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REPORT

with a proposal for a European Parliament recommendation to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States
(2005/2003(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: António Costa

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PROPOSAL FOR A EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL

on the quality of criminal justice and the harmonisation of criminal law in the Member States (2005/2003(INI))

The European Parliament,

- having regard to the proposal for a recommendation to the Council by António Costa, on behalf of the PSE Group, on the quality of criminal justice in the European Union (B6-0234/2004),
- having regard to the Universal Declaration of Human Rights adopted by the United Nations General Assembly in its resolution 217 A (III) of 10 December 1948, and in particular Articles 7, 8, 9, 10 and 11 thereof,
- having regard to the International Covenant on Civil and Political Rights adopted by the United Nations General Assembly in its resolution 2200 A (XXI) of 16 December 1966, which entered into force on 23 March 1976, and in particular Articles 2, 7, 9, 10 and 14 thereof,
- having regard to the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 (ECHR), which entered into force on 3 September 1953, and in particular Articles 6 and 13 thereof,
- having regard to Title VI of the Treaty on European Union, and in particular Articles 29, 31(1)(c) and 34(2)(a) and (b),
- having regard to the Treaty establishing a Constitution for Europe, signed by the Member States in Rome on 29 October 2004, and in particular Articles I-42 and III-260 (evaluation mechanisms), III-270 and III-271 (judicial cooperation in criminal matters), and II-107 to II-110, which take over the provisions of Articles 47 to 50 of the Charter of Fundamental Rights of the European Union,
- having regard to the Community ‘acquis’ in the field of criminal justice, in particular the Convention on Mutual Assistance in Criminal Matters¹, the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States², Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence³, the proposal for

¹ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1).

² OJ L 190, 18.7.2002, p. 1.

³ OJ L 196, 2.8.2003, p. 45.

a Council framework decision on the European Evidence Warrant¹ and the proposal for a Council framework decision on certain procedural rights in criminal proceedings throughout the European Union (COM(2004)0328),

- having regard to the relevant articles of the Treaty of Accession providing for the possibility of suspending the application of certain provisions of the area of freedom, security and justice (AFSJ) in the event of failure to comply with certain rules (which requires that such rules are defined beforehand),
 - having regard to its recommendation of 14 October 2004 on the future of the area of freedom, security and justice as well as on the measures required to enhance the legitimacy and effectiveness thereof²,
 - having regard to the Hague Programme adopted by the European Council on 4-5 November 2004,
 - having regard to Rules 114(3) and 83(5) of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0036/2005),
- A. whereas Articles II-107 to II-110 of the Treaty establishing a Constitution for Europe and Articles 6 and 13 of the ECHR define the scope of the ‘right to justice’ which the Union and its Member States, each within its jurisdiction, must guarantee EU citizens,
- B. whereas this right to justice includes, in particular, the right to an effective remedy, the right of access to an impartial tribunal, the right to a fair trial, the right to be tried within a reasonable time and the right to access to legal aid, as well as full respect for the fundamental rights of persons suspected of an offence prior to criminal proceedings and the right to respectful and human treatment, pursuant to the international standards of the UN and of the European Convention on the Prevention of Torture, for convicted persons following such proceedings,
- C. whereas protection of these rights is all the more essential in criminal proceedings, in which fundamental freedoms are at stake,
- D. whereas responsibility for protecting these rights lies first and foremost with each Member State, which does so in accordance with its own constitutional set-up and legal traditions; whereas Member States need to deal with the problems existing in their own legal systems, especially those identified by the European Court of Human Rights; whereas, however, a genuine European area of freedom, security and justice must guarantee European citizens comparable treatment throughout the Union and requires greater mutual trust between Member States with a view to mutual recognition of judicial decisions, including even the surrender of their own citizens to the courts of another Member State,

¹ Proposal for a Council framework decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters (COM(2003)0688).

² P6_TA(2004)0022.

- E. having regard to the case law of the European Court of Justice in Luxembourg and of the European Court of Human Rights in Strasbourg and the fact that the case law of both courts should be consistent,
- F. whereas, since the adoption of the Tampere programme (paragraph 33), the principle of mutual recognition of judicial decisions has become a cornerstone of judicial cooperation within the Union,
- G. whereas the Treaty establishing a Constitution for Europe (Article III-260) and the Hague Programme (in particular paragraph 3.2 thereof) recognise the importance of mutual evaluation between Member States in order to strengthen mutual trust, which is a precondition for mutual recognition, as is the adoption of minimum substantive and procedural standards and the setting of reasonable time-limits,
- H. whereas the evaluation of the quality of justice in the EU should also concern the working methods of the judges and the different systems of administration of justice in the Member States; whereas this does not contradict the notion of due respect for the principle of the independence of the judiciary,
- I. whereas this evaluation needs to be grounded in a common framework of reference which can guarantee its coherence and objectivity,
- J. whereas the most appropriate tools and procedures need to be defined for the purposes of this evaluation and in order to step up exchanges of information and training opportunities in support of the quality of criminal justice in Europe,
- K. whereas the creation within the EU in recent years of European networks, such as the Association of Councils of State and Supreme Administrative Jurisdictions, the Network of Supreme Court Presidents, the Network of Supreme Courts and the European Network of Councils for the Judiciary (ENCJ), testifies to the growing awareness of the need to work together in order to improve the quality of the justice offered to the Union's citizens,
- L. having regard to the key role played by training in developing a common legal culture and a culture of fundamental rights within the Union, in particular via the actions of the European legal training network,
- M. whereas the improvement of the quality standards of justice and of its efficiency on the basis of the evaluation must enhance both the quality of substantive and procedural criminal provisions and the quality of their implementation, which is not in contradiction with due respect for the principle of the independence of the judiciary,
- N. whereas mutual evaluation requires a specific methodology, taking into account the complexity of the process,
- O. whereas the Hague Programme acknowledges the need to adopt the Treaty establishing a Constitution for Europe as a reference framework and to begin the preparatory work to ensure that the measures provided for in the Constitutional Treaty can be implemented as soon as it enters into force,

- P. having regard to the public seminar held by the Committee on Civil Liberties, Justice and Home Affairs on 18 January 2005 on promoting enhanced quality of justice in Europe,
- Q. approving the guidelines of the Hague Programme concerning the strengthening of mutual trust (paragraph 3.2.), especially by improving the quality of justice, by developing evaluation and by means of the invaluable contribution of the networks of legal institutions and organisations,
- R. recalling paragraph 3.2 of the Hague Programme, which highlights the need to respect the diversity of various structures and traditional features of national legal systems and the independence of the judiciary in each Member State, while promoting enhanced quality of justice in Europe through mutual trust,
1. Addresses the following recommendations to the European Council and the Council:
- (a) immediately initiate a European Union action to enable European citizens throughout the Union, whatever the legal and constitutional set-up of the country in which they find themselves, to enjoy the right to justice in both comparable conditions and on the basis of ever-higher quality standards, thus acquiring greater trust in the administration of justice,
 - (b) define with the Member States a 'Quality Charter for Criminal Justice in Europe' to serve as a common reference framework for all the Member States and ensure consistent and objective evaluation; this Charter should be drawn up taking due account of the experiences acquired and work done at national level, as well as at international level by the Council of Europe and the United Nations,
 - (c) in order to strengthen mutual trust between national legal systems, on a basis of respect for diversity, establish a mechanism for ongoing mutual evaluation, with the Quality Charter as its objective reference framework, taking account of experiences in other areas in which mutual evaluation is already operational (Schengen, terrorism, enlargement, etc), preparing the way, as far as possible, for the mechanism set out in Article III-260 of the Constitutional Treaty and meeting the following objectives:
 - establishment of a comparative statistical database,
 - organisation of benchmarking exercises,
 - promotion of best practices,
 - information on the nature and operation of judicial systems in the other Member States,
 - annual publication of an evaluation report on the quality of justice in Europe, accompanied by a series of recommendations to the Council and the Member States with a view to proposing improvements to the problems identified,

- (d) formally set up the mutual evaluation mechanism (procedures, structures, indicators, reports, etc.) on the basis of one or more decisions pursuant to Article 31 of the Treaty on European Union implementing the principles contained in the case law of the Strasbourg and Luxembourg Courts and the guidelines laid down by the Council of Europe's Commission for the Efficiency of Justice (CEPEJ),
- (e) involve judges' and lawyers' associations, legal experts, users of the legal system, and the national parliaments in this evaluation, for example by setting up a monitoring committee on the quality of justice, in the spirit of Article I-42(2) of the Constitutional Treaty and in accordance with the principle of subsidiarity; this evaluation could be conducted jointly by the European Parliament and the national parliaments,
- (f) recognise that the creation of an area of freedom, security and justice based on mutual trust is not possible without a minimum of harmonisation of national legislation; with regard to material criminal law, Parliament agrees with the Council that priority should be given to the offences expressly referred to in the Constitutional Treaty; with regard to procedural law, the following subjects should have priority:
- transparency in the administration of justice, as well as full respect for the fundamental rights of persons suspected of an offence prior to criminal proceedings and the right to respectful and human treatment of those convicted following such proceedings,
 - the gathering and assessment of evidence,
 - the transfer of prisoners to enable them to serve their sentences in the Member State of residence,
 - the serving of non-custodial sentences in the Member State of residence,
 - the execution of enforcement measures in the Member State of residence,
 - minimum rights of prisoners in any Member State,
 - further conviction in respect of acts already subject to harmonisation measures,
 - the system for protecting the depositions of witnesses and victims;

recognise that the evaluation should also be carried out on the basis of the above elements with a view to taking or continuing initiatives at Union level in these fields,

- (g) recognise that the corollary of the principle of mutual evaluation must be the promotion of training actions for all legal professionals, based on the European networks of legal organisations and institutions; thus, in the context of the adoption of the financial perspective for 2007-2013 and pursuant to the provisions of the Hague Programme (paragraph 3.2, subparagraph 2), provide for financial support to be given to the European networks of legal organisations and institutions, to the

exchange programmes between legal authorities initiated by Parliament (notably under heading 18 05 01 03), and to pilot schemes enabling the cooperation of agents or organisations in the Member States, with the objective of improving the quality of justice,

- (h) call on the Commission immediately to incorporate the ‘Quality Charter for Criminal Justice in Europe’, the mutual evaluation mechanism and supplementary measures for the harmonisation of certain criminal provisions into the Action Plan which it is due to submit in 2005 in accordance with the conclusions of the Hague European Council meeting; in this connection, joins the European Council in recommending that the Commission adopt the provisions contained in the Treaty establishing a Constitution for Europe as the reference framework for the Action Plan;
2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission, the governments and parliaments of the Member States, and the Council of Europe.

EXPLANATORY STATEMENT

Mindful of the distribution of competences between the Member States and the European Union, the cornerstone of the construction of the area of freedom, security and justice is mutual recognition, whilst respecting the diversity of legal systems in the various Member States.

Since the 1999 Tampere programme it has been clear that the approximation of legislation in the material and procedural fields should be restricted to the minimum necessary, and that action by the European Union and the Member States should focus on strengthening mutual trust as an essential condition for mutual recognition. The purpose of this report is to propose practical measures to strengthen mutual trust with a view to mutual recognition (based on a Quality Charter for criminal justice and an evaluation system) and to consider what minimum harmonisation measures still need to be adopted as a back-up to mutual recognition.

In order to provide Members with further information and draw up useful guidelines for the drafting of this report on the basis of the opinions of the various parties concerned, the Committee on Civil Liberties, Justice and Home Affairs is holding a public seminar on 18 January 2005 on promoting a higher quality of justice in Europe. Representatives of national and European institutions, legal practitioners and the most directly concerned NGOs have been invited to take part.

1. Introduction

Parliament is particularly attached to the full implementation of Article 29 of the Treaty on European Union, which stipulates that ‘the Union’s objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice’.

In its resolution of 14 October 2004 on the future of the area of freedom, security and justice¹, Parliament called for the promotion of a culture of fundamental rights within the EU, allowing for permanent dialogue between the highest courts, public administrations and law professionals, as well as the development of information exchange and discussion networks between judges, administrations and research workers in order to enhance mutual trust.

This culture and dialogue are essential if the judicial system is to be of the quality which its various users have been increasingly demanding in recent years. This demand is justified:

- first as a basic *democratic* requirement, recognised by several international texts, in particular Article 6 of the European Convention on Human Rights relating to the right to a fair trial, and the relevant case law;
- in *functional* terms, i.e. for the purposes of good administration and sound budgetary management, which has become one of the issues in the public debate,

¹ P6_TA(2004)0022 [A6-0010/2004](#).

- in terms of *effectiveness* both for the benefit of those standing trial and in financial terms, since an effective judicial system is a factor of competitiveness to be taken into account among the objectives of the Lisbon strategy.

To these legitimate demands in each of the Member States, the building of a European area of freedom, security and justice has added the following dimensions:

- following *enlargement*, one of the key factors in rebuilding the democratic systems after the collapse of the dictatorships in Central and Eastern Europe is the establishment of an independent and effective judicial system serving the rule of law. This was one of the aspects considered in the evaluation of the Copenhagen criteria for the accession of these countries to the Union;
- with the *mutual recognition of judicial decisions*, the 25-member Europe has entered a new phase of its history, requiring greater mutual trust and, to this end, the introduction of evaluation, information and training provisions.

2. The right to justice throughout Europe

Articles II-107 to II-110 of the Treaty establishing the Constitution for Europe (Articles 47-50 of the Charter of Fundamental Rights) and Articles 6 and 13 of the European Convention on Human Rights define the scope of the ‘right to justice’ which the Union and its Member States, each within its jurisdiction, must guarantee new citizens. This right to justice includes, in particular, the right to an effective remedy, right of access to an impartial tribunal, the right to a fair trial, the right to be tried within a reasonable time and the right of access to legal aid. It also includes full respect for the fundamental rights of persons suspected of an offence prior to criminal proceedings and the right to respect for inhuman treatment for convicted persons following such proceedings. Clearly, the protection of such rights is all the more essential in criminal proceedings, in which fundamental freedoms are at stake.

Responsibility for protecting these rights lies first and foremost with each Member State, which does so in accordance with its own constitutional set-up and legal traditions. However, the building of a genuine European area of freedom, security and justice means:

- that European citizens should be guaranteed comparable treatment throughout the Union,
- and that there should be greater trust between Member States with a view to mutual recognition of judicial decisions, including even the surrender of their own citizens to the courts of another Member State.

The draft Constitutional Treaty (Article 3-260) and the Hague programme (paragraph 3.2) recognised the importance of evaluation with a view to mutual trust and mutual recognition.

The issue of the evaluation of the quality of justice has also come under increasing scrutiny in various international fora (Council of Europe¹, World Bank, etc.).

¹ See in particular work of the Council of Europe Commission for the Efficiency of Justice (CEPEJ):

It is important to prepare as of now the practical tools for this evaluation within the European Union and to step up exchanges of information and training opportunities with a view to enhancing the quality of criminal justice in Europe.

In the Hague programme the European Council laid down the strategic guidelines for the next five years and called on the Commission to submit an Action Plan in 2005 to set out the necessary measures for the implementation of the programme.

The decisions of the Strasbourg and Luxembourg Courts already provide a common reference for the Member States. However, mutual trust would undoubtedly be strengthened if the Member States could, after defining common indicators, evaluate one another as is already the case in other sectors of the area of freedom, security and justice. If such an operation were to prove successful, an EU framework decision based, for example, on Article 31(1)(c) of the TEU could form an appropriate legal base.

3. Enhancing mutual trust

The establishment of a genuine area of freedom, security and justice is founded on a judicial culture based on the diversity of legal systems, with high-quality standards, and presupposes the establishment of a common reference framework and the adoption of a mechanism for mutual evaluation. This is necessary in order to increase mutual trust and hence boost the application of the principle of mutual recognition.

3.1. Quality Charter for Criminal Justice

The uniform application of Union law and the guarantee that all citizens may benefit fully from the area of freedom, security and justice (in whichever Member State they find themselves, depends on proper access to a judicial system with high standards of quality (cf. paragraph 3.2. of The Hague Programme).

The Member States are in fact already under an international obligation to guarantee a quality criminal-justice system, in particular by virtue of Article 6 of the European Convention on Human Rights.

The rapporteur proposes adopting a statement of principles - 'a 'Quality Charter for Criminal Justice in Europe' - which should form the basis to the evaluation of the functioning of judicial systems in the European Union. On this basis, the aim will be to incorporate all elements relating to the various judicial systems, in particular the level of respect for the principle of judicial independence, compliance with fair trial standards and the conduct of criminal proceedings, including the conditions in which sentences are to be served.

It should also help to guarantee that equivalent effects are produced in the various Member States, by introducing obligations such as the setting of reasonable deadlines for judicial proceedings¹.

http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Efficiency_of_justice/

¹ The work of the CEPEJ could serve as a basis in this area (see:

The public seminar on 18 January 2005 by the Committee on Civil Liberties, Justice and Home Affairs will be a first step in this direction. Once the quality of justice objective has been included in the Action Plan, the Commission should take the necessary measures to involve all the parties concerned in the preparatory work on the Charter and the implementation of the evaluation system. It should, to this end, draw up a set of specific criteria to assess the quality of criminal justice in the various Member States, taking due account of the work conducted within the Council of Europe and international standards, such as the United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment¹ and the European Convention for the Prevention of Torture. The Quality Charter is not a new legislative instrument. It should be a common reference framework which will guarantee consistent and objective evaluation.

3.2. The mutual evaluation mechanism

3.2.1. Background

Over the last few years various mechanisms for mutual evaluation have been adopted in the following fields:

- i. agreements on the abolition of frontiers (Schengen);
- ii. the fight against organised crime (Joint Action of 5 December 1997)²;
- iii. the fight against terrorism (Decision of 28 November 2002)³;
- iv. legal assistance in criminal matters⁴;

It should also be noted that the Council, by means of the Joint Action adopted on 29 June 1998⁵, introduced a mechanism for evaluating compliance with the '*acquis communautaire*' in the field of Justice and Home Affairs by the (then) candidate countries.

3.2.2. The Treaty establishing a Constitution for Europe

This recommendation, aimed at creating a mechanism for evaluating the quality of justice anticipates, to a certain extent, a similar mechanism envisaged in Article III-260 of the European Constitution. Under this article, the Council may, on a proposal from the Commission, adopt European regulations or decisions laying down the arrangements whereby Member States conduct objective and impartial evaluation of the implementation by the Member States of policies relating to the area of freedom, security and justice, 'in particular in order to facilitate full application of the principle of mutual recognition'. The European Parliament and the national parliaments will simply be informed of the substance and results

http://www.coe.int/T/E/Legal_Affairs/Legal_co-operation/Operation_of_justice/Efficiency_of_justice/Documents/CEPEJ%202004%2019-REV%201%20Eng2.pdf

¹ which was adopted by the General Assembly on 10 December 1984 and entered into force on 26 June 1987.

² OJ L 344, 15.12.1997, p. 7

³ OJ L 349, 24.12.2002, p., 1.

⁴ OJ C 216, 1.8.2001, p. 14.

⁵ OJ L 191, 7.7.1998, p. 8.

of the evaluation. However, the national parliaments may participate in the evaluation mechanism, in accordance with Article I-42, paragraph 2 of the draft Treaty.

The rapporteur suggests initiating an evaluation of the quality of justice without delay, involving the national parliaments and the European Parliament.

3.2.3. The Hague programme

Paragraph 3.2 of the Hague programme, approved at the European Council meeting of 4 and 5 November 2004, reiterates the importance of mutual trust between the Member States and the need to ensure that all citizens have access to high-quality judicial systems. It specifies that the implementation of the principle of mutual recognition depends to a great extent on the establishment of a system for mutual evaluation of the implementation of EU policies of the area of freedom, security and justice.

3.2.4. The functioning of the mechanism

The proposed mutual evaluation mechanism is fully compatible with respect for the independence of the judiciary. Its exclusive aim is to promote good judicial practice throughout the territory of the European Union. This culture of mutual evaluation will contribute to solidarity between the Member States and make it possible to detect discrepancies between national judicial systems, so as to ensure that all citizens benefit from comparable quality standards.

The European Parliament expects the Commission to submit a proposal for a decision to the Council at the earliest opportunity, defining the rules according to which the Member States, in cooperation with the Commission, may carry out an objective and impartial evaluation of the level of fulfilment of the criteria laid down in the quality charter for criminal justice in Europe. It will be useful to be able to count on the cooperation of European networks of legal organisations and institutions, which will ensure both the independence of legal systems and adequate contact with legal professionals, as well as the cooperation of Eurojust, which has a privileged view of the operation of judicial cooperation, and of bodies representing civil society such as NGOs.

The mechanism should have the following objectives:

- i. establishing a comparative statistical database;
- ii. launching a benchmarking exercise;
- iii. ensuring the dissemination of best practices;
- iv. publishing an evaluation report on compliance with the quality charter.

A report should be drawn up every year. As mentioned above, the national parliaments should be involved in the evaluation procedures and the annual report should be forwarded to the European Parliament.

Bearing in mind the role played by training in developing a common legal culture, it would be important to involve the European legal training network in dealing with and distributing this report.

4. Approximation of criminal legislation

4.1. Substantive provisions

The creation of an area of freedom, security and justice based on mutual trust between the Member States must include a minimum degree of approximation of national legislation, as laid down in Article 31(1)(e) of the Treaty on European Union (adoption of ‘minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking’).

Other cross-border crimes need to be covered by similar harmonisation measures. The current wording of Article 31(1)(e) of the Treaty on European Union is not adequate for effectively protecting European citizens or guaranteeing an area of freedom, security and justice.

Due account has been taken of this fact in the drafting of the Treaty establishing a Constitution for Europe. Under the terms of Article III-271, the adoption of the minimum rules will affect any kind of particularly serious crime with a cross-border dimension. The following list is mentioned: terrorism, trafficking in human beings and the sexual exploitation of women and children, drug trafficking, arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

The Hague programme establishes that priority must be given to the approximation of criminal legislation covering the types of crime explicitly mentioned in the Treaties. According to the European Council: ‘the Treaty establishing a Constitution for Europe (hereinafter ‘the Constitutional Treaty’) served as a guideline for ambition, but the existing Treaties provide the legal basis for Council action until such time as the Constitutional Treaty takes effect. Accordingly, the various policy areas have been examined to determine whether preparatory work or studies could already commence, so that measures provided for in the Constitutional Treaty can be taken as soon as it enters into force’.

The European Parliament is backing the European Council in recommending to the Commission that the Action Plan to be submitted in 2005 adopt as its reference framework the provisions laid down in the Treaty establishing a Constitution for Europe.

It is suggested that the Commission start preparatory work on the approximation of criminal legislation in relation to the crimes mentioned in Article III-271 of the Constitutional Treaty, in order to ensure that the relevant legislative acts can be adopted when the Treaty comes into force.

The European Parliament reserves the right to carry out a mid-term evaluation of The Hague Programme and to define any new priorities, in accordance with Article III-271(1)(3).

4.2. Procedural rules

Despite the adoption of the Convention on Mutual Assistance in Criminal Matters¹, the European Parliament considers that the approximation of criminal legislation systems is still clearly inadequate in some areas.

In particular, it considers that progress is needed in the following areas:

- i. the gathering and assessment of evidence;
- ii. the transfer of prisoners to enable them to serve their sentences in the Member State of residence;
- iii. the serving of non-custodial sentences in the Member State of residence;
- iv. the execution of enforcement measures in the Member State of residence;
- v. minimum rights of detainees in any Member State;
- vi. further conviction in respect of acts already subject to harmonisation measures.

It is therefore desirable that the Commission submit to the Council a legislative proposal as soon as possible on the above-mentioned matters in the field of police and judicial cooperation in criminal matters.

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The rapporteur therefore proposes that the Committee on Civil Liberties, Justice and Home Affairs adopt the attached draft recommendation pursuant to Rule 114(3) of the Rules of Procedure.

¹ OJ C 197, 12.7.2000.

EUROPEAN PARLIAMENT RECOMMENDATION TO THE COUNCIL ON THE QUALITY OF CRIMINAL JUSTICE IN THE EUROPEAN UNION B6-0234/2004

The European Parliament,

- having regard to Rule 114(1) of its Rules of Procedure,
 - whereas Articles 47 to 50 of the Charter of Fundamental Rights and Articles 6 to 13 of the European Convention on Human Rights define the scope of the 'right to justice' which the Union and its Member States, each within its jurisdiction, must guarantee EU citizens,
 - whereas this 'right to justice' includes, in particular, the right to an effective remedy, the right of access to an impartial tribunal, the right to a fair trial, the right to be tried within a reasonable time and the right of access to legal aid, and whereas protection of these rights is all the more important in respect of criminal proceedings,
 - convinced that responsibility for protecting these rights lies first and foremost with each Member State which does so in accordance with its own constitutional set-up and legal traditions, but that membership of the Union means that European citizens should be guaranteed comparable treatment throughout the Union and that there should be greater trust between Member States with a view to mutual recognition of judicial decisions, including even the surrender of their own citizens to the courts of another Member State,
 - recalling that the draft Constitutional Treaty (Article III-260) and the Hague programme (paragraph 3.2) recognise the importance of mutual evaluation between Member States in order to strengthen mutual trust, and that more appropriate tools and procedures need to be defined for the purposes of this evaluation and in order to step up exchanges of information and training opportunities in support of the quality of criminal justice in Europe,
1. Addresses the following recommendation to the Council:
 - that it define indicators and procedures, taking due account of mutual evaluations already existing as part of measures to combat terrorism and in connection with Schengen cooperation, for the establishment of a mutual evaluation system on the quality of criminal justice in the Member States;
 - that it transpose these procedures and indicators in one or more decisions based on Article 31 of the Treaty on European Union implementing the principles contained in the case law of the Strasbourg and Luxembourg Courts and the guidelines laid down by the Commission in relation to the effectiveness of justice in Europe;
 2. Instructs its President to forward this recommendation to the Council and, for information, to the Commission.

PROCEDURE

Title	Report with a proposal for a European Parliament recommendation to the Council on the quality of criminal justice and the harmonisation of criminal law in the Member States			
Procedure number	2005/2003(INI)			
Proposal(s) for recommendation(s) considered	B6-0234/2004			
Basis in Rules of Procedure	Rules 114(3) and 83(5)			
Committee responsible Date announced in plenary	LIBE 13.9.2004			
Date of decision to draw up report	16.12.2004			
Committee(s) asked for opinion(s) Date announced in plenary				
Not delivering opinion(s) Date of decision				
Enhanced cooperation Date announced in plenary				
Other proposal(s) for recommendation(s) included in report				
Rapporteur(s) Date appointed	António Costa 13.9.2004			
Previous rapporteur(s)				
Discussed in committee	24.11.2004	13.12.2004	18.1.2005	1.2.2005
Date adopted	1.2.2005			
Result of final vote	for:	37		
	against:	4		
	abstentions:	2		
Members present for the final vote	Alexander Nuno Alvaro, Alfredo Antoniozzi, Johannes Blokland, Mario Borghezio, Mihael Brejc, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Charlotte Cederschiöld, Carlos Coelho, António Costa, Agustín Díaz de Mera García Consuegra, Rosa Díez González, Antoine Duquesne, Kinga Gál, Patrick Gaubert, Adeline Hazan, Lívia Járóka, Timothy Kirkhope, Ewa Klamt, Ole Krarup, Stavros Lambrinidis, Henrik Lax, Edith Mastenbroek, Jaime Mayor Oreja, Hartmut Nassauer, Bogdan Pęk, Martine Roure, Inger Segelström, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka			
Substitutes present for the final vote	Frederika Brepoels, Panayiotis Demetriou, Gérard Deprez, Camiel Eurlings, Ignasi Guardans Cambó, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Vincent Peillon, Herbert Reul, Marie-Line Reynaud, Jan Zahradil			
Substitutes under Rule 178(2) present for the final vote				
Date tabled – A6	9.2.2005		A6-0036/2005	
Comments	...			

PROPOSAL(S) FOR RECOMMENDATION(S) CONSIDERED

Number B6	B6-0234/2004
Author(s)	
Title	The quality of criminal justice in the European Union
Committee responsible	LIBE
Committee(s) asked for opinion(s)	
Date announced in plenary	13.1.2005