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Committee on Constitutional Affairs

2007/2028(INI)

3.5.2007

OPINION

of the Committee on Constitutional Affairs

for the Committee on Legal Affairs

on the institutional and legal implications of the use of 'soft law' instruments
(2007/2028(INI))

Draftsman (*): Philip Dimitrov Dimitrov

(*) Enhanced cooperation between committees – Rule 47 of the Rules of Procedure

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SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas the European Union must respect the principle of proportionality (Article 5.2 TEC) and, therefore, refrain from resorting to legislation unnecessarily,
- B. whereas the use of 'soft law' is a widely tried and tested alternative to, or preparation for, legislation in the European Union,
- C. whereas, as well as respecting the right of initiative of the Commission, Parliament also upholds its own right to invite the Commission to make a legislative proposal (Article 192 TEC),
- D. whereas 'soft law' instruments, which have not been attributed legally binding force as such, but which, nevertheless may have certain - indirect - legal effects, have proved capable of effectively regulating some areas of community activity, in the context of, and under the conditions laid down in, the EU Treaties,
- E. whereas it is possible that the recommendations, if used without sufficient care, may result in certain acts of the Commission being ultra vires,
- F. whereas Parliament strongly supports the Interinstitutional Agreement on better law-making of 2003,
- G. whereas there is currently a dispute as to how to make the regulatory function of the European Union more efficient with regard to both 'soft law' and 'hard law',
- H. whereas 'soft law' does not provide full judicial protection,
- I. whereas extensive recourse to 'soft law' instruments shall signify a shift from the unique Community model to that of a traditional international organisation,
- J. whereas 'soft law' instruments are to be used as preparatory instruments for binding legislative acts, subject to being replaced when the appropriate legislative will is arrived at; and whereas they assist in the interpretation and enforcement of Community legislation,
- K. whereas as 'soft law' constitutes a widely accepted interactive form of EU regulatory policy along with coordination, cooperation, negotiation and hierarchy,
 - 1. Stresses that each EU institution, including the European Council, must consider both legislative and non-legislative options when deciding, on a case-by-case basis, what action, if any, to take;
 - 2. Stresses the fact that 'soft law' is established practice, and that it should be approached with particular caution;

3. Urges the Commission to make a particular effort to guarantee transparency, visibility and public accountability in the process of adopting non-binding Community acts, as well as to increase the use of impact assessment in the decision-making process;
4. Calls on the Commission to develop, in cooperation with Parliament, a modus operandi that guarantees the participation of the democratically elected bodies including, possibly, by means of an interinstitutional agreement, and thus more effective monitoring of the need for the adoption of 'soft law' instruments.

PROCEDURE

Title	Institutional and legal implications of the use of 'soft law' instruments		
Procedure number	2007/2028(INI)		
Committee responsible	JURI		
Opinion by Date announced in plenary	AFCO 15.2.2007		
Enhanced cooperation – date announced in plenary	15.2.2007		
Drafts(wo)man Date appointed	Philip Dimitrov Dimitrov 1.3.2007		
Previous drafts(wo)man			
Discussed in committee	20.3.2007	10.4.2007	2.5.2007
Date adopted	2.5.2007		
Result of final vote	+: –: 0:	18 0 0	
Members present for the final vote	Enrique Barón Crespo, Richard Corbett, Brian Crowley, Philip Dimitrov Dimitrov, Andrew Duff, Maria da Assunção Esteves, Ingo Friedrich, Anneli Jäätteenmäki, Sylvia-Yvonne Kaufmann, Jo Leinen, Íñigo Méndez de Vigo, Rihards Pīks		
Substitute(s) present for the final vote	Klaus Hänsch, Gérard Onesta, Georgios Papastamkos, Jacek Protasiewicz, György Schöpflin, Alexander Stubb		
Substitute(s) under Rule 178(2) present for the final vote			
Comments (available in one language only)			