



6.10.2009

B7-0000/2009

## MOTION FOR A RESOLUTION

further to Question for Oral Answer B7-0000/2009

pursuant to Rule 115(5) of the Rules of Procedure

on the Communication from the Commission to the European Parliament and the Council - An area of freedom, security and justice serving the citizen - Stockholm programme

**Luigi Berlinguer**

on behalf of the Committee on Legal Affairs

**Juan Fernando López Aguilar**

on behalf of the Committee on Civil Liberties, Justice and Home Affairs

**Carlo Casini**

on behalf of the Committee on Constitutional Affairs

**European Parliament resolution on Communication from the Commission to the European Parliament and the Council - An area of freedom, security and justice serving the citizen - Stockholm programme**

*The European Parliament,*

- having regard to the Treaty of Lisbon, in particular its provisions dealing with the area of freedom, security and justice ("the AFSJ"), its new legal framework for the protection of fundamental rights and the strengthening of Union citizenship, Article 2 of the TEU as modified by that Treaty, Protocol No 8 to that Treaty relating to the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the European Union, which has the same legal value as the Treaties,
  - having regard to the Commission's communication of 10 June 2009 (COM (2009) 262 final), "An area of freedom, security and justice serving the citizen", which outlines its priorities in the AFSJ for 2010-2014, together with its evaluation of the Hague Programme and the associated scoreboard, as well to the contributions made by national Parliaments, civil society, and EU agencies and bodies,
  - having regard to the question of [...] September 2009 to the Council and the Commission on Communication from the Commission to the European Parliament and the Council - An area of freedom, security and justice serving the citizen - Stockholm programme (O-0000/2009 – B7-0000/2009),
  - having regard to the draft resolution jointly tabled by Carlo CASINI, Juan Fernando LÓPEZ AGUILAR and Luigi BERLINGUER on behalf of the Committee on Constitutional Affairs, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Legal Affairs as well as to the amendments tabled by the Committee on Women's Rights and Gender Equality, the Committee on Petitions and the Subcommittee on Human Rights, and the debates at the November plenary session in Strasbourg,
  - having regard to Rules 115(5), 110(2) and 51 of its Rules of Procedure,
- A. whereas ever since the entry into force of the Amsterdam Treaty, the area of freedom, security and justice has been an essential objective of the European Union; however, in many respects, the 2005 Hague Programme, particularly in the field of civil justice, lost sight of the clear and ambitious vision set out in the 1999 Tampere Programme and it is therefore essential to return to the original spirit of that programme, which embraced all the aspects of the law, before the security dimension became the political priority in the wake of the dramatic and urgent turns taken by the fight against terrorism,
- B. whereas the Treaty of Lisbon, recently massively approved by the Irish people, will reshape the foundations, objectives and methods of AFSJ-related policies,

- C. considérant que les droits et le rôle institutionnel assignés pour la première fois par le Traité de Lisbonne aux parlements nationaux auront un impact positif notamment sur le développement et le fonctionnement de l'ELSJ, notamment parce que le respect du principe de subsidiarité sera mieux garanti,
- D. considérant que l'adhésion de l'Union à la Convention européenne des Droits de l'Homme, prévue par le Traité de Lisbonne, n'affectera pas la protection des droits fondamentaux dans l'Union à travers la Charte des Droits Fondamentaux et la jurisprudence de la Cour de Justice, et constituera un élément précieux de protection supplémentaire, tout en gardant à l'esprit qu'une distinction claire des compétences entre la Cour européenne des Droits de l'Homme et la Cour de Justice devra être établie,
- E. Whereas transparency in the law-making process must be paramount and citizens and national Parliaments should be able to follow the definition and implementation of AFSJ-related policies,
- F. whereas in the field of civil justice the priorities for the next five years must reflect the needs expressed by individual citizens and business,
- G. whereas the European judicial are must be built on a European judicial culture among practitioners and the judiciary - particularly first-tier judges - based not only on Community law, but developed through mutual knowledge and understanding of the national judicial systems, a root-and-branch revamping of university curricula, exchanges, study visits and common training with the active support of the European networks in the various sectors of the judicial system;

### ***1 - Looking forward to the AFSJ under the Treaty of Lisbon***

1. Notes that the new multiannual programme in the AFSJ is likely to be adopted and implemented under the new legal framework defined by the Treaty of Lisbon so that it must already embody all the innovations therein according to which:
- Schengen cooperation is confirmed as the core of the AFSJ;
  - Union citizenship and the protection of fundamental rights will become the core of AFSJ-related policies, and EU institutions will be called upon to observe the principle of the equality of EU citizens;
  - the current dichotomy between the ordinary and intergovernmental regimes, as established by the Maastricht Treaty, will come to an end, providing evidence of increased trust between Member States,
  - the decision-making process will be strengthened by extending qualified majority voting in Council, which will allow acts relating to similar or related fields to be adopted by the same voting system,
  - additional safeguards will secure strict respect for the principles of subsidiarity and proportionality in the AFSJ by ensuring that a relatively low number of national Parliaments can launch an “alert procedure” as well by conferring on a single Member

State the right to make use of an “emergency brake” when it considers that a draft legal instrument in judicial cooperation in criminal matters is liable to affect essential elements of its internal national order;

2. se félicite de l'introduction par le Traité de Lisbonne de la procédure de codécision en tant que procédure législative ordinaire dans les domaines de l'ELSJ où elle n'était pas d'application jusqu'ici; considère que l'association du Parlement européen à la ratification des accords internationaux n'est que le complément nécessaire des compétences qui lui seront reconnues au plan interne notamment dans les matières couvertes par l'actuel troisième pilier;
3. souligne l'importance de l'élargissement sans restriction de la compétence de la Cour de Justice, tant pour rendre des décisions préjudicielles sur toute question relevant de l'ELSJ que pour permettre à la Commission de lancer de procédures d'infraction<sup>1</sup>;
4. considère que le principe de solidarité entre États membres et entre les États membres et l'Union prend dans l'ELSJ une signification particulière et doit se transformer en solidarité active notamment lorsqu'il est question du contrôle aux frontières, immigration, protection civile et clause de solidarité;

## ***2 - A more coherent, transparent and democratic multiannual programme***

5. Considers that in implementing the Stockholm Programme a priority objective should be to ensure, in a spirit of loyal cooperation, that citizens benefit from an equivalent level of protection of their fundamental rights wherever they are faced with public power exercised by the Union or the Member States and that no persons should suffer disadvantages in their legal relations with others because of their choice to exercise the fundamental freedoms conferred on Union citizens in accordance with the tradition of human rights and the Rule of Law common to the Member States;
6. Points out that in the new legal and institutional framework created by the Treaty of Lisbon further action in the AFSJ can be developed only by duly associating the European Parliament and national Parliaments and civil society in a appropriate manner, with a view to building an open and continuous debate;
7. Calls for a more transparent law-making process at EU and national level, especially in the cases where a proposal could affect the rights of the individual and of the citizen, no matter if the initiative is submitted by the Commission or by a group of Member States;
8. Welcomes the creation by the Treaty of Lisbon of a framework for the evaluation of AFSJ policies and calls for the establishment of a concrete evaluation system which encompasses the quality, efficiency and fairness of justice, closely involving the European Parliament and national Parliaments;
9. Calls for a periodic assessment of the results achieved within the multiannual programme to be the subject of an annual debate in the European Parliament, which should focus on the protection of fundamental rights in the EU; this debate should be based on reports

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<sup>1</sup> Sous réserve de l'art. 10 du Protocole 36 sur les dispositions transitoires et l'art. 276 du TFUE.

from the Council, the Commission and the European Union Agency for Fundamental Rights (FRA);

### ***3 - A Europe of rights***

10. Strongly believes that action should be taken to make EU citizens more aware of their fundamental rights;
11. Considers that diversity enriches the Union and that the Union must be a safe environment where differences are respected and the most vulnerable protected: measures to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia and to protect children, minorities and vulnerable people, together with efforts to raise the level of awareness of anti-discrimination legislation among citizens should be vigorously pursued, making full use of the existing instruments, including the financial programmes;
12. rappelle qu'avec le Traité de Lisbonne, la Charte des droits fondamentaux de l'Union devient contraignante au même titre que les Traités et entièrement applicable à toute mesure prise dans le domaine de l'ELSJ, et que son respect sera contrôlé par la Cour de Justice de l'Union;
13. rappelle, également, que l'Union adhère à la Convention européenne pour la sauvegarde des droits de l'Homme et des libertés fondamentales, and as a result negotiations with a view to the Union's accession to the ECHR should start immediately and, what is more, cooperation agreements should be concluded with international institutions and bodies responsible for the protection of fundamental rights;
14. Calls for an impact assessment in respect of fundamental rights for every new policy, legislative proposal and programme clearly stating what fundamental rights may be affected and what measures are envisaged to safeguard them in accordance with principles of proportionality and necessity;
15. Calls for the collection and compilation by the FRA of reliable, comparable statistics on discrimination and their publication in readily understandable form and shares the view of the Trio Council Presidencies (FR, CZ, SE) that a possible review of the mandate of the FRA should be undertaken by 31 December 2009 and that such a review will afford an opportunity to deepen cooperation with the Council of Europe;

### ***4 - Stronger rights linked to Union citizenship***

16. Souhaite l'élaboration d'une loi électorale uniforme et réitère sa position selon laquelle, pour encourager les citoyens européens à participer aux élections européennes dans leur Etat membre de résidence dont ils n'ont pas la nationalité, le Conseil, dans les modalités qu'il est appelé à arrêter, devrait se limiter à ce qui est strictement nécessaire pour donner effet aux droits de vote et d'éligibilité; examinera avec intérêt la proposition de la Commission d'avancer le vote aux élections européennes à la semaine du 9 mai;
17. Calls on the Member States fully to implement the rights linked to Union citizenship, so that Union citizens can exercise their right to free movement together with members of

their family, thus enabling them to travel, work, study, retire and have a family life without restriction anywhere in the Union;

18. Calls the Member States to implement in a fair and consistent way their obligation to ensure consular and diplomatic protection for Union citizens;

#### ***5 - A Europe which protects its citizens***

19. Urges Member States to ensure that future EU action in this field strikes the right balance between security and freedom;
20. Urges the Commission to focus on promoting the freedom of European citizens where the present requirement for unanimity prevents the adoption of an EU legal framework, and the law of criminal procedure; indeed, the imperative of protecting citizens against terrorism and organised crime should be framed in clear legislation which affords European citizens an effective means of challenging disproportionate or unclear rules;
21. Considers that the exercise of these freedoms must be secured beyond national borders, and European citizens must be able to fully exercise their specific rights, even outside the Union;
22. Believes that when EU action is envisaged in this field, criteria should be laid down for assessing the proportionality and necessity of limitations to fundamental rights;

#### ***6 - A Europe of solidarity***

23. Urges integration, immigration and asylum policies to be built on the widest respect of fundamental rights and that Community law be compatible with international legal instruments in this field, so as to ensure a consistent approach and develop coherent action, not only in the fight against illegal immigration, but also to help refugees in distress;
24. Calls on Member States actively to engage and show their full commitment to work together within the framework of the mechanism for internal resettlement;
25. Calls in this regard for the prompt formalisation of a system of "compulsory and irrevocable solidarity" together with greater cooperation by third countries, as provided in the Treaties;
26. Calls for the adoption of a comprehensive blueprint setting out the overall objectives and architecture of the Union's integrated border management strategy
27. Urges to avoid launching new instruments or systems until the existing tools are fully operational, safe and reliable and calls for a thorough assessment of the necessity and proportionality of new instruments such as entry/exit, registered traveller programme and the system of prior travel authorisation;
28. Considers FRONTEX an essential instrument in the Union's global strategy on

immigration and supports the review of its mandate - including a clear framework for return operations meeting international human rights standards - in order to strengthen its role;

29. Recalls the absolute necessity for FRONTEX to be able to count on the availability of the resources placed at its disposal by the Member States both for its coordination of the individual joint operations and for its permanent missions;

## **7 - Civil and commercial justice for families, citizens and business**

### ***a. Greater access to civil justice for citizens and business***

30. Considers that the priorities in the field of civil justice must first and foremost meet the needs expressed by individual citizens and business whilst constantly simplifying the machinery of justice and creating clearer and more accessible procedures; to this end, while commending the Commission's decisions to present a proposal on wills and successions and a Green Paper on matrimonial property regimes in connection with separation and divorce, calls for:
- further efforts to promote alternative dispute resolution aiming in particular at improving access to justice for consumers; stresses that collective redress measures at Community level must not lead to unnecessary fragmentation of national procedural law;
  - proposals for a simple and autonomous European system for the attachment of bank accounts and the temporary freezing of bank deposits, the mutual recognition and enforcement of authentic acts, provisions to fill the gaps left in the Rome II Regulation concerning rights of the personality and defamation, a definitive solution to the problem of bilateral agreements dealing with jurisdiction and recognition and enforcement of judgments, and provisions to fill the lacuna highlighted by the Court of Justice in the field of company law, a proposal on the protection of vulnerable adults, and a proposal for a regulation, for adoption if necessary by recourse to enhanced cooperation, on the law applicable in matrimonial matters and parental responsibility;
  - detailed consideration to be given to a form of Community provisional measure additional to those of national courts, to the divergent national legal approaches to retention of title and other similar mechanisms, to the recognition of international adoptions, and to the whole question of the mutual recognition of national civil status documents;
  - the practical application of the large amount of innovative legislation adopted to date in the field of European civil procedure to be studied with a view to simplifying it where possible and codifying it into a single instrument bringing together all the Community legislation adopted in this area;

### ***b. Reaping the full benefits of the single market with European contract law***

31. Calls on the Commission to boost its work on European contract law on the basis of the

academic Draft Common Frame of Reference, and to involve Parliament fully in the open and democratic process which must lead to the adoption of a political Common Frame of Reference; emphasises that the political Common Frame of Reference should result in an optional and directly applicable instrument enabling parties to a contract, inter alia companies and consumers, freely to choose European Contract Law as the law governing their transaction;

## **8 - Fighting crime whilst guaranteeing citizens' rights**

### ***a. Priorities in criminal justice***

32. Calls for the construction of EU criminal justice area based on respect for fundamental rights developed through:
- an ambitious legal instrument on procedural safeguards in criminal proceedings, based on the presumption of innocence, which gives full effect to the rights of the defence,
  - a comprehensive legal framework offering victims of crime the widest protection, including adequate compensation and witness protection,
  - minimum standards for prison and detention conditions and a common set of prisoners' rights in the EU,
  - a comprehensive legal instrument on the taking and admissibility of evidence in criminal proceedings;

### ***b. A coherent multilayered security strategy***

33. Believes that further action against organised crime and terrorism should be oriented more towards the protection of fundamental rights and provide for adequate protection of witnesses, incentives for those who cooperate in dismantling terrorist networks, and prevention and integration policies addressing in particular individuals belonging to high-risk categories;
34. Calls for the annual publication of a comprehensive report on crime in the EU consolidating reports related to specific areas such as Organised Crime Threat Assessment and the Eurojust annual report, and stresses the need for an interdisciplinary approach and a comprehensive strategy for the prevention and fight against crimes such as the trafficking in human beings and cybercrime;
35. Presses for the development of a comprehensive European security strategy, based on the Member States' security plans, a stronger solidarity principle and an objective evaluation of the added value of the EU agencies, networks and information exchanges; intends to follow closely, together with national Parliaments all the activities carried out by the Council in the context of operational cooperation on EU internal security;

### ***c. Operational bodies and agencies***

36. Attaches great importance to Eurojust and Europol and is committed to participating fully alongside national Parliaments in defining, evaluating and controlling their activity;

37. Calls for closer and more in-depth cooperation between national administrations, European agencies and joint operative teams via specialised networks (such as SIS II, VIS, CIS and the judicial networks) and for specific cooperation between intelligence and police services at national and European level as far as the fight against terrorism and organised crime are concerned;

#### ***9 - Building a European judicial culture***

38. Calls for the creation of a European judicial culture embracing all aspects of the law, to this end:
- the Network of the Presidents of the Supreme Judicial Courts, the European Network of the Councils for the Judiciary, the Association of the Councils of State and of the Supreme Administrative Courts and the Network of Prosecutors General to the Supreme Courts, officers of the court and practitioners have a huge amount to offer by coordinating and promoting professional training for the judiciary and mutual understanding of other Member States' legal systems and making it easier to resolve cross-border disputes and problems, and their activities must be facilitated and receive sufficient funding; this must lead to a fully-funded plan for European judicial training drawn up in liaison with the above-mentioned judicial networks and the European Judicial Training Network;
  - there must be active policies designed to foster mutual knowledge and understanding of foreign law and so achieve more certainty in the law and foster the mutual trust essential for mutual recognition; these must provide for exchanges of experiences, exchanges, visits and information and courses for practitioners and the judiciary; the creation by the professional organisations of a common system of training points/credits for legal practitioners, coupled with a network of legal training bodies across the EU accredited to provide familiarisation courses in national law for practitioners and judges;

#### ***10 - E-Justice: a facility for citizens, practitioners and the judiciary***

39. Calls for a greater effort on e-Justice at Community level in the interests of access to justice for citizens and business:
- a.* Member States cooperating on bilateral projects should ensure that their work is designed in a way that is transferable to the Community level in order to avoid unnecessary duplication;
  - b.* the existing body of Community law in the field of civil law, in particular procedural law, should be made more compatible with the use of IT, in particular the European payment order and the small claims procedure, the Civil Evidence Regulation and alternative dispute resolution and action should be taken in the areas of electronic acts and transparency of debtors' assets; the aims should be simpler, cheaper and faster civil proceedings in cross-border cases;

- c. Electronic tools such as the European Criminal Records Information System and the Schengen Information System (SIS) should be further developed;

### ***11 - Urgent matters***

40. Calls for the progressive merging of the some 1 200 measures of a varied nature adopted in the AFSJ since 1993 into a coherent whole, whilst taking account of the Union's new missions and roles as well as of the new legal framework offered by the Treaty of Lisbon starting with areas considered as priorities in agreement with the European Parliament;
41. est d'avis que, dans les cas où une procédure législative a débuté sous les dispositions du Traité de Nice prévoyant une simple consultation du Parlement, comme c'est le cas dans nombreux domaines relevant de l'ELSJ, et que l'avis du Parlement a été rendu, la procédure législative devrait recommencer sous le Traité de Lisbonne en première lecture afin de donner au Parlement l'occasion de s'exprimer en connaissance de ses prérogatives;
42. Reserves the right to come back with specific proposals when it is consulted on the legislative action programme;
43. Charge son Président de transmettre la présente résolution au Conseil, à la Commission, aux gouvernements et aux parlements des États membres.