

Does the Stockholm Programme matter?

The Struggles over Ownership of AFSJ Multiannual Programming

Sergio Carrera and Elspeth Guild

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Abstract

Does the 2009 Stockholm Programme matter? This paper addresses the controversies experienced at EU institutional levels as to ‘who’ should have ownership of the contours of the EU’s policy and legislative multiannual programming in the Area of Freedom, Security and Justice (AFSJ) in a post-Lisbon Treaty landscape. It examines the struggles around the third multiannual programme on the AFSJ, i.e. the Stockholm Programme, and the dilemmas affecting its implementation. The latest affair to emerge relates to the lack of fulfilment by the European Commission of the commitment to provide a mid-term evaluation of the Stockholm Programme’s implementation by mid-2012, as requested by both the Council and the European Parliament.

This paper shifts the focus to a broader perspective and raises the following questions: Is the Stockholm Programme actually relevant? What do the discussions behind its implementation tell us about the new institutional dynamics affecting European integration on the AFSJ? Does the EU actually need a new (post-Stockholm) multiannual programme for the period 2015–20? And last, what role should the EP play in legislative and policy programming in order to further strengthen the democratic accountability and legitimacy of the EU’s AFSJ?

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Does the Stockholm Programme matter?

The Struggles over Ownership of AFSJ Multiannual Programming

Sergio Carrera and Elspeth Guild*

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Introduction

Three years have passed since the adoption in December 2009 by the European Council of the third multiannual programme on the European Union's Area of Freedom, Security and Justice (AFSJ), i.e. the Stockholm Programme.¹ This Programme aimed at setting out the main EU policy priorities on AFSJ cooperation between 2009 and 2014. From the start, it has been the source of heated debates in various EU institutional arenas, with positions divided between the European Commission and the Council as to 'who' should define the contours of the EU's policy and legislative agenda for the AFSJ. The latest controversy to emerge relates to the lack of fulfilment by the Commission of the commitment to provide a mid-term evaluation of the Stockholm Programme's implementation by mid-2012 as requested by both the Council and the European Parliament.² At the time of writing, it appears that the Commission has no intention of publishing the promised evaluation. Against this background, the Civil Liberties, Justice and Home Affairs (LIBE) Committee of the European Parliament has announced its intention to carry out its own review, taking stock of the progress (or lack thereof) made by mid-2013.

This paper shifts the focus to a broader perspective and raises a question that we deem central when seeking to understand the post-Lisbon Treaty institutional landscape and decision-making in EU AFSJ policies: Is the Stockholm Programme actually relevant? What do the discussions behind its implementation tell us about the new institutional dynamics affecting European integration on AFSJ? Does the EU actually need a new (post-Stockholm) multiannual programme for the period 2015–20? And last, what role should the EP should play in legislative

* Sergio Carrera is Senior Research Fellow at the Justice and Home Affairs Section at the Centre for European Policy Studies (CEPS). Prof. Elspeth Guild is Associate Senior Research Fellow in the same Section. The authors would like to thank Nicholas Hernanz for assistance in drafting appendix 1 of this paper and João Soares da Silva for his input on the statistical figures presented in the paper.

¹ Council of the European Union, The Stockholm Programme: An open and secure Europe serving and protecting citizens, 5731/10, Brussels, 3 March 2010.

² The Council's Stockholm Programme stated that "[t]he European Council invites the Commission to submit a mid-term review before June 2012 of the implementation of the Stockholm Programme", p. 21. See European Commission, Communication, Delivering an area of freedom, security and justice for Europe's citizens: Action Plan implementing the Stockholm Programme, COM(2010) 171 final, Brussels, 20.4.2010. The Communication stated that "[t]he Commission will also submit a mid-term review of the implementation of the Stockholm Programme in 2012, in order to ensure that the programme remains in line with European and global developments", p. 9. The European Parliament also called for a mid-term evaluation of the Stockholm Programme by early 2012. See the European Parliament resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme, P7_TA(2009) 0090, Multi-annual programme 2010–2014 regarding the area of freedom, security and justice (Stockholm programme), paragraph 154.

and policy programming in order to further strengthen the democratic accountability and legitimacy of the EU's AFSJ?

1. Setting the Context: Controversies over EU AFSJ Programming and the Stockholm Affair

Since the transfer of a number of AFSJ policies to shared competence with the Amsterdam Treaty in 1999, the EU's policy agenda on what used to be denominated as Justice and Home Affairs (JHA) has been structured in five-year (multiannual) programmes adopted by the European Council. The European Commission has been entrusted with the task of putting into action and monitoring their practical implementation. Starting with the Tampere Programme in 1999,³ which was then followed by The Hague Programme in 2004,⁴ ownership of the policy priority-setting and legislative planning underlying these documents has traditionally lain in the hands of the Council. This constituted a direct expression of the predominance of intergovernmentalism in EU JHA decision-making and the lack of a proper European institutional pluralism giving body to these policies, with the European Parliament (EP) and the Court of Justice of the EU (CJEU) largely excluded from playing their roles in democratic accountability and judicial control (Carrera et al., 2010; Guild et al., 2010).

This 'classical' setting of the JHA institutional framework and decision-making, however, has mutated during the last three years. One of the main motors of change has been the entry into force of the Treaty of Lisbon at the end of 2009, which among its major contributions brought a substantial number of reforms to the EU's AFSJ policy landscape, not least the application of the so-called 'Community method of cooperation' or co-decision procedure (now denominated the 'ordinary legislative procedure') to a vast majority of these areas – and hence the formal recognition of the EP as co-legislator, along with the expansion of the jurisdiction of the CJEU to review and interpret AFSJ law and actions. The Treaty of Lisbon has also guaranteed the constitutionalisation of fundamental rights in the EU's legal system and placed the individual's liberty and security at the core of European cooperation in these domains, with the recognition of the legally binding force of the EU Charter of Fundamental Rights (Guild, 2010).

The first steps of the post-Treaty of Lisbon phase witnessed the kick-off of the European Commission under the second term of President José Manuel Barroso, and the bifurcation of the previous Directorate-General for Justice, Freedom and Security (DG JLS) into two separate DGs: Justice, Fundamental Rights and Citizenship, under the authority of Viviane Reding; and Home Affairs, led by Cecilia Malmström. This important period of transition within the Commission was not immune to sensitivities. The strategy adopted by Barroso was first to appoint two different commissioners but still under a sole DG JLS. Reding was appointed Commissioner for Justice, Fundamental Rights and Citizenship and Malmström Commissioner for Home Affairs. Although at their hearings before the EP in January 2010 both underlined their commitments to "close working relationships", Reding's priority of mainstreaming fundamental rights in home affairs dossiers reportedly led to "turf wars" between them.⁵ This

³ European Council, Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels.

⁴ Brussels European Council, Presidency Conclusions, 4 and 5 November 2004, 14292/1/04, Brussels, 8 December 2004, Annex I, "The Hague Programme: Strengthening Freedom, Security and Justice in the European Union", point 1.5 (2005/C53/01, OJ C53/1, 3.3.2005). See also European Commission Communication, The Hague Programme: Ten priorities for the next five years – The Partnership for European renewal in the field of freedom, security and justice, COM(2005) 184, Brussels, 10.5.2005.

⁵ *European Voice*, "A departmental split to end turf wars?", Brussels, 10.6.2010 (www.europeanvoice.com).

was one of the factors leading to Barroso's final decision to formally divide DG JLS into two DGs as from 2 July 2010, i.e. DG Home Affairs and DG Justice, Fundamental Rights and Citizenship.

The Stockholm Programme therefore landed in an EU institutional setting that was in the midst of transition. Unlike its two predecessors, and unexpectedly for some Council officials, the first months of life of the Stockholm Programme were subject to heated exchanges between the Council and the Commission concerning its shape and implementation. After the adoption by the Council of the Programme in December 2009, the Commission published a Communication (Action Plan) implementing the Stockholm Programme in April 2010.⁶ In contrast to the previous Commission's Action Plans implementing the Tampere and the Hague Programmes, the Stockholm Plan was qualified by several Council representatives as an act of provocation and even as a shameful practice. It was seen to go far beyond the wording and set of policy priorities envisaged by the Council's Stockholm Programme. What has become known as the Stockholm Affair (Carrera, 2012a) became formalised with the JHA Council Conclusions reminding the Commission to use the Stockholm Programme as "the only guide frame of reference" for the political and operational legislative agenda of the EU's AFSJ.⁷

Two years on, it appeared as if the Stockholm Programme controversy had been somehow forgotten. Yet, right before the summer holidays of 2012 the LIBE Committee of the EP formally requested the two AFSJ commissioners to provide an update on the state of affairs in the mid-term evaluation of the Stockholm Programme's implementation. Both Reding and Malmström replied with separate letters addressed to the LIBE Chairman, Juan Fernando López Aguilar, attaching annexes containing a list of policy initiatives, legislative proposals and political reports falling within the respective remits and adopted in the time period corresponding to the Stockholm Programme's implementation.⁸ The letters were followed by presentations by each of them at different intervals before the EP LIBE Committee. It is important to note that Malmström's letter expressly acknowledged that "the Commission is not planning to produce a written report about the mid-term implementation of the Stockholm Programme". In light of the letters and the presentations before the LIBE Committee, it is clear that the Commission does not intend to obey the call by the Council and the EP to present a mid-term evaluation of its implementation before the end of 2012. What insights should we draw from these controversies?

2. Institutional Pluralism and AFSJ Cooperation after the Lisbon Treaty

The dilemmas surrounding the Stockholm Programme constitute an illustrative example of the various ways in which the new institutional setting resulting from the Lisbon Treaty has profoundly affected the dynamics of Europeanisation in AFSJ cooperation. There is now a

⁶ European Commission, Communication, Delivering an area of freedom, security and justice for Europe's citizens: Action Plan implementing the Stockholm Programme, COM(2010) 171 final, Brussels, 20.4.2010.

⁷ Council of the European Union, Draft Council Conclusions on the Commission Communication "Delivering an area of freedom, security and justice for Europe's citizens – Action Plan implementing the Stockholm Programme" (COM(2010) 171 final), 9935/10, Brussels, 19 May 2010.

⁸ The letter from Viviane Reding is not available online, but its annex with the list of policy initiatives can be found on the Statewatch website (www.statewatch.org/news/2012/sep/eu-com-justice-stockholm.pdf), (last visited on 7 December 2012). The letter from Cecilia Malmström and its annex can be found on the European Parliament's website (last visited on 7 December 2012) (www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/reply_malmstrom_20120928/reply_malmstrom_20120928en.pdf) and (www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/annex_stockholm_prg/annex_stockholm_prgen.pdf).

renewed Treaty-based framework affecting the classical relational power and actor-based architecture in JHA cooperation at Union levels. This has been the main aspect fuelling disagreements and competition between the Council, the European Commission and the European Parliament over ownership of strategic policy and legislative programming in the AFSJ. While the new Art. 68 of the Treaty on the Functioning of the European Union (TFEU) confers power on the European Council to “define the strategic guidelines for legislative and operational planning” in the AFSJ, substantial discord has nonetheless emerged as regards the actual scope and mandatory nature of this provision.

Among the more relevant reforms introduced by the Lisbon Treaty on JHA cooperation at EU levels, perhaps the more far-reaching has been the application of the EU ordinary legislative procedure as a principle encompassing the decision-making processes, which now implies that the JHA Council is no longer the sole actor unilaterally delineating the strategy(ies) and legislative outputs in these domains. The Commission’s competences have been consolidated and reinforced in relation to a wider range of AFSJ policies. The Commission was crystal clear during the Stockholm Affair when emphasising its right of initiative in relation to the AFSJ agenda and claiming its role in setting policy and legislative priorities. The high degree of ambition of the new commissioners for justice and home affairs has been visible since their very first appearances before the EP⁹ and it first materialised in the 2010 Action Plan implementing the Stockholm Programme.¹⁰

The EP has also become a co-owner of the EU AFSJ. As Figures 1 and 2 illustrate, the actual workload of the LIBE Committee has been particularly dynamic from the end of 2009 to the present, with approximately 199 legislative and non-legislative dossiers on AFSJ-related matters having been handled, out of which around 114 have been reports. This positions the LIBE among the most active committees during the EP’s 7th legislature. While it is true that the EP does not have a right of initiative recognised by the Treaties, it has been actively involved in AFSJ decision-making procedures and policy priority-setting since the end of 2009. Its contributions have been most noticeable not only in relation to the internal dimensions of AFSJ cooperation, but also in the external ones through its involvement in the ratification of international agreements. The first and perhaps most visible example of the EP’s new role was the voting down in February 2010 of the so-called ‘SWIFT agreement’ between the EU and the US, because of concerns related to its compliance with the European system of data protection and the principle of proportionality.¹¹ Moreover, the EP called for a periodic assessment of the

⁹ This was noticeable for instance in the first speech of Commissioner Reding before the EP when she made the following statement:

Well, as from 1 December [i.e. Lisbon Treaty], it is different and now Parliament, together with the Commission, will have to show that this Lisbon Treaty is not only about words, but that it is *a real revolution for the whole area of justice and home affairs*. I am therefore convinced that the Lisbon Treaty now will mean *a whole reorientation* of our policies in the field of justice, fundamental rights and citizenship. Not only reorientation in thinking, but also *reorientation in results*, because there is no freedom without just security, and there is no security without justice. (Emphasis added.)

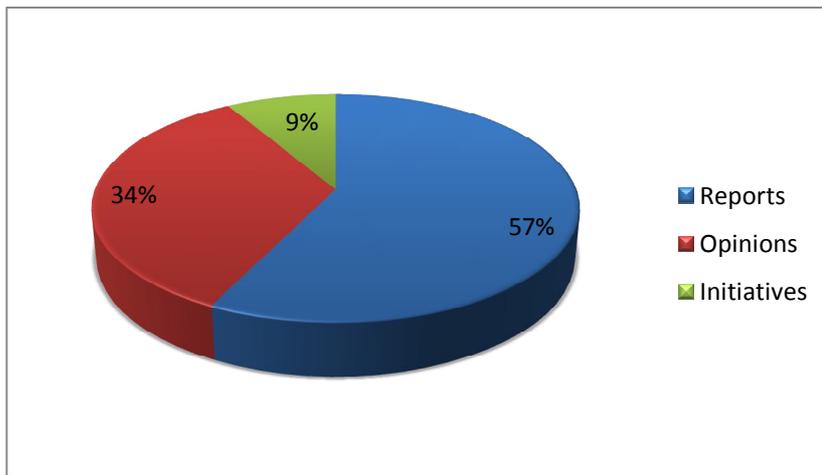
See Committee on Civil Liberties, Justice and Home Affairs, Hearing of Viviane Reding Commissioner-Designate for Justice, Fundamental Rights and Citizenship, Brussels, 12 January 2010 (<http://www.europarl.europa.eu/hearings/static/commissioners/cre/reding.pdf>).

¹⁰ The Commission stated in the Action Plan that “[t]he entry into force of the Lisbon Treaty *enables the Union to demonstrate greater ambition* in responding to the day-to-day concerns and aspirations of people in Europe” (emphasis added; COM(2010) 171 final, op. cit.).

¹¹ See the Council Decision on the signing, on behalf of the European Union, of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (2010/16/CFSP/JHA), OJ L 8/9, 13.01.2010. See also the Report by Jeanine Hennis-

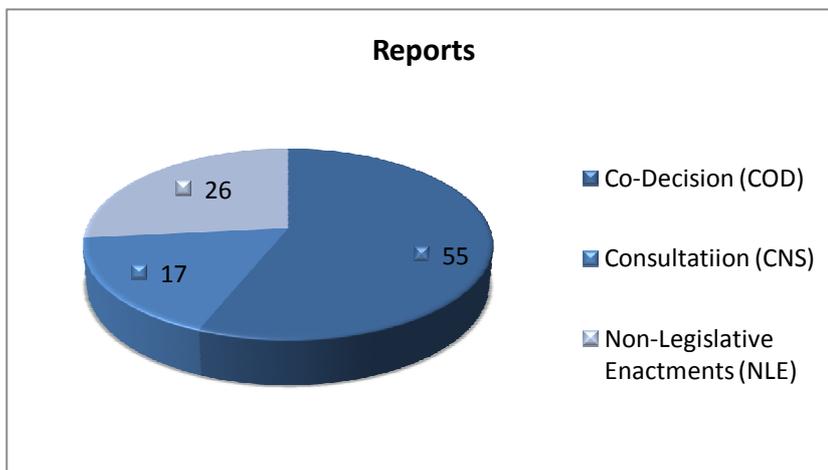
results achieved by the Stockholm Programme and set its own policy priorities for the period 2009–14 in its own resolution on the Stockholm Programme and the Commission’s Action Plan of November 2009. It also stated that it reserves “the right to come back with specific proposals when it is consulted on the legislative action programme”.¹²

Figure 1. AFSJ legislative and non-legislative dossiers of the LIBE Committee, 7th Legislature of the European Parliament (2009–12)



Source: Authors’ elaboration on the basis of statistical data provided by the European Parliament.¹³

Figure 2. European Parliament reports, 2009–12



Source: Authors’ elaboration.

Plasschaert, adopted by the EP’s Committee on Civil Liberties, Justice and Home Affairs (LIBE) on 4 February 2010, P7_TA-PROV(2010) 0029.

¹² European Parliament resolution of 25 November 2009 on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme, P7_TA(2009) 0090, Multi-annual programme 2010-2014 regarding the area of freedom, security and justice (Stockholm programme), paragraph 153.

¹³ The authors would like to express their gratitude to the European Parliament for providing this valuable information. The data presented in the figure can be further disaggregated as follows: i) 114 reports, of which 55 correspond to COD (co-decision), 17 to CNS (consultation) and 26 to NLE (non-legislative enactments); ii) 67 Opinions; and iii) 17 initiatives.

3. Multilevel Strategy Planning on AFSJ Policies

The Stockholm Programme's relevance has not only been nuanced by the new competences attributed to the European Commission and the European Parliament in AFSJ-related domains. During the last three years the EU's AFSJ has also experienced the emergence of a multiplicity of 'strategic' policy agendas and thematic multiannual programmes. The EU's picture on AFSJ programming has mutated into an increasingly heterogeneous matrix of strategies – often running in parallel, and sometimes even in competition with, or presenting incoherencies among one another. Indeed, the current EU multiannual programming on AFSJ needs to be seen in diversified, 'strategic' policy-setting venues and instruments, where freedom, security and justice policies are subject to various 'strategic' policy agendas put forward by the different EU institutional actors.

Starting with the European Commission, DG Home Affairs has issued several policy planning documents, such as the annual reports on migration and asylum,¹⁴ the Communication on implementation of the Internal Security Strategy (ISS) – the ISS in Action,¹⁵ the new strategic framework set in the Global Approach on Migration and Mobility,¹⁶ or the Communication on intra-EU solidarity on asylum.¹⁷ DG Justice has followed a similar tendency in such instruments as the Strategy for the Effective Implementation of the EU Charter,¹⁸ the *Annual Report on the Application of the EU Charter of Fundamental Rights*,¹⁹ or the Communication on an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law.²⁰ While some of these policy programmes have been event-driven and therefore justified in reaction to specific developments, such as the migratory flows evidenced in the Mediterranean in the wake of the so-called Arab Spring at the beginning of 2011, a majority of the strategic policy agendas and priorities were not novel in nature but rather pre-existed these events and had already encountered disagreement between the Commission and the Council.

The EP has been similarly proactive in its setting of AFSJ strategic policy programmes in domains as relevant (and as sensitive). This has included putting forward its own policy planning and proposals in such areas as the ISS, the EU's counter-terrorism policies, the alleged transportation and illegal detention of prisoners in European countries by the CIA and enhanced intra-EU solidarity in the field of asylum.²¹ Each of these EP policy instruments contains policy

¹⁴ European Commission, Communication, *3rd Annual Report on Immigration and Asylum*, COM(2012) 250 final, Brussels, 30.5.2012.

¹⁵ European Commission, Communication, the EU Internal Security Strategy in Action: Five steps towards a more secure Europe, COM(2010) 673, Brussels, 22.11.2010.

¹⁶ European Commission, Communication, the Global Approach to Migration and Mobility, COM(2011) 743 final, Brussels, 18.11.2011.

¹⁷ European Commission, Communication, on enhanced intra-EU solidarity in the field of asylum: An agenda for better responsibility-sharing and mutual trust, COM(2011) 835 final, Brussels, 2.12.2011.

¹⁸ European Commission, Communication, Strategy for the Effective Implementation of the Charter of Fundamental Rights by the European Union, COM(2010) 573 final, Brussels, 19.10.2010 (http://ec.europa.eu/justice/news/intro/doc/com_2010_573_en.pdf).

¹⁹ Refer to the European Commission's website, "Annual Report on the application of the Charter" (http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm).

²⁰ European Commission, Communication, Towards an EU Criminal Law Policy: Ensuring the effective implementation of EU policies through criminal law, COM(2011) 573 final, Brussels, 20.09.2011 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0573:FIN:EN:PDF>).

²¹ See the European Parliament resolution of 14 December 2011 on the EU Counter-Terrorism Policy: Main achievements and future challenges (2010/2311(INI)); European Parliament resolution of 22 May 2012 on the European Union's Internal Security Strategy ((2010) 2308 (INI)); European Parliament

priorities and mechanisms of its own, not necessarily corresponding to those laid down in the Council's 2009 Stockholm Programme or the Commission's Action Plan implementing it. A case in point was the EP resolution on organised crime in the EU, which called for the setting-up of a special committee on 'mafia-style organised crime in the EU'.²² This led to the establishment in March 2012 of the CRIM (Organised Crime, Corruption and Money Laundering) Committee in the EP,²³ which among other responsibilities is mandated with proposing "appropriate measures to enable the Union to forestall and counter these threats, including at international, European and national level".

The Council and several EU member states have also contributed to this diversification of strategic planning and programming. One of the most relevant examples was the so-called '2008 European Pact on Immigration and Asylum'. The French Presidency (June–December 2008) identified as one of its priorities the domain of migration and advocated the adoption of a pact, which was agreed by the Council in October 2008.²⁴ The European Pact on Immigration and Asylum was qualified as a clear expression of 'nationalism' and 'intergovernmentalism' in European cooperation on immigration, borders and asylum because of the importance that it attributed to the preservation of national (member state) competences in these domains and its attempts to bring legitimacy to (and universalise at the EU level) certain national policy responses and practices of particular member states (Carrera and Guild, 2008).

In the Council Conclusions on the "follow-up of the European Pact on Immigration and Asylum" of June 2010,²⁵ the European Council invited the Commission to monitor the progress made in the areas of migration and asylum, covering both the implementation of the European Pact on Immigration and Asylum, and the relevant sections of the Stockholm Programme and the Action Plan implementing it. The Commission published the first report on the implementation of the European Pact,²⁶ which was later on taken over by the above-mentioned annual reports on immigration and asylum. The second (2010) *Annual Report on Immigration and Asylum*, published in May 2011, provided a scoreboard of the European Pact commitment(s) and Stockholm Programme objectives, giving for each of these the relevant policy and legislative developments and achievements, at both the EU and member state

resolution of 11 September 2012 on alleged transportation and illegal detention of prisoners in European countries by the CIA: Follow-up of the European Parliament TDIP Committee Report (2012/2033(INI)); European Parliament resolution of 11 September 2012 on enhanced intra-EU solidarity in the field of asylum (2012/2032(INI)).

²² European Parliament resolution of 25 October 2011 on organised crime in the European Union (2010/2309(INI)), paragraph 15.

²³ For more information on the CRIM Committee and its responsibilities refer to <http://www.europarl.europa.eu/committees/en/crim/home.html>. The Conference of Presidents of the EP has approved the CRIM Special Committee request to extend its term of office until the end of September 2013.

²⁴ See Council of the European Union, *European Pact on Immigration and Asylum*, 13440/08, Brussels, 24 September 2008; see also European Commission, *First Annual Report on Immigration and Asylum (2009)*, COM(2010) 214 final, Brussels, 6.5.2010 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0214:FIN:EN:PDF>) and European Commission, Communication, Tracking Method for Monitoring the Implementation of the European Pact on Immigration and Asylum, COM(2009) 266 final, Brussels, 10.6.2009 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0266:FIN:EN:PDF>).

²⁵ Council of the European Union, Council Conclusions on the follow-up of the European Pact on Immigration and Asylum, 3018th Justice and Home Affairs Council Meeting, Luxembourg, 3 June 2010.

²⁶ European Commission, Communication, Tracking Method for Monitoring the Implementation of the European Pact on Immigration and Asylum, COM(2009) 266 final, Brussels, 10.6.2009.

levels.²⁷ The focus changed fundamentally, however, in the third (2011) *Annual Report on Immigration and Asylum* of May 2012, which instead presented a “forward-looking analysis of EU policy on immigration and international protection based on the developments of 2011” and only marginally referred to the Stockholm Programme and the European Pact.²⁸

The Commission’s lack of attention to the Stockholm Programme and the European Pact may have actually been justified by the continual re-programming and multiplication of priority-setting within the Council itself. In fact, in addition to the Pact, a new ‘strategic framework’ on these same policies was adopted by the Council during the Danish Presidency of the EU in April 2012 under the title “EU Action on Migratory Pressures – A Strategic Response”.²⁹ The document states that

[t]he goal of the paper is to set out a list of actions in strategic priority areas where efforts need to be stepped up and monitored in order *to prevent and control existing pressures that derive from illegal immigration as well as abuse of legal migration routes*. The action list will be updated by future EU presidencies and member states are encouraged to volunteer to monitor particular challenges so as to ensure that one party has an overview of the development of those activities, thereby helping future EU presidencies with their task. (Emphasis added.)

The overriding focus of this EU Strategic Response to the insecurity aspects ascribed to immigration is obvious when looking at the various components giving it form. The Council’s paper presents six strategic priority areas, which are illustrated in full in appendix 2 of this paper and are aimed at addressing the phenomenon labelled as ‘migratory pressures’ in the EU. The initiatives in the priority areas include “the prevention, control and combat of illegal immigration at the Greek–Turkish border, prevention of illegal immigration from and via the Western Balkans and intensified efforts to combat abuse of free movement rights by third country nationals”.³⁰ Similar to the European Pact on Immigration and Asylum, the Council’s Strategic Response to Migratory Pressures needs to be considered as an intergovernmentally-driven policy pushed by certain member states within the Council. It constitutes another attempt to bring back the pre-Lisbon Treaty situation, in which national governments were still the ones setting the JHA agenda and finding venues for member states to gain back discretion in these policy areas. These kinds of Council strategies are of serious concern, as they ultimately undermine the common political determination to be expected in the new institutional pluralism characterising the post-Lisbon EU AFSJ.

²⁷ See European Commission, Communication, *Annual Report on Immigration and Asylum*, COM(2011) 291 final, Brussels, 24.5.2011; see also European Commission, Staff Working Document accompanying the document Communication, *Annual Report on Immigration and Asylum* (2010), SEC(2011) 620 final, Brussels, 24.5.2011.

²⁸ European Commission, Communication, *3rd Annual Report on Immigration and Asylum*, COM(2012) 250 final, Brussels, 30.5.2012. See also European Commission, Staff Working Document accompanying the document Communication, *3rd Annual Report on Immigration and Asylum*, SWD(2012) 139 final, Brussels, 30.5.2012.

²⁹ Council of the European Union, *EU Action on Migratory Pressures – A Strategic Response*, 8714/1/12, Brussels, 23 April 2012.

³⁰ *Ibid.*, p. 2; see also Council of the European Union, *EU Response to increased Migratory Pressures*, 18302/11, Brussels, 9 December 2011 (<http://register.consilium.europa.eu/pdf/en/11/st18/st18302.en11.pdf>).

4. Implementing the Stockholm Programme? Policy Issues at Stake

This section does not aim at providing a detailed scoreboard of the implementation of the Stockholm Programme during its three years of life. That is what the European Commission was expected to deliver before the end of 2012 and it would require a more careful and thorough (quantitative and qualitative) assessment and follow-up of every planned EU AFSJ policy and legislative measure. Instead it aims at providing a preliminary flavour of the more salient policy issues of concern at this stage of implementation, which can substantiate present and near-future policy debates on multiannual programming in the AFSJ. Our analysis has been mainly based on the list of measures as presented in the annexes of the above-mentioned commissioners' letters provided to the LIBE Committee of the EP – which present a number of methodological weaknesses, not least concerning their obscurity and lack of accuracy.³¹ The full list of policy and legislative instruments that have been reported on by the two relevant DGs of the Commission to the EP is presented in appendix 1 of this paper. The main purpose of providing for the reader the full list of measures presented by the Commission's letters to the EP in the appendix is to contribute to the transparency and accountability of the informal reporting procedures that are currently taking place as regards the implementation of the Stockholm Programme.

While the Lisbon Treaty put an end to the previous 'pillar divide' in AFSJ cooperation (by which previous JHA policies were split between the first pillar (which came under the Community method of cooperation) and the third pillar (which remained in the hands of member states) (Wolf et al., 2011), the increasing institutional pluralism has not eased the rhythm of the legislative decision-making processes. It has been difficult for the two DGs of the Commission to 'keep their promises' in many of the JHA policy and legislative dossiers. This has been particularly the case in respect of one of the key political priorities laid down in the 2009 Stockholm Programme, which stated that "[i]t is of paramount importance that law enforcement measures, on the one hand, and measures to safeguard individual rights, the rule of law and international protection rules, on the other, go hand in hand in the same direction and are mutually reinforced".³²

It is important to remind the reader that the actual responsibility for this assessment is no longer exclusively 'political' in nature and fundamentals. The legal force of the EU Charter of Fundamental Rights has profoundly transformed the question of the relationship between liberty, justice and security in EU JHA cooperation from a political to a legal or juridical one, where the rule of law is of paramount relevance. Art. 6.3 of the Treaty on the European Union (TEU) now requires the EU Charter of Fundamental Rights to be interpreted consistently with the European Convention of Human Rights (ECHR) and the jurisprudence of the European Court of Human Rights (ECtHR). If there is a central issue that has engaged the ECtHR over the past ten years, it can be seen in the particularly high profile of those cases addressing the questions of 'whose liberty is at stake' and 'what security is at risk'. As stated above, the full force of judicialisation of AFSJ legislation and actions by the CJEU and the ECtHR has yet to become apparent, but it is emerging rapidly.³³ We have already passed the crossroads where

³¹ Council of the European Union, Stockholm Programme Mid-Term Review, 15921/12, Brussels, 15 November 2012.

³² Council of the European Union, The Stockholm Programme: An open and secure Europe serving the citizen, 17024/09, Brussels, 2 December 2009, p. 9.

³³ By way of illustration we can refer to the following landmark CJEU cases: Joined Cases C-411/10 and C-493/10, *N.S. (C-411/10) v. Secretary of State for the Home Department and M. E. and Others (C-493/10) v. Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform* [2011] OJ C 274/21 and OJ C 13/18; Case C-357/09, *Said Shamilovich Kadzoev (Huchbarov)* [2009] ECR I-

political choices and strategies have met the rule of law. With the Lisbon Treaty, the EU has clearly chosen its path.

But let us look at the detail of the legislative and policy instruments published by the Commission, and those adopted by the Council, during the last three years. The list of legislative texts is rather revealing of the current state of affairs in the implementation of the Stockholm Programme. A majority of the ‘liberty-related’ legislative proposals (dealing with individuals’ fundamental rights and freedoms) have experienced substantial blockages within the Council and some even have no real prospects of formal adoption any time soon. The list shows how the actual political decision-making now takes place not in strategising policy programmes, but rather in the form of blocking certain types of legislation.

Cases in point are the so-called ‘Horizontal Non-Discrimination Directive’³⁴ and the Commission’s lack of implementation of the roadmap on the rights of suspects and accused persons in criminal proceedings, in particular the one on legal aid and special safeguards for suspected or accused persons who are vulnerable, which have fallen aside and there are no expectations for their adoption.³⁵ Similar barriers have been witnessed in respect of expanding the mandate of the European Union’s Fundamental Rights Agency (FRA) to cover former EU third-pillar measures in the fields of criminal justice and policing policies,³⁶ and the substantial delays in the EU’s accession to the ECHR. An additional (yet fundamental) example is the difficulties experienced by the new Commission’s proposals for data protection legislation, especially the proposed directive dealing with data protection in the area of law enforcement cooperation,³⁷ which are yet again illustrative of this tendency.

11189; Joined cases C-402/05 P and C-415/05 P, *Yassin Abdullah Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities*, 3 September 2008, ECR I-06351; see also Case C-399/11, Criminal proceedings against Stefano Melloni, Opinion of AG Bot, 2 October 2012.

³⁴ See European Commission, Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM(2008) 426, Brussels, 2.7.2008. Refer also to the European Parliament’s legislative resolution of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008) 0426 – C6-0291/2008 – 2008/0140(CNS)).

³⁵ See Council of the European Union, Procedural Rights in Criminal Proceedings, 14828/09, Luxembourg, 23 October 2009. Refer also to European Commission, *Strengthening mutual trust in the European judicial area: A Green Paper on the application of EU criminal justice legislation in the field of detention*, COM(2011) 327 final, Brussels, 14.6.2011. Refer to the Proposal for Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest, COM(2011) 326 final, Brussels, 8.6.2011. Notably, however, Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings was adopted in October 2010 (OJ L 280/1, 26.10.2010) and Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings was adopted in May 2012 (OJ L 142/1, 1.6.2012).

³⁶ See Council of the European Union, Council Decision establishing a Multiannual Framework for 2013–2017 for the European Union Agency for Fundamental Rights, 10449/12, Brussels, 13 June 2012 (<http://register.consilium.europa.eu/pdf/en/12/st10/st10449.en12.pdf>) and Council of the European Union, Note on the Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013–2017 – Requesting the consent of the European Parliament, Brussels, 13 May 2012 (<http://register.consilium.europa.eu/pdf/en/12/st10/st10615.en12.pdf>).

³⁷ European Commission, Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) COM(2012) 11 final, Brussels, 25.1.2012; European Commission, Proposal for Directive on the

Even here, however, the new landscape of the EU Charter of Fundamental Rights is having an impact. The recent political agreement to open up the EURODAC database of asylum seekers' fingerprints to EU law enforcement authorities is accompanied by virtual extracts from judgments of the ECtHR on the human rights limitations of the use of personal data for law enforcement purposes.³⁸ Clearly this indicates that some EU institutional actors are aware of the new landscape and concerned about the robustness of EU compliance with these obligations.

The (in)security dimension in the AFSJ rubric has significantly prevailed in the adoption of legislative and policy measures. This has been especially the case under the remits of the ISS (Guild and Carrera, 2011). A case in point here concerns the proposals dealing with the exchange of information (data processing) within and outside the EU for law enforcement purposes, such as the Terrorist Financial Tracking Program and agreements on passenger name records with the US, as well as the development of large-scale databases and information systems and the setting-up of the new EU Agency for large-scale IT systems in the area of freedom, security and justice (Bigo et al., 2012; Brouwer, 2011).³⁹ One of the areas where 'more work' is to be expected during the second term of the Stockholm Programme period relates to the enforcement side of criminal justice cooperation. An example here is the Commission's intention to prepare a proposal on instruments for the collection and admissibility of evidence,⁴⁰ subsequently overtaken by the Member States' initiative on European Investigation Order (Sayers, 2011).⁴¹ Another is the upcoming proposal on the European Public Prosecutor Office

protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final, Brussels, 25.1.2012.

³⁸ Refer to Council of the European Union, Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of 'EURODAC' for the comparison of fingerprints for the effective application of Regulation (EU) No. [...] (establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person) and to request comparisons with EURODAC data by Member States' law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Recast version), 14847/12, Brussels, 12 October 2012.

³⁹ See the Council Decision (2012/471/EU) of 13 December 2011 on the signing, on behalf of the Union, of the Agreement between the United States of America and the European Union on the use and transfer of Passenger Name Records to the United States Department of Homeland Security, OJ L 215/1, 11.8.2012; refer also to the Agreement of 30 November 2009 between the European Union and the United States of America on the processing and the transfer of Financial Messaging Data from the European Union to the United States for purposes of the Terrorist Finance Tracking Programme, 22.02.2010; and also the Council Decision on conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ L 195/1, 3, 5 and 15, 27.7.2010; see also Regulation (EU) No. 1077/2011 of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 286/1, 1.11.2011.

⁴⁰ European Commission, Green Paper on obtaining evidence in criminal matters from one Member State to another and securing its admissibility, COM(2009) 624, Brussels, 11 November 2009.

⁴¹ Council of the European Union, Initiative of the Kingdom of Belgium, the Republic of Bulgaria, the Republic of Estonia, the Kingdom of Spain, the Republic of Austria, the Republic of Slovenia and the Kingdom of Sweden for a Directive of the European Parliament and of the Council regarding the European Investigation Order in criminal matters, 16120/12, Brussels, 15 November 2012.

for investigating, prosecuting and bringing to judgment perpetrators of crimes against the financial interests of the Union and potentially other serious crimes.⁴²

Several other legislative proposals included in the 2010 Commission's Action Plan are expected to be fulfilled before the end of 2014. Among them are an immigration code,⁴³ which was not included in the Council's 2009 Stockholm Programme, and the long-term development of Frontex, including the feasibility of creating a European system of border guards. The Commission has been particularly cautious, however, when presenting new legislative acts covering existing legal instruments, such as the Directive on the Right to Family Reunification (2003/86/EC)⁴⁴ and the Citizens Directive (2004/38/EC), to avoid creating opportunities for Council negotiations to further lower existing EU standards in these domains and regain powers conferred on the EU concerning issues of mobility and the rights of individuals on the move. The Commission has instead sometimes opted for issuing 'soft policy documents', such as guidelines for improving EU member states' implementation.⁴⁵ This corresponds to what Groenendijk has signalled as one of the main dilemmas in AFSJ cooperation, which comes out of the unpleasant surprise in many member state governments about the 'loss of sovereignty' and discretionary decision-making in these areas, especially during the last decade of European integration. He anticipates that this "will translate [into] a defensive attitude toward proposals for new common rules that will result in a further reduction of the room for national policies" (Groenendijk, 2012).

An exemplary case illustrating the tendency to 'renationalise' or return to the period of intergovernmentalism has been the debates surrounding the Schengen system, which has been challenged throughout 2011 and 2012 as a result of member states' attempts to limit or apply unlawful exceptions to the right of free movement of persons and the abolition of internal border checks (Carrera, et al, 2011; Hobbing, 2011). The Commission responded to these controversies with the publication of the so-called 'Schengen Governance Package' in September 2011 (Carrera, 2012b).⁴⁶ The stronger Union-led approach proposed by the Commission for national governments to reintroduce internal border controls and for improving the evaluation of their application of the Schengen *acquis* in 2011 has met huge resistance within the Council, which is trying to widen existing exceptions for suspending free mobility in the Schengen area. The Schengen affair has also led to unresolved struggles between the Council and the European Parliament, which is strongly claiming its co-ownership on Schengen-related policy matters and has for the first time in the history of JHA cooperation

⁴² Refer to Art. 86 TFEU.

⁴³ The Commission's Action Plan implementing the Stockholm Programme (COM(2010) 171 final, op. cit.) said that by 2013 an immigration code would be proposed, focusing on the "[c]onsolidation of legislation in the area of legal immigration taking into account the evaluation of the existing legislation, needs for simplification *and where necessary extend the existing provisions* to categories of workers currently not covered by EU legislation" (emphasis added), p. 57.

⁴⁴ European Commission, *Green Paper on the right to family reunification of third-country nationals living in the European Union*, COM(2011) 735, Brussels, 15.11.2011.

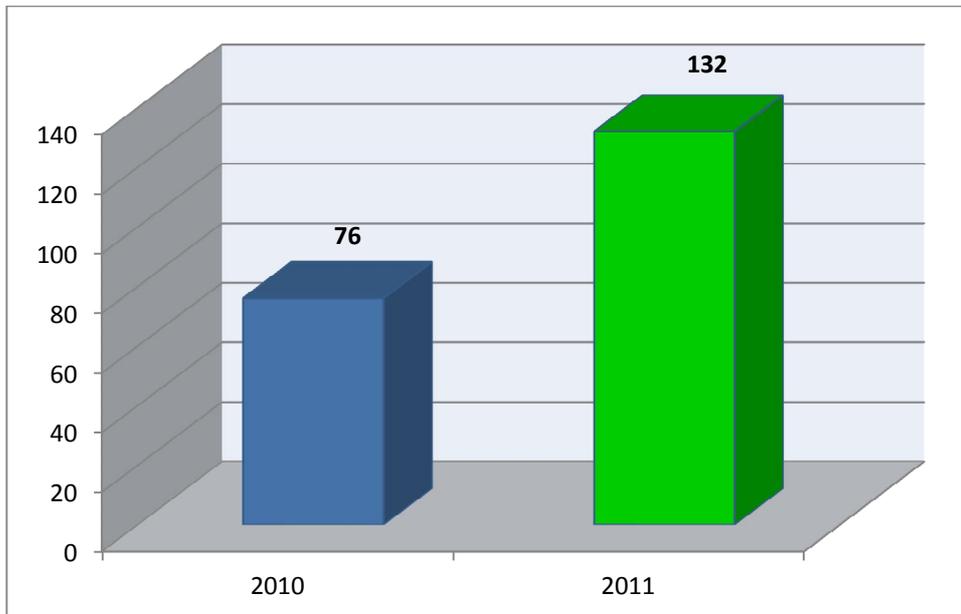
⁴⁵ European Commission, Communication, Guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313 final, Brussels, 2.7.2009.

⁴⁶ See European Commission, Communication, Schengen Governance – Strengthening the area without internal border controls, COM(2011) 561, Brussels, 16.9.2011; refer also to European Commission, Proposal for a Regulation on the establishment of an evaluation and monitoring mechanism to verify the application of the Schengen *acquis*, COM(2011) 559, Brussels, 16.9.2011; European Commission, Proposal for a Regulation amending Regulation (EC) No. 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances, COM(2011) 560, Brussels, 16.9.2011.

frozen cooperation with the Council on five AFSJ dossiers until the Schengen question is resolved.⁴⁷

Therefore, a key challenge for the future is neither ‘*grandes orientations*’ nor ‘*choix politiques*’, but actually more effective ways of ensuring the timely and correct transposition and the practical implementation by EU member states of existing legislative instruments in the AFSJ. The application of EU AFSJ law has been subject to various evaluation reports and the launch of infringement proceedings by the European Commission. A substantial number of infringement proceedings was launched by the Commission in the domains of home affairs and justice during 2011. By the end of the 2011, the European Commission had opened 60 infringement proceedings in the area of home affairs,⁴⁸ and 72 in domains dealing with justice, citizenship and fundamental rights. Together this makes a total of 132 cases, which brings ‘justice and home affairs’ to the top of the list of ‘most infringement-prone policy areas’ after those related to the environment (299), the internal market (262), taxation and customs union (215), and energy (149). As Figure 3 shows, this constitutes a noticeable increase in comparison with 2010, during which a total of 76 cases were launched in both domains.⁴⁹

Figure 3. Combined JHA opened infringement proceedings in 2010 and 2011



Sources: Authors’ elaboration on the basis of the European Commission’s annual reports (2010 and 2011) on monitoring the application of EU law.

⁴⁷ On 14 June 2012, the Conference of Presidents (leaders of political groups and the President of the European Parliament) of the EP decided to suspend cooperation with the Danish Presidency of the Council on five JHA dossiers. Voting on these dossiers remains blocked by the European Parliament, although informal discussions with the Council continue. The five dossiers are as follows: Amendment of Schengen border code and the Convention implementing the Schengen Agreement; Judicial cooperation in criminal matters: Combating attacks against information systems; the European Investigation Order; Budget 2013 aspects relating to internal security; and EU Passenger Name Records.

⁴⁸ See European Commission, *29th Annual Report on monitoring the application of EU law*, General Secretariat, Brussels, 2012 (http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_29/sg_annual_report_monitoring_eu_law_121130.pdf).

⁴⁹ European Commission, *28th Annual Report on monitoring the application of EU law*, SEC(2011) 1094, General Secretariat, Brussels, 29.9.2011, p. 18.

What is additionally critical here is that as the implementation dates pass for member states' application, national tribunals will be facing an increasing number of cases in which they are uncertain of the correct domestic application and interpretation of these measures. They will therefore naturally engage with the CJEU in Luxembourg, asking for it to provide clarification and guidance. An increasing body of jurisprudence on AFSJ legislative instruments is now developing and is only expected to increase in the future (Carrera et al., 2012).

In light of the above, it is evident that the AFSJ state of affairs is a 'new one' where the Council's strategic policy planning matters less than it used to before the Lisbon Treaty. At the time of the Amsterdam Treaty in 1999, the EU competences on JHA were novel and the role of fundamental rights was not at all as clear as it is nowadays. The 1999 Tampere Programme, which set for the first time the multiannual policy priorities on JHA cooperation, resolved to a large extent some of these basic political questions, which have been later on translated not only into a large body of secondary legislation, but also by the insertion of the EU Charter in the main legal corpus of the EU Treaties. There is thus no longer a substantial role for the Council to fill as a policy-maker because 'the policy' has been already made on the AFSJ. The EU is now mainly in implementation mode. The Council's control is mainly in the form of negotiation and adoption of secondary EU law and therefore speaks through the Treaties, which are now very prescriptive on what legislation should be adopted in these areas.

There is consequently very little attraction in new multiannual policies or legislative programmes that would overturn the Commission's role of checking transposition and the CJEU's jurisprudence. Such moves could actually diminish the entire EU as an effective actor and render more fragile the hierarchy of rule of law in Europe. The advanced level of European integration on FSJ constitutes a fundamental reason for no longer keeping the Council's monopoly at times of setting strategic policy priorities for the AFSJ. The dynamism characterising AFSJ legislative processes demonstrates how much of the AFSJ has already been realised or is already on the table in the form of policy documents and legislative proposals. There is now a robust body of EU law and policy strategies in these domains. This means the effective diminution of space for a 'political re-think' of the 'strategic' direction of the realisation of the EU's AFSJ by the Council and national governments.

5. Conclusions and Policy Suggestions

The EU AFSJ is now in a different phase of European integration, in which institutional pluralism and democratic accountability are embedded in its foundations and working habits. The pre-Lisbon Treaty scenario, according to which the JHA Council kept ownership of policy and legislative programming in the EU's AFSJ, is over. Three years after the entry into force of the Lisbon Treaty and the adoption of the Stockholm Programme, however, EU institutions are still trying to find their own ways to navigate in this new ocean of multiple actors involved in European AFSJ cooperation. Ownership of the politics surrounding strategy and programming has nonetheless been liberalised. The Council's multiannual programming (and its last manifestation in the Stockholm Programme) is indeed no longer at the heart of the EU's AFSJ agenda. In an increasingly multistrategy programming setting, where diverse policy and competing policy agendas emerge and develop, the Treaty of Lisbon and the EU Charter of Fundamental Rights should be seen as now providing the blueprints for future EU AFSJ cooperation.

What do the controversies behind its implementation tell us about the new institutional dynamics affecting European integration on AFSJ? The struggles around the Stockholm Programme reveal this new, plural EU institutional landscape in JHA policy-making. The Stockholm Affair and the current inter-institutional debates on the Commission's disinclination

to deliver the requested mid-term evaluation of the Stockholm Programme before the end of 2012 need to be understood as a symptom of a healthier status of European cooperation on AFSJ post-Lisbon Treaty. The expansion of the Community method of cooperation to a majority of AFSJ policies has reinforced the agency of the European Commission in legislative programming and enlarged the ownership and autonomy of the European Parliament in policy-making and planning.

Does the EU actually need a new (post-Stockholm) multiannual programme for the period 2015–20? This paper has argued that the time for big new policy initiatives and multiannual programmes on AFSJ has past. The railway lines have already been built and it is time to consolidate these same lines and get the trains moving. Just like the policy on the internal market in its time, once a major policy objective and agenda have been set, the next step is faithful implementation, not an over-ambitious or radical change of policy direction and tactics every five years. Coherence and consistency with the previously agreed parameters of European cooperation and their founding Treaty-based principles should be seen as the indispensable driving forces for the next phases of European integration on freedom, security and justice policies at Union levels.

The negotiation and adoption of the next (post-Stockholm) multiannual programme (2015–20) under the Italian Presidency during the second half of 2014 should not strive to invent new policy proposals or political agendas, but rather to ensure more effective implementation and follow-up of existing policy programmes and policy/legislative AFSJ instruments by EU member states. Special attention should also be paid to ways of better guaranteeing the legitimacy and evaluating the soundness of the foundations upon which EU AFSJ cooperation has been built so far, such as the mutual trust with which EU member states comply with the values and principles stipulated in Arts. 2 and 6 TEU, not least the rule of law and protection of fundamental human rights.

Turning now to our last question regarding the role that the EP should play in legislative and policy programming, it is clear that the EP still needs to internalise and fully implement the powers and competences envisaged in the Treaties and its Rules of Procedure. These include its right to carry out ‘own initiative’ reports, impact assessments of the Commission’s proposals, following up more closely the implementation of its resolutions by the Commission and daring to potentially reject certain legislative initiatives put forward by the Commission or Council in the course of decision-making procedures. The EP’s recent decision to freeze cooperation with the Council on five key AFSJ legislative dossiers until the dispute over the Schengen governance package is satisfactorily resolved constitutes a first visible and positive step in that direction.

Unlike the Council of the European Union, which represents member states and national governments, the European Parliament constitutes ‘the’ main EU institutional actor representing ‘the peoples of Europe’. It is therefore uniquely positioned to ensure the necessary democratic scrutiny and a higher level of transparency in matters involving Lisbon Treaty foundations and the previously agreed policy priorities set at EU levels on AFSJ cooperation. Both the Council and the European Parliament are of course necessary partners in the Union’s legislative process, but the European Parliament is no longer in a position to be ignored or relegated in the monitoring, follow-up and actual implementation of the EU’s AFSJ policy and legislative agendas.

Liberalising the ownership of EU AFSJ multiannual programming would not only better correspond to the institutional pluralism emerging in the post-Lisbon Treaty context. It should also ideally facilitate stronger anchorage of AFSJ legal and policy-making principles on the inalienability and protection of the fundamental rights of the individuals who are in fact the final

addressees and beneficiaries of these policies, and who should thus be seen as the final owners of the EU multiannual programmes. This will continue to constitute one of the main challenges affecting future EU AFSJ cooperation, however. The EP should provide an increasingly visible and careful contribution here in bringing the necessary democratic legitimacy and scrutiny to AFSJ cooperation in the EU. This should be based on lessons learned from its own performance as co-owner of the policy and legislative AFSJ agenda since the end of 2009.

The EP should in particular make sure that first, the principles and agendas already stipulated in the Treaties and the EU Charter are effectively implemented in a fashion whereby liberty and security “go hand in hand in the same direction and are mutually reinforced”. By doing so the EP would be loyal to its Rules of Procedure (which confer to the LIBE Committee a salient role in fundamental rights protection), and its legitimacy would be strengthened while being coherent with its pre-Lisbon Treaty role in protecting fundamental human rights.⁵⁰ Second, the EP could play a more active role in facilitating ‘policy consistency’ and more legal certainty across the EU’s institutional spectrum of AFSJ ‘multilevel strategies’, specifically in relation to the current and future EU funding attributed to the implementation and practical application of EU home affairs and justice policies at the EU and national levels.

⁵⁰ The Rules of Procedure state that the LIBE Committee is currently responsible for “the protection within the territory of the Union of citizens’ rights, human rights and fundamental rights, including the protection of minorities, as laid down in the Treaties and in the Charter of Fundamental Rights of the European Union”. Refer to “Rules of Procedure of the European Parliament, 7th parliamentary term – October 2012” (<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+RULES-EP+20121023+RESP-LIBE+DOC+XML+V0//EN&language=EN&navigationBar=YES>).

6. References

- Bigo, D., S. Carrera, G. González Fuster, E. Guild, P. de Hert, J. Jeandesboz and V. Papakonstantinou (2011), *Towards a New EU Legal Framework for Data Protection and Privacy: Challenges, Principles and the Role of the European Parliament*, Study for the European Parliament, PE 453.216, CEPS, Brussels, September.
- Bigo, D., S. Carrera, B. Hayes, N. Hernanz and J. Jeandesboz (2012), *Evaluating Current and Forthcoming Proposals on JHA Databases and a Smart Borders System at EU external borders*, Study for the European Parliament, CEPS, Brussels, forthcoming.
- Brouwer, E. (2011), *Ignoring Dissent and Legality: The EU's proposal to share the personal information of all passengers*, CEPS Papers in Liberty and Security in Europe, No. 40, CEPS, Brussels.
- Carrera, S. (2012a), "The Impact of the Treaty of Lisbon over EU Policies on Migration, Asylum and Borders: The Struggles over the Ownership of the Stockholm Programme", in E. Guild, P. Minderhoud and R. Cholewinski (eds), *The First Decade of EU Migration and Asylum Law*, Leiden: Martinus Nijhoff Publishers, pp. 229-254.
- Carrera, S. (2012b), *An Assessment of the Commission's Schengen Governance Package: Preventing Abuse by EU Member States of Freedom of Movement?*, CEPS Papers in Liberty and Security in Europe, No. 47, CEPS, Brussels.
- Carrera, S. and E. Guild (2008), "The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanisation? Security vs. Rights?", CEPS Policy Brief No. 170, CEPS, Brussels, September.
- Carrera, S., E. Guild and A. Eggenschwiler (2010), *The Area of Freedom, Security and Justice ten years on: Successes and Future Challenges under the Stockholm Programme*, CEPS Paperback, CEPS, Brussels.
- Carrera, S., E. Guild, M. Merlino and J. Parkin (2011), *A Race against Solidarity: The Schengen Regime and the Franco-Italian Affair*, CEPS Papers in Liberty and Security in Europe, CEPS, Brussels.
- Carrera, S., E. Guild and A. Faure-Atger (2009), *Challenges and Prospects for the EU's Area of Freedom, Security and Justice: Recommendations to the European Commission for the Stockholm Programme*, CEPS Working Document No. 313, CEPS, Brussels, April.
- Carrera, S., M. De Somer and B. Petkova (2012), *The Court of Justice of the European Union as a Fundamental Rights Tribunal*, CEPS Papers in Liberty and Security in Europe, No. 49, CEPS, Brussels, August.
- Groenendijk, K. (2012), "Introduction: Migration and Law in Europe", in E. Guild, P. Minderhoud and R. Cholewinski (eds), *The First Decade of EU Migration and Asylum Law*, Leiden: Martinus Nijhoff Publishers, pp. 1-22.
- Guild, E. (2010), *Fundamental Rights and EU Citizenship after the Treaty of Lisbon*, CEPS Papers in Liberty and Security in Europe, CEPS, Brussels.
- Guild, E. and S. Carrera (2009), "Towards the Next Phase of the EU's Area of Freedom, Security and Justice: The European Commission Proposals for the Stockholm Programme", CEPS Policy Brief No. 196, CEPS, Brussels, August.
- Guild, E. and S. Carrera (2011), *Towards an Internal (In)security Strategy for the EU?*, CEPS Papers in Liberty and Security in Europe, No. 35, CEPS, Brussels.

- Guild, E., S. Carrera and T. Balzacq (2010), "The Changing Dynamics of Security in an Enlarged European Union", in D. Bigo, S. Carrera, E. Guild and R. Walker (eds), *Europe's 21st Century Challenge: Delivering Liberty*, Farnham: Ashgate Publishing, pp. 31-48.
- Hobbing, P. (2011), *A farewell to open borders? The Danish Approach*, CEPS Papers in Liberty and Security in Europe, CEPS, Brussels.
- Wolf, S., F.A.N.J. Goudappel and J.W. de Zwaan (2011), *Freedom, Security and Justice after Lisbon and Stockholm*, The Hague: T.M.C. Asser Press.
- Parkin, J. (2011), *The Difficult Road to the Schengen Information System II: The legacy of 'laboratories' and the cost for fundamental rights and the rule of law*, CEPS Papers in Liberty and Security in Europe, CEPS, Brussels, April.
- Sayers, D. (2011), *The European Investigation Order: Travelling without a Roadmap*, CEPS Papers in Liberty and Security in Europe, No. 42, CEPS, Brussels.

Appendix 1. Implementing the Stockholm Programme?

This appendix lists the policy initiatives, legislative proposals and political reports related to the goals of the Stockholm Programme as presented by the European Commission (DG Justice and DG Home Affairs) in two separate letters sent to the LIBE Committee of the European Parliament:

- 1) the letter from Viviane Reding, Vice-President of the European Commission in charge of Justice, Fundamental Rights and Citizenship, to Juan Fernando López Aguilar, Chairman of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, of 18 September 2012;⁵¹ and
- 2) the letter from Cecilia Malmström, Member of the European Commission in charge of Home Affairs, to Juan Fernando López Aguilar, Chairman of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, of 28 September 2012.⁵²

These letters present the measures proposed between January 2010 and September 2012 in a thematic fashion, following the structure provided by the Stockholm Programme, i.e. i) fundamental rights, a Europe of law and justice, and drugs policy for DG Justice; and ii) the fight against crime, visas and border controls, and migration and asylum for DG Home Affairs.

This appendix respects the nature and order of the presentation of both letters from the commissioners. As the reader will notice, the European Commission's style of presentation of the information is not the most helpful when reviewing the implementation of the Stockholm Programme and the related Action Plan.

In addition to the obscurity when listing and presenting some of the measures, the tables contain a number of inaccuracies in the titles and referencing of legislative instruments, some of which have been corrected. The authors of this paper have decided to respect the reporting layout used by the two Commission letters and consider that a thorough and systematic evaluation would still be necessary to ascertain where the gaps and unfinished tasks are in the implementation of the Stockholm Programme. This ambitious task falls beyond the objectives of this paper. The appendix also checks whether those instruments constituting Commission legislative proposals (which are highlighted/shaded in green) have been adopted by the Council, using the table provided in a Council Note from the Cyprus Presidency entitled "Stockholm Programme mid-term review" of November 2012⁵³ as well as the PreLex website from the European Commission⁵⁴ and the Council's registry.⁵⁵

⁵¹ This letter is not available online. Its annex, however, can be found on the Statewatch website (www.statewatch.org/news/2012/sep/eu-com-justice-stockholm.pdf) last visited on 7 December 2012.

⁵² See the letter and its annex on the website of the European Parliament (last visited on 7 December 2012) (www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/reply_malmstrom_20120928/reply_malmstrom_20120928en.pdf) and (www.europarl.europa.eu/meetdocs/2009_2014/documents/libe/dv/annex_stockholm_prg/annex_stockholm_prgen.pdf).

⁵³ See Council of the European Union, Addendum to the Note from the Presidency to the Coreper/Council – Stockholm Programme mid-term review, Document 15921/12 ADD1, 15 November 2012 (<http://www.statewatch.org/news/2012/nov/eu-council-stockholm-review-documents-15921-add1-12.pdf>).

⁵⁴ The Pre-Lex website can be found at <http://ec.europa.eu/prelex/apcnet.cfm?CL=en>.

⁵⁵ The Council public registry can be accessed at <http://www.consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en>.

Justice, Fundamental Rights and Citizenship

Ensuring the protection of fundamental rights

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
C(2010) 593	5/02/2010	Commission decision on standard contractual clauses for the transfer of personal data to processors established in third countries under Directive 95/46/EC of the European Parliament and of the Council	
SEC(2010) 305	17/03/2010	Commission proposes negotiation directives for the Union's accession to ECHR	
COM(2010) 573	19/10/2010	Communication on a Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union	
COM(2010) 602	27/10/2010	Report on progress towards effective EU citizenship, 2007–2010	
COM(2010) 603	27/10/2010	EU Citizenship Report 2010, Dismantling the obstacles to EU citizens' rights	
COM(2010) 605	27/10/2010	Report on the election of Members of the European Parliament (1976 Act as amended by Decision 2002/772/EC, Euratom) and on the participation of European Union citizens in elections for the European Parliament in the Member State of residence (Directive 93/109/EC)	
COM(2010) 609	4/11/2010	Communication on a comprehensive approach on personal data protection in the European Union	
COM(2010) 674	17/11/2010	Communication on Dial 116 000: The European hotline for missing children	
COM(2010) 708	2/12/2010	Proposal for Council Decision amending Council Decision of 28.02.08 implementing Regulation 168/2007 as regards the adoption of a Multi-annual Framework for the European Union Agency for Fundamental Rights for 2007–2012	
COM(2011) 60	15/02/2011	Communication on an EU agenda for the rights of the child	
SEC (2011) 193	22/02/2011	Report on the progress on equality between women and men in 2010	
COM(2011) 149	23/03/2011	Communication on Consular protection for EU citizens in third countries – State of play and way forward	
COM(2011) 160	30/03/2011	2010 Report on the Application of the EU Charter of Fundamental Rights	

COM(2011) 173	5/04/2011	Communication on an EU framework for national Roma integration strategies up to 2020	
COM(2011) 249	5/05/2011	Report on the interim evaluation of the Fundamental Rights and Citizenship Programme, 2007–2013	
COM(2011) 880	13/12/2011	Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013–2017	
COM(2011) 881	14/12/2011	Proposal for a Council Directive on consular protection for citizens of the Union abroad	
COM(2011) 904, 908, 909, 911, 912, 915, 916, 917	21/12/2011	Proposals for Council Decisions on the declaration of acceptance by the Member States, in the interest of the European Union, of the accession of the Russian Federation and 7 other states to the 1980 Hague Convention on the Civil Aspects of International Child Abduction	
COM(2012) 9	25/01/2012	Communication on Safeguarding privacy in a connected world – A European data protection framework for the 21 st century	
COM(2012) 10	25/01/2012	Proposal for a Directive of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data	
COM(2012) 11	25/01/2012	Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data	
COM(2012) 12	25/01/2012	Report based on Article 29(2) of the Council Framework Decision of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters	
COM(2012) 99	9/03/2012	Report on the application of Directive 94/80/EC on the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals	
COM(2012) 169	16/04/2012	Communication on the 2011 Report on the Application of the EU Charter of Fundamental Rights, including annex reports on the Charter and on equality between women and men, for 2011	

COM(2012) 226	21/05/2012	Communication on the National Roma integration strategies: A first step in the implementation of the EU framework	
C(2012) 4885	19/07/2012	Implementing decision replacing the Annex of the Council Directive 94/80/EC laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals	
COM(2011) 573	20/09/2011	Communication, Towards an EU criminal law policy: Ensuring the effective implementation of EU policies through criminal law	

Strengthening confidence in the European judicial area

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
COM(2010) 82	9/03/2010	Proposal for a Directive of the European Parliament and of the Council on the right to interpretation and translation in criminal proceedings	20/10/2010 ✓
COM(2010) 104	24/03/2010	Proposal for a Council Decision authorising enhanced cooperation in the area of the law applicable to divorce and legal separation	12/07/2010 ✓
COM(2010) 105	24/03/2010	Proposal for a Council Regulation implementing enhanced cooperation in the area of the law applicable to divorce and legal separation	20/12/2010 ✓
COM(2010) 348	1/07/2010	Green Paper on policy options for progress towards a European contract law for consumers and businesses	
COM(2010) 392	20/07/2010	Proposal for a Directive of the European Parliament and Council on the right to information in criminal proceedings	22/05/2012 ✓
COM(2010) 428	23/08/2010	Report based on Article 22 of the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders	
COM(2010) 747	14/12/2010	Green Paper on less bureaucracy for citizens: Promoting free movement of public documents and recognition of the effects of civil status records	
COM(2010) 748	14/12/2010	Proposal for a Regulation of the European Parliament and the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	6/12/2012 ✓
COM(2011) 125	16/03/2011	Communication on Bringing legal clarity to the property rights for international couples	

COM(2011) 126	16/03/2011	Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions in matters of matrimonial regimes	
COM(2011) 127	16/03/2011	Proposal for a Council Regulation on jurisdiction, applicable law, recognition and enforcement of decisions regarding the property consequences of registered partnerships	
COM(2011) 156	4/04/2011	Proposal for a Council Regulation amending the list of insolvency proceedings, winding-up proceedings and liquidators in Annexes A to C to Regulation (EC) No 1346/2000 (the Insolvency Regulation)	9/06/2011 ✓
COM(2011) 175	11/04/2011	Report on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States	
COM(2011) 274	18/05/2011	Communication on Strengthening victims' rights in the EU	
COM(2011) 275	18/05/2011	Proposal for a Directive of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime	25/10/2012 ✓
COM(2011) 276	18/05/2011	Proposal for a Regulation of the European Parliament and of the Council on mutual recognition of protection measures in civil matters	10/06/2011 ✓
COM(2011) 293	26/05/2011	Communication on the protection of the financial interests of the European Union by criminal law and by administrative investigations: An integrated policy to safeguard taxpayers' money	
COM(2011) 326	8/06/2011	Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest	
COM(2011) 327	14/06/2011	Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention	
COM(2011) 351	15/06/2011	Interim evaluation report on the results obtained from and the qualitative and quantitative aspects of the implementation of the civil justice financing programme	
COM(2011) 445	25/07/2011	Proposal for a Regulation of the European Parliament and of the Council creating a European account preservation order to facilitate cross-border debt recovery in civil and commercial matters	

COM(2011) 551	13/09/2011	Communication on Building trust in EU-wide justice: A new dimension to European judicial training	
COM(2011) 573	20/09/2011	Communication, Towards an EU criminal law policy: Ensuring the effective implementation of EU policies through criminal law	
COM(2011) 635	11/10/2011	Proposal for a Regulation of the European Parliament and the Council on a common European sales law	
COM(2011) 636	11/10/2011	Communication on a Common European Sales Law to Facilitate Cross-Border Transactions in the Single Market	
COM(2012) 363	11/07/2012	Proposal for a Directive of the European Parliament and of the Council on the fight against fraud of the Union's financial interests by means of criminal law	

Ensuring the security of Europe (drugs policy)

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
COM(2010) 583	20/10/2010	Proposal for a Council Decision on submitting 4-methylmethcathinone (mephedrone) to control measures	2/12/2010 ✓
COM(2010) 630	5/11/2010	Report, 2010 progress review of the EU Drugs Action Plan (2009–2012)	
COM(2011) 246	5/05/2011	Report on the interim evaluation of the specific programme, “Drug Prevention and Information Programme” (DPIP), 2007–2013	
COM(2011) 430	11/07/2011	Report on the assessment of the functioning of Council Decision 2005/387/JHA on the information exchange, risk-assessment and control of new psychoactive substances	
COM(2011) 689	25/10/2011	Communication, Towards a stronger European response to drugs	

Other (future financing)

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
COM(2011) 759	15/11/2011	Proposal for a Regulation of the European Parliament and the Council establishing for the period 2014–2020 the “Justice” programme	
COM(2011) 758	15/11/2011	Proposal for a Regulation of the European Parliament and of the Council establishing for the period 2014–2020 the “Rights and Citizenship” programme	

Home Affairs

Ensuring the security of Europe

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
<i>Internal Security Strategy</i>			
COM(2010) 673	22/11/2010	Internal Security Strategy Communication	
COM(2011) 790	25/11/2011	The first annual report on the implementation of the Internal Security Strategy	
<i>Upgrading the tools for the job</i>			
COM(2010) 252	August 2010	Recommendation to authorise opening of negotiations with the US on data protection and data exchange (RESTREINT UE)	
COM(2010) 385	20/07/2010	Communication from the Commission to the EP and the Council on information management in the area of justice, freedom and security	
COM(2010) 492	21/09/2010	Communication on the global approach to PNR data of third countries	
SEC(2010) 1084	17/09/2010	Recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and Canada on the transfer and processing of passenger name record (PNR) data to prevent and combat terrorism and other transnational serious crime, including organised crime	
SEC(2010) 1082	17/09/2010	Recommendation from the Commission to the Council to authorise the opening of negotiations with the United States on the transfer and processing of PNR data	
SEC(2010) 1083	17/09/2010	Recommendation from the Commission to the Council to authorise the opening of negotiations with Australia on the transfer and processing of PNR data	
COM(2011) 032	2/02/2011	Proposal for a Directive for the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (European PNR)	
COM(2011) 225	18/04/2011	Report from the Commission to the Council on the Implementation of the Directive 2006/24/EC on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC	

COM(2011) 280	19/05/2011	Proposal for a Council Decision on the signature of the Agreement between the EU and Australia on the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime	22/09/2011 ✓
COM(2011) 281	19/05/2011	Proposal for a Council Decision on the conclusion of the Agreement between the EU and Australia on the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime	13/12/2011 ✓
COM(2011) 805	10/08/2011	Proposal for a Council Decision on the signature of the Agreement between the EU and the United States on the transfer and use of PNR data to prevent and combat terrorism and serious transnational crime	13/12/2011 ✓
COM(2011) 807	23/11/2011	Proposal for a Council Decision on the conclusion of the Agreement between the EU and the US on the transfer and use of PNR data to prevent and combat terrorism and other serious transnational crime	26/04/2012 ✓
<i>Effective policies</i>			
COM(2010) 273	31/05/2010	European Parliament and Council Regulation implementing Article 10 of the United Nations' Firearms Protocol and establishing export authorisation, import and transit measures for firearms, their parts and components and ammunition	14/03/2012 ✓
COM(2011) 713	18/01/2012	Communication from the Commission to the European Parliament and the Council – European crime statistics: Action Plan, 2011–2015	
<i>Protection against serious and organised crime</i>			
COM(2010) 95	29/03/2010	Proposal for a Directive of the European Parliament and of the Council on preventing and combating trafficking in human beings, and protecting victims, repealing Framework Decision 2002/629/JHA	5/04/2011 ✓
COM(2010) 493	15/10/2010	Report from the Commission to the European Parliament and the Council on the application of Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities	
C(2011) 5459	10/08/2011	Decision setting up a group of experts on trafficking in human beings	

COM(2012) 286	19/06/2012	Communication, EU strategy towards the eradication of trafficking in human beings, 2012–2016	
COM(2010) 94	29/03/2010	Proposal for a Directive of the European Parliament and the Council on combating the sexual abuse, sexual exploitation of children and child pornography, repealing Framework Decision 2004/68/JHA	13/12/2011 ✓
COM(2010) 517	30/09/2010	Proposal for a Directive on attacks against information systems and repealing Council Framework Decision 2005/222/JHA	
COM(2012) 140	28/03/2012	Communication, Tackling Crime in our Digital Age: Establishing a European Cybercrime Centre	
COM(2011) 176	12/04/2011	Report of the Commission based on Article 8 of the Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime	
COM(2011) 308	6/06/2011	Communication, Fighting Corruption in the EU	
COM(2011) 309	6/06/2011	Report from the Commission to the European Parliament and the Council based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector	
C(2011) 3673	7/06/2011	Commission Decision establishing an EU Anti-corruption reporting mechanism for periodic assessment (“EU Anti-corruption Report”)	
COM(2012) 085	12/03/2012	Proposal for a Directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the European Union	
<i>Terrorism</i>			
SEC(2010) 315	12/03/2010	Recommendation from the Commission to the Council to authorise opening of negotiations between the EU and the United States of America for a long-term international agreement to make available to the United States Treasury Department financial messaging data from the European Union to prevent and combat terrorism and terrorist financing	

COM(2010) 317	15/06/2010	Proposal for a Council Decision on signature of the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (TFTP)	28/06/2010 ✓
COM(2010) 316	15/06/2010	Proposal for a Council Decision on conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of financial messaging data from the European Union to the United States for purposes of the Terrorist Finance Tracking Program (TFTP)	13/07/2010 ✓
COM(2010) 386	20/07/2010	Communication from the Commission to the European Parliament and the Council – The EU Counter-Terrorism Policy: main achievements and future challenges	
COM(2010) 473	20/09/2010	Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors	
COM(2011) 429	13/07/2011	Communication to the European Parliament and to the Council on a European terrorist finance tracking system: Available options	
<i>Comprehensive and effective EU disaster management</i>			
SWD(2012) 190	22/06/2012	Commission Staff Working Document – Review of the European Programme for Critical Infrastructure Protection (EPCIP)	

Access to Europe in a globalised world

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
<i>Integrated management of the external borders</i>			
COM(2010) 61	24/02/2010	Proposal for a Regulation of the European Parliament and the Council amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX)	25/10/2011 ✓
COM(2010) 93	19/03/2010	Amended Proposal for a Regulation of the European Parliament and of the Council on establishing an Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	12/09/2011 ✓

COM(2010) 633	5/11/2010	Report from the Commission to the European Parliament and the Council: Progress Report on the Development of the Second Generation Schengen Information System (SIS II) January 2010–June 2010	
COM(2011) 118	10/03/2011	Proposal for a Draft Regulation of the European Parliament and of the Council amending Regulation 562/2006 (Schengen Borders Code) in order to further harmonise specific aspects of border checks	
C(2011) 3918	20/06/2011	Commission Recommendation amending the Recommendation establishing a common Practical Handbook for Border Guards (Schengen Handbook) to be used by Member States' competent authorities when carrying out the border control of persons (C(2006) 5186 final)	
COM(2011) 391	29/06/2011	Report from the Commission to the European Parliament and the Council on the development of the Second Generation Schengen Information System (SIS II), Progress Report July 2010–December 2010	
C(2011) 4574	4/07/2011	Commission decision on amending the SIRENE Manual	
COM(2011) 461	27/07/2011	Proposal for a Regulation of the EP and the Council amending Regulation (EC) No 1931/2006 as regards the inclusion of the Kaliningrad area and certain Polish administrative districts in the eligible border area	13/12/2011 ✓
C(2010) 3667	17/06/2010	Commission Decision establishing the Handbook for the organisation of visa sections and local Schengen cooperation	
COM(2011) 5559	16/09/2011	Amended proposal for a Regulation of the European Parliament and of the Council on the establishment of an evaluation mechanism to verify the application of the Schengen <i>acquis</i>	
COM(2011) 560	16/09/2011	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 in order to provide for common rules on the temporary reintroduction of border control at internal borders in exceptional circumstances	
COM(2011) 561	16/09/2011	Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Schengen governance – Strengthening the area without internal border control	

COM(2011) 680	25/10/2011	Communication from the Commission to the European Parliament and the Council on Smart Borders – Options and the way ahead	
COM(2011) 873	12/12/2011	Proposal for a Regulation of the European Parliament and of the Council Establishing the European Border Surveillance System (EUROSUR)	
COM(2012) 76 (Restricted)	29/02/2012	Commission Recommendation to the Council to authorise opening of negotiations between the EU and Iceland, Norway, Switzerland and Liechtenstein to participate in IT agency (Restricted)	
COM(2012) 81	30/04/2012	Proposal for a Council Regulation on migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II) (recast)	
COM(2012) 230	16/05/2012	Communication from the Council on the bi-annual report on the functioning of the Schengen cooperation 1 November 2011–30 April 2012	
COM(2012) 334	22/06/2012	Report from the Commission to the European Parliament and the Council – Progress Report on the Development of the Second Generation Schengen Information System (SIS II) July 2011–December 2011	
<i>Visa policy</i>			
COM(2010) 197	5/05/2010	Proposal for a Council Decision concerning the signing of the Agreement between the European Union and Georgia on the facilitation of the issuance of visas	3/6/2010 ✓
COM(2010) 256	27/05/2010	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement	25/11/2010 ✓
COM(2010) 358	5/07/2010	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in a possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as amended by Regulation (EC) No 851/2005	15/12/2010 ✓

COM(2010) 409	6/08/2010	Council Decisions on the signature and conclusion of the Agreements between the European Community and the Federative Republic of Brazil on the short-stay visa waiver	7-8/10/2010 ✓
SEC(2010) 1287	29/10/2010	Recommendation for a mandate in view of opening negotiations for agreement on visa facilitations between the EU and Moldova	
SEC(2010) 1286	29/10/2010	Recommendation for a mandate in view of opening negotiations for agreement on visa facilitations between the EU and Russia	
SEC(2010) 1285	29/10/2010	Recommendation for a mandate in view of opening negotiations for agreement on visa facilitations between the EU and Ukraine	
SEC(2010) 1400	12/11/2010	Recommendation for a mandate in view of opening negotiations for agreement on visa facilitations between the EU and Belarus	
COM(2011) 290	24/05/2011	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement	
C(2011) 5501	28/07/2011	Commission decision on amending the Visa Code Handbook – C(2010) 1620	
C(2011) 5499	28/07/2011	Commission decision on technical specifications for travel documents (C(2006) 2909)	
COM(2011) 516	30/08/2011	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 810/2009 establishing a Community Code on Visas (Visa Code)	15/02/2012 ✓
SEC(2011) 1076	16/09/2011	Joint Staff Working Paper on the implementation by Ukraine of the Action Plan on Visa Liberalisation	
SEC(2011) 1075	16/09/2011	Joint Staff Working Paper on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation	
C(2011) 6999	3/10/2011	Commission Regulation amending Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)	
C(2012) 888	27/02/2012	Draft Commission decision on determining the EU position for a Decision of the Joint Visa Facilitation Committee set up under the Visa Facilitation Agreement between the EU and Georgia	

C(2012) 1301	29/02/2012	Commission decision on determining the technical specifications for the consultation mechanism of the VIS	
COM(2012) 267 COM(2012) 268	4/06/2012	Commission proposals for Council Decisions on the signature and conclusion of an Agreement between the European Union and the Republic of Moldova amending the Agreement between the European Community and the Republic of Moldova on the facilitation of the issuance of visas	22/06/2012 ✓
COM(2012) 348	22/06/2012	Report on the implementation by the Republic of Moldova of the Action Plan on Visa Liberalisation	
COM(2012) 265 COM(2012) 266	5/06/2012 5/07/2012	Commission proposals for Council Decisions on the signature and conclusion of an Agreement between the European Union and Ukraine amending the Agreement between the European Community and Ukraine on the facilitation of the issuance of visas	23/07/2012 ✓
COM(2012) 376	11/07/2012	Report from the Commission to the Council and European Parliament on the development of the Visa Information System (VIS) in 2011	
C(2012) 4726	11/07/2012	Decision establishing the list of supporting documents to be presented by visa applications in the UK (harmonisation of local Schengen cooperation)	
COM(2012) 443	29/08/2012	Report from the Commission to the European Parliament and the Council on possible Migratory and Security Impacts of Future Visa Liberalisation for the Republic of Moldova on the European Union – Preliminary Assessment	
C(2012) 5310	6/08/2012	Commission implementing decision establishing the list of supporting documents to be presented by visa applicants in Chile, Kazakhstan, Nicaragua and Nigeria	
COM(2012) 472	28/08/2012	Third Report on the post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission statement of 8 November 2012	

Putting solidarity and responsibility at the heart of our response

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
<i>A Europe of responsibility, solidarity and partnership in migration and asylum matters</i>			
COM(2010) 214	6/05/2010	First Annual Report on Immigration and Asylum (2009)	

COM(2011) 291	24/05/2011	Second Annual Report on Immigration and Asylum	
COM(2012) 250	30/05/2012	Third Annual Report on Immigration and Asylum (2011)	
<i>A dynamic and comprehensive migration policy</i>			
COM(2011) 248	4/05/2011	Communication on Migration	
COM(2011) 292	24/05/2011	Communication – A Dialogue for migration, mobility and security with the Southern Mediterranean countries	
COM(2011) 564	26/09/2011	Communication on Cooperation in the area of JHA within the Eastern Partnership	
COM(2011) 743	18/11/2011	Communication on the Global Approach to Migration and Mobility	
COM(2010) 379	13/07/2010	Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment	
COM(2010) 378	13/07/2010	Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer	
C(2011) 5478	28/07/2011	Commission Decision laying down the technical specifications for the uniform format for resident permits for third country nationals	
COM(2011) 587	28/09/2011	Report from the Commission to the European Parliament and to the Council on the application of Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service	
COM(2011) 585	28/09/2011	Report from the Commission to the European Parliament and to the Council on the application of Directive 2003/109/EC on the status of third-country nationals who are long-term residents	
COM(2012) 427	1/08/2012	Report from the Commission to the European Parliament and to the Council on the European Migration Network Development	
COM(2011) 735	15/11/2011	Green paper on the right to family reunification of third-country nationals living in the European Union (Directive 2003/86/EC)	

SEC(2010) 357	19/03/2010	Commission Staff Working Document: The consolidation of the EU framework on integration – Report to the 2010 Ministerial Conference on Integration	
COM(2011) 455	20/07/2011	Communication on a European Agenda for the Integration of Third-Country Nationals	
SEC(2011) 957	20/07/2011	Commission Staff Working Paper on an EU initiative supporting the integration of third-country nationals	
COM(2011) 76	23/02/2011	Communication to the European Parliament and to the Council on the evaluation of EU readmission agreements	
SEC(2011) 1047	16/09/2011	Commission proposal for the Council decisions concerning signature and conclusion of the agreement between the EU and Armenia on visa facilitation and readmission	19/12/2011 ✓
SEC(2011) 1049	16/09/2011	Commission proposal for the Council decisions concerning signature and conclusion of the agreement between the EU and Azerbaijan on visa facilitation and readmission	19/12/2011 ✓
SEC(2011) 1048 SEC(2011) 1050	16/09/2011	Recommendation from the Commission to the Council in order to authorise the Commission to open negotiations for the conclusion of an agreement between the EU and third countries (Armenia and Azerbaijan) on the facilitation of the issuance of short-stay visas	19/12/2011 ✓
COM(2012) 239	22/06/2012	Proposal for a Council decision concerning the conclusion of the EU–Turkey readmission agreement	
COM(2012) 240	22/06/2012	Proposal for a Council decision concerning the signature of the EU–Turkey readmission agreement	
COM(2010) 213	6/05/2010	Communication on Action plan on unaccompanied minor migrants (2010–2014)	
<i>Asylum: A common area of protection and solidarity</i>			
SEC(2011) 852 (Restricted)	01/07/2011	Arrangements on the participation of Norway, Iceland, Switzerland and Liechtenstein in the European Asylum Support Office (Restricted)	
COM(2011) 549	12/09/2011	Annual Report from the Commission to the European Parliament and the Council on the activities of the EURODAC Central Unit in 2010	

COM(2012) 254	30/05/2012	Amended proposal for a Regulation of the European Parliament and the Council on the establishment of “EURODAC” for the comparison of fingerprints for the effective application of Regulation (EC) No [.../....] [establishing the criteria and mechanism for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person] and to request comparisons with EURODAC data by Member States’ law enforcement authorities and Europol for law enforcement purposes and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-IT systems in the area of freedom, security and justice	
COM(2010) 314	16/06/2010	Report from the Commission to the Council and to the European Parliament on the application of Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted	
COM(2010) 465	8/09/2010	Report from the Commission to the Council and to the European Parliament on the application of Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status	
COM(2011) 319	1/06/2011	Amended Proposal for a Directive of the European Parliament and the Council on common procedures for granting and withdrawing international protection status	
COM(2011) 320	1/06/2011	Amended Proposal for a Directive of the European Parliament and the Council on laying down standards for the reception of asylum seekers	25/10/2012 ✓
COM(2011) 835	2/12/2011	Communication on enhanced intra-EU solidarity in the field of asylum – An EU agenda for better responsibility-sharing and more mutual trust	

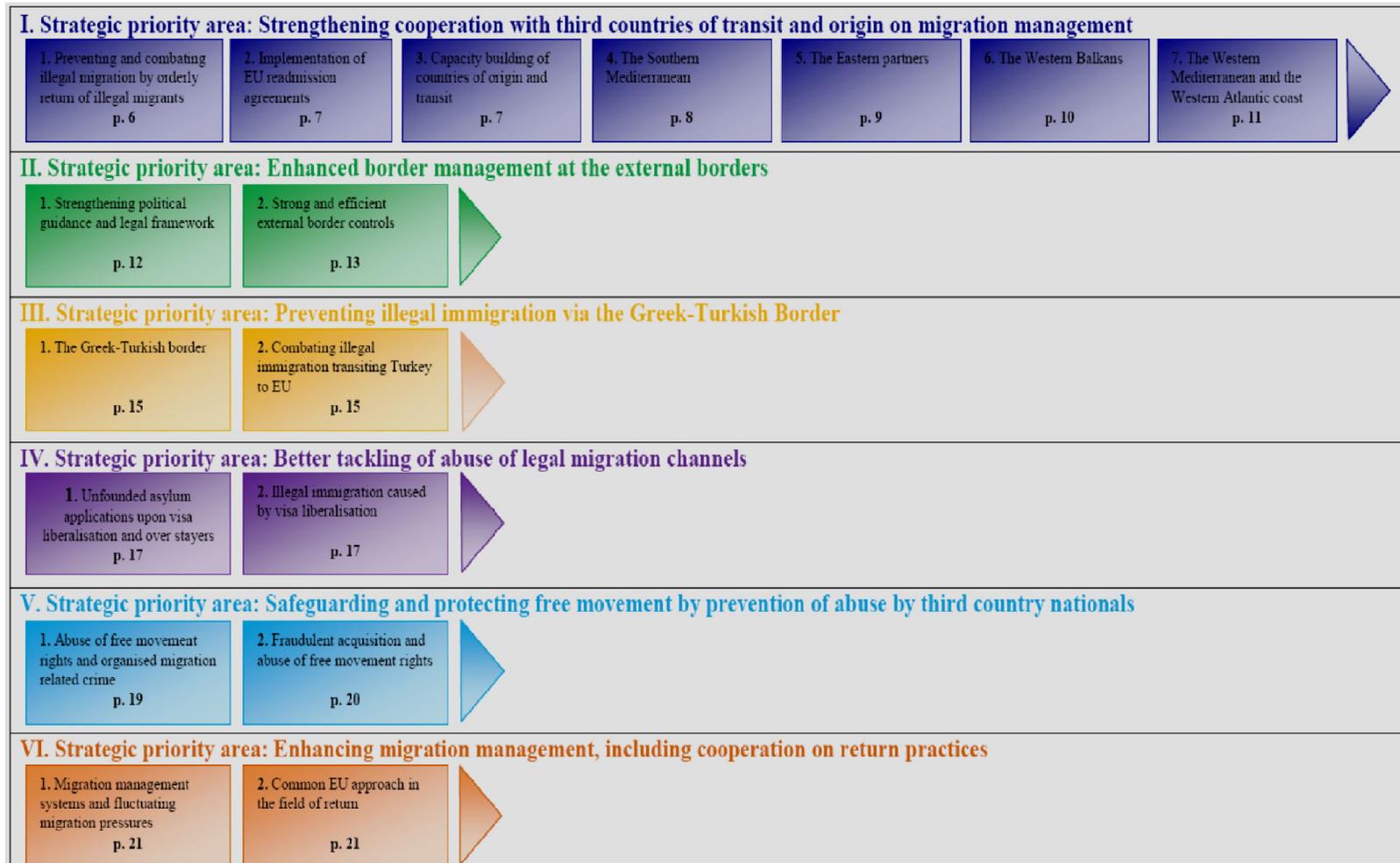
COM(2012) 110	9/03/2012	Communication from the Commission concerning the position adopted by the Council with a view to the adoption of a proposal for a Decision of the European Parliament and of the Council amending Decision No 573/2007/EC establishing the European Refugee Fund for the period 2008 to 2013 as part of the General programme “Solidarity and Management of Migration Flows” and repealing Council Decision 2004/904/EC (“establishment of a Joint EU Resettlement Programme”)	
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Other (financing)

<i>Reference</i>	<i>Publication date</i>	<i>Full title</i>	<i>Adoption by Council</i>
COM(2011) 318	16/06/2011	Communication from the Commission to the European Parliament and the Council on the mid-term evaluation of the Framework Programme “Security and Safeguarding Liberties” (2007-2013)	
COM(2011) 749	15/11/2011	Communication, ‘Building an open and secure Europe: The home affairs budget for 2014-2020’	
COM(2011) 750	15/11/2011	Proposal for a Regulation establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa	
COM(2011) 751	15/11/2011	Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund	
COM(2011) 752	15/11/2011	Proposal for a Regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime and crisis management	
COM(2011) 753	15/11/2011	Proposal for a Regulation of the European Parliament and of the Council establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime and crisis management	

Appendix 2. EU Action on Migration Pressures – A Strategic Response

Figure A2.1 Strategic priority areas



Source: Council of the European Union, EU Action on Migratory Pressures – A Strategic Response, 8714/1/12, Brussels, 23 April 2012.

Figure A2.2

EU Action on Migratory Pressures – a Strategic Response



Source: Council of the European Union, EU Action on Migratory Pressures – A Strategic Response, 8714/1/12, Brussels, 23 April 2012.