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Committee on Civil Liberties, Justice and Home Affairs

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OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on Parliament's new role and responsibilities implementing the Treaty of
Lisbon
(2008/2063(INI))

Draftsman (*): Johannes Voggenhuber

(*): Procedure with associated committees- Rule 47 of the Rules of Procedure

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SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

The Lisbon Treaty: an interinstitutional challenge in the freedom, security and justice area

1. It is a common understanding that the entry into force of the Treaty of Lisbon and of the Charter of Fundamental Rights of the European Union (the Charter of Fundamental Rights) will make it possible for the European Union to become "...an area of freedom, security and justice (FSJA) with respect for fundamental rights and the different legal systems and traditions of the Member States." (Article 67 of the Treaty on the Functioning of the European Union (TFEU)). No longer limited by specific objectives, as it was the case with the Maastricht Treaty, the FSJA will become a pivotal element for future relations between the Member States and the EU. Moreover, in this comparatively new area which touches the core of the national constitutional orders, all the players at national and at European level have a particular interest in maintaining a common dialogue.
2. In that perspective and in order for Parliament to be ready immediately from the first day of the entry into force of the new Treaty, it will be of the utmost importance that the EU institutions negotiate an inter-institutional agreement covering:
 - a) a new vision and the main objectives to be achieved by the EU after 2009;
 - b) new methods of cooperation involving national parliaments in these policies;
 - c) the measures to be adopted to make the transition a success for the institutions and for European citizens.

Bearing in mind the inter-institutional strategy, each institution should then adapt its own internal organisation and methods.

A new vision and the main objectives to be achieved by the EU after 2009

3. The future of the FSJA should be defined by the European Council before the end of 2009. The Member States themselves are preparing, by debating in the High-Level "Future" Group (High-Level Advisory Group on the Future of European Home Affairs Policy), possible ideas for shaping the next multiannual programme. The Commission is also preparing a comprehensive report for the spring of 2009 which could be the basis for the following Parliamentary and Council deliberations.

Bearing in mind this calendar, Parliament could also draw up its own evaluation report before spring 2009.

On the basis of the contributions of the Member States (Future Group report), of the Commission and on the basis of its own recommendations, Parliament as elected in June

2009 will be able to negotiate a legislative programme for the FSJA with the new Commission and with the European Council.

4. The future legislative programme for the FSJA should promote measures in the field of police and judicial cooperation in civil and criminal matters, taking into account the principle of mutual recognition of judicial decisions which is included in the new Treaty, thus facilitating cross-border cooperation between Member States and aiming towards a future European criminal law.
5. In line with this approach, it would be more than welcome if the Commission were to adopt a strategy aimed at:
 - a) **strengthening the relationship between the rules of the Treaties** which constitute the legal basis for specific policies (such as preventing discrimination, protecting asylum seekers, improving transparency, data protection, the rights of minorities and the rights of victims and suspects) **and the corresponding Articles of the Charter of Fundamental Rights**. The adoption of a binding Charter of Fundamental Rights will make it possible to revise this acquis, bearing in mind the primary duty of the EU institutions to protect fundamental rights. This evolution is demonstrated by the data protection issue, which will become a free-standing fundamental right;
 - b) **establishing permanent and deeper relations between European and national legislators, on the one hand, and between European and national judges, on the other**, on matters of shared competencies with Member States.
6. As Parliament has already advocated¹, the Commission and the Member States should not only check the compliance of future legislative proposals with the Charter of Fundamental Rights, but also with all European and international instruments regarding fundamental rights to which the Member States are parties. **The Charter of Fundamental Rights, its binding nature and its suitability, as well as the accession of the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)**, will also improve respect for fundamental rights in this field. The introduction of the ordinary legislative procedure will give impetus to the legislative process as well.
7. The multiannual programme for the FSJA should continue to be debated in an annual debate which should focus on the protection of fundamental rights in the European Union, on the implementation of the Charter of Fundamental Rights and on Member States' compliance with the values and principles laid down by the new Article 6 of the Treaty on European Union (TEU)². It should be based on reports from the Council, the Commission and the European Union Agency for Fundamental Rights (FRA). Parliament shares the view of the 'Trio Council Presidencies'³ (France, Czech Republic and Sweden)

¹ See Parliament's resolution of 15 March 2007 on compliance with the Charter of Fundamental Rights in the Commission's legislative proposals: methodology for systematic and rigorous monitoring (OJ C 301 E, 13.12.2007, p. 229).

^{2[2]} It should be noted that according to current Parliamentary rules, the Committee on Civil Liberties, Justice and Home Affairs is responsible for most FSJA-related policies and for the "alert system" outlined in Article 7 TEU.

³ Draft 18-month programme of the Council, Council doc No. 10093/08.

that a "possible review of the mandate of the Agency for Fundamental Rights will be undertaken by 31 December 2009" and that such a review gives the opportunity to deepen cooperation with the Council of Europe, its Secretary General, its Commissioner for Human Rights and its relevant Parliamentary Assembly committees.

New methods of cooperation involving national parliaments in the FSJA policies

8. The main problem encountered by Parliament, when exercising shared legislative responsibilities with the Council in respect of police and judicial cooperation in criminal matters, will be access to relevant information in the Member States. By reason of the very sensitive issues dealt with as part of FSJA-related policies, it is more than necessary to implement as soon as possible the new Treaty provisions on **transparency** in the EU institutions and also to allow Parliamentary scrutiny of confidential information such as that dealt with by Europol, the EU Joint Situation Centre (SitCen) and the future Standing Committee on Internal Security (COSI) (Article 71 TFEU). The new Article 15 TFEU, by extending the current right of access to Parliamentary, Commission and Council documents to all EU institutions and agencies (Article 255 EC Treaty) will improve the accountability of the EU institutions, notably in these fields.
9. In the same perspective of democratic accountability, it is essential in Parliament's interest:
 - a) to associate national parliaments in a permanent way when defining the FSJA general strategies, adopting the legislative measures or evaluating their impact at national level¹.
 - b) to be provided with the Commission's formal position² on Member States' initiatives, notably on the possible impact of the proposed new rules on the protection of fundamental rights and preservation of the European legal order.
 - c) to involve civil society by taking into account the provisions of the Treaty of Lisbon concerning the citizens' initiative, by informing citizens about this new right and by ensuring that the regulation to be adopted for the implementation of the "Citizens Initiative" creates clear, simple and user-friendly conditions for the exercise of that right.
 - d) to associate civil society networks which would interact with European and national institutions in respect of the FSJA (see the networks linked with the FRA, the European Forum for Criminal Justice, etc...).
10. A more general issue will be how to implement, as far as FSJA-related policies are concerned, the new Treaty provisions on delegated and implementing powers (Article 290 and Article 291, TFEU). A general principle to follow should be that a measure which could affect the scope of fundamental rights protection should be adopted under the delegated powers regime which gives Parliament the power to revoke the decision.
11. It must also be noted that the **Parliament will now be associated with the negotiation**

¹ See in particular Article 70 of the TFEU.

² This is already sometimes the case according to a practice launched by the Commissioner Vitorino during the previous legislature.

and adoption of international agreements by implying a fundamental rights dimension, e.g. the transmission of personal data to third countries. As a consequence, the relevant committees should also establish strong links with the corresponding institutions in the Council of Europe, the UN Agencies and with the parliaments of the third countries involved.

How to deal with pending legislative proposals in the transitional phase

12. In the transitional period Parliament will face several changes in the form and substance of pending legislation. For the Committee on Civil Liberties, Justice and Home Affairs, Parliament should maintain its insistence on reaching an **inter-institutional agreement** which, in relation to pending third pillar legislative proposals, should provide for the equivalence of the consultation procedure with the first reading of the codecision procedure, so as to allow full judicial scrutiny.

Therefore, all third pillar pending proposals that have a limited impact on fundamental rights and freedoms may be adopted without delay, e.g. the framework decisions on the enforcement of decisions rendered in absentia, the decision on the strengthening of Eurojust, the decision on the European Judicial Network. All these files are important for the improvement of judicial cooperation.

13. Another concern for Parliament will be to agree with the Council to postpone, after 1 January 2009, the measures **that will fall under the codecision regime and which Parliament considers to be politically inappropriate in their current formulation.** A typical proposal falling within this category is the proposal for a framework decision on the use of Passenger Name Record (PNR) for law enforcement purposes.
14. Another sensitive pending legislative proposal affected by the change of procedure is the framework decision on the protection of personal data in the framework of police and judicial cooperation in criminal matters. This proposal covers only partially the legal vacuum which will exist after the abolition of the third pillar. A possible two-step strategy could be to adopt the current third pillar proposal on condition that it is complemented with a new text immediately after the entry into force of the Treaty of Lisbon.
15. There are also two pending procedures in the field of legal migration, namely the *conditions of entry and residence of third-country nationals for the purposes of highly qualified employment (blue card)* and the *single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State*. If those proposals are not adopted before the entry into force of the Treaty of Lisbon, the procedure must be restarted from the beginning.
16. Some legislative proposals have been pending for years because of the impossibility of reaching a unanimous decision, e.g. the framework decision on procedural rights in criminal proceedings, but they are not obsolete. They are more urgent and necessary than ever, and the ordinary legislative procedure will provide a way out of these impasses.

17. There is also a pending proposal approved by Parliament to transform the legal basis of Europol (currently a Convention) into a third pillar decision providing financing for Europol from the Community budget). If not adopted before the entry into force of the Treaty of Lisbon, Parliament should re-open the procedure in order to transform Europol into a genuine Community body.
18. Where Member States make use of the emergency blocking procedure provided for in the TFEU in relation to criminal matters (Articles 82(3) and 83(3)), the Chair of the Committee on Civil Liberties, Justice and Home Affairs will write to the European Council expressing the current position reached in its debates.
19. It would appear that after 1 January 2009, the most urgent initiatives that the Commission should take then now on will be linked with:
 - a) the EU obligation to ratify the ECHR;
 - b) the EU obligation to ratify international agreements negotiated but not yet concluded under Article 24 of the current EU Treaty;
 - c) the Court of Justice requirements (see the case of the Black Lists regulation);
 - d) the setting up of a **European Public Prosecutor's Office** to improve Eurojust.

In the same perspective, the Commission should take the initiative to bring current third pillar legislative instruments with a fundamental rights dimension into the Community pillar (e.g. Europol). A change of legal basis for current third pillar instruments would also ensure the competence of the Court of Justice before the 5 year deadline (see Article 10 of the Protocol on transitional provisions).

20. Parliament welcomes the Trio Presidency assessment that "Coercive measures should be accompanied by corresponding rules to strengthen the rights of the individual, whether a suspect, victim or witness. The possible development of the rights of victims will be examined on the basis of the Commission's assessment of the implementation of the Framework Decision on the Standing of Victims in Criminal Proceedings. After the entry into force of the Treaty of Lisbon, a proposal for a legal instrument on procedural rights in criminal proceedings will be expected from the Commission or from Member States."

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	24.6.2008
Result of final vote	+: 43 -: 2 0:
Members present for the final vote	Alexander Alvaro, Emine Bozkurt, Philip Bradbourn, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Esther De Lange, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Armando França, Urszula Gacek, Kinga Gál, Patrick Gaubert, Roland Gewalt, Jeanine Hennis-Plasschaert, Lívia Járóka, Ewa Klamt, Magda Kósáné Kovács, Stavros Lambrinidis, Henrik Lax, Roselyne Lefrançois, Baroness Sarah Ludford, Claude Moraes, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Martine Roure, Inger Segelström, Csaba Sógor, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Evelyne Gebhardt, Ignasi Guardans Cambó, Sophia in 't Veld, Ona Juknevičienė, Sylvia-Yvonne Kaufmann, Nicolae Vlad Popa, Johannes Voggenhuber