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COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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QUESTIONNAIRE FOR THE HEARING OF THE COMMISSIONER-DESIGNATE FOR POLICIES RELATING TO THE AREA OF FREEDOM, SECURITY AND JUSTICE

***(NB: In theory** the Commissioner-designate should have taken over the Commission's June 2004 submission to the European Council on Tampere II (COM(2004)401 – SEC(2004)680 and SEC(2004)693), but should inform Parliament which points he or she does not intend to take over, or intends to amend, stating the reasons for doing so.*

As the first stage in establishing the area of freedom, security and justice (AFSJ) was completed on 1 May 2004, the consistency and balance provided for in the Tampere European Council's October 1999 conclusions as between the different demands of freedom, security and justice need to be restored. That can now be done, in particular in the light of the agreement reached on the draft Constitution, which has eliminated all uncertainty as to the political objective and will strengthen and simplify the constitutional framework for building the AFSJ through action which is more in keeping with (a) the democratic principle and (b) fundamental rights and is (c) more effective.

Action more in keeping with the democratic principle: In this sphere, which, more than others, concerns citizens' interests and fundamental rights as much as it does policies which Member States find sensitive, decisions are still taken, regrettably, under procedures not wholly in keeping with the democratic principle[1] which the Unions claims to be guided by (Article 6(1) of the EU Treaty and Article I-45 of the draft Constitution). Thanks to the Constitution, the legislative procedure will in principle become the standard procedure in two years' time; clearly, though, measures already have to be taken on the basis of the Treaties in force and political commitments entered into and oft-restated.

[1] As a procedure, codecision with Parliament remains the exception. In connection with consultations, where they are provided for, exhaustive information is not supplied; most are subject to strict time limits. Where a draft is rejected, there are no repercussions as far as the Council is concerned. Parliament is neither consulted on, nor even notified about, the adoption of 'common positions' at international level.

Accordingly, does the Commissioner-designate undertake, in agreement with the other Members of the College, to exploit the full scope of the Treaties in force for bolstering the principle of democratic representation of the Union's institutions and, in particular,

1. to encourage the Council to adopt by 5 November 2004, at the latest, the decision it should already have taken on 1 May 2004 to change over to the codecision procedure for measures under Title IV of the EC Treaty, in particular as regards immigration (Article 67 of the EC Treaty and Declaration No 5 annexed to the Treaty of Nice)?

2. to acknowledge a genuine right for the European Parliament to promote legislative initiative, in particular where the proposed legislation falls within a codecision area (Article III-234 of the draft Constitution, replacing Article 192 of the EC Treaty)?

3. not to overrule Parliament rejection either of ordinary legislative proposals or of Commission proposals adopted under the 'comitology' procedure, and to amend Council Decision 468/99 accordingly in the process (as provided for by Article I.35(2) of the draft Constitution)?

4. to propose to the Council that the European Parliament be at least systematically consulted when any international agreement is concluded or a third-pillar 'common position' is adopted, given that there is no parliamentary scrutiny even at national level?

5. to amend Regulation No 1049/2001 so as (a) to ensure that the Council's legislative debates are transparent (as provided for by Articles I-23(5), I-45(3), I-49(2) and II-42 of the draft Constitution) and (b) to ensure parliamentary access to, and/or scrutiny of, confidential information handled by the institutions with regard to the AFSJ (as is standard practice at national level in dealings between national parliaments and governments)?

6. to give the committee exhaustive information and systematically adopt a position on Member States' legislative initiatives or on the implementation of measures adopted by the EU?

7. to provide the European Parliament and national parliaments, during the annual debate on the AFSJ, with more detailed information on problems encountered in the process of establishing the area, providing a comprehensive account of national positions and reservations and possible solutions for overcoming them?

Action more in keeping with fundamental rights: This covers, in particular, instances where the Union adopts measures helping to establish a European public policy environment in which, regardless of Member States' legal traditions, all European citizens should be equal before the law and enjoy a high degree of protection anywhere on Union territory. Until the Treaty of Amsterdam, protection of human rights was above all an 'external' constraint in connection with Union policies (compliance being verified by the courts at European level). Since then, however, and to an even greater extent under the Constitution, it has become a primary objective for the legislative authority and a criterion both for taking old legislation in a different direction and for fashioning new legislation[1].

[1] Fostering transparency, equal opportunities, privacy protection, pluralism and measures to combat discrimination and enhance citizenship are becoming separate objectives alongside the traditional objectives of fostering the internal market, media competition, dissemination of information, etc.

What action does the Commissioner-designate intend to take to strengthen this requirement, since it alone can ensure that the Member States and citizens have faith in each other in the European integration process. In particular, does the Commissioner-designate undertake

8. via the prospective European Agency for Fundamental Rights, to foster a genuine culture of fundamental rights and to provide the resources and tools for promoting ongoing debate and exchanges of information between national and European parliamentarians, and between European-level courts and Member States' constitutional courts, with a view to sharing best experience and practices and laying down reference norms at Union level?

9. to step up, on the basis of Article 13, Union action to combat discrimination and promote the protection of minorities, and to put in place a transparent system to give citizens assistance and conduct a dialogue with the Member States, in particular where the safeguarding or rights conferred by the Treaties is involved?

10. to develop legal immigration, if necessary by laying down European quotas, while ensuring the integration of immigrants, as is envisaged by the new legal basis provided for by the constitutional treaty (Article III-168(4))?

11. to promote, by means of appropriate initiatives, better quality of both civil justice (in cross-border cases) and criminal justice by laying down minimum guarantees for defendants in order to overcome any Member State reluctance to implement the European arrest warrant and other measures concerning mutual recognition?

12. to promote high standards for the protection of privacy and personal data in all areas of EU action by revising strategies for systematic and disproportionate gathering of personal data from private individuals (as stated by Parliament in its resolution of 31 March 2004)?

13. to submit as soon as possible a proposal for a framework decision laying down standards for third-pillar data protection and establishing, as a European authority, a committee made up of national authorities (meeting at Community level within the group provided for by Article 29 of Directive 95/46)?

More effective action: It is now obvious even to the European Council that it is virtually impossible to take decisions or - if they do actually manage to be taken - put them into practice; and that often makes the Union's response more virtual than real.

While, unlike for traditional Community policies, the responsibility of Member States in the security policy field should itself be stepped up, since each state needs to take account of the others' requirements, what action does the Commissioner-designate intend to take:

14. to step up operational cooperation between Member States, while establishing indicators, and to lay down common effectiveness standards to be observed by Member State administrations so as to ensure that there is a high degree of protection, e.g. at borders, in terms of both preventing and combating organised crime and terrorism?

15. to ensure, as soon as possible, that there is a legal basis and that Parliament genuinely is given information and involved, in particular when security research projects with several million euros in funding are established (PASR-2004)?

16. to develop a European security plan on the basis of national security plans, while restricting direct intervention within both institutions and agencies (Europol, Eurojust plus the prospective European Public Prosecutor's Office) to what is absolutely essential?

17. to introduce security communications and information exchange networks, e.g. in connection with a European criminal records function, while ensuring that there is democratic oversight both by the European Parliament, and by national parliaments and European-level courts, of any cooperation which develops between intelligence services?

18. to ensure that the establishment of the AFSJ is not affected by the particular circumstances of certain Member States, that the Schengen rules (now applying to 22 Member States) are accepted as standard Union practice and that enhanced cooperation can develop where Member States prevent the adoption of measures ensuring a higher level of protection for fundamental rights?

19. to ensure not only that the budget resources given over to the AFSJ - in particular when the financial perspective is revised for the period 2007-2013, when it will include a specific heading entitled 'citizenship, freedom, security and justice', will make it possible to realise the political objectives laid down in the prospective Tampere II programme, but also that there is efficient and transparent management of those resources?