Area of freedom, security and justice

European Parliament resolution on progress made in 2004 in creating an area of freedom, security and justice (AFSJ) (Articles 2 and 39 of the EU Treaty)

The European Parliament,

— having regard to Rule 108(5) of its Rules of Procedure,

A. having regard to its recent resolutions of 11 March 2004 (1) and 14 October 2004 (2) taking stock of the implementation of the Tampere programme and formulating its initial recommendations to the European Council, which adopted, on 5 November 2004, the Hague Programme laying down the guidelines for the area of freedom, security and justice (AFSJ) for the following five years,

B. having regard to the debate on 11 April 2005 and to the answers given by the Council and Commission to Oral Questions Nos B6-0164/2005 and B6-0165/2005,

C. whereas last year, apart from the changeover to codecision for some planned measures on illegal immigration, the desired progress on the AFSJ did not take place in spite of significant developments in other areas of Community activity or even intergovernmental cooperation on defence and security policy,

D. whereas matters have gradually become deadlocked in the European Council, too, which in 2004, on three occasions, was obliged to acknowledge difficulties in implementing Union decisions on, in particular, police and judicial cooperation in criminal matters and, more specifically, in combating terrorism and international crime,

E. concerned that, in spite of repeated calls to do so, nine old Member States and six new Member States still have to ratify the Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States of the European Union and that 11 countries have still not ratified the Protocol of 27 November 2003 to the Europol Convention,

F. alarmed at the delays, and the difficulties cited by Member States, in putting the European arrest warrant into practice, and at the timidity exhibited in initiatives on judicial assistance or mediation in civil matters, which some prefer to confine to cross-border cases only, all of which demonstrates the lack of trust characterising relations between Member States,

G. whereas, in order to end this deadlock, some Member States have developed forms of cooperation outside the framework of the treaties, such as the ‘G5’ and ‘quasi decision-making’ bodies such as the FATF on money laundering, the Dublin Group in relation to combating drugs and the Berne Group in relation to exchanges of information, which are all bodies over which there is no democratic scrutiny; convinced that, while progress is to be desired and would be appropriate, it must take the form of ‘closer cooperation’ (such as the ‘Schengen+’ arrangements).

H. convinced that all these factors are affecting the political credibility of the Union, and the legitimacy of its actions, at a time when it faces major challenges in connection with policies on migration, border controls, promoting freedoms and combating transnational crime and terrorism, and that, at all costs, there must be urgent action to relaunch the process of building a common area and boost mutual confidence between the 25 Member States and prepare for the accession and candidate countries' accession.

Doing away with the democratic deficit as a matter of urgency and promoting a uniform legal framework within the AFSJ

1. Repeats its call on the Council to establish a uniform legal framework for AFSJ-related policies, to move judicial and police cooperation into the Community sphere, pursuant to Article 42 of the EU Treaty, as a matter of urgency, and, in accordance with Article 67 of the EC Treaty, to use, as a matter of course, qualified-majority voting within the Council plus the codecision procedure for all AFSJ-related policies;

2. Draws the Council's attention to the fact that maintaining the status quo pending ratification of the Constitutional Treaty not only is worsening the democratic deficit, but also will make it impossible for the 25 to take decisions and virtually impossible for the implementation of those decisions to be verified (as the European Council’s own assessments show);

3. Calls therefore on the Commission to draw up before September 2005 a proposal for a decision, on the basis of Article 42 of the EU Treaty, providing that action in areas referred to in Article 29 is to fall under Title IV of the Treaty establishing the European Community and, at the same time, requiring such action to be decided on by qualified majority; calls on the Council to adopt a fresh decision, based on Article 67 of the EC Treaty, laying down a changeover to codecision for the Community measures provided for by Title IV and the removal of the limits on the Court's powers;

4. Calls on the Council to amend its rules of procedure as soon as possible so as to disclose all preparatory legislative acts including legal opinions drafted in this context, as repeatedly requested by Parliament and in Cases C-52/05 P and C-39/05 P, and the positions taken by Member States, and to conduct its discussions and deliberations in public, particularly on AFSJ matters; asks its competent committee to check whether it would be appropriate to intervene in these cases so as to ensure transparency in the adoption of measures affecting European citizens;

5. Draws the Council’s attention to the need to ensure that any progress in creating an area of freedom, security and justice is made in the context of sincere cooperation with the European Parliament and in compliance with the principle of democracy, according to which the European Parliament must be involved in the elaboration of European legislation from the outset and not merely once a political agreement has already been reached;

6. Proposes that the Commission establish a procedure for regular notification of the Committee on Civil Liberties, Justice and Home Affairs about external aspects of the AFSJ, in particular negotiations on agreements plus political dialogue with non-member countries and international organisations; calls on the Commission to finalise the 'TRANS-JHA' pilot project, which should make it possible to monitor events and documents relating to AFSJ legislative procedures on a day-to-day basis, provided that such information and documents are accessible on the institutions' registers; calls on the national parliaments to take part in this pilot project by making available on-line the preparatory work for each legislative procedure concerning the adoption or transposition of EU measures relating to the AFSJ;
7. Calls on the Member States not to prejudice the powers of the European Community and the European Union in relation to international agreements and to seek to introduce in international conventions 'connection clauses' enabling the Union and the Community to accede to such conventions or, at the very least, 'disconnection clauses' to safeguard the EU acquis in relations between Member States within the areas covered by the conventions;

8. Encourages all the Union's institutions to maintain an open, transparent and regular dialogue with representative associations and civil society and to promote and facilitate citizens' participation in public life; asks the Commission to table as soon as possible a proposal aiming to take concrete steps in this direction;

Freedom, security, justice and solidarity

9. Considers that AFSJ development measures should be incorporated into the Community sphere, not only from a legal point of view but also in terms of the political objectives to be realised in a spirit of solidarity between Member States and citizens; takes the view that, to that end, the JHA Council ought to open up its proceedings and deliberate with, in particular, the:

— Development, General Affairs and Social Affairs Councils when laying down immigration, integration and readmission policies,

— Budget and General Affairs Councils when laying down measures for financial solidarity as regards both the implementation of border control arrangements and asylum and return policies and the provision of infrastructure and resources needed for civil protection and for preventing disasters and terrorist attacks;

Incorporating action to promote fundamental rights

10. Restates its firmly held view that establishment of the AFSJ demands an even greater commitment on the part of European and national institutions to promote the highest level of protection of fundamental rights, both in the interests of individuals and in order to prevent any subsequent delay in transposing measures adopted or any refusal to transpose them; proposes to that end that:

— all new legislative proposals, in particular concerning AFSJ, be accompanied by a reasoned assessment of their impact on fundamental rights; calls furthermore on the group of Commissioners with responsibility for fundamental rights to notify the Committee on Civil Liberties, Justice and Home Affairs periodically about its proceedings and to ensure proper coordination of their respective work;

— Parliament should have the same rights as the Council in connection with Commission adoption of implementing measures for Community and Union legislative acts where those acts might affect fundamental rights, as is often the case in AFSJ-related fields;

— Parliament's future annual debates on the AFSJ also be an occasion for an assessment of the protection of fundamental rights within the Union on the basis of specific thematic reports drawn up both by the Commission, in connection with the report provided for in Article 212 of the EC Treaty, and by the Fundamental Rights Agency, as suggested in its resolution of 26 May 2005 on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency (1);

11. Regards, in order to protect fundamental rights, the following action as urgent:

— adoption of appropriate measures to foster integration of minorities and combat any form of discrimination (Article 13 of the EC Treaty), including adoption, after reconsultation of Parliament, of the framework decision on racism and xenophobia,

— development, in agreement with the Member States, of a programme for quality justice in Europe in accordance with its recommendation to the Council of 22 February 2005 on the quality of justice and the harmonisation of criminal law in the Member States (1).

— adoption of common measures on access to civil and criminal justice in Europe (preventing double standards for cross-border cases),

— strengthening procedural guarantees during trials; calls on the Council to adopt as soon as possible the framework decision on this subject, with due consideration for Parliament’s opinion; calls on the Commission to submit before the end of 2005 the announced legislative proposals on:

* mutual recognition during the pre-trial phase,
* control measures which do not involve deprivation of freedom,
* ‘ne bis in idem in absentia’ principle,
* fair treatment in obtaining and using evidence,
* rights deriving from presumption of innocence;

— adoption of solidarity measures to aid victims, with special consideration for the situation of children,

— formal EU incorporation of the European Code of Police Ethics (2), already informally endorsed by the JHA Council (on 28 October 2004) (3), and strengthening the role of CEPOL;

**Defining the specific objectives of the EU and its Member States**

12. Calls on the Commission to submit to the next European Council meeting a programme for the implementation of the Hague Programme which will:

— indicate the specific objectives to be achieved in agreement with the Member States during the next five years with regard to reducing crime, protecting individuals and strengthening freedoms,

— provide for a transparent monitoring mechanism at European and national level for the implementation of these objectives and an adequate assessment of any weaknesses;

**Justice**

13. Recalls that judicial cooperation in criminal matters rests on the principles of mutual trust between judicial authorities and citizens and between the judicial authorities themselves and mutual recognition; considers that these objectives will be achieved through the establishment of joint rules, more effective exchange of information between the parties concerned and the provision of training for magistrates on European issues; in this connection, it is essential to strengthen Eurojust, with the aim of establishing a European Prosecutor’s Office;

14. Expresses the wish that further progress be made in the field of judicial cooperation in civil matters, in particular with regard to family law and commercial law;

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Policies on migration, asylum and cross-border movement

15. Requests the Commission to bring forward the proposal for a supervisory mechanism supplementing the existing Schengen evaluation mechanism by the end of 2006;

16. Calls for a genuine European asylum and immigration policy that is fair, equitable and respectful of migrants' fundamental rights;

17. Rejects the outsourcing of asylum and immigration policies and the establishment of immigration camps or portals outside the European Union;

18. Calls on the Commission and the Council to ensure that the enhanced cooperation agreement on immigration, recently approved by the JHA Council, between the EU and Libya does not provide for collective expulsions or administrative detention in places where fundamental rights are flagrantly violated and that it also recognises the rights of asylum seekers in Libya, in accordance with the Geneva Convention;

19. Recalls the need for a common immigration policy that is not confined to combating illegal immigration; urges that a legal immigration policy be implemented;

20. Recalls that a European migration policy should be accompanied by a European integration policy providing, among other things, for proper integration on the labour market, the right to education and training, access to social and health services, and immigrants' participation in social, cultural and political life;

21. Notes the Commission's Green Paper on an EU approach to managing economic migration (COM(2004)0811); recalls that economic immigration in Europe should not be confined to the needs of the European labour market but should take account of all forms of migration, including family reunification; urgently wishes European economic immigration to be supported by strong harmonisation of rules on the admission of migrants to the European Union and to constitute a means of combating discrimination on the labour market;

22. Calls on the European Union and its Member States to ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, adopted by the United Nations General Assembly on 18 December 1990, and ILO Conventions 97 and 143 on migrant workers; calls on the Commission to include in decisions and framework decisions all the provisions contained in the UN Convention;

23. Is extremely concerned by the European Union's return policy, in particular joint flights for the removal of immigrants; recalls that readmission agreements with third countries should be based on genuine dialogue and take account of the needs of such countries; this dialogue should allow political cooperation and codevelopment in order to tackle the causes of migration;

24. Urges the Commission to ensure that those in need of protection may gain safe access to the Union and have their claims properly processed, and to ensure strict adherence to standards of international human rights and refugee law and in particular to the principle of non-refoulement;

25. Reminds the Commission, as the guardian of the Treaties, of its duty to ensure that the right of asylum is respected in the European Union, in accordance with Article 6 of the EU Treaty and Article 63 of the EC Treaty, given that recent cases of collective expulsions from certain Member States have cast a shadow over compliance by these countries with their obligations under EU law;
26. Draws attention to the need for a Community immigration and asylum policy based on opening legal immigration channels and defining common standards for the protection of immigrants’ and asylum seekers’ fundamental rights throughout the European Union, as laid down by the Tampere European Council in 1999 and confirmed by the Hague Programme:

27. Reiterates its deep reservations about the lowest common denominator approach in the draft Council directive on asylum procedures and calls on Member States to ensure prompt transposition of Directive 2004/83/EC (1);

**Combating organised crime and terrorism**

28. Restates its firmly held view that any policy on security within the Union requires not only mutual trust, but also the setting of shared objectives and an appropriate level of resources, plus a legal framework and guarantees for citizens; considers it regrettable in this connection that:

— firstly, there is as yet no genuine European domestic security strategy laying down tangible objectives, where implementing responsibility lies, what outcomes are expected and objective performance assessment criteria,

— secondly, in spite of this vagueness as to the objectives to be realised at European level, Member States are insisting on the adoption of blanket measures to gather and access data — both data relating to operations (pursuant to the data availability principle) and data relating to individuals’ daily activities (travel, communications);

29. Resolves, given the lack of relevant information from the Council on this issue, to instruct its competent committee to check what strategic and operational measures are being taken at present at European level to counter terrorism and organised crime; takes the view that the Committee on Civil Liberties, Justice and Home Affairs ought therefore, by the end of 2005, to hear:

— the senior staff in SITCEN and the Commission’s DG Justice, Freedom and Security with responsibility for policies on combating organised crime,

— the management of EUROPOL, EUROJUST and OLAF so as to ascertain what the current position and credible outlook is with regard to cooperation between Member States and the Union’s bodies,

— the head of INTERPOL so as to ascertain what the current position and outlook is with regard to cooperation between that body and Member States, the EU and its agencies and information exchange systems,

— national judicial and policing authorities so as to ascertain the true extent of cooperation among Member States and between them and the EU and its agencies (data exchange, joint teams, bilateral agreements),

— national-parliament representatives with responsibility for the issues referred to above;

30. Calls on the Commission:

— to submit a Community legal basis for EUROPOL before the entry into force of the Constitutional Treaty and make provision for intensive forms of cooperation between it and EUROJUST plus appropriate forms of European Parliament and national parliament oversight over the two bodies,

— to submit the legal basis for establishing a European list of persons, groups and activities subject to restrictive anti-terrorism measures and a list of persons potentially presenting a public-order risk (Articles 96 and 99 of the Schengen Convention);

A policy of blanket surveillance, proportionality imperatives and data protection

31. Shares the European Council's approach seeking rational management of the information available to the Union and Member States; points out, however, all the IT systems processing information potentially relevant to the Union's security policy were designed for specific purposes and with due regard for the proportionality principle, which in democratic societies, on data protection grounds, may justify placing constraints on their use;

32. Points out that those constraints cannot be brushed aside by simply invoking the new imperatives of the fight against terrorism and organised crime, but, rather, that there must be prior agreement on the objectives to be pursued and, consequently, the information which is essential to achieve what is sought must be defined and placed at the disposal of the competent authorities for an appropriate period; repeats its call to switch from a 'pull' system to a 'push' system for the transmission of data to the US authorities, and harbours the utmost reservations as to the establishment of a European PNR system to be placed under the responsibility of EUROPOL, as envisaged in the Commission communication on transfer of air passenger name record (PNR) data; a global EU approach (COM(2003)0826); calls on the Commission and the Council to take into consideration its resolution of 31 March 2004 (1) on PNR during all negotiations with third countries or international organisations, in particular the International Civil Aviation Organisation (ICAO);

33. Alerts the Council to the risks posed by the interoperability of information systems;

34. Repeats its call for common criteria for data protection in the security domain to be laid down on the basis of the principles identified by the European Council and by the European Conference of Data Protection Authorities (2) and repeats its call for the establishment of a joint authority for data protection as part of judicial and police cooperation, involving national and European authorities in connection with EUROPOL, EUROJUST, SIS and SID; takes the view that that authority should be responsible for checking whether European authorities comply with protection rules and for assisting those authorities with legislative work;

35. Draws attention to the need to strengthen the security of travel documents; however, the technical solution chosen is of prime importance since it will be the sole means of guaranteeing the effective use of biometrics and the physical protection of data, in particular against unauthorised access; it is essential that technical specifications be safeguarded at the same time by means of cost-effective solutions, and that these be secure as regards the collection, processing, storage and use of data; points out that it would be useless for the European Union to over-hastily adopt a solution which would prove inadequate;

36. Recalls that the Article 29 Working Group and the European Data Protection Supervisor consider that the national initiatives of April 2004 dealing with data retention do not fully comply with the ECHR and the Charter of Fundamental Rights of the European Union;

37. Stresses that the costs of analysing the data collected should be borne by the body requesting the data so as to avoid a disproportionate number of queries;

38. Takes issue once again with the lack of transparency and public debate as to the choice of this type of technology and negotiations both at ICAO technical group level and with the US Administration; restates its opposition to the use of RFID chips on European citizens' passports, and calls on the Commission to examine these technologies in detail before making them mandatory for hundreds of millions of passports;

39. Instructs its President to forward this resolution to the Council, the Commission, the European Council and the governments and parliaments of the Member States.