

European Parliament

Resolution on the progress made in the EU towards the Area of freedom, security and justice (AFSJ) (Articles 2 and 39 of the EU Treaty)

(30 November 2006)

The European Parliament,

- having regard to Article 2 of the EU Treaty which sets the Union the objective of maintaining and developing itself as an area of freedom, security and justice,
 - having regard to Article 39 of the EU Treaty which instructs Parliament to hold a debate on the progress made in this area,
 - having regard to the answers given by the Council at the debate of 27 September 2006 to Oral Question B6-0428/2006, and to the Commission's presentation of its communications reporting on the implementation of the Hague programme and future prospects,
 - having regard to the debates held at the parliamentary meeting of 2-3 October 2006, organised in conjunction with the Finnish Parliament,
 - having regard to Rule 108(5) of its Rules of Procedure,
- A. whereas in a world which is more and more globalised and subject to crises and persistent tensions, economic inequalities and ever-increasing migratory flows, ideological and cultural confrontations which affect a growing number of individuals, and terrorist threats of an unquantifiable scale, the demand of European citizens for the right to enjoy greater freedom, security and justice within the Union is constantly increasing,
- B. whereas seven years after Tampere European Council conclusions of 15-16 October 1999, the European Union does not have a coherent immigration policy, and in particular lacks a legal immigration policy,
- C. noting that those external pressure factors
- could not have been taken into account in 1999 by the European Council when it adopted the first Tampere Programme, and that they have not been adequately taken into account since the establishment of the Hague Programme in November 2004,
 - are already factors that Member States cannot control, and which will become very difficult for the Union itself to control, unless it rapidly equips itself with the means to realise its ambitions and becomes a credible spokesman for the policies linked to the area of freedom, security and justice (AFSJ) vis-à-vis international organisations such as the United Nations^{1[1]} or, at regional level, the African Union with regard to migration and development policies or, on the European continent itself, without more

^{1[1]} Particularly the Security Council and its Counter-Terrorism Committee, the Human Rights Council and the specialised agencies which, in different ways, may influence EU measures on AFSJ.

structured cooperation with the Council of Europe and its bodies responsible for promoting the rule of law and the protection of fundamental rights^{2[2]},

- D. whereas, given the absence of a consistent *acquis* and shared positions amongst its Member States, the EU is not in a position to exercise any serious influence, in the in relation to AFSJ, on the position of third countries, including its allies such as the USA, and that this could affect its credibility, in addition to forcing it to yield political and strategic initiative to those countries,
- E. whereas the EU's weakness at a strategic level is not only due to the fact that these policies were only recently moved to EU level (even if the first attempts to create a European judicial area go back as far as 1975, when the continent first suffered a wave of terrorist attacks), but, above all, to the fact that this move was made in the Maastricht and Amsterdam Treaties, with many reservations on the part of the Member States, and whereas the move to the ordinary legislative regime provided for as early as 1993, has taken place only by limited progress in 1999, 2001, 2004 and finally 2005 with the (partial) activation, thanks to the Hague Programme, of the 'passerelle' provided for by Article 67 of the EC Treaty,
- F. recalling that even today the proliferation of legal bases for a single political objective, the proliferation of jurisdictional conflicts and appeals to define the scope of the institutions' powers, the unanimity rule and, above all, the absence of genuine democratic and jurisdictional control all make the current situation of the third pillar policies extremely fragile from the point of view of respect by the EU for the principles on which it claims to be founded (Article 6 EU Treaty),
- G. warning against the risks of pursuing outside the European Treaties the development of topics which are already the subject of proposals put forward by the EU institutions; wishing to launch an open debate based on fair cooperation amongst the EU institutions and with the Member States' parliaments concerning the incorporation of the Prüm Treaty, signed on 27 May 2005, into the EC Treaty, in order to enable Parliament to exercise democratic control,
- H. noting that the Member States are more aware than anyone of the deficiencies of this situation from a democratic, jurisdictional and indeed operational point of view and that, by signing the Constitutional Treaty, they have committed themselves to making obligatory from November 2006 what was under the Maastricht Treaty merely an option open to the Council,
- I. convinced that activating the 'passerelles' provided for by Articles 67 the EC Treaty and 42 of the EU Treaty is not only appropriate to the current constitutional situation but also compatible with the constitutional situation of the future, and that consequently, the Council should also be activating it under the aegis of Article 18 of the Vienna Convention on the Law of Treaties, which commits its signatories to cooperating loyally to create the most favourable conditions with a view to its future ratification,
- J. endorsing the proposal by the Commission to activate, during 2007, the 'passerelles' provided for in Article 67 of the EC Treaty (by abolishing the restrictions on the jurisdiction of the Court of Justice of the European Communities with regard to matters falling under Title IV of

^{2[2]} European Court of Human Rights, Secretary-General of the Council of Europe and Commissioner for Human Rights.

the EC Treaty) and Article 42 of the EU Treaty, as already recommended to the European Council in its resolution of 14 October 2004³[3],

- K. recalling that the activation of the ‘passerelle’ leaves open the possibility for the Council to decide on its voting conditions and that in this context various solutions could be found to preserve unanimity in certain cases and/or for specific periods, provided that there is, in any event, codecision with Parliament in all matters affecting European citizens’ rights, since Parliament could not be viewed as having less decisive weight than the smallest Member State,
- L. whereas the ‘passerelles’ activated on the basis of the existing Treaties are already consistent with the framework imposed by the Constitutional Treaty and do not go beyond what the latter provides for (e.g. with regard to quotas in migration policy),
- M. whereas it is also essential that it be defined what the ‘passerelles’ should be leading to, and that if fresh objectives cannot be added to the existing Treaties, it would be more than timely to provide, within two years, for a consolidation/simplification of the Union *acquis* in the field of AFSJ, as it has gradually been shaped hitherto by cooperation between Member States, particularly since the Maastricht Treaty. Such consolidation and simplification should aim to eliminate the numerous inconsistencies and, as far as possible, make the *acquis* of enhanced cooperation (as is the case for the Schengen *acquis*) as widespread as possible,
- N. having regard to the strong demand from citizens and practitioners for an improvement in practical cooperation under the Treaties as they stand at present, as well as from the Council, within which, to date, there has been no agreement enabling genuine progress to be made with this cooperation,
- O. whereas the new Member States which meet the Schengen criteria and are in a position to join the system must not be unfairly penalised on account of significant delays in the implementation of Second-Generation Schengen Information System (SIS II),
- P. whereas Parliament has demonstrated remarkable speed and a noteworthy spirit of compromise in having secured an agreement at first reading on the three legislative texts which constitute the package relating to the legal basis for SIS II,
- 1. Calls on the Commission to submit to the Council in 2007 the draft decision activating Article 42 of the EU Treaty and bringing the provisions concerning police, including Europol, and judicial cooperation on criminal matters, including Eurojust, under Community competence (Title IV of the EC Treaty);
- 2. Calls on the Council:
 - to adopt as a matter of urgency, in keeping with Parliament’s opinion, the draft decision based on Article 67(2) EC Treaty with regard to removing the restrictions on the powers of the Court of Justice in the context of Title IV of the EC Treaty and to do all it can to speed up the handling of preliminary rulings in AFSJ matters;
 - to provide for extending codecision with Parliament and qualified majority voting in Council to all areas, such as legal immigration or the integration of third-country nations, where this is in keeping with the Treaties currently in force, as planned in 2004 by the Dutch Council Presidency;

³[3] OJ C 166 E, 7.7.2005, p. 58.

3. Calls on the European Council to issue guidelines to the Council and Commission to:
- (a) refocus European legislation around the fundamental requirement of ensuring a high level of protection of fundamental rights within the Union and, where individual rights are involved, not to limit themselves to issues of a cross-border nature only; in this context, Parliament should be able to benefit from the expertise and support of the future Fundamental Rights Agency;
 - (b) take steps to strengthen the protection of the founding principles of the EU (Article 6 of the EU Treaty) and of the early warning and penalty mechanisms provided for in Article 7 of the EU Treaty, the case-law of the European Courts, the Constitutional Courts, and the inquiries launched by both the Council of Europe and Parliament are enough to show that observance of those principles must be a constant concern for Member States and for EU institutions and that the former must set themselves public reference criteria for improving the quality of justice and police cooperation; in this context, activating the early warning procedure provided for by Article 7(1) of the EU Treaty should be one of the normal mutual assistance measures necessary for ensuring a high level of protection for the principles laid down in Article 6 of the EU Treaty;
 - (c) meet the call for genuine improvement to practical cooperation through the strengthening and harmonisation of the present powers of Eurojust and its national members, in particular by conferring on it a genuine power to coordinate investigations and prosecutions, and to help settle disputes over competence, and by conferring on Europol the power to organise and coordinate investigations and operational actions jointly with Member States' competent authorities in joint investigation teams; each year, national parliaments and Parliament should discuss progress made and problems encountered with this type of activity and check whether adjustments are needed to national and European legislation;
 - (d) make sure that a surveillance state is not created via European legislation and that public authorities' interference in the exercise of individual liberties is strictly limited and subject to periodic review involving Parliament and national parliaments;
 - (e) make good the current deficit in European legislation with regard to the handling of confidential data when they are held by the EU institutions; provide, accordingly, for the revision of Article 9 of Regulation (EC) No 1049/2001⁴ and for the setting-up within Parliament of a committee to monitor confidential activities;
 - (f) promote, through the adoption of Council recommendations, the implementation in the Member States of the principles/recommendations of the Council of Europe's Secretary-General in applying Article 52 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as regards parliamentary oversight over intelligence services (see, in particular, the future recommendations of the temporary committee on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners);
4. Calls upon the Council to submit to Parliament as soon as possible the guidelines which it is currently devising on the subject of the draft framework decision on the protection of personal data processed in connection with police and legal cooperation in criminal matters; warns against the risk of draining that proposal of its substance and recalls the undertakings given by

⁴[4] OJ L 145 of 31.5.2001, p. 43.

the Council concerning Parliament's political involvement in the adoption of the framework decision;

5. Invites the national parliaments to ascertain as soon as possible the impact at national level of the new provisions contemplated by the Council as regards data protection and application of the principle that databases containing data processed for security purposes must be accessible and interlinked; states that it is interested in taking account of the results of that verification in the opinions it will deliver to the Council on these issues;
6. Urges the Commission to publish every year a report on the activities of the group of Commissioners in charge of fundamental rights, anti-discrimination and equal opportunities; also urges the Commission to provide as soon as possible an overview of the activities and decisions taken by that group during the last two-and-a-half years;
7. Believes that it is essential that when it comes to policies as sensitive as those relating to fundamental rights, immigration and increased security, the EU institutions should not seek to replace the Member States but to play a complementary role; believes further that it is necessary to ensure that the communitarisation of police and judicial cooperation in criminal matters go hand in hand with a certain right of scrutiny:
 - (a) both as regards the Member States' current right of legislative initiative (the Council could commit itself to asking the Commission, under Article 208 EC Treaty ,to submit legislative proposals in areas indicated by a quarter of the Member States);
 - (b) and in order to allow the national parliaments to adopt positions on the proposals in question in the field of AFSJ; they currently have a six-week deadline before the Council decides on a given proposal; Parliament could commit itself not to reach an agreement at first reading with the Council before the six-week deadline had elapsed;
8. Recalls the need to maintain a certain consistency as regards legislative powers at EU level by providing, for example, for immigration legislation not to be limited to illegal immigration, but to cover legal immigration too;
9. As far as the Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security⁵[5] is concerned, expresses its deep concern at the US letter of interpretation of the agreement, which shows that the US authorities have an interpretation going beyond the content of the agreement, in particular as regards the purpose of the agreement, access by US agencies and bodies to the PNR data and the number of data fields that can be consulted;
10. Urges the Council to adopt without delay the draft framework decision on procedural rights in criminal proceedings throughout the European Union (COM(2004)0328), taking due consideration of the position adopted by Parliament on 12 April 2005⁶[6];
11. Reiterates the need, as foreseen at Tampere in 1999:
 - to apply the principle of mutual recognition across the board, so as to make it the keystone of EU legislation;

⁵[5] OJ L 298, 27.10.2006, p. 29.

⁶[6] OJ C 33 E, 9.2.2006, p. 159.

- subsequently to strengthen access to justice, as provided for by the proposals concerning civil mediation, small claims and payment orders;
 - provide for legislative harmonisation measures only after an impact assessment concerning fundamental rights, involving national parliaments in the process;
12. Affirms the need to preserve, even when communitarising the third pillar and without prejudice to the Commission's prerogatives, the right of the Member States to help one another and to carry out reciprocal monitoring, as is already the case for Schengen cooperation and for the fight against terrorism;
 13. Supports the recent Commission communication seeking to establish an AFSJ policy evaluation system, and recalls that the evaluation should:
 - (a) be the subject of an annual communication to Parliament, so that it can debate it, in accordance with the Treaties, and involving the national parliaments in that debate;
 - (b) further involve the representatives of civil society and the academic world in evaluating the impact of AFSJ-linked policies and measures;
 14. Believes, finally, that the noblest of objectives would remain mere good intentions if they were not backed up by adequate human and financial resources:
 - (a) implementing at EU level the principle of solidarity and sincere cooperation, including financial cooperation between Member States;
 - (b) adapting the powers of the European agencies (Europol, Eurojust, Frontex, OLAF, CEPOL, etc.) so as to enable them to implement the strategic priorities established by the Member States at EU level;
 - (c) making it possible to prevent and tackle civil crisis situations with international repercussions; here, there already exists a certain amount of expertise at the level of the Commission and Council Secretariat-General for pooling human, technical and financial resources at very short notice;
 15. Calls upon the Commission to endeavour to speed up the process of implementing the SIS II, to keep Parliament informed regarding the advances made in the process and to submit reasons for the delays which have already occurred and for any further delays which may occur in the future;
 16. Instructs its President to forward this resolution to the European Council, the Council, the Commission and the Governments and Parliaments of the Member States.