

## Communication from the European Commission on its right to propose legislation (15 July 1998)

**Caption:** Statement of 15 July 1998 by the Commission concerning its role in the progressive establishment of an area of freedom, security and justice, and in particular its right to propose legislation following the new provisions of the Amsterdam Treaty.

**Source:** RAPID. The Press and Communication Service of the European Commission. [ON-LINE]. [Brussels]: European Commission, [16.08.2000]. MEMO/98/55. Disponible sur <http://europa.eu.int/rapid/start/welcome.htm>.

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[http://www.cvce.eu/obj/communication\\_from\\_the\\_european\\_commission\\_on\\_its\\_right\\_to\\_propose\\_legislation\\_15\\_july\\_1998-en-c5976688-3a4e-4df6-b876-cfe4216ce1eb.html](http://www.cvce.eu/obj/communication_from_the_european_commission_on_its_right_to_propose_legislation_15_july_1998-en-c5976688-3a4e-4df6-b876-cfe4216ce1eb.html)

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## Towards an area of freedom, security and justice

[...]

### **The Amsterdam Treaty: an important step in the right direction**

This contrasting picture verdict does not match up to the constant concern expressed by the public and echoed on a number of occasions by the European Council.

Hence the importance of the new provisions adopted in Amsterdam in that they open up the possibility of significant progress. First of all the objective of maintaining and developing the Union as an area of freedom, security and justice is asserted and the various aspects involved are reviewed. And secondly, the Union has been given the necessary framework in which to accommodate it and the instruments required have been strengthened and at the same time made subject to tighter judicial and democratic review. The Community method is confirmed: several of the areas of the current "third pillar" are brought under Community arrangements and the Community institutions are given a role in police and criminal justice cooperation. Finally, the integration of Schengen rewards the efforts of the Member States which embarked on this cooperation and gives the Union a base on which it will now have to build further.

In this context fully implementing the Amsterdam Treaty offers a unique opportunity. Having said this, it must also be recalled that this cooperation will, at least for the next five years, continue to be the subject of the unanimity rule.

### **The way forward**

#### **A new spirit of interinstitutional cooperation**

Translating the ambitious objectives of the Amsterdam Treaty into concrete action is a major responsibility shared by all the institutions. Going no further than declarations of intent or simply making cosmetic changes would expose the Union to the risk of disappointing the public in proportion to its high expectations.

One of the keys to success lies in a new spirit of interinstitutional cooperation. It is true that one of the features of the new Amsterdam set-up is an adjustment of responsibilities giving the Commission a bigger role. But what is important is not so much the fact of having a right of initiative, be it shared or exclusive, as the way in which this right is exercised. In any case the Treaty provides that for five years the right of initiative will be shared between the Commission and the Member States for matters transferred to the Community framework. In these areas more than in others it will therefore be necessary to continue a constructive dialogue between the Member States and the Commission.

It is the Commission's intention to be guided by the following two lines of action:

- It will, of course, make use of its right of initiative, but in doing so it will set priorities which take account of the timetable fixed by the Treaty itself as regards full attainment of the free movement of persons. It will base its action on a sound understanding of the subsidiarity principle and an analysis of the possibilities offered by the new Treaty to consolidate Community and Union action in areas where it was hampered by the imperfections of the existing Community framework. An initial outline of these priorities is given in the section "Priorities" below.

- It will ensure that the opportunity offered by the new Treaty is not wasted. It would warn against an attitude that is contrary to the spirit of the new Treaty. In concrete terms this means ensuring that the spirit is respected as regards the transition period for the work in progress and the integration of the Schengen acquis. This is dealt with in the following section.

### **The transition to the new Treaty**

Four transitional issues must be addressed :

The Schengen acquis, whose distribution between the future "first" and "third" pillars will have significant consequences for work in this area. It is possible that, if no agreement is reached in that exercise by the time the treaty enters into force, the fall-back position, foreseen in the Amsterdam Treaty's Schengen Protocol, of situating the whole of Schengen acquis in the future Title VI will apply. The Commission considers that such an outcome would not be acceptable, and would need to be corrected over time by the adoption of appropriate Community instruments to take over those parts of the Schengen acquis which fall under the future "first pillar".

"Unfinished business". Currently under discussion in the Council are a number of draft instruments tabled before the signature of Amsterdam but with the possibility that agreement may be reached in the Council before the Treaty comes into force. The Commission will continue to encourage the efforts already being made to introduce appropriate Amsterdam language. Should these efforts fail, however, there would be a clear need for replacement Amsterdam-based texts to be tabled immediately after the entry into force of the Treaty.

Commission initiatives currently on the Council table. These initiatives, of which the draft Convention on Admission and the draft Joint Action on Temporary Protection are the most significant, are based on Maastricht. They are unlikely to be adopted before the entry into force of Amsterdam. As already stated in the Commission's proposals, new texts will be prepared to be ready for immediate tabling when the Treaty enters into force. The same consideration applies for any new Commission initiatives taken between now and the entry into force of the Treaty.

The existing Third Pillar acquis as transmitted to the applicant countries, some of which even pre-dates Maastricht e.g. the Dublin Convention. In the case of these instruments, it will be necessary to examine whether and, if so, on what timescale there is a need for Amsterdam versions. In addition to any identified need for improvements of substance to these instruments, such reformulations will at the very least adapt the existing instruments in terms of the involvement of the institutions of the Union.

[...]

## **Conclusion**

With its call to the Council and the Commission, the Cardiff European Council demonstrated the importance it attaches to grasping all the opportunities offered by the Amsterdam Treaty in what is a crucial matter for the Union, its Member States and their citizens. The Heads of State and Government expressed their desire to see a number of issues addressed which are complex and, in some cases, sensitive, but which are vital for the future of the Union.

The Commission regards the design and implementation of this plan of action as a joint effort with the Council. It feels that the European Parliament should also be involved, with the enhanced role it will enjoy in the new institutional arrangements. A dialogue with the civil society concerned is likewise considered essential. This communication, by which the Commission wished to present its approach, is an initial contribution to a dialogue which will have to get under way in the months ahead. It will be stepped up at a later stage, in particular when it comes to identifying in detail the priority actions which will put flesh on this initial outline.

In presenting its ideas, the Commission is particularly conscious of the need, especially so long as the right of initiative is to be shared between it and the Member States, for coordination with the Council with regard to the preparation of the Action Plan called for in Cardiff. As far as the exercise of its own right of initiative is concerned, it proposes applying the following list of criteria:

1. bring into line with the new Treaty the proposals already on the table but not adopted before Amsterdam;

2. ensure consistency with instruments already in force, by proposing initiatives to develop and/or extend the acquis (e.g. in the area of visas);
3. make optimum use of the Commission's existing know-how, before developing specific know-how in areas in which hitherto the Commission had no formal powers;
4. check to what extent a law-enforcement aspect needs to be prepared for the existing Community policies;
5. strike a balance in all areas of action between freedom on the one hand and security and justice on the other.