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PARLIAMENTARY MEETING
at the initiative of the European Parliament and the UK Parliament

LIBERTY AND SECURITY:

IMPROVING PARLIAMENTARY SCRUTINY
OF JUDICIAL AND POLICE COOPERATION IN EUROPE

Monday 17 October p.m. - Tuesday 18 October a.m. 2005
European Parliament, Brussels

Success in the fight against international crime and terrorism depends on the ability of all actors involved, and in particular EU Member States, to cooperate in the best possible manner. These issues should not only be of interest to experts in EU policies and institutional engineering: they are of direct and immediate interest to all.

EU legislation in the “area of freedom, security and justice” (AFSJ) is based either on First or Third Pillar provisions in the Treaties. As a consequence, different procedures are followed for the adoption of legislation in the field, depending on the treaty base: some measures are adopted by the Community method (proposal from the Commission, co-decision between the Council and the European Parliament), others follow an intergovernmental path. The use of different procedural paths results in varying parliamentary and judicial scrutiny capabilities, both at the European and national level.

Action in certain fields has gradually become deadlocked in the Council of Ministers. Arguably, this is in part due to the complex institutional framework outlined above. Some Member States have therefore developed forms of cooperation outside the framework of the treaties¹. But there is little or no systematic democratic scrutiny of these initiatives.

The European Parliament has repeatedly deplored the lack of transparency and of democracy in planning and decision-making procedures within the AFSJ. All too often, the European Parliament and national parliaments are confronted with *faits accomplis*². There is growing concern in the European Parliament and many national parliaments that this democratic gap is affecting the political credibility of the Union, and the legitimacy of its actions, at a time when it faces major challenges in connection with the development and adoption of common policies on migration, border controls, promoting freedoms and combating transnational

¹ One example was the creation of the so-called G5 in May 2003 which brings together the interior ministers from France, Germany, Italy, Spain, and the UK.

² European Parliament recommendation to the Council and to the European Council on the future of the area of freedom, security and justice as well as on the measures required to enhance the legitimacy and effectiveness thereof. 14.10.2004 (2004/2175(INI), P6_TA(2004)0022).

crime and terrorism. The European Parliament has called for urgent action to relaunch the process of building a common area and boost mutual confidence between the 25 Member States³.

Parliaments have a decisive role to play in this respect, since they determine the form of legislation and monitor the implementation of policy. There is therefore a desire to improve cooperation between national parliaments and the European Parliament in their scrutiny of measures to implement the "area of freedom, security and justice".

The Constitutional Treaty aims to simplify and democratise EU action in the field of judicial and police cooperation⁴. In the Treaty, evaluation and monitoring mechanisms in this field are foreseen as a task shared by national parliaments and the European Parliament⁵. But under the present circumstances, it is not clear whether such changes will be implemented.

The European Parliament considers that the time is appropriate to convene a joint parliamentary meeting between national parliaments and the European Parliament to discuss issues of parliamentary scrutiny of judicial and police co-operation in the area of freedom, security and justice. The chairs of the responsible committees in the UK Parliament, the national parliament of the Member State holding the Presidency of the Justice and Home Affairs Council, join with the European Parliament in convening this meeting.

In the context of the implementation of The Hague Programme, the European Parliament and the UK Parliament committee chairmen propose to discuss the following four issues in greater depth:

- *How to improve mutual trust between Member States, EU institutions and agencies: the case of the European Arrest Warrant;*
- *Fight against organised crime and police cooperation : the role of Europol;*
- *Judicial cooperation: the role of Eurojust;*
- *Treatment of personal data for security purpose: a new EU legal framework?*

In each case the discussion could focus on assessing:

- i) progress made in establishing the AFSJ, and the likelihood of further progress;
- ii) the effectiveness and efficiency of parliamentary scrutiny both at national⁶ and European level, and
- iii) possible future parliamentary cooperation on specific issues.

³ 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). 08.06.2005. (P6_TA-PROV(2005)0227)

⁴ By, for example, incorporating the Charter of Fundamental Rights, generalising the use of codecision for legislative procedures, extending the supervisory role of the Court of Justice to include those measures relating to the AFSJ from which it had hitherto been excluded and giving individual citizens the right to bring actions before European Court.

⁵ Article III-260 provides for the creation of a mutual evaluation mechanism of the measures regarding the area of freedom, security and justice. The Constitutional Treaty also associates national Parliaments to the political control of Eurojust and Europol. The treaty makes provisions for national Parliaments, together with the European Parliament, to evaluate the activities of Eurojust (article III-273) and to scrutinise Europol's activities (article III-276). See COSAC Third Biannual Report, chapter 5.

⁶ On national parliamentary scrutiny of JHA issues see Chapter 5 of COSAC's 3rd biannual report which describes the procedural developments relating to the EU's "area of freedom, security and justice" incorporated in the Constitutional Treaty, and further describes the specific procedures for scrutinising this area which have been adopted in some national parliaments (see in particular pp.83-94.)

One objective of the meeting could be a discussion of ways in which informal exchanges of information and networks of interested parliamentarians and parliamentary officials could be established in the field of the AFSJ.

The event will be organised by the European Parliament⁷, together with the UK Parliament, as Parliament of the country holding the Council Presidency.

Following the successful precedent of the Joint Parliamentary Meeting on the Lisbon Strategy, hosted at the European Parliament in March 2005, each national parliament will be invited to send delegations of six members (or three per chamber).

A draft programme is attached. Background notes on each of the four issues to be discussed will be available soon.

Practical guidelines for the debate

- *Presentations opening each session should be limited to 10 minutes.*
- *During the discussion, so as to make it possible for the highest possible number of parliamentarians to intervene, speaking time will be limited to three minutes per contribution or question.*
- *Speakers wishing to supplement their speeches may do so in writing by submitting a document (preferably in English or French) in advance to the secretariat (email: anicolaidou@europarl.eu.int). This document will be circulated during the meeting.*
- *Members requesting the floor are kindly asked to inform the chair indicating their name and Parliament on a special sheet. The floor will be given to Members in the order in which requests are received, and in turn to two Members of national Parliaments, followed by one Member of the European Parliament, and so forth.*
- *At the end of each session a short amount of time will be reserved to allow some Members to react to what has been said in an intervention limited to one minute (by means of a blue card).*

13 September 2005

⁷ EP Committee on Civil Liberties, Justice and Home Affairs, together with the Directorate for Relations with National Parliaments and the Policy Department on Citizen's Rights and Constitutional Affairs.

TENTATIVE PROGRAMME

Monday 17 October 2005

Arrival of national parliamentarians. Registration and welcome to the European Parliament.

15.00-15.30 OPENING SESSION

- Welcome by **Mr. Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs, **Lord WRIGHT OF RICHMOND**, Chairman of Sub-Committee F (Home Affairs) of the House of Lords European Union Committee, **Rt. Hon. John DENHAM MP**, Chairman of the House of Commons Home Affairs Committee.
- Opening speech by **Mr. Josep BORRELL FONTELLES**, President of the European Parliament.

15.30-17.00 SESSION I

HOW TO IMPROVE MUTUAL TRUST BETWEEN MEMBER STATES, EU INSTITUTIONS AND AGENCIES? THE CASE OF THE EUROPEAN ARREST WARRANT

The European arrest warrant (EAW) is probably one of the most significant measures in the field of EU cooperation on criminal matters⁸. Initial assessments of its effectiveness and efficiency are being carried out by the Commission⁹ and the Council.

The transposition of the EAW into national law has brought to light a series of difficulties, particularly in the field of respect for fundamental rights. Cases have been brought before national jurisdictions, including some constitutional courts, and the constitutional court of one Member State has declared the implementation of the EAW to be unconstitutional-

What lessons can be drawn of one year of implementation? What are the implications of recent decisions of the Polish and the German constitutional courts? What role have national parliaments played in the transposition process? Do national differences in transposition and implementation run counter to mutual trust?

Chair: **Rt. Hon. John DENHAM MP**, Chairman of the House of Commons Home Affairs Committee.

⁸ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), Official Journal of the European Communities, L 190 p.1, 18.7.2002.

⁹ COM(2005)0063 and SEC(2005)267, on the evaluation of the implementation of the Framework Decision on the European Arrest Warrant - <http://europa.eu.int/eur-lex/lex/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0063:EN:HTML>

15.30-15.50 Presentations

- A representative from the Conference of European Constitutional Courts (to be confirmed).
- **Mrs. Adeline HAZAN**, Member of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, rapporteur on the implementation of the European arrest warrant.

15.50-16.50 Discussion¹⁰

16.50-17.00 Break

17.00-18.30 SESSION 2

***HOW TO STRENGTHEN JUDICIAL COOPERATION?
THE ROLE OF EUROJUST***

In terms of the creation of an area of freedom, security and justice, the establishment of Eurojust¹¹ may be considered as a major achievement. But its hybrid nature - with both intergovernmental and more integrated features - may create difficulties.

In particular different Eurojust National Members enjoy substantially differing powers and status, depending on their Member State of origin. This may cause an imbalance between them, as well as for Eurojust as a whole, when working with Member States.

Another important issue lies in the fact that Eurojust has no power of constraint over national judicial authorities. Does this weaken the efficiency of Eurojust? The Constitutional Treaty provides for the creation of a European public prosecutor (with a limited remit) within Eurojust.

In the context of the ratification process, what are the views of national parliaments on these issues? How can judicial cooperation in Europe be further improved?

Chair: **Mr. Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs

17.00-17.20 Presentations

- **Mr. Michael G. KENNEDY**, President of the college of Eurojust (to be confirmed).
- A national parliament draftsman.

17.20-18.30 Discussion

20.00 Dinner-debate. Speaker: **Ilmo. Sr. Baltasar GARZÓN**, Magistrado-Juez de la Audiencia Nacional del Reino de España (to be confirmed)

¹⁰ As speaking time will be limited to three minutes per contribution, speakers wishing to supplement their speeches may do so in writing by submitting a document (preferably in English or French) in advance to the secretariat (email: anicolaidou@europarl.eu.int). This document will then be circulated during the seminar.

¹¹ <http://www.eurojust.eu.int/>

Tuesday 18th October 2005

09.00-10.30 SESSION 3

***FIGHT AGAINST TERRORISM AND ORGANISED CRIME,
POLICE COOPERATION IN EUROPE:
THE ROLE OF EUROPOL***

Europol¹² became operational in 1999, four years after the Europol Convention was adopted. It is an intergovernmental organisation, the mission of which has been progressively extended thanks to a series of protocols to the initial Convention. Several protocols which have been aimed at improving the operational capability of Europol have not been ratified yet by national parliaments. Europol's activities are subject neither to the supervision of the European Parliament nor to judicial review by the European Court of Justice.

What are the obstacles to ratification of these protocols? Is the present nature of Europol consistent with its mission and objectives? Is cooperation between national police forces and Europol satisfactory? How to improve mutual trust while acknowledging the wide diversity in the organization of national police forces? What can parliaments do to improve police cooperation throughout Europe? How could parliamentary scrutiny be improved?

Chair: Mr. Stefano ZAPPALÀ, Vice-Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs (to be confirmed)

09.00-09.20 Presentations

- **Mr. Max-Peter RATZEL**, Europol Director (to be confirmed)
- A national parliament draftsman

09.20-10.30 Discussion

10.30-10.40 Break

10.40 -12.10 SESSION 4

***TREATMENT OF PERSONAL DATA FOR SECURITY PURPOSES:
A NEW EU LEGAL FRAMEWORK***

The exchange of data is a core element of police and judicial cooperation, particularly in dealing with organised crime and terrorism within and across borders. The bombings in Madrid in 2004 and in London in 2005 have shown this in an outstanding manner. National legislation on data protection founded on article 8 of the ECHR and Convention 108 of the Council of Europe is so diverse that on the one hand European citizens enjoy very different standards of protection and on the other security services find difficult to exchange data.

The challenge for the European Institutions is to strike the right balance between security and civil liberties taking into account the technical developments of the information society. Council agreement on a legal framework for data protection in the Third Pillar has been expected since as long ago as 2001. Such a framework is needed both to protect privacy and to ensure that the exchange of relevant information between national law enforcement authorities will no longer be hampered by different levels of data protection across Member States.

From a legislative point of view, the European Parliament considers that a new European legal framework in this domain should in particular be founded on two proposals announced by the Commission on:

¹² <http://www.europol.eu.int/>

- the obligations of private companies when they collect data that can be useful for security purposes (and their impact on technical and economic aspects for phone or internet providers);
- the privacy standards to be respected by the law enforcement and judicial authorities of the Members States when dealing with personal data.

The UK Presidency, supported by the Commission, has indicated that it is willing to reach an agreement on these proposals, and the European Parliament is currently defining its position on the two texts in view of a possible agreement before the end of 2005 as recommended by the European Council.

Members of national Parliaments will wish to take the opportunity of this timely meeting to express their recommendations and observations on such an important issue.

Chair: Lord WRIGHT OF RICHMOND, Chairman of Sub-Committee F (Home Affairs) of the House of Lords European Union Committee.

10.40-11.10 Presentations

- **Rt Hon. Charles CLARKE MP**, President of the JHA Council, UK Home Secretary (to be confirmed).
- **Mr. Franco FRATTINI**, Vice-President of the Commission.
- **Mr. Alexander ALVARO**, Member of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, rapporteur on the draft Framework Decision on the retention of data¹³.

11.10-12.10 Discussion

12.10-12.30 CLOSING SESSION

- **Lord WRIGHT OF RICHMOND**, Chairman of Sub-Committee F (Home Affairs) of the House of Lords European Union Committee.
- **Rt. Hon. John DENHAM MP**, Chairman of the House of Commons Home Affairs Committee.
- **Mr. Jean-Marie CAVADA**, Chairman of the EP Committee on Civil Liberties, Justice and Home Affairs.

¹³ Report on the initiative by the French Republic, Ireland, the Kingdom of Sweden and the United Kingdom for a Draft Framework Decision on the retention of data processed and stored in connection with the provision of publicly available electronic communications services or data on public communications networks for the purpose of prevention, investigation, detection and prosecution of crime and criminal offences including terrorism (<http://www.europarl.eu.int/activities/expert/committees/reports.do?committee=1248>)