

Working Group X

Working document 31

## **Working group X "Freedom, Security and Justice"**

**Subject :** Letter by Prof. Dr. Mihael Brejc, Vice-President of the National Assembly of Slovenia, Alternate Member of the European Convention

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To

Mr. John Bruton, Chairman of the Working Group "Freedom, Security and Justice"

Dear Mr. Bruton,

Allow me, first, to congratulate you and the secretariat for the efforts invested in the preparation of the draft final report. The proposals are very well prepared and realistically reflect the activities of the working group.

Due to the plenary session of our parliament I cannot be present at the last meeting of the working group tomorrow, but before you adopt the final conclusion, I would like to point out certain issues, although I strongly support the draft report.

With regard to JHA questions, the Convention should take care that fundamental rights are respected and at the same time the security of citizens is guaranteed. I agree completely that the provisions on JHA are integrating into a single Treaty structure under one title. The common general legal framework will overcome the current pillar structure. The mixed approach (Community procedures and enhanced intergovernmental co-operation) and separation of legislative and operational tasks seems to be a favourable approach towards efficient EU JHA legislation.

**Legislative procedures**

Actions in the area of Asylum, Refugees and Displaced Persons need a common asylum system with a common procedure, not only minimum rules as in the current Treaty, and there is a need for the QMV and co-decision.

Pressures at our future external borders will increase and all Member States have the responsibility to protect it. The new Treaty should recognise this objective and provide the measures to promote solidarity and a fair burden sharing – but not only with regard to financing. We need to be aware that some new Member States will have a long border with third countries (e.g. Slovenia with less than 2 million inhabitants will have 670 km of external border, that means 347 km of external border for 1 million citizens.)

I would like to draw your attention to the EP Resolution concerning the implications of EU enlargement for the co-operation in the field of JHA which says, ... *the responsibility for controlling the EU's external borders cannot simply be left to the most northerly, easterly, southerly or westerly member States but must be borne, both technically and financially, on a Community basis.* (para.19, A4-0107/1998).

With regard to the reform of legal instruments, I support the idea that we need to have single legal instruments: regulations, directives and decisions. Conventions, most of them have not yet been ratified, should be abolished.

The future Treaty should define the areas in which the EU should have competencies as well as the principle of the mutual recognition of judicial decisions. EU competencies on criminal law and police matters must be established in very clear terms and minimum standards concerning criminal procedures should be developed.

Before the approximation of the substantive criminal law, we have to define very precisely the areas where such approximation is necessary. EU competence should be defined not only as a list of serious crimes, but also with the definition of constituent elements of given crimes. A list of crimes should be changed by QMV in the Council. But the list of crimes without a common criminal procedure will have no sense, therefore we also need at least the mutual recognition in this area or common rules on some elements of criminal procedure.

The principle of mutual recognition should be added into the Treaty concerning the rules on police and judicial co-operation, and the definition of crimes where there is co-operation have to be broad enough.

I fully agree that QMV and co-decision procedure has to be introduced for most of the JHA areas, because unanimity could mean that there is less possibility for fast and urgent response due to possible significant delays in case of new security problems.

Concerning the right of initiative, the best solution will be giving right of initiative to the Commission as well as to a group of Member States (for ex. at least 1/5). There will be needs, namely, to regulate the problems only in a specific region, where other Member States and perhaps the Commission, too, will see no interest.

### **Strengthening operational collaboration**

The principle of solidarity between Member States is particularly important. I support the idea of gradual development of an integrated system of border management. Seville conclusions could serve as a legal basis for some measures such as common practise, training, information exchange, financial burden sharing, but not establishing border forces to replace national border units.

The Treaty is very unclear with regard to which tasks should Europol and Eurojust cover and these tasks should be clarified with the objective that they become more operational bodies.

Concerning European Public Prosecutor – isn't it a little too early for such a body having in mind Eurojust and the mutual recognition system? Is there a clear need?

National parliaments should play a role to assure compatibility with national law systems in criminal area and an early warning mechanism as proposed by WG I should be used in JHA area, too.

If there is a single Treaty structure, all Member States will also accept the jurisdiction of the Court of Justice, with the exception of matters concerning internal security.

I expect the majority of group members will support the final version of the report and in this way contribute to the successful plenary session of the Convention.

Sincerely,

Mihael Brejc