parliament through extension of the co-decision procedure. In addition, calls for full democratic scrutiny of Europol ensuring that Europol is fully accountable to the European Parliament in partnership with the national parliaments and subject to judicial control of the European Court of Justice;

- (c) Calls therefore for the end to the intergovernmental ‘Third Pillar’ system for police and judicial cooperation, with the exception of operational activities, and the incorporation of EU-level cooperation within normal Community methods, alongside the formulation of a simpler, clearly discernible allocation of competences between EU and national levels; calls also, however, for an ongoing political dialogue between national parliaments and the European Parliament in order to ensure that competences are respected, democratic goals furthered and information shared;
- (d) calls for the Council to seek to implement as soon as possible the move to qualified majority voting and co-decision on those Title IV matters prescribed in the Treaty of Nice, and to determine to reach unanimous agreement on transferring the remaining relevant measures under Title IV to such procedures in 2004 as foreseen under article 67(2) TEC;

3. Reinforcement of mechanisms to monitor decisions taken at EU level and implemented in the Member States

In order to complement but not replace the enforcement mechanisms under the Treaties regarding transposition of legislation, a more consistent and comprehensive system of open coordination and ‘peer review’ should be enacted whereby Member States would not only exchange experience but mutually critically evaluate their implementation of EU measures and their respect more widely of democratic accountability, integrity of public administration, non-discrimination, civil liberties and rule of law; agrees with the call by the Copenhagen European Council for the Council to rationalise the different evaluation processes;

4. The future Member States to be fully included upon accession in EU Justice and Home Affairs policy including free movement rights, without prejudice to the safeguard clauses

The European Parliament must be kept informed in the run-up to May 2004 of the result of the evaluation and practical implementation by the future Member States of the *acquis* in JHA matters, including their ability to respect the Schengen standards, and also of any move to invoke the ‘safeguard clauses’;

- 5. Calls on the Commission and the Council to take all necessary steps, in accordance with Article 6 of Council Decision 200/596/EC establishing a European Refugee Fund, to

ensure that in the event of a sudden mass influx of refugees or displaced persons

- the funds earmarked in the Refugee Fund for emergency measures can swiftly be made available to the Member States,
 - reception and accommodation can be provided by the Member States, any food and clothing needed can be made available and psychological or medical assistance be provided in case of need,
 - an authority in every Member State is assigned to be the Commission's sole interlocutor in carrying out refugee projects;
6. Calls on the Council presidency and the Commission to persuade the Member States to make more intensive use of the Community programmes AGIS and ARGO. In particular, involvement of the candidate countries should be stepped up in the interests of developing uniform standards;
 7. Calls on the Council and the Commission to make every endeavour to ensure that joint external border security with equally high standards is provided at all the Union's external borders and that units of border guards are made available, at the request of the Member States, to back up national border guards;
 8. Instructs its President to forward this resolution to the Council, the Commission and the parliaments and governments of the Member States.