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Committee on Civil Liberties, Justice and Home Affairs

2007/2286(INI)

18.12.2007

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on the Treaty amending the Treaty on European Union and the Treaty establishing the European Community (Lisbon Treaty)
(2007/2286(INI))

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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 new Treaty: a long-awaited way out of a legal and institutional schizophrenia in the policies related to the area of freedom, security and justice

1. Welcomes the following general improvements introduced by the new Treaty as regards the policies related to the area of freedom, security and justice:
 - (a) making legally consistent, binding and transparent, at Treaty level, the relationship between the fundamental rights outlined in the Charter of Fundamental Rights of the European Union and the related EU policies needed to ensure the protection and promotion of those rights. With a binding Charter, the EU legislator will now be able to implement in a more consistent way all policies which could affect the fundamental rights of a person. This will be the case not only as regards the policies expressly comprised in the area of freedom, security and justice, such as the right of asylum, or the right to a fair trial, but also as regards the more general policies linked to the protection of human dignity against any form of discrimination, the protection of minorities, the right to transparency and to sound administration at European level, social rights and the right to data protection. The accession to the European Convention on Human Rights will, moreover, strengthen this relationship by also making the EU institutions accountable before the European Court of Human Rights;
 - (b) bringing to an end the schizophrenic institutional and legal situation created fifteen years ago by the Treaty of Maastricht, which introduced a parallel, temporary legal regime for justice and home affairs policies (the so-called "third pillar"). By re-establishing the full competence of the Court of Justice, the rule of law will be reinstated where it is still lacking, and by associating the European Parliament in codecision the democratic legitimacy of these policies will be substantially improved;
 - (c) strengthening the EU's democratic accountability by extending the codecision procedure (the "ordinary legislative procedure") to measures concerning police and judicial cooperation in criminal matters. A further point to be welcomed is that Parliament's assent will be required where the Council wishes to establish minimum rules on "other" specific aspects of criminal procedure, to create a European Public Prosecutor's Office out of Eurojust and to extend the powers of the European Public Prosecutor;
 - (d) associating the European Parliament in the conclusion by the EU of international treaties. Hitherto, despite Article 21 of the EU Treaty, which provides for the European Parliament to be consulted, it has never been consulted by the Council even when the treaty under negotiation was clearly a "main aspect of the common foreign and security policy" (as in the case of the EU-US Agreement on extradition and mutual legal assistance);

- (e) abolishing, in several cases, the principle of unanimity within the Council. The qualified majority system will facilitate negotiations in the EU institutions and lead to the adoption of higher standards of fundamental rights protection (by contrast, the unanimity principle favours the adoption of a minimum common denominator and in several cases raises questions as to the added value of EU legislation).

By aligning the procedures in respect of qualified majority voting and codecision, the new Treaty will make it easier to adopt, within a consistent political framework, measures which now fall partly within the unanimity requirement and partly within the qualified majority requirement (as is currently the case with regard to legal and illegal migration);

- (f) harmonising legislative instruments. Instead of "common positions", "framework decisions", "decisions" and "conventions" as referred to in the present Article 34 of the EU Treaty, the European Union will adopt the normal Community instruments, regulations, directives and decisions governed by Community law, which will lead to another important change, namely, the possibility of these legislative acts having direct effect;
- (g) improving transparency and accountability in the relations between the EU institutions and individual citizens, civil society, political parties and national parliaments. In this regard, the fact that, for policies related to the area of freedom, security and justice, a specific regime has been established whereby the Commission, Member State governments and the European and national parliaments are to be involved in assessing the impact of these policies within the EU is extremely beneficial. As regards good governance within the EU, Parliament calls on the Commission and the Council to speed up the deliberations on the practical implementation of the plan to establish a European Public Prosecutor's Office, as a main prerequisite for the realisation of the goals set out in the first sentence of this point;

2. Regrets that the price to be paid for these improvements has been that:

- (a) according to Article 10 of the Protocol on transitional provisions to the Treaty, the measures adopted under the third pillar regime will, for a period of five years after the entry into force of the new Treaty, remain beyond the control of the Commission and, moreover, of the Court of Justice. It is hard to understand why the Member States decided to protract for such a long period a situation which they themselves recognised as being legally flawed. The question is now how to minimize the negative impact for EU citizens:
 - an initial answer to this is to be found in the aforesaid Protocol, which provides that, where an act is amended, the transitional period will no longer apply to the amended act. The institutions should now decide whether it may not be better immediately after the entry into force of the new Treaty to amend some of the pre-existing, less satisfactory third-pillar measures;
 - a further solution could be to postpone until the period from 1 January to May 2009 the formal adoption of measures which are currently founded on the third pillar and which may affect the fundamental rights of citizens. A few months'

delay will be easily comprehensible to EU citizens if the new rules will be enforceable before the European judicature;

- (b) somewhat complex new provisions are introduced to cater for the situation where a Member State considers that a draft directive would affect fundamental aspects of its criminal justice system or where it is not possible to reach unanimity (police cooperation). In those circumstances, the Member State in question may request that the draft directive be referred to the European Council. The first reason is perfectly understandable and even justifiable, as would be the case also for other situations where a Member State is confronted by the risk of a substantial reduction in the protection of fundamental rights; the second one is more a problem of a balance of powers.

In these cases, the "ordinary" legislative procedure will be suspended for four months. In case of disagreement, and if at least nine Member States wish to establish enhanced cooperation on the basis of the draft directive concerned, the authorisation to proceed on the basis enhanced cooperation will be deemed to have been granted (and so would not need Parliament's consent, as required by Article 280 of the EC Treaty). However, where the ordinary procedure applies, it is important to stress that the adoption of the measure itself would still require codecision in conjunction with Parliament;

- (c) the system of opt-ins and opt-outs will become even more complex. Although the new provisions on enhanced cooperation will not apply to measures which build on the Schengen *acquis*, the Schengen regime will be modified (see below). Furthermore, the other opt-outs which apply to non-Schengen related measures, such as judicial cooperation in civil matters, will be extended to apply to police and judicial cooperation (see the modifications to the protocols on Schengen and the position of the United Kingdom, Ireland and Denmark);
- (d) as far as the particular situation of the United Kingdom and Ireland is concerned, it must be recalled that Parliament was not formally consulted when a separate regime was decided for those countries in the Schengen regime in 2000 and 2001. The current situation is that, where the United Kingdom has opted into the Schengen *acquis*, it must participate, and where it has not opted in, it may not participate¹. The modifications to the Schengen protocol will not change this aspect, but will add the possibility for the United Kingdom and Ireland to decline to participate in a measure building on the Schengen *acquis* in respect of which they have already opted in.

This is likely to cause further fragmentation of the rules. Parliament will not be consulted in relation to participation in a measure and the effect on Schengen *acquis*. None the less, the actual measure will still need to be adopted by codecision, where the codecision procedure applies;

- (e) Furthermore, the UK and Ireland will be able to opt out of proposals to amend Title

¹ As a result, the Council has not permitted the UK to participate in the creation of Frontex and in the adoption of Regulation (EC) No 2253/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States, and the UK has brought two actions against the Council (Cases C-77/05 *United Kingdom v Council* [2007] ECR I-0000 and C-137/05 *United Kingdom v Council* [2007] ECR I-0000).

IV measures in respect of which they have previously opted in, and they will not be bound by new data protection rules adopted on the basis of the new treaty provision exempting the UK and Ireland from the substantive rules on police and judicial cooperation in criminal matters;

3. Considers that the improvements introduced by the new Treaty outweigh its weaknesses. The EU institutions should now do their utmost to secure the successful ratification of the new Treaty by the Member States. They should also:
 - (a) inform EU citizens of their new rights and of the new EU legal framework and, by the same token, invite the Member States to launch wide-ranging information campaigns and introduce specific professional training for national judiciaries and security services, with the aim of preventing all illegal discrimination between European citizens;
 - (b) associate the national parliaments in the definition of the next multi-annual programme in the area of freedom, security and justice; this association could most appropriately take place through:
 - informal fora (such as the "Future" Group which will meet periodically during the four Council Presidencies in 2008 and 2009);
 - the formal, regular and timely transmission of all legislative preparatory texts, from the original legislative proposals onwards, in order to avoid discrimination between national parliamentarians and between European citizens;
 - (c) conduct in 2008 the negotiations for the adoption at the beginning of 2009 of all the necessary measures needed for the successful launch by the new elected Parliament, commencing in 2010, of the new area of freedom, security and justice; bearing in mind the national and/or parliamentary reservations expressed in respect of a number of legislative procedures, invites the Commission and the Council to re-examine, from the perspective of the new legal bases introduced by the Treaty of Lisbon and taking stock of the political debate, the following legislative texts;

General rights

- Framework Decision on procedural rights (2004/0113(CNS))
- Framework Decision on data protection for security purposes (to be integrated into the revision of Directive 95/46/EC) (2005/0202(CNS)) (parliamentary reservations from DK, IE, NL, SE and UK)

Judicial cooperation

- Framework Decision on racism and xenophobia (2007/2067(CNS)) (parliamentary reservations from SE, NL, DK, IE and LV)
- Framework Decision on decisions adopted "in absentia"(still to be submitted)

- Framework Decision on the European evidence warrant (2003/0270(CNS)) (parliamentary reservations from SE and DK)
- Framework Decision on the mutual recognition of convictions (2005/0018(CNS)) (parliamentary reservations from SE, NL and IE)
- Framework Decision on supervision orders in pre-trial procedures (2006/0158(CNS))
- Framework Decision on the exchange of information extracted from criminal records (2005/0267(CNS)) (parliamentary reservations from SE, FI, NL, IE, EL and DK)
- Framework Decision on EUROJUST (still to be submitted)

Police cooperation

- Framework Decision on fighting organised crime (parliamentary reservation from SE)
 - Framework Decision on access to VIS data for security purposes (to be integrated as an amendment to the VIS Regulation) (2005/0232(CNS))
 - Framework Decision on access to EURODAC for security purposes (to be integrated as an amendment to the VIS regulation) (2006/0310(CNS))
 - Framework Decision on EUROPOL (consultation of European Parliament pending);
4. Declares its willingness to participate, in a spirit of cooperation with the Commission and the Council Presidency, in the redrafting of these proposals during the course of 2008, and reserves its right to make any formal recommendations necessary to improve the political agreements already reached, as provided for in Article 39 of the EU Treaty; to this end, proposes the creation from the beginning of 2008 of a high-level working group competent to discuss openly the improvements to be made to the texts cited above;
 5. Welcomes the Conference Declaration concerning Article 10 of the Protocol on transitional provisions (Declaration 39a), and invites the Commission to start work, as early as 2008, on the amendment or replacement of legal acts which already appear unsatisfactory or ineffective (such as the Convention on Mutual Legal Assistance in Criminal Matters or other texts which experience shows should be improved);
 6. Considers that, from 2008, Parliament should be regularly informed of, and consulted on, the main programmes and agreements concerning third countries, such as the area of freedom, security and justice with Russia, the international strategy against trafficking in human beings, and matters relating to drugs trafficking and preventing and combating terrorism, even where such consultation is not mandatory.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	18.12.2007
Result of final vote	+ : 41 - : 1 0 : 0
Members present for the final vote	Alexander Alvaro, Roberta Angelilli, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giuseppe Castiglione, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Panayiotis Demetriou, Gérard Deprez, Agustín Díaz de Mera García Consuegra, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Urszula Gacek, Kinga Gál, Roland Gewalt, Ewa Klamt, Henrik Lax, Roselyne Lefrançois, Sarah Ludford, Viktória Mohácsi, Claude Moraes, Javier Moreno Sánchez, Rareş-Lucian Niculescu, Martine Roure, Luciana Sbarbati, Inger Segelström, Søren Bo Søndergaard, Vladimir Urutchev, Ioannis Varvitsiotis, Manfred Weber, Renate Weber, Tatjana Ždanoka
Substitute(s) present for the final vote	Edit Bauer, Genowefa Grabowska, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Jean Lambert, Antonio Masip Hidalgo, Bill Newton Dunn
Substitute(s) under Rule 178(2) present for the final vote	Manuel Medina Ortega