

Jean-Marie Cavada

Ladies and gentlemen, colleagues,

Since the topic I have been given is “*The future of European home affairs policy*”, allow me to begin by recalling that the rule when speaking about the future is to take account of

- 1) the past and
- 2) the challenges of the present.

...*The past*...

As far as the past is concerned, it is worth recalling that, for decades, **questions relating to Member States’ home affairs were not included in the European integration process**, as the Member States preferred (and in several cases still prefer) bilateral cooperation or the Council of Europe framework to the Community.

The limits that still exist in the current treaties on the power of the Community legislator and the competences of the Court of Justice testify to Member States’ **reluctance** to transfer to the Community competences which form the core of national sovereignty even today.

But it was impossible to maintain **such a separation between the role of the state and economic policy in the face of the first wave of terrorist attacks in the early seventies**, which led to the first forms of police cooperation by the TREVI group, or in the face of, in particular,

- **pressure from the business sector, which called for the elimination of the EC’s internal borders** (which led the Member States to develop the Schengen system in the eighties, a system intended to step up controls at external borders to compensate for the elimination of internal borders)
- **pressure from policymakers**, who, following the fall of the Berlin Wall, took the historic decision in the Treaties of Maastricht, Amsterdam and Nice to give the European Community, and then the European Union, the **mission of filling the dangerous political vacuum that threatened to disrupt the centre of Europe**.

In the face of these pressures and developments, it became clear even to the most cautious governments that **public order issues could not be tackled without genuine coordination and cooperation with the other Member States**. This necessity, which was reflected in the Tampere programme in 1999, became even clearer following **September 11, 2001**, when it

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became evident that even coordination was insufficient; instead, a **strategy** was needed, not just at the level of the Member States and coordination between them, but also at **European Union level**.

Problems no longer affected only the internal public order in the Member States; instead, the idea of a public order for the European Union as a whole began to take root.

Yet the idea of **public order is based on the interaction between rules, institutions and citizens**. This definition of this interaction took centuries within the individual Member States; just imagine the **potential difficulties in reaching a definition in a Union** whose institutional core remains that of a community which originally considered this entire issue taboo.

...The present ...

However, this **Union is beginning to provide meaningful responses**, even if these responses still suffer from a **certain degree of improvisation and imbalance** due to the fact that they were adopted in the wake of the September 11 attacks.

Take the example of the **European arrest warrant**, which is in the process of revolutionising cooperation between judges within the EU and laying the foundations of a European judicial area.

This measure, which had already been scrutinised by several constitutional courts, including the German constitutional court, was also examined by the Court of Justice in Luxembourg two days ago. So many academics and NGOs had voiced reservations! Indeed, the European Parliament itself demanded measures ensuring minimum guarantees for accused persons, and is still waiting for them six years later. There is thus only one possible explanation for the favourable rulings issued by constitutional judges at national and European level.

There is no alternative to the European Union and it is necessary that the EU functions and is supported, including by the highest national courts. Needless to say, the **European legislator** greatly welcomes this openness on the part of the national courts and **supports their initiatives to enter into a dialogue** within the networks that link the highest administrative courts, highest courts, highest councils of the judiciary and soon, we hope, also the national constitutional courts and the European courts in both Luxembourg and Strasbourg.

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Yet the **real challenges** now concern **legislation and the ability to define credible objectives at EU level**.

In this respect, the **current system has also reached its limits**, since it is still based on

- the **principle** of unanimity, which still applies to police and judicial cooperation in criminal matters and legal, long-term immigration
- a **still controversial view of the scope of fundamental rights** (just recall, for instance, the saga regarding the protection of personal data in the field of security or the difficulties in agreeing on criminalisation of acts of racism)
- the **schizophrenic legal structure of the 'pillars'** of the Community and the Union, which requires us to pursue the same objective under two different legal systems (for example, the negotiations on the creation of the second-generation Schengen information system (SIS II) or the new visa information system (VIS), on which we are now close to reaching a final agreement under the German Presidency).

These problems would have been solved by the Constitutional Treaty, which was due to enter into force last year: we are thus naturally all waiting confidently and with considerable hopes for the constitutional process to be relaunched by the German Presidency at the next European Council.

We believe that progress will have been made by the time of the next European elections in 2009, particularly in the fields we are concerned with, those connected with preserving public order at national level and anchoring it at European level

...The future...

I now come to the **steps which European and national legislators must take** until the modifications to the treaties which we have been awaiting for several years come about.

With regards to **contents**, I believe that the **objectives set out in Tampere in 1999, and updated in The Hague in 2004 and again recently in Tampere, remain** valid, despite the fact that the European Parliament feels that there is a **certain imbalance in favour of security** and that **insufficient attention is paid to freedoms and rights**. We also firmly believe that imitating the American model of "all-embracing security" would not be the best solution, since national legislation is already very restrictive in Europe, with regard to identity

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control, security and trade in arms, for example (provisions of this kind being almost non-existent within the USA).

Having said this, the **transatlantic dialogue must be reinforced** and I would like to take this opportunity to inform you that the LIBE Committee, following a visit to the US Congress at the beginning of April, will meet Mr Chertoff, Secretary of the Department of Homeland Security, on 14 May. If any of your committees would like to be present at this meeting you will be more than welcome, since the topics of data protection and visa policy are also of major importance at national level.

This brings me to the final and most important point in my speech: **the necessity of increased transparency and of much more intensive dialogue** between European and national lawmakers.

I have to admit that, despite repeated invitations to the hearings linked with the annual debates on the area of freedom, security and justice and the fact that our parliamentary committee's agendas are sent to all the correspondents at the national parliaments, attendance by **national parliamentarians is sporadic if not non-existent**.

Thus, LIBE sometimes approves texts of fundamental importance for the Member States – like the texts which I just mentioned on SISII and VIS, or the agreements with the USA concerning data on airline passengers, the issue of extradition or cooperation on criminal proceedings, or European visa provisions - **without any true debate taking place or the position of the committees in the national parliaments being taken into account**.

In a world which is interconnected 24 hours a day via the Internet, a world of blogs and discussion forums, and against the background of the explosion of phenomena like wikipedia through which everyone contributes to improving the knowledge of others, **this apparent breakdown in communication between national and European parliamentarians is something which I find difficult to explain**.

Naturally, institutional channels exist which demand that European information comes from the responsible ministry and political channels exist which allow a member of parliament at national level to get in touch with an MEP from the same party, and vice versa. But **why not engage in direct dialogue between corresponding parliamentary committees as well**,

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both at the stage when new European provisions and objectives are being defined and during their implementation?

It is true that this type of dialogue will only be possible if greater transparency exists between our commissions and if information is always up to date and accessible to European and national parliamentarians.

In our fields, decisions can drag on for years and then suddenly make progress over the course of a few weeks, simply because a presidency is able to achieve the political conditions necessary for a decision to be taken during its 6-month term.

This is what happened regarding the directive on data retention, the Borders Code and SISII. I believe it is vital that both European and national parliaments are also able to influence such decisions when they are being taken. On behalf of the committee which I chair, I pledge to do everything possible to ensure such transparency by ensuring that information is circulated, particularly on those issues where success appears is likely.

What I can say, is that a precise contribution at the right moment by a national parliament which is more knowledgeable and much better informed than us about the situation on the ground can only help us to enhance legislation and to reorder our legislative and budgetary priorities.

I shall now conclude my speech and would like to **invite all those who are interested to make themselves known** in order to allow us, before the next hearing on the area of freedom, security and justice next October, to create the conditions for a more direct, transparent and efficient dialogue. This will benefit not only the quality of all of our work, but also the democracy of the decision-making process itself.

Thank you very much for listening.