

EUROPEAN PARLIAMENT

2004



2009

Committee on Civil Liberties, Justice and Home Affairs

2004/2129(INI)

26.10.2004

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Constitutional Affairs

on the draft Treaty establishing a Constitution for Europe
(2004/2129(INI))

Draftsman: Stefano Zappalà

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 European Parliament

1. Commends the draft treaty establishing the first constitution for Europe and considers that the progress made with regard to the area of freedom, security and justice would by itself justify ratification by the Member States of the draft Treaty;
2. Considers that the Constitutional Treaty meets in full the expectations expressed by the European Parliament with regard to the creation of a genuine common area of freedom, security and justice;
3. Welcomes the fact that:
 - the Constitutional Treaty makes good the democratic deficit that characterises the decision-making process in matters of judicial and police cooperation in criminal matters, and that the merger of the Community into the Union, the extension of the legislative procedure to former third-pillar areas and the introduction of qualified majority voting mean that a genuine 'Union of the rule of law' can at last be achieved;
 - the Charter of Fundamental Rights is to be incorporated into the Constitutional Treaty, which will guarantee the effective protection of those rights in the European Union, this being a prerequisite for the completion of the area of freedom, security and justice;
 - the Treaty provides that the European Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms;
 - thanks to the abolition of the pillar structure, it will at last be possible to have a common legal basis for data protection, which will allow the necessary harmonisation of existing provisions, particularly in the field of criminal and police cooperation;
 - the right of legislative initiative for a quarter of the Member States has been recognised in the area of judicial cooperation on criminal matters and police cooperation; Member States may thus participate actively in the creation of the area of freedom, security and justice, proposing to the Union solutions to matters that transcend national boundaries;
 - immigration policy is to become a fully-fledged European Union policy, transcending the concept of the straightforward protection of internal security and promoting solidarity and the equal distribution of responsibilities among the Member States in this domain, and that a specific legal basis is to be introduced for the integration of third-country nationals residing legally in the Union;

- considerable progress has been made in the context of the completion of a European area of freedom, security and justice and of the promotion of the quality of justice at European level;
 - the Constitutional Treaty defines the outlines of European law and order as safeguarding the security not only of Member States but also of the European Union, both internally and externally, and that the role of the Commission, as well as agencies such as Eurojust and Europol, is to be enhanced to this end;
 - Europol will no longer have to have an intergovernmental agreement as its basis, but rather an ordinary European law, and will conduct its activities under the supervision of the European Parliament, national parliaments and the Court of Justice;
 - the Treaty confers a suitable legal basis on the Council for deepening the area of freedom, security and justice, notably by extending the scope for harmonisation of substantive criminal law or the competences of the European Public Prosecutor's office;
 - in particular, the role of the national parliaments is strengthened, especially as regards monitoring of respect for the principles of subsidiarity and proportionality, participation in the Eurojust evaluation processes and implementation by the Member States of the policies relating to the area of freedom, security and justice;
 - the Union's fight against trafficking in people and sexual exploitation of women and children will be facilitated by the Constitutional Treaty (particularly by means of Article II-65(3), which prohibits trafficking in human beings, and Article III-271(1), which provides for the possibility of establishing minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime, such as trafficking in human beings and sexual exploitation of women and children);
4. Notes that in certain areas moves could have been made towards further integration, and in particular questions:
- the limitations imposed by the introduction of the clause (Article III-267(5)) granting Member States alone the power to determine the volumes of admission to their territory of third-country nationals, which effectively precludes the possibility of establishing a genuine European policy for the management of legal admissions to the European Union;
 - the appropriateness of incorporating the 'emergency brake' clause (Article III-270(3)) for judicial cooperation in criminal matters;
 - the appropriateness of some Member States being able to enjoy special arrangements for derogation from the Constitution;
 - the European Parliament's limited role in the area of judicial cooperation in civil

matters as regards family law;

- the fact that the clauses relating to the freezing of funds, financial assets and economic gains needed to achieve the objectives of the area of freedom, security and justice are limited, contrary to what was proposed in the Convention text, to the area of the prevention and combating of terrorism, and exclude the prevention and combating of organised crime and of trafficking in human beings;
 - the proposed limitations on the powers of the European Public Prosecutor's office; believes that its powers should possibly be extended beyond the sole area of the protection of the Union's financial interests (Article III-274);
5. Recommends that the Commission on Constitutional Affairs call on the Member States to ratify the Constitutional Treaty at the earliest opportunity.

PROCEDURE

Title	Draft Treaty establishing a Constitution for Europe		
Procedure number	2004/2129(INI)		
Committee responsible	AFCO		
Enhanced cooperation	-		
Draftsman Date appointed	Stefano Zappalà 13.9.2004		
Discussed in committee	22.9.2004	5.10.2004	25.10.2004
Date suggestions adopted	25.10.2004		
Result of the final vote	for:	36	
	against:	3	
	abstentions:	0	
Members present for the final vote	Alexander Nuno Alvaro, Roberta Angelilli, Edit Bauer, Kathalijne Maria Buitenweg, Giusto Catania, Charlotte Cederschiöld, Carlos Coelho, António Costa, Agustín Díaz De Mera García Consuegra, Antoine Duquesne, Kinga Gál, Timothy Kirkhope, Ewa Klamt, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Sarah Ludford, Edith Mastenbroek, Jaime Mayor Oreja, Claude Moraes, Hartmut Nassauer, Athanasios Pafilis, Martine Roure, Michele Santoro, Luciana Sbarbati, Inger Segelström, Ioannis Varvitsiotis, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka		
Substitutes present for the final vote	Gérard Deprez, Luis Francisco Herrero-Tejedor, Sophia Helena In 't Veld, Jean Denise Lambert, Marco Pannella, Vincent Peillon, Agnes Schierhuber, Antonio Tajani		
Substitutes under Rule 178(2) present for the final vote			