Strengthening the EU founding values: the role of the European Parliament.

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1. A bit of history…

What's more difficult than defining your own Identity ? A task this difficult for human beings becomes even harder when this exercise involves defining abstract and collective entities such as a State or an international organisation let alone defining the European Union which is somewhere in the middle and still deserves the Delors definition of an "unidentified" political object".2

Defining the EU identity is even more difficult because the European construction is still in full evolutionary phase. Only twenty years have passed since the signature of the Maastricht Treaty and only eleven since the adoption of the Laeken declaration which paved the way to the constitutional reshaping of the Lisbon treaty. This Treaty, which was intended to stabilise the EU construction for a certain time, is now challenged and more are asking for further changes in the years to come. We are all witnesses of this EU transitional phase and it is hard to see the light at the end of the tunnel because in the meantime new countries are joining the EU enriching it but also making it more difficult to manage the differences between its members.

Bringing together 27 (and very soon more than 30) member States diverse by size, history, culture, economy and population requires not only strong common foundations but also a common vision which make possible the exercise of "shared sovereignty" notably for the MS who are party to the EURO, Schengen cooperation and the Charter of fundamental rights.

2. EU and the MS sharing the same legal foundations …

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[2] According to the well known prevision of Jacques Delors spoken before the European Parliament on September 9th *1985 "..it cannot be dismissed that in thirty or forty years Europe will form a UPO—a sort of unidentified political object—or an ensemble which, once more, will be able to give to each of our countries the advantage of a dimension which will permit it to prosper internally and to hold its place externally." (unofficial translation)*

The common foundations of the EU and of its member states are rooted respectively in the national constitutions which already accept to integrate in the internal order principles defined at e supranational level and by the EU treaties which frame the EU's Identity. The common foundations preserve then both the latter as well the constitutional identity of the MS.

This process of mutual recognition between the European and the national level has been made possible by the fact that all the parties have agreed as of constitutional nature the values which have been progressively shaped by a long lasting dialogue between the Court of Justice (ECJ) and the national Constitutional Courts. This started fifty years ago when the ECJ's seminal rulings Van Gend en Loos (1963) and Costa Enel proclaimed the autonomy of the European legal order *"…for the benefit of which the States have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also their nationals. Independently of the legislation of Member States, Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which became part of their legal heritage"*
By making reference to the rights and obligations of the individuals and not only of the Member States the European Court of Justice made clear its ambition to become the Constitutional Court of the Community. By so doing it inevitably opened a direct dialogue with the national Constitutional Courts on the respective domain of competence as well as on the values to be shared After some resistance notably by the Italian and the German Constitutional Courts a sort of gentleman's agreement arisen on the scope of the principle of primacy of the EU law. It has finally been accepted at national level but with the "counter-limits" that the EU primacy should apply only to policies foreseen by the EU Treaties, should not result in a lower level of protection of fundamental rights (as the one granted by the national constitutions) and should not affect the constitutional identity of the Member States.
Until now these "counter-limits" have never been invoked apart a very bizarre case recently raised by the Czeck Constitutional Court [3] on a rather trivial issue dealing with the pension treatment of a Czech citizen employed by Czechoslovak National Railways before the splitting of Czechoslovakia in two states.

These national "counter-limits" have been taken in account by the ECJ which has thereafter developed a very clever jurisprudence aimed to overcome the resistance of the national Constitutional Courts and to avoid, as far as possible, legal "misunderstanding" or inconsistencies between the national and the European level.
The most clever ECJ move has been to create a "mirror effect" between national and EU principles by translating the main legal principles developed by the national constitutional courts to "common general principles" of the European Union. By doing the ECJ obtained a double result : covering the silence of the founding treaties and strengthening the European judicial dialogue at the highest level.

The "legal transplant" took place notably in the domain of protection of fundamental rights and has been welcomed by the national constitutional courts which, in return,

[3] See here the **CZECH Constitutional Court Judment** : http://www.usoud.cz/view/pl-05-12

recognized the legitimacy of the European jurisprudence as a consequence of the (partial) transfer of sovereignty to the EU as well as an essential element of a "common constitutional heritage" shared by all the EU members.

In '93 these common principles have been mirrored as primary law by the Maastricht Treaty which declared in the art. 6 of the (former) TEU 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.*" The message was strengthened by the second paragraph which evoked the notion of the "common constitutional heritage" by stating that:*"The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law."*

The same article evoked the relation between the European and National level by stressing that *"The Union shall respect the national identities of its Member States."* However not every State could be an EU member and the same year the European Council adopted the "Copenhagen criterias" according to which a country candidate to become EU member must have

- achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union;
- the ability to take on the obligations of membership including adherence to the aims of political, economic & monetary union..

Arguably these criteria should also be respected also after the accession as should the principles outlined in the former art. 6 TEU which has now become the "values" listed by art. 2 TEU as the "values" *"of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail."*

3. The "alert procedure" preserving the EU fundamental principles/values..

Since '99 with the entry into force of the Amsterdam Treaty the art. 7 TEU foresees a political monitoring mechanism which empowers the Council even to exclude a Member State from the voting right in case of *"..a serious and persistent breach by a Member State of principles mentioned in Article 6(1)".* By so doing the Council can prevent the State from blocking the Council votes notably where the Treaty still requires the unanimity.
In 2000 after the so called "Haider case" the alert mechanism's spectrum has been widened by the Nice Treaty also to the cases where the Council determines that there is *"..a clear risk of a serious breach by a Member State of the values referred to in Article*

2." In this case the Council shall hear the Member State in question and may address it recommendations. The Treaty also makes clear that *"The Council shall regularly verify that the grounds on which such a determination was made continue to apply."*
It is remarkable that the "alert procedure" coexists with the Treaty provision which imposes the EU to respect *'…national identities, inherent in (their) fundamental structures, political and constitutional*" principle already foreseen by the Maastricht Treaty and solemnly confirmed after Lisbon by the art. 4p2 of the TEU.

It is also worth noting that if the procedure outlined by the art. 7 paragraph 2 is mainly aimed to protect the EU decision making process (by restraining, if needed, a failing State from voting), the "alert" procedure foreseen by paragraph 1 where "clear risk" of violation of the EU values would be determined, is focused on the Member State itself. It is then inevitably a sort of EU interference in the internal legal order however this is justified as far as it is done on the basis of the "common values" which should bind together the members of the Union and to protect the interests of the citizens of the concerned state who are also EU citizens. Under this perspective the art 7 mechanism is no more than a "mutual evaluation " mechanism comparable with the "alert systems" foreseen in some EU sensitive policies such as the Schengen cooperation or the fight against transnational terrorism, or at greater and deeper scale, the coordinated policies linked with the economic and monetary union.

The political nature of the "alert mechanism" is factually confirmed by the fact that, at least until now, it has been invoked (although never activated) several times notably by the European Parliament, and never by the Commission 4 or by the Member States. Unlike the Council and Commission' modus operandi, debates and, when necessary, strong confrontations are the very essence of the parliamentary work; it is then not surprising that for the political groups the mutual evalution enshrined in the alert mechanism is also beneficial for the political awareness and, at the end, the cohesion inside the European"political families".
The recent experience proof this as that all the cases which could have virtually triggered an alert procedure have also been lively debated by the European political groups and parties with the Governments of the states concerned and very often the Government representatives accepted the confrontation in the EP premises or the visit of Parliamentary delegations in their capitals .

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4 [2] That having been said the Commission reluctance against art 7 p. 1 could be an expression of "political realism" to avoid a defensive position by the State under scrutiny which could harden their positions rather than closing the gap between the EU and the State concerned. This approach is the same taken by the Wise Men Report which in October 8th 2000 drew to an end the so called "Haider's case". According to that report the (informal) ostracism declared by fourteen Member States against the fifteenth was "counterproductive".To remind the case the 14′ initiative was driven by the fear that the new Austrian Minister Haider of well known xenophobic positions could block, in his capacity of member of the Council of the European Union, the adoption of legislative proposals on non-discrimination, requiring the unanimous vote in the Council. Was the Haider's case really counterproductive? The Wise Men assessment is contradicted by the fact that during that period it has been possible to adopt in record time (with the Austrian vote) the two first Directives on combating discrimination (Directive 2000/43 and Directive 2000/78) to draw to a positive end the European Convention on the European Charter of Fundamental rights, and, last but not least, there has been a loss of popularity of the Haider Party (FPO) and its consequent exclusion from the Austrian government.

This could be further proof that a European common political space transcending national boundaries is slowly taking shape and that procedure is not always considered an undue interference in a States' internal political life or a challenge of democratically elected national parliaments and governments.

4. Shared foundations should support a common vision…

Even if sharing the same foundations and values is indispensable to be part of the same project it is not sufficient. It is also essential that Member States flesh out in their daily activity the objective of abolishing the internal physical and legal borders as well as the objective of building a new public space where all the EU citizens are not discriminated and feel themselves everywhere in the EU as members of the same polity.

A common strategy and vision is also indispensable to avoid the differentiation and the inconsistencies arising from 27 different diverging national agendas.
The recent economic crisis has clearly proven that the risk of implosion of all the EU projects by a sort of "domino" effect is far to be theoretical. The fact that some countries have followed economic and budgetary policies inconsistent with the monetary Union has weakened the general EU economic, political and social cohesion. So the question is : how to shape progressively a new "European model", which will be inevitably different from the national ones, by preserving at the same time the history, the culture and the values of each of the Member States?

The challenge of a common policy bringing together different agendas is not new. Already in December 1973, after the first European Economic Community enlargement to UK, IRL and DK the Heads of State or Government "*…decided to define the European Identity with the dynamic nature of the Community in mind" 5*.. The main aim of that declaration was to build a common external policy. However it is worth noting that the '73 Declaration made already clear that *".. The diversity of cultures within the framework of a common European civilization, the attachment to common values and principles, the increasing convergence of attitudes to life, the awareness of having specific interests in common and the determination to take part in the construction of a United Europe, all give the European Identity its originality and its own dynamism".*
It took therefore more than twenty years before the inclusion in the founding Treaties of some visionary elements *6* of the 1973 Declaration and one can even guess if the original objective of a common external policy has been reached in the meantime..

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[5] Bulletin of the European Communities. December 1973, No 12. Luxembourg: Office for official publications ofthe European Communities.**URL:**
http://www.cvce.eu/obj/declaration_on_european_identity_copenhagen_14_december_1973-en-02798dc9-9c69-4b7d-b2c9-f03a8db7da32.html

[6] The '73 Declaration made also reference to concepts which will be mirrored in the Treaties twenty years later. The Headof State and of Government It is interesting to *"…have decided that unity is a basic European necessity to ensure the survival of the civilization which they have in common. The Nine wish to ensure that the cherished values of their legal, political and moral order are respected, and to preserve the rich variety of their national cultures. Sharing as they do the same attitudes to life, based on a determination to build a society which measures up to the needs of the individual, they are determined to defend the principles of representative democracy, of the rule of law, of social justice — which is the ultimate goal of economic progress — and of respect for human rights. All of these are fundamental*

5. European Values: a compass for establishing an European area of freedom security and justice.

The event that triggered the evolution of the European construction from a market oriented organisation to a full fledged political entity has been the fall of the Berlin Wall; however already in '84 the European Parliament adopted a draft Treaty which paved the way for all the following Treaty revisions: the Single European Act and the Treaties of Maastricht, Amsterdam, Nice and Lisbonne.
The central message of the Spinelli Project of '84 was that citizens' andfundamental rights protection, are at the core of the EU and that it is founded on a double legitimacy arising from the states and from the European citizens (as it is now stated by art. 10 of the TEU after the Lisbon treaty) has been These ideas have since then inspired the European Parliament action notably after the entry into force of the Amsterdam Treaty which mandated the EU institutions to maintain and develop the European Union as an "area of freedom, security and justice".

The Strasbourg Assembly took this objective very seriously as it considered that the protection of the individual and the freedom, security and justice related policies are the main political and legal framework where the founding values of the European Union could be preserved and in some cases enshrined in EU law.
With this objective in mind the European Parliament acted following a double approach : as a "watchdog" and as a legislator.

6. The EP initiatives aimed to launch the art. 7 alert procedure

The EP "watchdog" role has dramatically increased notably after the entry into force of the art. 7 TEU procedure foreseen by the Amsterdam Treaty.

The first case was triggered by the EP discovery of a global system for the interception of private and commercial communications (called "ECHELON") where notably the UK was involved. The issues at stake were not only the fact that an EU member state was intercepting the other member states without their authorisation but also the fact that by so doing it violated art. 8 of the European Convention on Human Rights (ECHR) which governs the protection of private life, and the many other international conventions which provide for the protection of privacy.
Following heated plenary debates, which involved the Council Presidency and even the former UK prime minister Tony Blair, the EP set up a Temporary Committee which reported the following year to the plenary. (7) The report recognized the existence of this "secret" system, acknowledged that if a member state (such as the UK) were to use the system for industrial espionage or give "foreign [eg. American] intelligence services

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elements of the European Identity. The Nine believe that this enterprise corresponds to the deepest aspirations of their peoples who should participate in its realization, particularly through their elected representatives."

[7] See the EP Echelon temporary Committee report here : http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2001-0264+0+DOC+PDF+V0//EN&language=EN

access to its territory for this purpose, it would undoubtedly constitute a breach of EC law". With the same report the EP suggested a wider use of cryptography to avoid privacy violations.

The second main case where a serious violation of fundamental rights was considered at stake, and which justified the EP decision to establish a temporary committee in view of a possible art. 7 procedure, has been the case of the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners 8.
Quite significantly the report submitted to the plenary by the temporary committee was established in parallel with a Council of Europe report on the same subject 9 and even if it didn't trigger a formal art. 7 Procedure it has been decisive for national enquiries which found is several cases that these violations took place. (10).

The third main case where art. 7 TEU was evoked was motivated by the risks of violation, in the EU and especially in Italy, of freedom of expression and information (protected by the Article 11(2) of the Charter of Fundamental Rights).
The EP initiative was launched following civil society petitions and even an Italian Constitutional Court Judgment according to which the media pluralism was not granted in Italy. The EP reaction was to take this occasion for a general assessment of media pluralism in Europe.
Again the EP report was accompanied by a parallel initiative on the Council of Europe side as it will happen also in further occasions (for instance on the issue of the "Black Lists" established by the UN Security Council when freezing assets of presumed terrorists).

The 2004 report on media pluralism was just the first of a series of resolutions asking for the amendment of the EU legislation in this domain so that pluralism can be granted not only at national but also at European level as the EP considered that in a globalized society a supranational answer is necessary to overcome the weaknesses at national level. The issue of freedom of expression is recurrently debated in the European Parliament and where a clear polarization between the left and the right emerge. The Hungarian case is only the last in time and the EP is still alone in asking a new European wide legislation in this matter notably after the entry into force of the Lisbon treaty which evokes the pluralism as a founding value of the EU not to speak of the fact that the art. 11 of the European Charter is now binding as primary law.

The EP and its competent Committee LIBE had the chance to evoke the art. 7 procedure to trigger an action of the Commission or of the Member States themselves in several

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8 See the Temporary Committee report : http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A6-2007-0020+0+DOC+PDF+V0//EN

9 See : http://www.coe.int/T/E/Com/Files/Events/2006-cia/

10 See the recent EP 11 September resolution on the same subject where Poland, Romania and Lithuania have been singled out by the European Parliament and urged to re-open their investigations into the detention of prisoners on their soil and transfers to Guantanamo organised by the CIA during the Bush era :http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0309+0+DOC+XML+V0//EN&language=EN

other cases. [11] However, the Treaty requirement of a two-third of MEP representing at least the absolute majority of the House, and the left-right polarization have until now prevented the formal triggering of the procedure.

7. Towards an "European Model" framed by sound legislation an international agreements

The EP didn't limit its action to a watchdog-type role but it pushed strongly for a new progressive legislative framework as well as for the conclusion of international agreements compatible with the European Values as well with the mission of transforming the European Union in a freedom security and justice Area where fundamental rights could be adequately protected and promoted.

More than other EU institutions the EP was well aware that after the Laeken Declaration and the Lisbon Treaty the new "European Model" required a sort of Copernican revolution where the market and the cooperation between governments should had been reoriented in view of the new position of the individual in the EU construction.
More than forty years after the "Van Gend en Loos" jurisprudence, the Charter of fundamental rights now require that the *EU "..places the individual at the heart of its activities, by establishing the citizenship of the Union and by creating an area of freedom, security and justice."*

The challenge for the EU legislator is enormous because it require a different prioritisation of the EU legislation in order to better protect its citizens by taking as a compass like the German Fundamental law the principle of human dignity.

In this perspective it is worth recalling the decisive role of the EP in adopting in 2000 with a fast-track procedure the first EU anti-discrimination Directives founded on art.13 of the European Community Treaty. It strengthened the EU constitutional value of the individual's equality before the EU law (currently stated also by the art. 9 of the TEU as modified by the Lisbon Treaty) and it is still now the most advanced text in this domain.
In the same perspective the EP took seriously the implementation of the principle of "informational self-determination" according to which the protection of personal data and the transparency of the public administration are the two sides of the same coin. On one side the individual is protected from abusive controls by public authorities and on the other it can control the EU institutions.

In this respect it is fair to note that the EP has also, for twelve years, been the champion of citizen's rights to Transparency and access to documents against the conservative approach taken by the Council and the Commission. The long lasting saga linked with the adoption, implementation and revision of the EU legislation in this domain (Regulation

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[11] As it has already been the case for the discrimination in Italy and in France against European citizens of Roma, or the case of "refoulement" of irregular migrants in states where they could risk persecution , or even the case of the violation of principle of non discrimination arising from an international agreement negotiated between Slovakia and the Holy See).

1049/01) testifies how the European Parliament is still alone in this domain even if with in some occasions it has been supported by the ECJ jurisprudence.

The new EU values also require a consistent action at international level.

This has been a domain where the EP has played a decisive role notably in a year's long campaign for the protection of personal data against the abuses by private persons as well by public authorities in third countries. This has been notably the case with the USA where personal data are not protected as it is foreseen in the EU by the Treaties and the Charter.
With the divisive issue of the Death penalty the treatment of personal data could be considered the issue where there is a clash of models between two democratic systems. If for the USA the protection of personal data is still considered a "penumbral right" to be recognised in limited circumstances, for the EU it is a fundamental right rooted in the National Constitutions as well as in the EU Treaties, the Charter and the ECHR. Needless to say these discrepancies have stirred long lasting tensions in the transatlantic relations as it has happened for:
- the controversy in 2000 with the European Commission on the adequacy of the so called "Safe Harbor" principles to be voluntary applied in the USA by private companies to protect personal data (12[);
- the controversy with the European Commission and with the Council on the first EU-USA Passanger Name Record (PNR) which triggered a case before the Court of Justice where the Court recognised partially the EP arguments (13[)
- the rejection after the entry into force of the Lisbon Treaty of the EU-US agreement on the exchange of personal data for tracking terrorism (so called "SWIFT" agreement) (14). Following the EP rejection the agreement has been re-negotiated, partially amended on the data protection issue, and thereafter approved by the EP (15[)

Unfortunnally the EP has been, at least until now, alone in all these campaigns aimed to strengthen an "European Model" founded on fundamental rights protection, which is for some aspects alternative to the ones existing in the Member States or at international level.

8. Conclusions: closing the gap between the EU values and the current EU legislative acquis

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12 See the EP resolution on Safe Harbor voted on July 5th, 2000 (with a very tight majority : 279 votes against 259): http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A5-2000-0177+0+DOC+PDF+V0//EN.

13 See the ECJ judgment here : *http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-317/04* as well the press release http://curia.europa.eu/jcms/upload/docs/application/pdf/2009-02/cp060046en.pdf

14 See the EP press release : http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IMPRESS&reference=20100209IPR68674

15 See: http://www.europarl.europa.eu/sides/getDoc.do?type=IMPRESS&reference=20100205BKG68527&language=EN

Reorienting the European Union from a market oriented approach to a fundamental rights one is not an easy task nor something that one institution can do alone. The examples presented above clearly show that the EU, notwithstanding the clear indications arising from the Lisbon Treaty and the Charter as well from the European Courts jurisprudence is still very far from having defined its new identity.
The same "resilience" and unwillingness is shown by several Member States which continue to behave as if the Treaty of Maastricht had not entered into force.

Suffice to note that on the EU side in the last three years the only remarkable evolution has been in the economic domain and even in this case it happened partially outside the formal framework of the Treaty ([16]).The recent debate on the Schengen Governance and the MS reluctance to take into account the post-lisbon situation show how hard it will be to adopt a new institutional framework compliant with the EU value of democratic accountability.

Three years after the entry into force of the Treaty it is more than evident that the post Lisbon constitutional framework is still for the future and has very little to share with the existing legal acquis.

The revision of the EU acquis by taking in account the EU values and the Charter of fundamental rights (the so called "Lisbonisaiton") is then the most important present and future challenge for the EU institution. Avoiding this re-orientation will unduly prolong the schizophrenic situation where the values proclaimed at Treaty level are not mirrored in the legislation which govern the daily life of the institutions and of the citizens.
The possibility of a quantum leap in the quality of the EU life is more than evident as far as the political will exists. It will suffice to revise by focusing on the new EU values the main legislative acts between the Thousands that adopted in almost all the domains of a State activity in times when the EU constitutional framework was substantially different and the protection of fundamental rights was only an ancillary objective.
Also the legislation traditionally linked with the internal market should then be revised by taking into account the objectives outlined in the Charter and in the values of art. 2 TEU. This has already been done for instance in '95 when on a legal basis linked to the internal market (former art. 95 TCE) the European Community has defined the most advanced regime for the protection of personal data.
It is well known that the Court of justice is very often obliged to strike a balance between fundamental rights and economic freedoms; why this very exercise is not taken seriously by the EU legislator?

Everything has changed after Lisbon and the EU mission is not only to protect but to promote fundamental rights and the individual's need in all the domain of the EU activity.
The closest important milestone of this "lisbonisation" process is already before us, as before December 1st 2014 all the acquis in police and judicial cooperation in penal

[16] And, again, only the European Parliament has raised the problem of the compliance with the Treaties See the opinion on the amendments to art. 136 of the TFEU which have reinstated a Member States role in a domain which could had been maintained under the responsibility of the EU institutions

matters will be subject to the "ordinary" regime (see the protocol 36 of the Lisbon Treaty).
Why not take this occasion to re-examine the EU legislation adopted after September 11th ? In a recent EP resolution it has been declared that the EU legislation in some cases has been unbalanced and has unnecessarily weakened individual freedoms for (still to be proved) increased security.
One can guess if the US post September 11th legislation transplant in the EU has not been too hasty and a critical and the EU Homeland security strategy (for instance in the management of the external borders or in the so called intelligence-led policy) has sufficient check and balances.
It can be argued that even if some US measures can be admissible on the other side of the Atlantic thanks to the check and balances system foreseen by the US Constitution they are very questionable in the EU context where do not exist a comparable check and balance system and moreover the European public opinion is in an embryonic stage.

The "lisbonisation" process could not affect only Brussels.

Since the EU updates seriously its acquis it is more than likely that also the Member States should update their national Constitutions. This possibility has already been evoked by several Constitutional Courts and notably in the Lisbon Urteil adopted by the BunderVerfassunGericht (BVG). In the meantime it has appeared that the situation in the domain of fundamental rights is also under a big stress in several Member States and this situation has raised strong concerns at EU level and in the other member States.
The case of Hungary is the most controversial one and its failures have been analysed by the EU institutions and by the Venice Commission of the Council of Europe.
Great concerns have been raised also for Greece which has been considered unable to grant the right of asylum by the Luxembourgh and Strasbourg Judges as well by several national Courts. In some cases the Member States follow unilateral strategies by refusing to trust other MS as it has happened with France and the Netherlands who are now blocking the accession of Romania and Bulgaria to the Schengen system because of problems of corruption in these countries (problems partially confirmed by Commission reports).

In this framework the traditional mutual respect between the EU institutions and the Member states has to be abandoned and even the Commission is proposing a generalised evaluation of the independence of the judiciary systems in all the member states.
A permanent monitoring mechanism will avoid the triggering of a formal art. 7 procedure.The same reciprocal support mechanism has also been proposed for the new European Common Asylum system and for the the revision of the Schengen governance.

These are promising signs but they will soon fade away if the political forces will not strengthen them at European and national level in the years to come