

Statement to the European Commission

The Permanent Subcommittee on EU Affairs of the National Council, mandated by Art. 23e of the Federal constitutional law in combination with paragraph 31e of the Rules of Procedure of the National Council, discussed the proposal concerning Council document 11300/09, Preparing the Stockholm Programme—Organisation of discussions in the Council, (14684/EU XXIV.GP) and the communication from the Commission COM (2009) 262 final “Communication from the Commission to the European Parliament and the Council ‘An area of freedom, security and justice serving the citizens’” ((15466/EU XXIV.GP in public meetings on 17 September and 20 October 2009 and came to the following conclusion:

The communication from the Commission “An area of freedom, security and justice serving the citizens” serves as a basis for the “Stockholm Program” to be decided on 10 December 2009. The program will create a framework for the EU-wide cooperation in justice and home affairs for the period 2010 to 2014.

The Committee explicitly supports the political priorities of the Commission that preface the Communication, in particular “Promoting citizens’ rights—a Europe of rights”. The considerations regarding comprehensive schemes in connection with migration and access to the labour market do not, however, appear to be compatible with the principles of subsidiarity. Some contents also raise questions with regard to fundamental rights and data protection. Reference is made in this regard to the unanimously adopted statement by the Austrian Data Protection Committee.

The Committee has the following comments to make about the individual sections of the proposal.

- (1) The Committee supports the political priority “Promoting citizens’ rights—a Europe of rights”, in particular the approach chosen by the Commission of “putting the citizen at the heart of the project” and welcomes the proposal for accession by the EU to the European Convention on Human Rights. In acceding to the Convention, the Commission should ensure that fundamental rights and fundamental freedoms are treated equally and also that there is no divergence or conflict between the judicature of the European Court of Human Rights and that of the European Court of Justice.

The right to privacy must be ensured in the light of new technologies and the increasing cross-border exchange of data. This means that the shared use of various databases and registers proposed by the Commission must be accompanied by the assurance of a high level of data protection. The automatic exchange of information calls for measures to prevent the prescribed limitations on the use of personal data from being circumvented. The setting up such data exchange systems must therefore be accompanied by mechanisms to protect the rights of the individual at the European level, including simple access to justice for every citizen and the provision of

sufficient data protection monitoring mechanisms, complete with the necessary resources.

- (2) The Commission should be further supported in its efforts to continue the fight against discrimination, racism, anti-Semitism and xenophobia, including particular forms of discrimination on account of gender, religion, age, disability or sexual orientation (e.g. homophobia).
- (3) The Committee supports the Commission's proposals regarding the second priority (Making life easier—a Europe of justice), in particular easier access to justice in all Member States. The basic principle of mutual recognition of judicial decisions should be further developed in future to permit the administration of justice in other Member States without an intermediate recognition process. This is contingent—as the Commission rightly recognises—on mutual trust and shared minimum standards. Work is also required to simplify and promote cooperation between authorities, notably in terms of taking evidence (in connection, for example, with the enforcement of labour and social law regulations concerning the transfer of workers). With all these measures—particular in connection with criminal law—the fundamental rights of citizens must be fully protected and the subsidiarity principle taken into account.
- (4) Cross-border threats such as terrorism and organised crime and serious forms of crimes are a major challenge for the European Union, calling without a doubt for an internal security strategy that ensures the protection of citizens within the framework of European fundamental rights (a Europe that protects).
- (5) The Committee welcomes the priority consideration of the five major areas of human trafficking, sexual exploitation of children and child pornography, cybercrime, economic crime and drugs strategy under the heading “Fight against international organised crime” as part of the third priority in the Commission proposal “Protecting citizens—a Europe that protects”. Priority should also be given to the markedly increasing problem of cross-border organised crime in the form of property offences. It is important to define and combat organised property crime (bank robbery, burglary, car theft, fraud, etc.) at the European level as a serious crime. This would respond to the growing concerns of the population and hence the postulated desire for close contact with the citizens within the EU.

There is also a need for an improved exchange of information between EU police forces, particularly in combating terrorism. The police data exchange programmes as part of the Treaty of Prüm should be evaluated.

The same applies to monitoring the implementation of the framework decision on data protection under the third pillar, i.e. in the sphere of freedom, security and justice. If it transpires that its provisions are not adequate to guarantee a uniformly high level of data protection that takes account of the special needs in combating organised and serious crime, additional thought should be given to an overall data protection concept for cross-border data traffic to combat and prosecute crime.

Greater consideration needs to be given to the effective combating and prosecution of typical cross-border offences. This includes measures to prevent suspects from escaping investigation and prosecution. A “European evidence warrant” is conceivable only if a high level of legal protection and effective access to national legal protection mechanisms is guaranteed at the same time.

For example, in connection with the European arrest warrant, suitable and appropriate criminal law compensation schemes must be provided, be it in the individual Member States or at the European level.

In this context, measures could also be considered to speed up proceedings to reduce pre-trial detention while ensuring that the conditions that have been set are monitored at the same time.

New control and surveillance measures (integrated border management) are being proposed to safeguard the external EU borders. The suggested differentiation between private and commercial traffic at border crossings needs to be rethought and the expediency and costs should also be considered in further detail.

In the interests of promoting the rule of law, it would be useful to set up a legal framework for cooperation agreements between law enforcement authorities and IT operators to combat cybercrime in order to facilitate cross-border investigations and examinations. The criteria for interventions with a bearing on fundamental rights must be legally fixed so as to provide adequate individual legal protection in this way and through an appropriate legal framework for the cooperation agreements.

- (6) The Committee welcomes the closer link between immigration and the needs of the labour market proposed in the fourth priority “Promoting a more integrated society for the citizen—a Europe of solidarity”. In particular, due attention should be paid in the future Stockholm Programme to the long-term effects of migration on the labour market and on the social situation of migrants.
- (7) The Committee agrees with the observation by the European Commission that the efficient control of migratory flows is one of the greatest challenges faced by the European Union. Austria points out in particular the high level of responsibility with respect to future integration, notably jobs for family members arriving later, the provision of housing and an infrastructure, and access to services and education. The future Stockholm Programme should take account of the important connection between integration and immigration and should be formulated accordingly.
- (8) Austria believes that a responsible labour migration policy should aim at ensuring in a suitable manner that migrants are treated equally and protected from wage and social dumping.

- (9) In the bilateral relations between the EU and other countries, the European Commission is proposing a shift in focus from combating illegal migration to controlling legal migration. In particular, it suggests circular migration programmes (admission for a fixed period of years with compulsory return and without integration). Austria rejects this concept in the light of its own experience. Apart from the fact that voluntary return is not possible in spite of the limited admission, it also needs to be taken into account that employees working for a fixed term are at particular risk of being employed in jobs beneath their qualifications and of being victims of wage and social dumping, with the corresponding repercussions for themselves and for the labour market as a whole. Austria is in favour of the principle of voluntary participation in measures, particularly in the framework of mobility partnership agreements.
- (10) The Committee welcomes the comment by the Commission that the common framework is “fully consistent” with the Member States’ powers to determine the numbers of non-EU nationals admitted to their labour markets. This responsibility must not be weakened, however, by the knock-on effects from other measures at the European level. Referring to the findings of the Council’s Legal Service, the Committee believes that the EU has no fundamental competence to expand the admission of non-EU members to the labour market. It questions the developments in this direction, such as the current interpretations regarding the transfer of workers or the question of a uniform legal status for legal immigrants from non-EU countries comparable to that of EU citizens, since they also amount to an increase in the possibilities for admission to the individual Member States and ultimately overlap with the national competence regarding labour market access for members of non-EU countries.
- (11) The EU employment and social ministers and also the social partners should be involved at all events in discussions affecting the labour market (labour law but also other work conditions and the safeguarding of social rights).
- (12) Regarding the question of asylum discussed in the Communication, reference is made to the comments on the legislative proposals made by the Subcommittee on 17 April 2009.
- (13) In principle, the European Parliament and the national parliaments should be involved in all future measures under the Stockholm Programme so as to ensure maximum legitimation for measures in sensitive democratic policy areas.
- (14) *Abolition of exequatur process*
The EU-wide recognition and execution of court judgements is a good example of the positive developments that have taken place in the last few years. Several initiatives have already been undertaken to abolish *exequatur*. At all events, it must be ensured that the legal traditions and principles of the individual Member States are adequately taken into account. An example of this is the subject of punitive damages, which are regarded above all in continental Europe as being a violation of *ordre public*. In spite of repeated

assertions to the contrary, the Commission's documents repeatedly propose the introduction of this concept, which is wholeheartedly rejected.

Individual citizens must continue to have the possibility of protecting themselves effectively against abuse as a result of simplified procedures of this type.

There is a striking discrepancy between this document and others published by the Commission. Here it is stressed that *Exequatur* should be abolished. In the Green Paper on the review of Council Regulation (EC) No 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (EuGVVO) this question remains open.

(15) Disputes with parties domiciled in non-EU countries

The comments on this point are not very convincing and it remains to be seen whether an enlargement of the EU's jurisdiction is admissible and expedient. It will depend in particular on the non-EU countries with which a — presumably reciprocal — improvement in protection in disputes can be achieved. Allowance for the legal traditions and principles of the Member States concerned is indispensable and will continue to be of particular importance, especially with disputes involving non-EU countries.

(16) A Europe of justice

In the light of the guaranteed fundamental rights already in place, there is no conceivable situation anywhere in the EU in which a (legal or natural) entity would not have the due legal possibility of appeal to a court and assertion of its civil rights and obligations. The right to justice is a subjective public right that can be claimed against the state to a decision on a dispute under private law.

Every person in the European Union can therefore expect to enjoy comprehensive legal protection and the ability to assert his/her right if the need arises. The protection due to citizens on the basis of community law is thus effectively guaranteed. The introduction of additional procedures for the assertion of rights throughout the EU is to be rejected in so far as they violate the currently valid regulations regarding judicial competence. "Forum shopping" of any kind is to be rejected.

Contract legislation is without a doubt at the heart of national jurisprudence. Any interference with this subject matter must be carried out—if at all—with the utmost caution and with account taken above all of the principles of subsidiarity and freedom of contract. No interference may be allowed with purely domestic matters. It is interesting to note that the European Union itself rejects the possibility of creating a simple standard, for example regarding the inclusion of a uniform instruction on the right of rescission in the draft consumer directive.

(17) The introduction of standard contracts is questioned because they quickly tend to mutate into soft law or the like. Apart from the fact that an EU-wide standard contract would be difficult to achieve in view of the great divergences

in the civil law regulations of the various countries, it would in effect place a long-term and significant limitation on freedom of contract.

It is unclear what is meant by an “optional, specifically European system of rules open to companies”. If it is intended as some kind of European business code, it should not be forgotten that large areas of the law are not applicable solely to businesses. If it is not possible to guarantee a seamless ruling in respect of matters not covered by the regulation, it would present more problems than benefits, since economic activity cannot be completely isolated from everyday life.

- (18) **Improving the quality of European legislation**
The Committee explicitly welcomes the emphasis by the Commission on the importance of the quality of legislation and the thought that must be given when proposals are first sketched out to their potential impact on citizens and their fundamental rights, on the economy and on the environment.