

20. An area of freedom, security and justice – Combating child pornography on the Internet *

(a) A4-0133/99

Resolution on the draft action plan of the Council and Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice (13844/98 – C4-0692/98 – 98/0923(CNS))

The European Parliament,

- having regard to the draft action plan of the Council and Commission (13844/98 – C4-0692/98 – 98/0923(CNS)) submitted to the Vienna European Council of 11/12 December 1998,
 - having regard to the Commission communication 'Towards an area of freedom, security and justice' (COM(98) 0459 – C4-0551/98),
 - having regard to the Declaration of the European Union of 10 December 1998 on fundamental rights,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinions of the Committee on Institutional Affairs and the Committee on Legal Affairs and Citizens' Rights (A4-0133/99),
- A. mindful of the considerable political, economic and social developments in Europe in the last ten years, and of the increased attractiveness of the European Union to various countries in the continent and neighbouring areas as a model for cohabitation between nations with different traditions and as an area without economic borders,
- B. aware of both the advantages and disadvantages which can accrue from an association between countries with cultures and social, political and legal systems which, while they share a common background and principles, display marked differences but which must nonetheless meet the increasing demand of civil society for greater fairness, justice and comparable conditions of security and judicial protection,
- C. aware, in the light of such large-scale processes affecting the whole continent, of the limits to strictly national responses, and the problems encountered by the Member States of the Union in coping with their human, social and economic impact while in the process maintaining reference points which have been found to be essential to citizens and to European public opinion in general,

Tuesday 13 April 1999

- D. aware that organised crime is taking advantage of the absence of or failure to apply European legislation in fields such as immigration, asylum and civil and criminal judicial cooperation and of the compartmentalisation of the national judicial systems, which outrages public opinion and is causing national authorities to lose credibility in the eyes of the European public and giving rise to costs which are not only financial but human and political,
- E. aware of the limitations inherent in the intergovernmental approach tried under the third pillar of the Union Treaty, which are responsible for the fragmentary character of many measures, agreements and acts of whatever nature which have been adopted or are being negotiated, a deficiency which applies to both their nature and their implementation; anticipating that these measures will be enhanced as a result of the entry into force of the Amsterdam Treaty, which will result in a fresh impetus enabling citizens, together, to reap the benefits of their democratic tradition,
- F. believing that mutual confidence must be strengthened between the European and national institutions and between them and the European public,
- G. whereas the legitimate demand for security by those residing within the Union cannot be dissociated from the objective of justice, which is one of the hallmarks of the European Union; whereas, therefore, in order to be effective, police action must be accompanied by the development of judicial cooperation and whereas such cooperation, in turn, is possible only if national crime prevention and crime-fighting policies are coordinated as often as possible at European level,
- H. noting that the Fifteen finally decided, by means of the Treaty of Amsterdam, to tackle the root of the problems by making constitutional changes; whereas, by means of these provisions, the Union is on the one hand responding to the demands of certain constitutional courts as to its capacity to ensure respect for fundamental rights according to the principle of the rule of law and on the other confirming its mission to act alongside the Member States in affirming not only economic but also political and civil principles; noting that this applies in particular to the following provisions:
- Article B of the Treaty on European Union (future Article 2 of the Treaty on European Union) which makes one of the objectives of the Treaty '... to maintain and develop the Union as an area of freedom, security and justice ...' and which is amplified in Article 73i (future Article 61) of the EC Treaty for the first pillar and Article K.1 (future Article 29) of the Treaty on European Union for the third pillar,
 - Article F (future Article 6) of the Treaty on European Union, which provides that 'the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States', and Article 6a (future Article 13) of the EC Treaty, which enables the Community, inter alia, to take action 'to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation',
 - Article F.1. (future Article 7) of the Treaty on European Union which provides that respect for fundamental rights is not only a prior condition for membership of the Union but also an absolute requirement for the exercise of the Member States' rights,
 - Article L (future Article 46) of the Treaty on European Union, which defines the jurisdiction of the Court of Justice with regard to fundamental rights and police and judicial cooperation in criminal matters,
 - Title IIIa (future Title IV) of the EC Treaty, which governs the free movement of persons, and Title V (future Title VI) of the Treaty on European Union, which governs police and judicial cooperation in criminal matters,
 - Article 117 (future Article 136) of the EC Treaty, which refers to the fundamental social rights set out in the Turin European Social Charter (1961) and the 1989 Community Charter of the fundamental social rights of workers and which thus provides a legal basis for European Union action against exclusion,
- I. whereas the implementation of the future Title IV of the Treaty, on the establishment of an area of freedom, security and justice, requires that the Schengen *acquis* be incorporated beforehand, as provided for in a Protocol annexed to the Treaty,

Tuesday 13 April 1999

- J. believing that after the establishment of the internal market, the single currency and the basis for a social Europe, one of the prime objectives of the Union must now be the establishment of an area of freedom, security and justice; this must be based on the principle that the free movement of persons and cooperation in fighting crime, by their nature, endanger the fundamental rights of the individual as regards both the policies envisaged and the action taken,
- K. believing that the establishment of this area of freedom, security and justice is urgently demanded by European public opinion (by every resident of the European Union), that its consolidation is intimately linked to the development of real — and not merely theoretical — European citizenship, and that it constitutes the only possible outcome of the internal market within which persons, goods, capital and services freely move,
- L. noting the conclusions of the Vienna European Council and the decision to hold an extraordinary part-session in autumn 1999 set aside for freedom, security and justice,
- M. having regard to the positive outcome of and the remarks formulated during the Interparliamentary Conference organised by Parliament's Committee on Civil Liberties and Internal Affairs on 24 and 25 March 1999,

1. A more positive definition of fundamental rights and European citizenship, and action against any form of discrimination

1. Approves fully the decision by the European Council to hold an extraordinary session in Tampere on 14 October 1999 to debate the establishment of the European area of freedom, security and justice; considers it to be of fundamental importance that the Heads of State and of Government, the newly elected European Parliament and the national parliaments draw up a common strategy on:

- European citizenship and the fundamental rights of persons living in the Union,
- full attainment of free movement of persons pursuant to Article 7a (future Article 14) of the EC Treaty,
- immigration and asylum,
- mutual recognition of civil and criminal sentences,
- administrative, judicial, customs and police cooperation and upgrading the role of Community agencies such as Europol;

declares its readiness, as of now, to participate in the definition of this strategy in collaboration with the high-level group responsible for preparing the Tampere conclusions, promoting, together with national parliaments, appropriate participation by civil society;

2. States that respect for fundamental rights must not merely be a criterion for assessing the legitimacy of Community action but should also be the hallmark of the European Union; considers, in view of the plethora of sources governing the scope of these rights, that the decision by the Presidency of the Council to draw up a Charter of fundamental rights should be analysed with the greatest interest and in particular that the added value which it would represent in comparison with the existing situation should be ascertained;

3. Believes that this initiative should be supplementary to and amplify the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the other international instruments adopted or being negotiated to which the Member States are or intend to be signatory, and that it should be linked with other legislative acts relating to each of the rights in question and become the point of reference for the work of the Court of Justice, which, in the absence of such legislation, has often had to assume the role of legislator in the past;

4. Considers that the future 'Charter' to be drawn up in cooperation with the European Parliament ⁽¹⁾, national parliaments and the Court of Justice should take as its basis the ECHR and the case law of the European Court of Human Rights and establish as high as possible a level of protection of rights as derived from the constitutional traditions common to the Member States;

⁽¹⁾ The following should, in particular, be taken into account: Declaration on fundamental rights and freedoms of 12.4.1989 (OJ C 120, 16.5.1989, p. 51) and resolutions of 14.6.1991 on Union citizenship (OJ C 183, 15.7.1991, p. 473) of 21.11.1991 on Community citizenship (OJ C 326, 16.12.1991, p. 205) and on the Constitution of the European Union of 10.2.1994 (OJ C 61, 28.2.1994, p. 155).

Tuesday 13 April 1999

5. Points out that the principle of the rule of law entails judicial review for matters relating to fundamental freedoms and individual rights and considers the use in the Treaty of safeguard clauses designed to restrict review by the Court of Justice to be unacceptable;
6. Considers that the Commission should, as a matter of priority, present the proposals on:
 - the setting-up of an authority to monitor the treatment of personal data in the work of the institutions (Article 213b — future Article 286 — of the EC Treaty);
 - the legal means to be used to ensure that the activities of the institutions under the third pillar guarantee the same level of protection in the various Member States;
 - access to the documents of the institutions (Article 191a — future Article 255 — of the EC Treaty);
7. Considers urgent the presentation by the Commission of the overall plan and of practical measures necessary to combat all discrimination on grounds of sex, race or ethnic origin, religion or conviction, disability, age or sexual orientation and to combat exclusion (Articles 6a and 117 — future Articles 13 and 136 — of the EC Treaty);
8. Recalls the need for greater consistency between the external and internal actions of the Union, which should be attained by drawing up common positions on the occasion of negotiations in international fora or in relations with third countries;

II. Tackling the questions of the free movement of persons, immigration and visas

9. Reaffirms that, by virtue of Article 7a of the EC Treaty, free movement of persons is a Community matter, that it ought to have been fully implemented on 1 January 1993 and that it applies to every person legally resident in the Union;
10. Urges the Commission, in the light of the work programme contained in the Treaty (Articles 62 and 63) and the discussions which have already taken place in the Council, and of the texts adopted by Parliament, to submit to the Tampere summit a new strategy and to perform a thorough analysis of the *acquis* in this field and, if necessary, make proposals for revision and rationalisation of the 70 or so items of Community legislation currently in force in this field; considers, moreover, that it is necessary to take into account the important link with the enlargement process, the pre-accession strategy and the condition imposed on the applicant countries that they should apply the whole of the *acquis* in the field of justice and home affairs;
11. Reaffirms the urgent need for a genuinely European approach, reappraising:
 - the free movement of persons,
 - visa policy (harmonising the list of third countries, improving the uniform format, and the issuing procedures),
 - immigration policy, laying down clear conditions for entry and residence (especially in respect of family reunion),
 - the definition of a statute for non-Community nationals legally residing in the Union and positive action to support their integration,
 - effective action against illegal immigration, targeting criminal networks organising trafficking in human beings,
 - establishment of a legal framework to enable the Union to cope effectively with a mass influx of displaced persons by creating a harmonised temporary protection regime, including the establishment of a system of humanitarian and financial solidarity between the Member States,
 - approximation of the conditions for receiving applicants for asylum and of legislation on procedures for conferring refugee status and forms of supplementary protection;
12. Considers that, in order to help formulate such an approach, the forthcoming Intergovernmental Conference should speed up the process of making these areas subject to codecision;
13. Points out that the implementation of freedom of movement for persons within the Union requires that the Schengen *acquis* be incorporated beforehand, partly in the first pillar and partly in the third pillar; considers that the *acquis* must therefore be subject to a thoroughgoing appraisal; Parliament can in no way be bound by the decision on the classification of the *acquis* to be taken by the Council before the entry into force of the Treaty of Amsterdam under an exceptional procedure (unanimity in Council, no Commission initiative and no consultation of the European Parliament);

Tuesday 13 April 1999

14. Calls on the Council to adopt without delay measures with a view to ensuring the absence of any controls on persons when crossing internal borders in accordance with Article 73j (future Article 62) of the EC Treaty;

III. Towards the European area of justice

15. Takes the view that the area of freedom, security and justice should be given practical form before the forthcoming enlargement of the Union and therefore calls on the Council and Commission to adopt the necessary measures without delay;

16. Believes that in general the objective of the Union should be to simplify the relationship the citizen and the business sector have with the judicial system and to make the judicial system more effective within an integrated European area, particularly by encouraging the emergence of a common judicial culture; believes that the process of creating a European legal and judicial area must be accompanied by full parliamentary and judicial control⁽¹⁾;

17. Points out that everyone is entitled to be heard by an independent and impartial judge and to a fair trial governed by the principle of presumption of innocence; stresses the importance of respect for the principles of equal access to justice, protection of the rights of the defence, and equal terms in both civil and criminal proceedings;

18. Points out that the social reintegration of those who have paid their debt to society is a fundamental principle of European criminal law; stresses, furthermore, that the rights of victims of crime and terrorism must be protected and that an adequate system of compensation for such victims must be guaranteed;

19. Considers that the granting of judicial assistance free of charge in cases of difficulty must be guaranteed in all judicial proceedings;

Improving the everyday life of the citizens of Europe by strengthening judicial cooperation in civil matters

20. Considers it a matter of urgency, as called for in the Avignon Declaration, to tackle the problems affecting the life of the individual citizen by adopting by Community act the Convention of Brussels II on matrimonial matters and the revision of the Brussels and Lugano Conventions on the recognition of judgments in commercial matters and by facilitating the settlement of cross-border disputes (by making it possible immediately to identify the law applicable), and access to justice;

21. Considers, moreover, that arrangements should be made to ensure that the recognition and enforcement of decisions between Member States is virtually automatic and that, in this context, there is an urgent and vital need to promote the compatibility of the rules applicable in the Member States concerning civil procedure, the conflict of laws and of jurisdiction (Article 73m — future Article 65 — of the EC Treaty) and to step up administrative cooperation between civil-law services by establishing specialist networks (Eurojust) at European level, by exchanging officials or by appointing liaison officers;

22. Considers that the principle laid down in Article K.4 (future Article 32) of the Treaty on European Union with regard to mutual judicial assistance whereby the Council is to determine 'the conditions and limitations under which' judges and investigating and prosecuting officials may operate in the territory of another Member State in liaison and in agreement with the authorities of that State could be applied more in the civil field, where the degree of integration should reflect the fact that this legislation is now of a Community nature;

23. Calls on the Commission to take full advantage of the fresh possibilities offered by Article 73m (future Article 65) of the EC Treaty in order to draw up its own body of rules in the area of civil law and to promote the compatibility of civil procedures;

Defining the Union's role on crime and punishment

24. Attaches fundamental importance to genuine crime prevention by establishing effective cooperation between national police services and Europol; believes that when the Treaty of Amsterdam has come

⁽¹⁾ See resolution of 13 March 1998 on judicial cooperation in criminal matters in the European Union, paragraph 8 (OJ C104, 6.4.1998, p. 267).

Tuesday 13 April 1999

into force, the Europol Convention must be updated to distinguish more clearly between its operations on behalf of a single Member State and those which are of 'European interest' in that they involve several Member States or are conducted on behalf of a Union institution; in the performance of the latter Europol should act as a European agency empowered to carry out operational duties under the supervision of investigating and prosecuting officials (linked through the Eurojust European mutual assistance network) and under the supervision of the European Parliament and the Court of Justice ⁽¹⁾;

25. Draws attention, moreover, to the mass of different legal provisions (for example, in the sphere of protection of personal data) governing the work of Europol and the attendant risk that fundamental rights may be put in jeopardy; believes, therefore, that appropriate framework decisions must be adopted in order to guarantee the equivalence of the provisions applicable under the first pillar, the third pillar or the Europol Convention;

26. Reaffirms its support for the principle laid down in Article K.4 (future Article 32) of the Treaty on European Union on mutual judicial assistance according to which the Council 'shall lay down the conditions and limitations under which' judges and investigating and prosecuting officials may operate in the territory of another Member State in liaison and in agreement with the authorities of that State; in the same context, considers it reasonable to further expand European judicial networks, promote exchanges of investigating and prosecuting officials and, in the case of the defence of the financial interests of the Community (the legal basis being Article 209a — future Article 280 — of the EC Treaty), ultimately to institute a 'European public prosecutor' who would bring legal proceedings (*Corpus Juris*);

27. Once again expresses its wish for greater compatibility of criminal proceedings in the Member States, the abolition of the dual criminality requirement for extradition, and for the introduction of direct detention for minor offences; shares the wish expressed by some Member States for mutual recognition of judgements and measures adopted by the courts of the Member States;

28. Considers it to be vital for the Union to draw up a strategy to support and coordinate the actions of the Member States as regards:

- (a) crimes against humanity or crimes linked to terrorist activity where the persons concerned are sought by several Member States, and recognition of the right of asylum or compliance with requests for extradition, not only through application of legislation which forms part of the third pillar *acquis* (the Convention of 10 March 1995 relating to a simplified procedure for extradition between the Member States of the European Union, the Convention of 27 September 1996 relating to extradition between the Member States of the European Union, the European Extradition Convention of 13 December 1957), but also by supporting international institutions operating in these fields, by setting up new bodies and by recourse to the appropriate legal instruments;
- (b) relations with the International Criminal Court, the extraordinary tribunals (Yugoslavia, Rwanda, Lockerbie ...) and the European Court of Human Rights;
- (c) crimes with repercussions beyond the territory of one Member State and for which measures establishing minimum rules relating to the constituent elements of criminal offences and the penalties applicable should be contemplated as a matter of urgency pursuant to future Article 31 of the Treaty on European Union; this might apply to offences
 - which affect the integrity/health of individuals (e.g. terrorism, trafficking in persons, violation of bioethical principles, child pornography, racism and xenophobia, and drugs trafficking);
 - which affect the European economy (e.g. forging of the euro, violation of the Union's financial interests, international money laundering, corruption and environmental offences);
 - which are committed using means which necessarily transcend national boundaries (e.g. the Internet);
 - which involve European citizens from more than one Member State (e.g. organised crime);
 - which involve organised crime;

⁽¹⁾ See resolution of the European Parliament on the progress made in 1998 in the implementation of cooperation in the fields of justice and home affairs pursuant to Title VI of the Treaty on European Union, Minutes of 14.1.1999 (Part II, Item 13(a)).

IV. Changing working methods and relations between the institutions and with society as from the transitional stage

29. Considers that the realisation of an area of freedom, security and justice is a task which should be carried out in close cooperation between Member States and the European institutions, under a joint programme; appropriate arrangements to ensure participation by the institutional bodies concerned at European and national level and by representatives of civil society in planning and implementing the measures laid down in the action plan should be provided for, bearing in mind the following principles:

- this strategy, the main elements of which should be presented at Tampere, should be based on a White Paper from the Commission (which would at the same time be a proposal for a programme for the European Parliament's term of office) and on specialised strategic documents to be drawn up by the Presidency of the Council and/or by the Commission for each of the fields relating to the realisation of the area of freedom, security and justice; the action plan derived from it would encompass the existing multiannual programmes (such as the programme for combating organised crime or drugs) in a context which takes account simultaneously of the inseparable requirements of freedom, security and justice and would highlight the policy which the Union intends to pursue in the five years ahead with regard to fundamental rights and measures to prevent all forms of discrimination (Article 6a — future Article 13 — of the EC Treaty);
- the options set forth in it should be widely debated, including by the European Parliament, national parliaments and civil society;

30. Considers that in the same way it is necessary to:

- ensure that the European public are optimally informed and establish legal assistance services attached to all the institutions of the Union (particularly at local and regional level);
- make it compulsory for judges, lawyers and public servants to receive training concerning fundamental rights, the European legal system and European comparative law;

31. Considers that as of now, during the transitional stage, as regards the Union *acquis*, it is desirable:

- in the case of the fields transferred to the first pillar, to review the form and content of proposals not yet adopted and instruments not yet in force (particularly agreements, joint actions or any other act entailing commitments for the Member States), verifying their legitimacy;
- in the case of acts adopted or in the course of being adopted under the third pillar, to check their legitimacy in relation to the new constitutional framework, involving the Court of Justice if appropriate;
- in the case of the agreements whose ratification process has not yet begun or has concerned only a minority of Member States, to transform them into 'framework decisions';

32. Considers that as regards the European institutions:

- when forming the new Commission, matters relating to fundamental rights and the implementation of the area of freedom, security and justice should be entrusted to a single Commissioner, who should work closely with the President of the Commission;
- the Justice Council should establish a special link with the General Affairs Council, and the preparatory bodies should be more closely integrated with the bodies operating in Community fields;
- the terms of reference of the Monitoring Centre for Racism and Xenophobia should be extended to all issues dealt with in the future 'European Charter' and to the drafting of the annual report on respect for fundamental rights in the Union referred to in the Declaration of 10 December 1998;
- the Commission should reorganise its services in order to prepare legislative work in these new fields adequately, provide assistance to Member States and constantly monitor the implementation of the programme;

33. Considers that substantial progress must be made in the field of the area of freedom, security and justice before the future enlargement of the Union; urges the Council and the Commission to adopt the necessary measures as soon as possible;

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

(c) A4-0450/98

Resolution on the harmonisation of forms of protection complementing refugee status in the European Union

The European Parliament,

- having regard to the Treaty on European Union, and in particular Title VI thereof,
- having regard to the Treaty of Amsterdam of 2 October 1997,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,
- having regard to the Convention of Geneva Relating to the Status of Refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967,
- having regard to the Universal Declaration of Human Rights of 10 December 1948,
- having regard to the United Nations Convention against torture and other cruel, inhuman or degrading treatment of 10 December 1984,
- having regard to the communication from the Commission to the Council and the European Parliament on immigration and asylum policies (COM(94)0023 — C3-0107/94),
- having regard to its resolution of 21 September 1995 on the abovementioned communication ⁽¹⁾,
- having regard to the Council Resolution on a harmonised approach to questions relating to third countries of reception of 30 November/1 December 1992, the Council's conclusions on countries for which there is generally no serious risk of persecution of 30 November/1 December 1992, and the Council Resolution on manifestly unfounded applications of 30 November/1 December 1992,

⁽¹⁾ OJ C 269, 16.10.1995, p. 156.

Wednesday 10 February 1999

- having regard to the Council Resolution on minimum guarantees for asylum procedures of 20 June 1995 ⁽¹⁾,
 - having regard to the Joint Position of the Council on the harmonised implementation of the definition of the term 'refugee' of 4 March 1996 ⁽²⁾,
 - having regard to the Council Resolution laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 July 1996 to 30 June 1998 of 14 October 1996 ⁽³⁾,
 - having regard to the Convention of Dublin of 15 June 1990 on determining the state responsible for processing an asylum application lodged with one of the Member States of the European Communities,
 - having regard to the proposals for a joint action submitted by the European Commission pursuant to Article K.3(2)(b) of the Treaty on European Union on temporary protection for displaced persons (COM(98)0372 — C4-0505/98 — 97/0081(CNS) and COM(98)0372 — C4-0506/98 — 98/0222(CNS)),
 - having regard to the Council Resolution of 18 December 1997 laying down the priorities for cooperation in the field of justice and home affairs for the period from 1 January 1998 to the date of entry into force of the Treaty of Amsterdam ⁽⁴⁾,
 - having regard to Petition No 852/97 submitted by Mr Friedrich Magirius, of German nationality, and others on the European Union's asylum policy,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Women's Rights (A4-0450/98),
- A. whereas the Universal Declaration of Human Rights recognises the right of any person to protect themselves against persecution and to enjoy asylum in any country, and whereas that fundamental right is reflected in the traditional respect for the individual in European countries,
- B. whereas refugee status is governed by the Geneva Convention, to which all the Member States of the European Union are party, and whereas those states undertook, in signing that Convention, to protect any person fearing persecution on account of his race, religion, nationality, membership of a social group or political opinions, provided that such persons are not covered by the grounds for exclusion contained in Article 1(F) of that Convention,
- C. whereas the Geneva Convention on refugees defines refugees as persons who, owing to well founded fear of being persecuted on grounds of race, religion, nationality, membership of a particular social group or political opinion, are outside the country of which they are nationals,
- D. whereas any person, and in particular any woman, who has been a victim of systematic gender-specific persecution in the context of wars or other serious social unrest or who has a legitimate fear of becoming such must, as a member of a social group, be recognised as a refugee within the meaning of the Geneva Convention,
- E. whereas moreover, in the light of recent crises, the causes of refugee movements must under no circumstances be confused with those of other migratory movements, and whereas the specific characteristics of asylum policy require that a clear distinction be drawn between asylum policy and immigration policy,
- F. whereas work is in progress at the Council on preparing the European Union's future strategy on immigration and asylum policy, whereas those preparations are failing to draw a sufficiently clear distinction between immigration and asylum issues and whereas Parliament must be consulted on these matters forthwith,
- G. whereas the entry, residence and status of persons seeking international protection in the territory of the Member States cannot be treated merely as issues relating to the internal security of those States and involve political and moral values which are underwritten by the international conventions to which those States are party,

⁽¹⁾ OJ C 274, 19.9.1996, p. 13.⁽²⁾ OJ L 63, 13.3.1996, p. 2.⁽³⁾ OJ C 319, 26.10.1996, p. 1.⁽⁴⁾ OJ C 11, 15.1.1998, p. 1.

- H. whereas asylum policy can no longer be dealt with at national level alone and whereas it is necessary, on the basis of the new Title IV in the Amsterdam Treaty, to adopt an approach which makes it possible to afford effective protection to any person who, for humanitarian reasons, needs international protection,
- I. whereas this approach must also make it possible to introduce long-term strategies to eliminate or reduce the underlying causes of movements of refugees and other persons seeking international protection, which, at the same time, implies stepping up cooperation with the countries of transit and the main countries of origin of immigrants, giving consideration to ways of increasing development aid and economic cooperation, improving the level of human rights protection in such countries and stepping up measures to combat immigration networks,
- J. whereas in recent years there has on average been a downward trend in the number of applications for asylum in the European Union, though with some marked disparities among Member States, and the rates of acknowledgement of refugee status have stagnated in many countries and whereas these trends cannot be attributed to an improvement in the human rights situation in the world,
- K. whereas in recent years several Member States have tightened up their legislation on asylum and immigration, as a result of which ever stricter conditions are being required of persons seeking protection in the countries of the Union and, moreover the number of conditions to be fulfilled by asylum seekers in order to gain access to the relevant procedures for determining their status has been increased,
- L. whereas, according to the Council's Joint Position of 4 March 1996, the 'appropriate forms of protection under national law' granted to persons who cannot claim refugee status though their fundamental rights would be threatened if they were forced to return to their country of origin have not been the subject of a joint approach at Member State level, and whereas the temporary protection scheme for displaced persons, currently under discussion at the Council, is not relevant to the situation in which the above-mentioned persons find themselves,
- M. whereas this state of affairs is reflected in a legal vacuum in several Member States of the Union between the provisions of the Geneva Convention on the one hand and the temporary protection scheme on the other, which is only applicable to crises and massive inflows of displaced persons,
- N. whereas national provisions, where they exist, for persons who cannot claim refugee status although their fundamental rights would be threatened if they were forced to return to their country of origin differ widely in the various Member States, some of which have established status categories complementary to refugee status, while others offer no formal protection other than that arising from the Geneva Convention,
- O. whereas these differences between the legal systems of the Member States may well cancel out the Union's current efforts to promote a better spread of responsibilities with regard to reception and residence of persons seeking protection, and may harm the spirit of solidarity between the Member States,
- P. whereas it is necessary, as of the present, to prepare for closer approximation of complementary forms of protection other than refugee status in the European Union, in the interests of the persons concerned and of the Member States themselves, and whereas the applicant countries should be involved in this work,
1. Points out that the fact of requesting asylum involves the assertion of a basic right and that, in addition to their responsibility in terms of acting to deal with the causes of refugee movements, the European states must, in line with their traditional respect for the individual and the international undertakings to which they have subscribed, ensure that that right can actually be exercised;
2. Notes that, since the early 1990s, the Council, without consulting the European Parliament, has adopted several decisions on asylum policy which, in particular, formalised certain criteria for refusing to admit asylum-seekers to the procedure for determining their refugee status, albeit in the form of resolutions and recommendations which as such have no binding legal force;
3. Notes that, while harmonised application of the definition of the term 'refugee' in Article 1 of the Geneva Convention is necessary in the context of Communitisation of asylum policy, the effect of the Council's Joint Position of 4 March 1996 on the harmonised application of the definition of the term 'refugee' has been to endorse a restrictive interpretation of the Geneva Convention by some Member States;

Wednesday 10 February 1999

4. Regrets that, in spite of attempts to standardise the criteria for granting refugee status under the Geneva Convention, recognition rates vary extremely widely among the member countries in respect of similar cases;
5. Reaffirms that the Geneva Convention must apply also to persons who are persecuted by non-state agents in cases where the state itself is incapable of protecting its own nationals;
6. Emphasises that the examination of applications for refugee status must be carried out within a reasonable period, which is far from being the case at present in several Member States;
7. Deplores the fact that the Treaty of Amsterdam has failed to supplement the theoretical step forward achieved through the transfer of asylum policy from the third to the first pillar by introducing, from its entry into force, proper mechanisms for democratic and judicial supervision which would enable the European Parliament to be closely involved in the preparation of decisions;
8. Calls on the Commission to embark immediately on the work of harmonising Member States' legislation on various aspects of asylum policy, and to be ready to submit proposals as soon as the Treaty of Amsterdam enters into force;
9. Asks that such proposals should comply with the letter and spirit of the Geneva Convention, the European Convention for the Protection of Human Rights and the United Nations Convention for the abolition of torture, in terms of both the procedures and the substantive examination of applications for asylum or the contents of the rights granted, and that any draft uniform definition of the term 'refugee' should be in conformity with the handbook on procedures and criteria for determining refugee status of the UNHCR, the only authority qualified to interpret the Geneva Convention;
10. Notes that national legislation on complementary protection varies widely from one Member State to another;
11. Is concerned at the tendency of certain states to substitute a precarious form of protection, which is tantamount to depriving the persons concerned of all rights, for recognition of genuine refugee status under the Geneva Convention;
12. Hopes that the Council, in close cooperation with the European Parliament, will implement paragraph 4(g) 'examination of forms of alternative protection (*de facto* protection and humanitarian residence permits)' of its resolution of 14 October 1996 and that that examination is supplemented by a Commission proposal;
13. Believes that that proposal, which should be accompanied by a timetable, should make provision, for persons who cannot claim refugee status within the meaning of the Geneva Convention, for a form of complementary protection enabling Member States, in accordance with their international commitments in the field of human rights protection, to grant a specific status to such persons;
14. Wishes to be consulted in good time on that proposal, in respect of which it proposes that complementary protection should apply, in particular, on the basis of international human rights protection instruments, to:
 - persons who have fled their country of origin, and/or cannot return because their lives, safety or freedom are threatened by widespread violence, foreign aggression, internal conflict, large-scale violations of human rights or other circumstances which have severely disrupted public order;
 - persons who have fled their country of origin, and/or cannot return because they have justified fears of being tortured, subjected to sexual violence or violence on account of their sexual orientation, inhuman or degrading treatment, capital punishment or other violations of their fundamental rights;
15. Calls, when the categories of persons in need of protection are defined, for account to be taken, where the rights of women are concerned, of the internationally recognised grounds for acceptance, viz. sexual violence and exploitation and especially trafficking in women. Accordingly, those concerned should receive the necessary medical and psychological help. Women should be granted a status separate from that of their relatives;
16. Considers that status complementary to refugee status must confer rights on the persons concerned;

Wednesday 10 February 1999

17. Acknowledges that, with each case taken on its merits, provision should be made for measures to ensure integration into social and economic life. Measures should be taken to give unaccompanied children special protection in accordance with the UNHCR guidelines, including adequate accommodation from the moment they apply for refugee status;

18. Insists that forms of protection complementary to refugee status must not call into question the full implementation of the Geneva Convention and must at the same time be distinguished from the temporary protection regime;

19. Takes into account the fact that the Austrian Council Presidency, through its strategy paper on immigration and asylum policy, has provided stimulus for discussion at European level;

20. Urges that applicants for complementary status whose applications are dismissed at first instance should be able to lodge an appeal with suspensory effect against any decision involving expulsion or return to the frontier;

21. Wishes to closely involve the national parliaments, the parliaments of the applicant countries, the United Nations High Commissioner for Refugees and the non-governmental organisations concerned in a discussion process aimed at establishing genuine protection complementing refugee status in the European Union;

22. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the governments and parliaments of the applicant countries.

21. Migration and asylum policy — Eurodac * — Integration, reception and voluntary repatriation of refugees * — Illegal immigration and facilitator networks *

(a) A4-0143/99

Resolution on the Strategy paper on the European Union's migration and asylum policy (9809/2/98 — C4-0051/99 — 99/0905(CNS))

The European Parliament,

- having regard to the Council's strategy paper, 9809/2/98 — C4-0051/99 — 99/0905(CNS),
- having regard to the Treaty on European Union, and in particular Articles K.1(1), (2) and (3), K.2, K.3 and K.6 thereof,
- having regard to the new Title IIIa of the Treaty establishing the European Community inserted by the Treaty of Amsterdam, the Protocol on the position of the United Kingdom and Ireland, and the Protocol on the position of Denmark,
- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950,
- having regard to the Geneva Convention relating to the status of refugees of 28 July 1951, as amended by the New York Protocol of 31 January 1967,
- having regard to the Universal Declaration of Human Rights of 10 December 1948,
- having regard to the Dublin Convention of 15 June 1990 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities,
- having regard to the Communication from the Commission to the Council and the European Parliament of 23 February 1994 on immigration and asylum policies (COM(94)0023),

Tuesday 13 April 1999

- having regard to its resolution of 21 September 1995 on the above-mentioned Communication ⁽¹⁾,
 - having regard to the Council's resolution of 20 June 1995 on minimum guarantees for asylum procedures ⁽²⁾,
 - having regard to the European Union Action Plan adopted by the Council on 26 January 1998 on the influx of migrants from Iraq and the neighbouring region (5573/98 — C4-0124/98),
 - having regard to the proposals for Joint Actions, presented by the Commission pursuant to Article K.3(2)(b) of the Treaty on European Union, concerning the temporary protection of displaced persons (COM(98)0372 — C4-0505/98 — 97/0081(CNS) and COM(98)0372 — C4-0506/98 - 98/0222(CNS)),
 - having regard to its resolution of 10 February 1999 on the harmonisation of forms of protection complementing refugee status in the European Union ⁽³⁾,
 - having regard to the Action Plan adopted by the Council (12028/5/98) and approved by the European Council in Vienna on 11 and 12 December 1998 on establishing the Union as an area of freedom, security and justice, and the Commission's Communication of 14 July 1998 on the same subject (COM(98)0459),
 - having regard to Council Document 5264/2/99 forwarded by the Council on 26 February 1999 (C4-0133/99),
 - having regard to Document SEC(99)0271 of 3 March 1999 forwarded by the Commission on 3 March 1999,
 - having regard to Rule 93 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs and the opinion of the Committee on Foreign Affairs, Security and Defence Policy (A4-0143/99),
- A. whereas migration has been a recurrent feature of the history of the European continent,
- B. whereas the countries seeking accession are faced with the phenomenon of migration in the same way as the current Member States and must, therefore, be involved in the consultations aimed at securing a consistent European approach,
- C. whereas the European Union's image as a world economic power, which has been boosted by the global launch of the new common currency, makes the Union a magnet for potential migrants,
- D. whereas large-scale migration has, owing to the development of modern means of transport, become an international phenomenon and any consistent policy must take account of the fact that it transcends the strictly European context,
- E. whereas account should be taken, when drawing up a European migration and asylum policy strategy, of the work done by the Council of Europe in these areas,
- F. whereas massive migratory movements, particularly those arising from regional conflicts on the Union's doorstep, are partly due to the Union's inability to speak with one voice and take rapid action on its own initiative in the foreign policy field,
- G. whereas the potential offered by the Geneva Convention is not fully exploited at present by signatory states, particularly with regard to the criteria for the definition of refugees and the definition of the persecutor (who may be non-governmental) and the termination clauses,
- H. whereas, however, a purely temporary decline in the number of requests for asylum and applications for refugee status granted cannot be interpreted as resulting from a substantial reduction in migratory pressure as this trend has reversed in some Member States since the end of 1997 and it must be acknowledged that there has been a simultaneous increase in illegal immigration; whereas, furthermore, there is no justification for the fall in the number of people whose requests are granted, as respect for human rights in the world has not improved,

⁽¹⁾ OJ C 269, 16.10.1995, p. 156.

⁽²⁾ OJ C 274, 19.9.1996, p. 13.

⁽³⁾ Minutes of that Sitting, Part II, Item 13(c).

Tuesday 13 April 1999

- I. whereas there is a lack of adequate and comparable data on illegal immigration; whereas the lack of such information, which is also difficult to obtain owing to the complexity of the problem, makes it impossible to assess the true scale of the problem,
- J. whereas the criminal organisations engaging in trafficking have considerable technical and financial resources that enable them to successfully evade the controls carried out at the Union's external frontiers; whereas the number of victims of the trafficking of human beings is intolerably high, especially on the Mediterranean coastal borders,
- K. whereas criminal organisations play a crucial role in assisting and encouraging large-scale illegal immigration; whereas the immigrants smuggled in by couriers are often victims of rings trafficking in human beings to exploit them for prostitution, the smuggling of drugs or illegal labour; whereas action to combat these criminal organisations must play a preponderant role in any European policy on migration,
- L. whereas any European policy on migration must aim to improve the social integration of immigrants lawfully resident in Union territory; whereas considerable progress still needs to be made in this area,
- M. having regard to the essential contribution made by legal immigrants to Europe's economy and to its social development, and also to the fact that demographic trends within the Union suggest that, in the medium term, immigrant labour will be required to meet the needs of the European economy,
- N. whereas, at all stages of the discussion process, a clear distinction must be made between issues connected with the right of asylum, which is a fundamental right, and those associated with influxes of migrants motivated, above all, by economic reasons,
- O. whereas legally established migrants must be able to exercise the right to be reunited with their families,
- P. whereas European policies on immigration, asylum, temporary protection and complementary protection should be designed to ensure a consistent system making it possible to establish in Europe an area of freedom, security and justice, within the new legal and institutional framework provided by the Treaty of Amsterdam (future Articles 61, 62, 63, 64 and 67 of the Treaty establishing the EC in particular) and whereas, even in those areas that continue to fall within the province of the Member States, increased cooperation is still desirable,
- Q. whereas increased cooperation and burden-sharing among the Member States is imperative, particularly in acute crisis situations such as that developing currently in Kosovo, the former Yugoslav Republic of Macedonia (FYROM) and Albania,

General questions

1. Congratulates the Council on launching a general debate on a consistent European approach to the questions of migration and asylum; points out, however, that the Commission has presented various legislative proposals in this area (including the three Directives in 1995 concerning the abolition of controls on persons crossing the internal borders, the Gradin draft on admission to the territory of the Union and the status of non-EU nationals legally resident in the territory of the Union), which have been amended by Parliament and are now pending in the Council;
2. Notes that the purpose of the strategy paper is to serve as a basis for the part of the action plan for the creation of an area of freedom, security and justice which concerns migration policy and to sketch out the guidelines for that five-year plan;
3. Calls on the Council to assume, without delay, collective responsibility for relieving the critical situation of the displaced persons and refugees in Kosovo, FYROM and Albania, by sharing the burden of receiving refugees and by joint efforts to improve the situation of those left in the area;
4. Is pleased that the strategy paper analyses asylum, migrant labour, action to combat illegal immigration and the position of legitimate immigrants; stresses the importance of maintaining a careful distinction between these very different issues;

Tuesday 13 April 1999

5. Welcomes the search for constructive solutions to the problems associated with immigration whose aims, in addition to the controls and limits needed for successful integration, also include respect for human rights and international legal standards and the position of legitimate immigrants in society;

Institutional questions

6. Calls on the Commission, in order to achieve consistency in the implementation of the provisions of the Treaty of Amsterdam, to propose, without delay, a new European policy on migration and asylum, directly linked with the accompanying measures, drawn up with the full involvement of Parliament; emphasises the need to seek a balance between the human dimension of migration and the legal measures which are designed to regulate migratory movements;

7. Points out that the Treaty of Amsterdam places policies on migration, asylum and the crossing of the external frontier in the first (Community) pillar; calls therefore for the division of powers in this pillar to be respected as far as possible; stresses that the Commission has the right of legislative initiative in the first pillar; calls on the Council, even if the Member States retain their right of initiative in these areas, to respect the Community logic and so take full account of Commission proposals and involve Parliament in the legislative procedure;

8. Urges that the Commission be enabled to take on adequate numbers of qualified staff so that it can duly perform the tasks assigned to it in the field of migration and asylum by the Treaty of Amsterdam;

9. Welcomes the Council's setting up of a High-Level Group on asylum and migration and, in particular, the fact that this group addresses matters under more than one pillar; regrets, however, that the group was intended to function for a limited period only and that its mandate is limited in terms of time and geographical scope and that Parliament is not involved in the work of the group; urges the group not to confine its activities to the repressive aspects of its mandate;

10. Welcomes the fact that the strategy paper has also examined the possibility of making a single Member of the Commission responsible for all matters relating to migration policy and considers that this could be a significant advance given that, at present, several Members of the Commission are responsible for different areas, ranging from the legal aspects of migration, humanitarian aid and the free movement of persons to the foreign policy aspects of migration;

11. Emphasises the need for open and detailed consultation with the UNHCR and citizens' organisations on migration- and asylum-related issues;

12. Calls on the Member States to ratify the International Convention for the Protection of Migrant Workers and their Families adopted by the UN General Assembly on 18 December 1990;

Asylum

13. Notes that the right to request asylum is a fundamental right which it must be possible to exercise in accordance with the Geneva Convention and the 1967 Protocol, with the legislation of the EU and with the national laws of the Member States; this being so, and bearing in mind the Council's common positions on the safe third country principle and the principle of safe country of origin, reaffirms that asylum seekers should not be expelled or returned, as defined in the Geneva Convention (Articles 33 and 31);

14. Calls for harmonisation to establish a minimum level for the services and reception facilities to which those with the status of asylum seeker are entitled, as the great differences that currently exist result in some countries bearing a far heavier burden than others

15. Urges that, in the event of an application for asylum being rejected, expulsion is suspended if there are signs that the applicant's life could be at risk in his or her country of origin;

16. Calls for processing procedures for asylum applications to be streamlined, with a view to making them more transparent (in particular information as to the procedure, access documents, the right to defence and cooperation with the public authorities) and speedy in the interests of the asylum seeker and the host state, while guaranteeing a means of judicial appeal or appeal before an independent authority; takes the view that an asylum seeker cannot be expelled until his right to appeal has been exhausted;

Tuesday 13 April 1999

17. Considers that priority should be given to improving the implementation of existing international conventions on asylum, in particular the Geneva Convention and the New York Protocol; opposes any attempt to renegotiate the existing conventions, and therefore asks, if need be, that those conventions be supplemented so as to adapt them to new circumstances, rather than creating new instruments;

18. Recalls its approval of the proposal contained in the strategy paper to set up at European level a system of complementary protection to supplement refugee status; rejects any attempt to replace the legal reference framework by a discretionary system based on an 'institutional offer' at the discretion of each government; is of the opinion that, in the event of a mass influx of refugees, Member States must nevertheless have the possibility of putting the system of individual protection on hold and giving institutional guarantees for a specific period; points out that the Commission has drawn up a proposal on the temporary protection of displaced persons; calls on the Council to adopt that proposal, together with the amendments Parliament has made to it, as a matter of urgency;

19. Calls on the Council, pursuant to the basic principle of solidarity between Member States, to take rapid action to reach consensus on the question of sharing refugees and the burden imposed by massive and sudden influxes of refugees into those Member States which accept them either for geographical reasons or for historical reasons;

20. Calls on the Council to adopt, as swiftly as possible, the proposals for joint actions presented by the Commission with regard to the temporary protection of persons displaced by conflicts;

Migrant labour

21. Calls for a general debate on the European Union's tasks in relation to accepting influxes of migrants, as this is a necessary preliminary to formulating a consistent common approach to the phenomenon of migration;

22. Points out that the Commission has presented a proposal for a Council act laying down an agreement on the rules governing the admission of third-country nationals to Member States and that the European Parliament has held a lengthy and detailed debate on the act; calls on the Council to take a decision on that proposal;

23. Calls on the European Institutions and the Member States to contribute actively to improving the integration of legitimate immigrants, who make a significant and positive contribution to the development of Europe's social and economic life, in particular by recognising their right to vote in local and European elections after five years' residence in a Member State; calls on the Commission to present a proposal for a statute for legally resident persons which establishes a framework of rights and obligations, including the question of freedom of movement within the European Union;

24. Agrees with the strategy paper where it stresses that the reduction of migratory pressure calls for a coordinated policy which extends beyond the narrow field of policy on the rights of aliens, asylum, immigration and border controls to encompass international relations and development aid as well as the raising of the level of protection of human rights;

Illegal immigration

25. Strongly condemns the criminal activities of illegal immigration networks and trafficking in human beings (particularly women and minors) and calls on the Member States and the countries seeking accession to strengthen, in association with third countries, their cooperation in administrative, police and judicial matters with a view to effectively preventing and stepping up the fight against crime, while fully exploiting the potential of Europol;

26. Stresses that refugees often have to resort to using false documents and smuggling networks and emphasises that, in the fight against organised illegal immigration, consideration must always be given to the right of refugees to seek protection;

27. Calls for a critical appraisal of measures used to combat organised illegal immigration in the light of the right which refugees have to seek protection;

Tuesday 13 April 1999

28. Notes that the reasons why people emigrate include, *inter alia*, unfavourable social and economic conditions in their countries of origin and that illegal immigrants fall victims to the activities of criminal organisations; emphasises that a large proportion of undeclared work is carried out by European citizens and legally resident persons; believes that the fight against undeclared work must also aim at the employers 'who give the orders'; stresses that whilst illegal immigration may aggravate the problem of undeclared labour, it is by no means the primary cause thereof;

29. Recommends that the principle of providing aid locally, in the countries of origin, be incorporated into any European strategy and that accompanying measures be introduced; recommends, moreover, that the administrative and judicial procedures applicable to illegal immigrants, while fully upholding fundamental rights, should lead to swifter decision making in particular with a view to regularising their status;

30. Advocates that the agreements on re-admission to crisis-torn regions be temporarily suspended where such re-admission would pose a risk to the physical integrity of the immigrants concerned;

31. Reminds the Council and the Member States that, in bilateral agreements on immediate re-admission of illegal immigrants which they conclude with neighbouring countries, be they countries of transit or of origin, they must take account, where appropriate, of the suspensory effect of the asylum procedure laid down in the Geneva Convention;

32. Calls for shared management of the problems of illegal immigration between the EU and non-member countries and calls, therefore, for the explicit inclusion of immigration management within the framework of the international agreements, but expressly rejects the linking of economic cooperation with agreements on immigration;

*
* *
*

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

(b) A4-0006/99

European Parliament recommendation to the Council on the programme of activities to be conducted under the Schengen cooperation arrangements up to June 1999

The European Parliament,

- having regard to Rule 94 of its Rules of Procedure,
 - having regard to Articles 7a and 100c (ECT) and Article K.6(3) (TEU),
 - having regard to the Amsterdam Treaty, with particular reference to Articles 61, 62 and 63 ECT and 30, 31, 43, 44 and 45 TEU, the protocols and declarations concerning the integration of the Schengen *acquis* into the framework of the European Union, and especially the protocols and declarations on the position of the United Kingdom, Ireland and Denmark,
 - having regard to the conclusions of the Presidency following the Vienna European Council of 11 and 12 December 1998,
 - having regard to the legislative proposals on freedom of movement and related policy measures at present under consideration,
 - having regard to the long-standing Nordic Passport Union between Denmark, Finland, Sweden, Norway, Iceland and the Faeroe Islands, and to the Common Travel Area between the United Kingdom and Ireland,
 - having regard to the proposal for a recommendation of the Committee on Civil Liberties and Internal Affairs (A4-0006/99).
- A. having been informed by the competent parliamentary committee:
- (a) of the work carried out in 1997 under the Schengen cooperation arrangements and the work programme of the German Presidency for the period July 1998 — June 1999,
 - (b) of the reports of the Joint Supervisory Authority (JSA) covering the period March 1997 — March 1998 and the operation of the Sirene network,

Thursday 14 January 1999

B. pointing out that:

- (a) the purpose of the Schengen Agreement and the subsequent implementing convention is to create an area in which full freedom of movement for persons is guaranteed, with a reasonable balance being struck between the principles of freedom and security,
- (b) the countervailing police and judicial cooperation measures cannot therefore under any circumstances take precedence over consolidation of this area of freedom and security and continuing to ensure the free movement of persons,
- (c) the operation of the Nordic Passport Union and the UK-Ireland Common Travel Area show that freedom to travel can be achieved without elaborate structures,

C. aware that:

- (a) Schengen's integration into the Union must meet the need for effectiveness while respecting the Union's legal and institutional set-up and that, as a result, the goals set out in the first pillar take precedence over the measures to be drawn up under the third pillar,
- (b) the Amsterdam Treaty sets a more ambitious goal than mere freedom of movement for persons, which includes the freedom to live in an area of security and justice in which all fundamental rights are guaranteed,

D. addressing the German Presidency in its dual capacity as holder of both the Schengen Presidency and the Council Presidency.

Sets out the following recommendations:

1. Integration of Schengen into the Treaty on Union

1. Considers it essential for the Schengen Member States to make further progress in the drive for integration and closer cooperation within the Union framework; considers nonetheless that, during the transitional phase preceding the entry into force of the new treaty, the Schengen States should base themselves on the Union's working methods as regards:

- respect for the fundamental rights of citizens and of third-country nationals,
- the integration into the working methods of the basic rules of legal certainty which give formal acts precedence over 'soft law',
- transparency of and democratic control over the decision-making process,
- legal scrutiny of and checks on the effectiveness of action decided upon under reinforced cooperation arrangements;

2. Expresses its concern that, with little more than a year to go until the Amsterdam Treaty enters into force, the Schengen States have not yet defined their *acquis* or the parts of the *acquis* which have become redundant, and that questions will in future arise regarding the scope of the instructions used daily by the various services (such as the provisions contained in the 'external borders' manual and in the 'consular instructions');

3. Considers it to be of vital importance for the Schengen *acquis* to be defined in good time so as to enable the EU Member States to divide that *acquis* between the first and third pillars as soon as the Treaty enters into force, since any recourse to the safeguard clause (provided for in Article 2(1), fourth subparagraph of the Schengen Protocol), under which the whole Schengen system will be deemed to be based on the third pillar, would have to be seen as an extremely serious failure, for which the Presidency and the Council would bear full institutional and political responsibility, and would constitute a major obstacle to the communitarisation of certain areas pursuant to the Amsterdam Treaty;

4. Expresses concern at the establishment of a 'standing committee on Schengen implementation' a few months before the entry into force of the Treaty, since this is likely to undermine the efforts by the institutions to implement policies at European and national levels; considers that the Commission should take over such powers when the Amsterdam Treaty enters into force; in any event, urges the Schengen Member States to take the necessary action to ensure that the 'standing committee on Schengen implementation' carries out its appointed tasks, namely to check that the requirements for applicant States are met and to lay the foundations for proper implementation of the Convention in tandem with the preparations being made for the integration of the Schengen *acquis* into the Union framework;

Thursday 14 January 1999

5. Urges the Member States to cooperate to the full in the work currently under way on integrating the Schengen *acquis* into the Union framework; queries, as far as the work on the take-over of the Schengen *acquis* is concerned, the objections to including the Schengen provisions under the first pillar, with particular regard to the inclusion of the Schengen Convention (SC) provisions on penalties (Article 3(2), Article 26(2) and (3), and Article 27(1)), conditions for the admission of aliens (Article 5), border controls and surveillance (Articles 7 and 8), extradition (Article 60), and firearms and ammunition (Articles 77 to 91); considers the drawing up of a 'mopping-up' clause to cover all provisions which could not be identified to be contrary to the principle of legal certainty; endorses the call made by the Vienna European Council and asks the Commission to propose an initiative aimed at integrating the Schengen *acquis* into the Treaty;

6. Considers that the agreement to be concluded with Norway and Iceland should remain strictly within the Union's institutional framework and comply with current legislation in Norway and Iceland insofar as it is compatible with Community principles, so as to ensure the free movement of persons in accordance with the Nordic Passport Union, which has proved its efficacy over the past 40 years;

7. Considers that the European Parliament should be informed of the substance of the Schengen *acquis* and consulted on the draft decision integrating that *acquis* into the Treaty on Union and on the agreement with Norway and Iceland, since the legal bases of future proposals to develop the Schengen *acquis* and, therefore, the role of the European institutions *vis-à-vis* such proposals, will depend on that decision; asks its committee responsible for such matters to consider whether an appeal should be made to the Court of Justice if the Council fails to consult Parliament;

8. Calls on the Council and the Commission to negotiate with Parliament an interinstitutional agreement on the latter's involvement in the formulation of strategies and in the legislative measures to be taken under the third pillar;

9. Considers that, although the texts of the decisions and statements of the Executive Committee and the Schengen Central Group will remain within the sphere of competence of the Schengen States until the entry into force of the Amsterdam Treaty, those States should base their approach on the principle of information and access to documents established by the Amsterdam Treaty, and, as of now, should give thought to:

- reviewing and publishing the rules governing the classification of documents and declassifying all documents which do not meet objective criteria;
- having the texts already adopted translated into all the official languages and published in the Official Journal;
- informing the European Parliament and, in exactly the same way, the national parliaments, given that a document which is made public in one Member State must also be made public in the other Member States so as to guard against discrimination between European citizens;
- making available to citizens more comprehensive, relevant information on the impact of the agreement's implementation;
- compiling a compendium of national and European case law on Schengen and a compendium of 'best practice';

10. Considers that the information handled under the Schengen cooperation arrangements should comply with the rules on data protection laid down in Directive 95/46/EC⁽¹⁾ and should be submitted to the supervisory body provided for in Article 286 of the EC Treaty, which should draw on the experience and working methods developed by the Schengen Joint Supervisory Authority (JSA);

11. Considers nonetheless that, pending (interpillar) general rules on data protection and on supervisory bodies covering the first and third pillars, a start should now be made on converting the Schengen Information System (SIS) into a European Information System (EIS), the core of which would comprise data relating to the movement of persons and immigration, in accordance with the new Chapter IV of the EC Treaty; considers, for obvious reasons of subsidiarity and effectiveness, that this system should:

- (a) be developed as a trans-European network (see IDA II codecision) and funded from the Union budget in accordance with Article 129c of the current Treaty;
- (b) be managed by an agency under the operational authority of the Commission (in respect of Title IV data) and the Council (in respect of Title VI data);
- (c) be supervised by the body provided for in new Article 286 of the EC Treaty (see previous paragraph);

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

Thursday 14 January 1999

- (d) integrate the data already managed under the Customs Information System, so as to prevent duplication and ensure data consistency;
- (e) ensure the functional separation (access levels, security system, etc.) required by the end-user services, both within the Community framework and under the third pillar;
- (f) consider the relationship with the Europol data processing systems;

considers that, in the meantime, an agreement providing for the future maintenance of the system should be signed with the Member State which manages the SIS;

12. Regrets the Council's decision to integrate the Schengen Secretariat into the Council Secretariat; considers that its integration into the Commission would have provided for greater consistency between security and justice policy and policy on the free movement of persons;

II. Other priorities set out in the German Presidency's programme

13. Welcomes the German Presidency's undertaking to improve cross-border cooperation in cases of criminal prosecution, on condition that such cooperation is duly recorded and subjected to legal scrutiny; notes that such a move could make an informal practice already existing in border regions more transparent; calls for the rights of the persons concerned to be guaranteed;

14. Endorses the Schengen States' decisions to:

- (a) abolish the grey list, which currently comprises 23 States;
- (b) harmonise their visa policies before 1 January 1999 and make provision for the harmonisation of the procedures and arrangements concerning responsibility, on condition that such harmonisation enhances the transparency of procedures and speeds matters up, and that the persons concerned are guaranteed a right of appeal;
- (c) ensure uniform application of visa provisions and enable diplomatic representations in third countries to gain access to visa data, on condition that the strict criteria on data reliability and updating are complied with;
- (d) introduce without delay the uniform format for residence permits for third-country nationals;

III. Assessing the operation of the Schengen arrangements: the annual report of the Executive Committee and the Joint Supervisory Authority

15. Considers that the operation of the Schengen arrangements can only be properly assessed once a satisfactory solution has been found to the problems existing in connection with both the rights of citizens to freedom of movement, security and access to justice and cooperation between Member States in combating crime; expresses concern, nonetheless, at the absence of a reliable system for systematically checking the effectiveness of the activities conducted under the Schengen cooperation arrangements and the implementing measures taken by each Member State;

Extension of the Schengen area

16. Welcomes the progress made on integrating Italy and Austria into the Schengen system, and hopes that Greece will be able to join in the near future;

17. Calls on the United Kingdom and Ireland to involve themselves in the policies provided for in Title IV of the Treaty; calls on the two Member States to take a consistent approach on 'opting in' with regard to the Schengen *acquis*; and calls on the Schengen countries to encourage the 'opting in' of the two Member States by giving due attention to openness, transparency and legal certainty;

18. Points out that, unlike the United Kingdom and Ireland, all new Member States have been asked to apply controls at the Schengen external frontiers; calls for the independent and impartial administration of justice, respect for individual rights and the principles of the rule of law, and their ties with ethnic minorities outside the European Union also to be taken into consideration when implementation of the Schengen rules by the applicant countries is assessed;

Implementation of Article 2(2) of the Convention

19. Deplores the fact that France is continuing to make use of the exemption mechanism provided for in Article 2(2) of the Convention in respect of its land borders with Belgium and Luxembourg, despite the concerted efforts made by France and the Benelux countries to combat drug trafficking; calls therefore on the French Government finally to end the checks at its borders with Belgium and Luxembourg;

20. Notes the intention of Belgium and the Netherlands to carry out controls at the internal borders during the European football championship in 2000; takes the view that measures to restrict the free movement of persons should be applied exclusively to individuals who represent a serious risk to public safety as a result of their past conduct and any previous convictions;

21. Deplores the lack of solidarity shown by the Schengen States in connection with the influx into Europe of Kurds from the Kurdish areas of Iraq and Turkey;

Asylum policy

22. Considers that the entry into force of the Dublin Convention on 1 September 1997 has had a positive impact; notes that problems are continuing to arise in connection with determining which State is responsible for processing asylum requests;

Operation of the Schengen 'information system'

23. Notes that the incident which occurred at the Belgian Sirene office, where personal data were stolen, has shown that the Sirene and N-SIS databases are not sufficiently well protected; demands that measures be taken at all levels to encode information, improve tracing procedures and reduce the number of users with special access;

24. Reiterates its call for improved coordination between the Schengen States as regards the entry of data into the SIS and ensuring that names are entered on police files only when real risks or specific criminal acts are involved, with due respect for the relevant international provisions laid down by the Council of Europe;

Operation of the Joint Supervisory Authority

25. Welcomes the Executive Committee's acknowledgement of the importance of the JSA's role; calls nonetheless for the JSA to be given an independent structure and a budget large enough for it to be able to carry out its task of protecting citizens' rights; emphasises the importance of its being given a 'users' account' so as to facilitate controls on the C-SIS;

26. Notes that the JSA's opinions highlight the existence of serious problems regarding:

- the security of computerised personal data during processing and transmission;
- illegal storage of data relating to wanted notices;
- failure to respect the principle of data finalisation;
- failure to respect individual rights in connection with the abusive use of identity data;
- the lack of a right of appeal for persons recorded as having been refused entry to the area;

27. Calls for the Executive Committee to take proper account of the JSA's opinions and for action to be taken without delay on the recommendations contained therein; welcomes the undertaking given by the Presidency to shorten the Executive Committee's deadline for reply;

*
* *
*

28. Instructs its President to forward this recommendation to the Council, the Commission and the Schengen Executive Committee, and to the governments and parliaments of the Member States, Norway, Iceland and the applicant countries.

(b) A4-0091/99

Resolution on criminal procedures in the European Union (Corpus Juris)

The European Parliament,

- having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms signed on 4 November 1950, and the protocols annexed thereto, and to the Conventions concluded within the framework of the Council of Europe, in particular those of 13 December 1957 on Extradition, of 20 April 1959 on Mutual Assistance on Criminal Matters, and of 27 January 1977 on the Suppression of Terrorism,
 - having regard to Article 6 of the Treaty on European Union, as amended by the Treaty of Amsterdam, according to which the European Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States,
 - having regard to the new Title VI of the Treaty on European Union, as amended by the Treaty of Amsterdam, and, in particular, to Articles 29-31, 33-35, 39, 43 and 44 thereof,
 - having regard to its previous resolutions on criminal law and on judicial cooperation in the field of criminal law,
 - having regard to the Action Plan on the establishment of an area of freedom, security and justice, adopted by the Council of the Union (Doc. 12028/5/98 JAI 31 REV 5) and approved by the Vienna European Council of 11 and 12 December 1998, and to the Commission communication (COM(98)0459) of 14 July 1998 on the same subject,
 - having regard to Rule 148 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties and Internal Affairs (A4-0091/99),
- A. whereas the increase in crime has resulted in the Member States asking the European Union to accept the challenge of finding suitable strategies to prevent and combat crime, while at the same time maintaining a high level of security for its citizens and avoiding, where possible, the creation of disparities in treatment between one Member State and another,
- B. whereas the conventions concluded previously cover only the most urgent problems but do not tackle them in depth, and whereas, furthermore, those conventions are difficult to implement because of the cumbersome procedures involved and the time required for their ratification by the 15 Member States,
- C. whereas the Council has been content merely to issue a policy declaration, without taking any specific follow-up measures, and whereas the legal instruments used by the Council are scarcely binding on the Member States and, what is more, are very superficial compared with the efficient resources available under the first pillar,
- D. whereas it is for the European Institutions to promote the debate on the adaptation of national legal systems in the field of criminal law and criminal procedure, with due respect being paid to the legal traditions of the Member States,

- E. whereas the Convention of 26 July 1995 on the Protection of the European Communities' Financial Interests and the proposed joint action seeking to make membership of a criminal organisation a criminal offence set the Member States on the path towards establishing uniform definitions of what constitutes a criminal offence, which will facilitate police cooperation and judicial cooperation in criminal matters,
- F. whereas the Treaty of Amsterdam has equipped the European Union with new instruments with which to combat the most serious forms of crime, in particular through the introduction of minimum rules relating to the constituent elements of criminal acts and to the penalties applicable, with a view to providing the public with a high level of protection in a common legal and judicial area,
- G. whereas cross-border crime is difficult to prosecute, in particular because of the differences between legal procedures in the Member States,
- H. whereas, in its conclusions, the Vienna European Council of 11 and 12 December 1998 called for a strengthening of EU action against organised crime (point 89 of the conclusions),
- I. whereas the fundamental principles and the existing body of criminal law should inform the negotiations being conducted with a view to the enlargement of the Union so as to ensure that criminal law and judicial systems in the applicant countries are brought into line with those of the Community,
- J. whereas recent events, such as the Öcalan and Pinochet cases, give increasing grounds for a review of the urgent need to establish mechanisms for cooperation in the field of criminal law based on minimum common standards and on increased cooperation between Member States,
- K. whereas all police authorities, whether at local, national or European level, must be subject to proper supervision,
- L. whereas all citizens living in the European Union are concerned for their safety and for that of their families,

Criminal law provisions

1. Recalls that the European Convention for the Protection of Human Rights and Fundamental Freedoms constitutes the foundation stone of European integration in the field of criminal law from which it has been possible to derive fundamental principles to serve henceforth as the common legal and cultural denominator of the Member States of the European Union;
2. Welcomes the Corpus Juris, which sets out criminal law provisions relating to the protection of the European Union's financial interests, since it might serve as an example for future developments, and looks forward with interest to the Commission's report on the possible implications of the Corpus Juris for national legal principles;
3. Is not seeking the creation of a European Penal Code but calls for the gradual establishment of a European criminal law system in which account is taken of Member States' legal traditions and, on the basis of the latter, methods are found of combating and preventing international organised crime and which, in particular:
 - (a) gives priority to gradual harmonisation, as provided for in the second paragraph of Article 29 of the Treaty on European Union and in the Action Plan to establish an area of freedom, security and justice, of the approach to the following offences connected with organised crime:
 - offences against children (especially sexual exploitation)
 - trafficking in persons
 - drug trafficking
 - terrorism
 - corruption and fraud
 - money-laundering

crimes in respect of which the Union already possesses a common body of law,

Tuesday 13 April 1999

(b) takes the view that additional efforts are required to define the Union's specific priorities in the following crime sectors:

- arms trafficking (Article 29 of the TEU)
- crimes against the environment (Action Plan) and trafficking in nuclear substances
- high-tech crimes (Action Plan), especially those committed via the Internet
- doping in sport (conclusions of the Vienna European Council)

in respect of which it is crucial to ensure continuity with the policies already being pursued at Union level, while at the same time extending the study of cross-border implications and seeking a coordinated approach at international level;

4. Calls on the Council and Commission, when elaborating this system, to put in place a genuine legislative programme capable of exploiting to the full the resources provided by the Treaty of Amsterdam, in particular the extended right to propose legislation attributed to the Commission and the framework decisions, once the new provisions enter into force;

Procedural arrangements and instruments

5. Takes the view that, with respect to the medium- and long-term prospects for criminal procedures in the European Union, an independent European Public Prosecutor might be appointed who would operate in parallel with national public prosecutors and, initially, might serve to centralise judicial information on transnational investigations under way relating to offences covered by the European criminal law system so as to avoid duplication of effort and enable the competent investigating and legal authorities to participate and to make available their respective intelligence and expertise, in particular in order to ensure better coordination of the actual investigations;

6. Assumes that, at a later stage, the European Public Prosecutor might be given responsibility, via delegated prosecutors, for the opening of investigations and the bringing before the competent Member State courts of public criminal law proceedings involving offences covered by the European criminal law system;

7. Points out that a European Public Prosecutor might be able to provide judicial control of the activities of Europol, given that the Treaty of Amsterdam provides for Europol to undertake operational activities although, to date, there has been no provision for any judicial and democratic review;

8. Points out that a European Public Prosecutor could also provide appropriate judicial control of UCLAF/OLAF and that, at all events, it is essential to ensure that the latter body is sufficiently independent of the Commission;

Institutional issues

9. Would like to know the opinion of the national parliaments about the adoption of acts connected with the establishment of an area of freedom, security and justice and undertakes to do its utmost to ensure that the citizens of Europe are kept fully informed about what is going on;

10. Demands, with a view to the drawing up of a legislative programme relating to the European criminal law system, that the Council enable Parliament to play its full role which, although still advisory in nature, has been strengthened by the Treaty of Amsterdam and is infeasible, in the light of the principle of legality, where Union activities begin to involve the sphere of criminal law;

11. Calls on the Commission to ensure that Parliament is fully involved in the phase of assessment of the feasibility of the measures connected with the establishment of an area of freedom, security and justice, and, in particular, the establishment of the Corpus Juris, and proposes that the national parliaments be invited to work together in order to consider the various political and constitutional aspects arising from the reform concepts connected with the European Public Prosecutor;

Final considerations

12. Calls on the applicant countries to give their full support to the reforms and to the process of bringing their legal systems and their administrations into line with those of the Community;

Tuesday 13 April 1999

13. Calls on the Council to conclude cooperation agreements, within the meaning of Article 38 of the Treaty on European Union, with target third countries particularly concerned by illicit drug trafficking, organised crime — especially financial (tax havens) — and terrorism with a view to promoting approximation of the constituent elements of criminal acts and penalties in the fields concerned;

*
* *
*

14. Instructs its President to forward this resolution to the Council and Commission, to the governments and parliaments of the Member States and to the governments and parliaments of the applicant countries.

