

Working Group X

Working document 15

Working group x « Freedom, Security and Justice »

Subject : Comments by Mrs Evelin LICHTENBERGER, Member of the Convention on the Working document 05 "Possible ways for the Working Group"

Contribution to Working X “Freedom, Security and Justice”

by Evelin Lichtenberger
Member of Austrian Parliament

Note on Working Document 5

Introduction

In addition to the two golden rules proposed by the chairman, which concern institutional elements, the following two “rules” regarding the merits of proposed measures should be considered:

- Individual liberties and civil rights should be respected as much as possible.
- There should be as much transparency and democratic control as possible.

A.

EC

Asylum and Immigration

First of all it is important to realize that neither refugees nor immigrants are burdens and that, instead, they are welcome in the European Union; it is therefore misleading, in this context, to speak of burden-sharing. Legal Residents in Member States of the European Union should therefore enjoy the same freedom of movement as any citizen of the European Union and should have free access to the European labour market. The high unemployment in some European states is not caused by immigration, whereas access to the legal labour market would significantly improve the integration of immigrants.

EU

a) Reform of the Legal Instruments

The replacement of the legal instruments of the third pillar with the legal instruments of the first one has my full support, but it has to be remembered that the use of direct legislative acts could create problems in the process of implementation into national law. It has to be made sure that the European Parliament is fully involved in the process of the conversion of the existing Conventions, especially the Europol – convention, so that the lack of democratic control, which is characteristic of the existing Conventions, can be dealt with.

b) Clearer Identification of the Scope of Union Legislation

The mutual recognition of judicial decisions cannot be enshrined in the Treaty, as long as there are no common minimum standards regarding the rights of individuals in criminal procedure. There should be a legal basis, which permits the creation of such minimum standards, but as the wording “minimum standard” implies, this should not restrict the Member States from enacting higher standards.

Furthermore, the approximation of certain elements of criminal procedure should not lead to a levelling down of fundamental rights in the Member States. We need precautions to ensure that no measures taken on this legal basis contradict national constitutional law, especially as regards individual liberties and civil rights.

Concerning police and judicial co-operation between Member States it is necessary to underline that there is a need for (more) democratic control through national parliaments or the European Parliament.

B.

a) Strengthening Operational Collaboration

The national law-enforcement agencies are controlled by national parliaments, therefore the European law-enforcement agencies, in particular Europol, OLAF, Eurojust and an institutionalised Task Force of Police Chiefs, should equally be controlled by the two legislative powers of the EU, the Council and the European Parliament.¹ The budgets of the European law-enforcement agency should be incorporated into the Community budget.²

The national parliaments have and should use their powers to control the national representatives to the various committees³ (e.g. the Europol Management Board or the representatives in the Task Force of Police Chiefs). There is no need to create an additional management institution which would most likely undermine a clear allocation of competence.

But there is a need for the creation of a functionary in charge of the different law-enforcement agencies, who is responsible to the European public equally represented by the Council and the European Parliament. It has to be questioned if it is really necessary for this high official / High Representative to work outside the Commission or if this would only increase the complexity of the

¹ see: COM (2002) 95 final, recommendations 2-4

² see: EP A4-0064/1999 recommendation 5 and 7,

³ see: EP A4-0064/1999 recommendation 6

European administration⁴. Some thought should be given to the question of avoiding having the same person being responsible for police cooperation and judicial cooperation.

It should be mentioned in the Treaty that all co-operation in this sensitive area has to follow strict guidelines of data protection; furthermore, “an independent body with authority to investigate any complaints against the police which involve decisions by Europol” or other European law – enforcement agencies “on the actions of its staff” should be created⁵.

I strongly agree that all action taken should be subject to judicial control by the European Court of Justice.

b) Development of Union Bodies (Europol, Eurojust)

For the sake of clarity of the future Treaty it would be a good thing if one could do without detailed statements concerning Europol and Eurojust. But because of the sensitivity of this policy area and in order to prevent an unnoticed increase of competences for the European level, the articles concerned should be as detailed as possible and all action taken should be co-decided by the European Parliament.

c) European Prosecutor / European Criminal Court

The creation of an European Prosecutor and / or European Criminal Court would mean a considerable step towards integration and should only be taken on the basis of a very broad agreement. This should be reflected in the Treaty.

⁴ see EP A4-0064/1999 recommendation 17 and 18 in connection with consideration B

⁵ EP A4-0064/1999 recommendation 15