

The European Council's Guidelines for the Area of Freedom, Security and Justice 2020

Subverting the 'Lisbonisation' of Justice and Home Affairs?

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Abstract

In its Conclusions of 26-27 June 2014, the European Council has adopted the new "Strategic Guidelines for Legislative and Operational Planning for the coming years within the EU's Area of Freedom, Security and Justice (AFSJ)". These Guidelines reveal a pre-Lisbon Treaty mindset among the EU member states and the Justice and Home Affairs Council. This essay argues that the Guidelines are mainly driven by the interests and agendas of national Ministries of Interior and Justice and are only "strategic" to the extent that they aim at first, re-injecting 'intergovernmentalism' or bringing back the old EU Third Pillar ways of working to the new EU institutional setting of the AFSJ and second, at sidelining the EU Charter of Fundamental Rights and rule of law in the AFSJ. The paper argues that the European Council Guidelines seek to prevent the advances in Justice and Home Affairs cooperation as envisaged in the Treaty of Lisbon, particularly its emphasis on supranational democratic, legal and judicial accountability. As a consequence of this move to 'de-Lisbonise' JHA cooperation, fundamental rights and rule of law-related initiatives will be neglected and the interest of the individual will be displaced from the centre of gravity in the coming AFSJ 2020 policy agenda.

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Introduction

The Area of Freedom, Security and Justice (AFSJ) has made policy domains related to citizenship, immigration, asylum, borders, judicial and police cooperation among the key concerns of the European Union (EU). This status has been recently reaffirmed by the European Council Conclusions of 26-27 June 2014,¹ which included a much-awaited set of “Strategic Guidelines” for legislative and operational planning of AFSJ policies for the next five years.

The reflections voiced in the run-up to the adoption of the Guidelines during the Greek Presidency of the EU were favourably received in various Brussels circles. These Guidelines were supposed to outline the next EU policy priorities on the AFSJ between 2015 and 2020, and succeed the previous EU agenda foreseen by the third multiannual programme on the AFSJ – the so-called ‘Stockholm Programme’.²

This Essay argues that the Guidelines have failed to meet most expectations. They have revealed a pre-Lisbon Treaty or old EU Third Pillar mindset among EU member states and the Council actors. They are primarily driven by the interests and agendas of national Ministries of Interior and Justice and are only “strategic” to the extent that they seek:

- First, to limit and prevent the emergence of plural and competing policy agendas and strategic programmes by the next European Commission and European Parliament, raising barriers to the effective operability of the EU inter-institutional supranational democratic, legal and judicial accountability enshrined in the Lisbon Treaty; and
- Second, to sideline the EU Charter of Fundamental Rights and rule of law in the wider EU AFSJ policy landscape. A comparative assessment between the agenda put forward by the European Council Guidelines and those anticipated by the European Commission and European Parliament’s contributions to the post-Stockholm reflection reveals that fundamental rights and rule of law-related initiatives are marginalised or even omitted by the Guidelines.

The Essay examines the European Council Guidelines and argues that they constitute fundamental obstacles for the further development of the EU’s AFSJ 2020 as they seek to ‘de-Lisbonise’ cooperation on Justice and Home Affairs (JHA). Our main conclusion is that one of the main challenges for the EU AFSJ in the years to come will be to display the full scope and effects of the institutional, decision-making and substantive innovations brought about by the Lisbon Treaty five years ago.

Tearing down the obstacles to inter-institutional pluralism, democratic rule of law and transparent decision-making procedures at EU levels is a basic step in creating a legitimate and trust-based AFSJ. It is also central to upholding the liberty, security and justice of individuals, as carefully laid down in the EU Charter of Fundamental Rights. Following the adoption of the Strategic Guidelines, however, these will remain the main challenges facing the next phase of the EU AFSJ.

¹ European Council, Conclusions, 26/27 June 2014, EUCO 79/14, Brussels, 27 June 2014.

² Refer to Council of the European Union, The Stockholm Programme: An open and secure Europe serving and protecting citizens, 5731/10, Brussels, 3 March 2010.

1. A strategy to 'de-Lisbonise' the AFSJ field

European cooperation on Justice and Home Affairs (JHA) has traditionally been characterised by unaccountable and obscure inter-governmental decision-making, treaty design and working logic. This was the case under the remits of the 1993 Maastricht Treaty (Treaty on the European Union), which for the first time enshrined in its Title VI (denominated the 'Third Pillar' in the previous EU Temple structure) the objective to progressively develop European cooperation on JHA from a predominantly law enforcement logic.

Things started to gradually change by mid-1999. The Amsterdam Treaty transferred some JHA fields (in particular those related to borders, immigration and asylum) to shared Community competence and the Community method of cooperation (so-called 'First Pillar'). Yet it left those related to police and criminal justice under the Maastricht Treaty's Third Pillar. Since 1999 the JHA Council has sat in the driver's seat in the decision-making process as well as in the planning and policy development of the AFSJ, which has been shaped by the adoption of lengthy and very detailed multi-annual policy programmes set by the European Council, such as the 1999 Tampere Programme or the 2004 Hague Programme (Guild, Carrera and Balzacq, 2010).³

The European Parliament used to be a 'non-player' in these fields, with limited democratic accountability powers and no assigned role in legislative decision-making. Its role incrementally moved from having no say under the Maastricht Treaty towards a more supportive role under the Amsterdam Treaty. The Court of Justice in Luxembourg had equally constrained jurisdictional competences to interpret and judicially review the validity of legislative acts adopted by the Council in these domains, which led to profound deficiencies in judicial scrutiny in EU JHA cooperation.

The end of 2009 brought about a set of far-reaching institutional innovations and decision-making re-design to the AFSJ Treaty and institutional machinery. The entry into force of the Lisbon Treaty in December 2009 reshaped the institutional ownership of the AFSJ, liberalising it beyond the Council rooms. The new Treaties took that ownership partly out of the Council's hands in several ways: first, by strengthening the competences of the European Commission; second, by recognising the European Parliament as co-legislator through the expansion of the Community method of cooperation (now the ordinary legislative procedure) in European AFSJ law, and thus becoming a central actor including in the old EU Third Pillar (criminal justice and police cooperation); and third, by enlarging the interpretative and review powers of the Court of Justice to a wider range of AFSJ fields; and fourth, by constitutionalising the legally binding nature of the EU Charter of Fundamental Rights (Guild, 2010).

This re-structuring of the AFSJ foundations was supposed to put an end to the JHA Council monopoly and its margin of appreciation. Pre-Lisbon Treaty intergovernmental and secretive ways of working were meant to be something of the past. The JHA Council was called upon to adapt both procedurally and mentally its pre-Lisbon Treaty bureaucratic and member state-centric working cultures to a more pluralistic and democratic institutional setting, where the

³ See European Council, Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels (Tampere Programme); 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) (Hague Programme).

Commission and the European Parliament became equal co-owners of policy and legislative operational planning and decision-making, along with a strengthened Court of Justice controlling the legality of their legislative actions.

That notwithstanding, it is now clear that the practical implementation of the Lisbonisation of the AFSJ institutional setting might have been difficult for the Council to swallow, with a number of controversies and inter-institutional struggles arising during the last five years.

One of the first shocks by the Council came after its adoption of the third multiannual programme on the AFSJ – the so-called ‘Stockholm Programme’ during the second half of 2009.⁴ While the entry into force of the Treaty of Lisbon was imminent, the European Council’s Stockholm Programme still took a JHA Council-dominant focus, following the previous habit of kindly suggesting what the Commission should do in a number of specific AFSJ policy fields, and ignoring the new position of the European Parliament.

The result was that the European Commission did not strictly follow the European Council policy and legislative programming in the Stockholm Programme. Instead, it pursued its own vision and agenda.⁵ While the Council officially called to attention and reminded the Commission to follow what had been prescribed in the Stockholm Programme as “the sole framework of reference for operational policy and legislative planning”,⁶ the Commission insisted on its right of legislative initiative and did not carry out an exhaustive *ex post* evaluation of the Stockholm Programme implementation (Carrera & Guild, 2012).⁷

In the reflection period preceding the adoption of the Strategic Guidelines by the European Council meeting of 26-27 June, the Directorates General (DG) for Home Affairs and Justice of the European Commission published a set of Communications in March 2014, taking stock of the progress made during the last five years in the EU AFSJ and identifying the key challenges ahead and political priorities to address them in the years to come.⁸ Interestingly, as we will assess in section 2 below, some of the priorities presented by the Commission differ from those now envisaged by the European Council Guidelines.

Nor did the European Parliament’s Civil Liberties, Justice and Home Affairs (LIBE) Committee take the European Council’s Stockholm programme as the main reference point.⁹ Since the end

⁴ See Council of the European Union, “The Stockholm Programme: An open and secure Europe serving and protecting citizens”, 5731/10, Brussels, 3 March 2010.

⁵ 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.

⁶ 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.

⁷ 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.

⁸ Commission Communication, “An Open and Secure Europe: Making it Happen”, COM(2014) 154, 11 March 2014; Commission Communication, “The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union”, COM(2014) 144, 11 March 2014; and Commission Communication, “A New EU Framework to Strengthen Rule of Law”, COM(2014) 158, 19 March 2014.

⁹ 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,

of 2009, the Parliament developed its own policy priorities and recommendations in a wide list of resolutions and own-initiative reports across AFSJ domains. As a previous CEPS study examining the performance of the LIBE Committee during the 7th legislature has demonstrated (Carrera, Hernanz & Parkin, 2013), the European Parliament has become a co-owner and a policy-agenda setter in the AFSJ. It has actively performed its role as co-legislator in areas previously reserved to member states and the Council, such as those related to 'internal security' or the old Third Pillar.

This has not been exempted from a number of clashes between the EU institutions in a series of legislative dossiers, not least in respect of some international agreements between the EU and third countries like the US, or in issues such as obstacles to transparency, openness and access to documents (Carrera, Hernanz & Parkin, 2013).¹⁰ Also on the occasion of taking stock of the mid-term implementation of the Stockholm Programme and in prospect of the reflection towards the EU AFSJ agenda, the European Parliament adopted a report where it laid down its own set of policy priorities and recommendations for the coming years.¹¹ Here also, one can identify a number of differences in comparing the Parliament's set of priorities with those prescribed by the European Council Guidelines (see section 2 of this Essay).

The reflections leading to the drafting and final adoption by the Guidelines 26-27 June need therefore to be read against this background. They can be understood as a reaction by the Council structures and actors to such a post-Lisbon Treaty institutional and policy setting, which has led to a multiplicity of inter-institutional policy agendas and programmes on JHA as well as inter-institutional struggles in AFSJ cooperation with the European Parliament playing an increasingly central role in decision-making processes.

In fact, during the last five years (2009-2014), there has been not a single and uniform EU policy agenda on AFSJ policies following and consistently implementing the 2009 Stockholm Programme. It could even be argued that there has not been a Stockholm Programme *per se*, or indeed a unique EU policy programming strategy or framework of reference on the AFSJ. As demonstrated by Annex 2 of this Essay there is a wide range of EU AFSJ policy strategies or frameworks of reference. Indeed, a plurality of policy agendas, strategies and roadmaps on a wide array of AFSJ policies have proliferated, often containing specific lines of action and policy priorities.

The European Council Guidelines appear to have been written and designed with the aim of limiting this increasingly multi-strategy and multi-actor programming setting at EU level, and constraining the autonomy assigned to the newly appointed European Commission by the Treaties and the European Parliament's position as co-legislator in these domains.

This has been further exacerbated by the bitterness characterizing the process of election of the President of the new European Commission and the candidature of Jean-Claude Juncker, which has been subject to political struggles and encountered opposition by certain Member States' governments, most notably the UK. Indeed, the strategy of limiting the scope of political ambition of the newly elected Commission beyond member states' interior and justice agendas

security and justice (Stockholm programme), para. 153. The EP underlined here that it reserved "*the right to come back with specific proposals when it is consulted on the legislative action programme*".

¹⁰ See also Court of Justice of the European Union, C-350/12, In't Veld v Council, 3 July 2014.

¹¹ European Parliament, Report on the Mid-Term Review of the Stockholm Programme (2013/2024(INI), 4.3.2014, Rapporteurs: Luigi Berlinguer, Juan Fernando Lopez Aguilar, Carlo Casini.

is implicit, for instance, in the way in which the European Council has linked the strategic agenda for the next five years with the adoption of the Decision proposing Juncker to the European Parliament as candidate for President of the Commission. In the section of the Conclusions dealing with “the Next Institutional Cycle”, the European Council has emphasised that:

It invites the EU institutions and the Member States to fully implement these priorities in their work. The agenda will also guide the institutions in the annual and multiannual programming as well as in legislative planning; they should organize their work accordingly. The European Council will ensure the regular monitoring of the implementation of these strategic priorities.¹²

This kind of language harkens back to pre-Lisbon territory in EU JHA cooperation.

Moreover, an absence of democratic oversight characterised the way in which the Strategic Guidelines were drafted under the auspices of the Greek Presidency of the EU during the first half of 2014. The decision-making processes leading to the adoption of the Guidelines mainly took place behind ‘closed doors’, excluding central actors such as the European Parliament. It is true that some limited discussions were organised in Brussels, yet the actual setting of priorities and their value added regrettably was not subject to an open, democratic and pluralistic debate, with the participation of civil society and international organisations. The negotiations of the Guidelines took also place during a period of major democratic transition at EU level with the European Parliament elections held at the end of May 2014. The new MEPs only arrived to Brussels in June 2014, which was simply too late to have a proper say before their formal adoption.

Consequently, and similar to the pre-Lisbon Treaty setting, the formulation process has remained largely undemocratic and non-transparent. In this way, the European Council has ignored the repeated calls by the Parliament to ensure better inter-institutional coordination and the need for an inter-institutional agreement in the next AFSJ multi-annual programming, as stipulated in Art. 17.1 of the Treaty on the European Union.¹³ Moreover, important issues that the Parliament had underlined as not working effectively in inter-institutional cooperation since 2009 have been left out in the Council AFSJ priorities for the coming years. This has been the case with respect to the Parliament’s role in the conclusion of international agreements, which has been said to continue being not effectively fulfilled by the Council.¹⁴

The European Council Guidelines may well constitute therefore a strategic attempt to re-inject ‘intergovernmentalism’ or to bring back the old EU Third Pillar working habits of the JHA Council to the entire new institutional fabric of the EU AFSJ. Paradoxically, therefore, while the need for the adoption of the Guidelines is enshrined in the Lisbon Treaty (Art. 68 TFEU), they can be seen as a strategy to “de-Lisbonise” the AFSJ field. This, as we argue in the next section,

¹² Para. 26 of the European Council Conclusions.

¹³ European Parliament, Report on the Mid-Term Review of the Stockholm Programme (2013/2024(INI), 4.3.2014, Rapporteurs: Luigi Berlinguer, Juan Fernando Lopez Aguilar, Carlo Casini. In para. 114, the Report stated that the European Parliament “Believes that the multiannual programming should be based on an interinstitutional agreement, as provided for in Article 17(1) TEU; expects the Commission, therefore, to submit a proposal on this basis”.

¹⁴ Para. 1 of the European Parliament Report “requests that the Commission and the Council Presidency better fulfill their obligation to inform Parliament immediately and fully at all stages of the procedure leading to the conclusion of international agreements”.

has profound repercussions for the kind of policies being prioritised or 'side-lined' in the Council's next EU AFSJ agenda.

2. Side-Lining the EU Charter of Fundamental Rights and Rule of Law

Annex 1 of this Essay presents an extended table allowing a comparison of the policy priorities and recommendations advanced by each of the three EU institutional actors for the next generation of the EU AFSJ 2020 across each specific policy area falling under the AFSJ rubric. The content and priorities contained in the 6-page European Council Guidelines are also laid out in the Annex. We argue that the pre-Lisbon 'strategic way of thinking' inside the Council described in Section 1 above has direct implications for the substance of the policies advanced or being prioritised (or not) by the Guidelines. These priorities often stand in sharp contrast with those already put forward by the relevant DGs of the European Commission and the European Parliament in their respective contributions to the 'Post-Stockholm' EU AFSJ policy agenda, in particular the following instruments:

- Communication issued by DG Home Affairs of the European Commission on "An Open and Secure Europe: Making it Happen" COM(2014) 154 of 11 March 2014.¹⁵
- 2 Communications adopted by DG for Justice of the European Commission on "The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union", COM(2014) 144 and "A New EU Framework to Strengthen Rule of Law", COM(2014) 158 of 11 March 2014.¹⁶
- European Parliament Report on the Mid-Term Review of the Stockholm Programme 2013/2024(INI) of 4 March 2014.¹⁷

A large number of differences can be discerned in comparing the priority areas presented and/or those not foreseen by each of these programmes in contrast to those listed by the European Council Guidelines, which can be synthesised into the following two:

- the absence of the relevance and effects of the EU Charter of Fundamental Rights and
- the omission of key fundamental rights and rule of law-specific policy dossiers and legislative priorities.

2.1. What about the EU Charter of Fundamental Rights?

The European Council Guidelines fail to acknowledge the relevance of the legally binding EU Charter of Fundamental Rights and more generally the role and impact of fundamental human rights in AFSJ cooperation, including the EU's accession to the European Convention of Human Rights (ECHR). While the text includes a reference to the need to adopt the new EU General

¹⁵ Commission Communication, "An Open and Secure Europe: Making it Happen", COM(2014) 154, 11 March 2014.

¹⁶ Commission Communication, "The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union", COM(2014) 144, 11 March 2014; and Commission Communication, A New EU Framework to Strengthen Rule of Law, COM(2014) 158, CORRIGENDUM, 19 March 2014.

¹⁷ European Parliament, Report on the Mid-Term Review of the Stockholm Programme (2013/2024(INI), 4.3.2014, Rapporteurs: Luigi Berlinguer, Juan Fernando Lopez Aguilar, Carlo Casini.

Data Protection framework by 2015,¹⁸ the EU Charter is not expressly referred to even once in their wording. A direct consequence is that the interests of the individual and the central role and implications of the EU Charter of Fundamental Rights are not the guiding paradigms in the legislative and operational planning designed by the Guidelines.¹⁹

In the above-mentioned contributions by the two DGs of the European Commission (Home Affairs and Justice), the relevance of the EU Charter of Fundamental Rights has been acknowledged. The contribution by DG Justice goes even further than that of DG Home Affairs, by underlying as a key priority for the years to come the promotion of a more effective implementation of the EU Charter's provisions. DG Justice's Communication COM(2014) 144 underlines the need to address specific fundamental rights in future policy actions (such as the protection of personal data, gender equality, citizens' rights, fair trial rights or children's rights), as well as the situation of specific groups like minorities or children, victims of crime and persons with disabilities, or the fight against xenophobia and racism.²⁰ The same Communication also calls for the need to overcome the current hurdles in the EU's accession to the ECHR, and to speedily conclude the negotiations and complete the ratification process.²¹

In a similar tone, the European Parliament Report on the Mid-Term Review of the Stockholm Programme points out the necessity to ensure the highest level of human rights protection in the EU AFSJ policies and to give greater attention to the particular situation of vulnerable groups in the EU by strengthening the fight against racism, xenophobia, anti-Semitism, religious intolerance, Islamophobia, anti-Roma sentiment, homophobia and transphobia.²² It asks member states to step up their efforts to enforce fundamental rights and social inclusion of Roma.²³ Similarly to the Commission, the EP condemns that the EU has not yet acceded to the ECHR and calls for rapid and accelerated procedures of accession. It also underlines that the Treaties place human rights, democracy and rule of law at the centre of both the internal and external dimensions of the EU AFSJ, which as we will see below is of critical importance in relation to EU migration and border control policies.²⁴

Concerning the need to adopt an updated version of the EU Internal Security Strategy (ISS) for 2015-2020, the European Parliament is the only institution expressly calling on the Commission

¹⁸ Para. 4 of the Strategic Guidelines. 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, 25.1.2012. European Commission, proposal for directive 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) 10 final, 25.1.2012, Brussels.

¹⁹ In so doing, the Guidelines stand in a difficult relationship with the priorities outlined in the accompanying "Strategic Agenda for Europe in Times of Change" also adopted by the same European Council meeting. This Agenda presents the overarching policy priorities to guide the work of the EU during the next five years in issues such as the economy, energy and climate change and foreign affairs. In contrast to the AFSJ Strategic Guidelines, the Strategic Agenda seems to give some emphasis to the need to empower and protect the interests of Europeans, by equipping the individual with "a trusted area of fundamental freedoms".

²⁰ Section 4.1 (i) Upholding Fundamental Rights of the Communication COM(2014) 144.

²¹ Section 4.3 of the Communication COM(2014) 144.

²² See Section 'Fundamental Rights', paras 15-32 of the Report.

²³ Ibid.

²⁴ Para. 99 of the EP Report, "The External Dimension of the Area of Freedom, Security and Justice".

to start preparing it and take due account of the implications of the Lisbon Treaty and the EU Charter, as well as to ensure the Parliament's input into the new ISS before adopting the new strategy (Guild & Carrera, 2011).²⁵

2.2. Where are other fundamental rights and rule of law AFSJ initiatives?

The second marked difference between the EU inter-institutional strategic policy agendas and priorities for the next years in AFSJ cooperation relates to the omission by the European Council Guidelines of a whole series of fundamental rights-specific policy dossiers and legislative priorities.

A gap between the European Council Guidelines and the strategies by the Commission and the EP relates to rule of law deficits in EU member states. Both the Commission and the EP's contributions highlight as a priority for the years to come the need to address what has been denominated as the 'Copenhagen dilemma'²⁶ or 'rule of law crises' in EU member states. The Communication COM(2014) 158 issued by DG Justice envisages the establishment of a "New EU Framework to Strengthen Rule of Law" for addressing systematic threats of rule of law by national governments in the context of current Article 7 TEU (Carrera, Guild & Hernanz, 2013a).

The EP Report also refers to the need to address this 'dilemma' by creating a "Copenhagen Commission" which would be composed of independent, high-level experts on fundamental rights, and whose aims would be to secure compliance by all member states with Article 2 TEU, to ensure the continuity of the 'Copenhagen criteria' and to advise and report on matters relating to fundamental rights.²⁷ The EP even recommended the establishment of a new "Copenhagen mechanism" and a "European policy cycle on the application of Article 2 TEU and the EU Charter of Fundamental Rights" (Carrera, Guild & Hernanz, 2013b).²⁸ Surprisingly, no reference to any of these landmark initiatives has found a place in the Strategic Guidelines.

Other notable absences in the European Council's AFSJ agenda 2015-2020 include the lack of acknowledgment of any lessons learned and further policy action in response to the 2013 Snowden revelations of mass-surveillance by EU member states, and their cooperation with the

²⁵ Para. 64 of the EP Report. The Report also states that the EP "regrets that the latest Commission evaluation of the implementation of the Internal Security Strategy fails to take into account the consequences of the incorporation of the EU Charter of Fundamental Rights". Ibid. See European Parliament resolution of 14 December 2011 on the EU Counter-Terrorism Policy: Main achievements and future challenges; European Parliament resolution of 22 May 2012 on the European Union's Internal Security Strategy ((2010) 2308 (INI)).

²⁶ This dilemma was referred to by the previous Commissioner for Justice Viviane Reding as: "Once this Member State has joined the European Union, we appear not to have any instrument to see whether the rule of law and the independence of the judiciary still command respect". See European Parliament (2012), Plenary debate on the political situation in Romania, statement by V. Reding, 12 September 2012. See also V. Reding, "The EU and the Rule of Law: What Next?", speech delivered at CEPS, 4 September 2013.

²⁷ See para. 16 of the EP Report. See also the European Parliament Report on the on the situation of fundamental rights: standards and practices in Hungary (pursuant to the European Parliament resolution of 16 February 2012) (2012/2130(INI)), 24.6.2013, Rapporteur: Rui Tavares.

²⁸ European Parliament, Report on the situation of fundamental rights in the European Union, Rapporteur: Louis Michel, para. 8.o, A7-0051/2014, 27.1.2014. See also para. 9.e of the Report which emphasis the need to establish a European policy cycle on the implementation of Article 2 TEU "to provide an annual and multi-annual framework, and an open annual institutional forum on these European values, in particular the protection of fundamental rights".

US and other states' intelligence communities (Bigo et al., 2013). It is surprising that both Commission Communications do not foresee any priority in this aspect, nor do they refer to the findings and recommendations contained in the European Parliament Report resulting from the Inquiry Committee on the US NS surveillance programme, surveillance bodies in various member states and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs.²⁹ Member states' interests to limit EU democratic, legal and judicial accountability with the excuse that 'national security' remains outside EU competence seem to have prevailed in the Conclusions (Carrera, Guild & Parkin, 2014).

The European Parliament Report on the Mid-Term Review of the Stockholm Programme examines electronic mass surveillance of EU citizens and calls for ensuring effective parliamentary and judicial oversight and security at EU and national levels, and for introducing more checks and balances. The EP also requests the Commission to propose an "accountability mechanism" aimed at strengthening the capacity of the EU and its member states to prevent, investigate and redress human rights violations at EU level "in particular those committed in the context of the alleged transportation and illegal detention of prisoners in European countries by the CIA" (Carrera, Guild, Soares da Silva & Wiesbrock, 2012).³⁰ None of these central issues is addressed in the European Council Guidelines.

There are other examples in which the interests of national Interior and Justice Ministries have prevailed. The Guidelines pay special attention to addressing the "root causes of irregular migration" by intensifying cooperation with third countries of origin and transit, including through migration and border management 'capacity building'.³¹ Certain member states' representatives appear to be interested in externalising or even 'outsourcing' the control of irregular immigration via the integration of EU migration policy in external relations and development cooperation.

The dilemmas inherent in EU actions to cooperate with third countries to tackle "the root causes of irregular immigration" were acknowledged by the Commission Communication on the work of the so-called "Task Force Mediterranean", which stated:

Relations with partner countries will also have to take into account the specific sensitivities and expectations of partner countries on the migration dossier, and their perception that the EU wishes to focus primarily on security-related aspects, readmission/return and the fight against irregular migration.³²

The EP Report expressed concern at the increasing demands being put on neighbouring countries in this context.³³ Indeed, for these third countries, security-related aspects may be

²⁹ See the European Parliament, Report on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs, 21 February 2014, A7-0139/2014, Rapporteur: Claude Moraes.

³⁰ See European Parliament Report 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)), 2.8.2012, Rapporteur: Helene Flautre..

³¹ Refer to para. 8 of the Strategic Guidelines which also state that "Migration policies must become a much stronger integral part of the Union's external and development policies, applying the "more for more" principle and building on the Global Approach to Migration and Mobility."

³² Commission Communication, on the work of the Task Force Mediterranean, COM(2013) 869 final, 4.12.2013, Brussels, p. 5.

³³ Refer to Para. 102 of the EP Report.

interpreted as an allegation that their citizens are potential criminals; Readmission and return may be understood as meaning that their own citizens are framed as 'illegal immigrants'; and the EU's "fight against irregular migration" could mean that they should take measures for their citizens not to go on holiday to the EU.³⁴

There are equally a number of legal and ethical challenges affecting the external dimensions of EU migration, borders and asylum policies, which call for more open and evidence-based debates. As underlined in a previous CEPS Essay (Guild & Carrera, 2013), this policy first creates a tension with the human right that everyone has to leave the country in which he or she may be. Its implementation would also make it difficult to guarantee fair and non-discriminatory treatment in third countries where the people to be prevented from moving into the EU are foreigners, as well as access to international protection of asylum seekers and refugees.³⁵ EU member states cannot simply avoid their own legal and political responsibilities on migrants and asylum-seekers extraterritorially or by 'passing the buck' to third countries' authorities or other organisations. Also, by investing in capacity to 'control migration', the EU may in fact be fostering the 'incapacity' by these third countries to safeguard international human rights standards (Carrera, den Hertog & Parkin, 2012).

Another instance where the interests of Ministries of Interior and Justice have prevailed in the European Council Guidelines is the kind of focus given to the EU citizenship right of free movement. The Guidelines expressly stipulate:

As one of the fundamental freedoms of the European Union, the right of EU citizens to move freely and reside and work in other Member States needs to be protected, including from possible misuse or fraudulent claims.³⁶

The focus on protection from "possible misuse or fraudulent' claims" brings us back to recent baseless allegations by certain EU governments interior ministries of abuses of free movement and 'social welfare tourism' by some EU citizens. The free movement of persons seems to have come increasingly under attack by some member states' representatives. A good example of such attacks was the joint letter sent in April 2013 from the Interior Ministers of Germany, Austria, UK and the Netherlands to the EU Presidency.³⁷ The letter requested the Commission to amend EU rules on free movement due to the alleged mis-use of national welfare schemes by "certain immigrants" from other member states.³⁸ This was accompanied by the proposal from the UK Prime Minister, David Cameron, containing a package of reforms setting out a range of measures that the UK authorities would like to take to limit EU citizens' access to social benefits and to deport those found homeless (Guild, 2013).

³⁴ This would in turn contradict the European Commission policy on "a smarter visa policy". Commission Communication, A smarter visa policy for economic growth, COM(2014) 165 final, 1.4.2014, Brussels.

³⁵ According to Protocol 4 Article 2(2).

³⁶ Para. 12 of the European Council Guidelines. See also p. 17 of the European Council Conclusions.

³⁷ Letter to Mr Alan Shatter, Minister for Justice and Equality (Republic of Ireland), President of the European Council for Justice and Home Affairs, May 2013.

³⁸ They also expressed concern over the additional costs certain Member States would have to shoulder due to "the fraudulent use of the right of free movement of EU citizens" and demanded better tools to fight against such abuses, including more effective expulsion and re-entry bans.

The European Commission has consistently rejected these political claims by EU member states, stating that EU law already provided sufficiently for the prevention of abuse,³⁹ recalling that freedom of movement constitutes one of the most valuable contributions by the EU for European citizens, and calling for evidence-based policy making in an area which constitutes a cornerstone of European integration.⁴⁰ DG Justice's Communication on "The EU Justice Agenda for 2020 - Strengthening Trust, Mobility and Growth within the Union", COM(2014) 144 has given priority to addressing ongoing legal and practical obstacles individuals encounter in attempts to exercise their EU citizenship rights.⁴¹ As demonstrated in a recent CEPS book, there is no evidence that mobile EU citizens abuse social benefits (Guild, Carrera & Eisele, 2013). It is therefore surprising that the European Council Guidelines still insist on allegations of misuse and fraud, instead of giving priority to overcoming well-documented barriers and practical hurdles that are still experienced by many EU citizens and non-citizens entitled to social benefits under EU law. Moreover, the insistence by these national Ministries to amend the Citizens Directive 2004/38⁴² stands in stark contradiction with the position held by the Court of Justice of the European Union according to which the freedom to move derives directly from the Treaties. The freedom of movement benefits from a constitutional status, which cannot be limited or further restricted by subsequent revisions of EU secondary legislation.⁴³

The EP Report on the Mid-Term Review of the Stockholm Programme has expressly pointed out a number of initiatives that are of special relevance from the perspective of the EU Charter and fundamental rights, and yet have been omitted in full by the European Council Guidelines. These include the need to:

- improve and review the current legislative framework and practices concerning access to documents;⁴⁴
- adopt of a new horizontal legal framework on non-discrimination;⁴⁵

³⁹ "JHA: Commission and Dublin do not want to revise free movement rules", Agence Europe, 7 June 2013.

⁴⁰ European Commission Communication on free movement of EU citizens and their families: five actions to make a difference, COM(2013) 837, Brussels, 25.11.2013.

⁴¹ The Communication states: "Despite progress in the enjoyment of their rights, EU citizens still face some obstacles. They still experience practical and legal difficulties when they try to enjoy the same rights they have at home in another Member State. The EU needs to address these obstacles with determination, while continuing to enable the fight against abuse, particularly at a time when the right to free movement of EU citizens is being challenged by some. The right of EU citizens to move freely and live in any EU country is one of the four fundamental freedoms enshrined in EU law and a cornerstone of EU integration" (p. 5).

⁴² Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

⁴³ See for instance Court of Justice of the European Union, Case C-507-12, Saint Prix, 19 June 2014. The CJEU refers to Article 45 TFEU and not to secondary legislation in its argumentation. See paras 35-47 of the judgment.

⁴⁴ Para. 30 of the EP Report.

⁴⁵ Para. 21 of the EP Report. 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)).

- foresee the possibility to suspend Dublin transfers of asylum seekers to member states under significant pressures;⁴⁶
- independently evaluate detention of undocumented immigrants in the EU and find alternatives to it;⁴⁷
- inform the EP before Frontex (EU External Borders Agency) concludes working arrangements or agreement on border controls/surveillance with third countries;⁴⁸
- ensure that “new border management instruments or large-scale data storage systems – such as the Commission’s smart borders package - should not be launched until the existing tools are necessary, fully operational, safe and reliable”;⁴⁹
- reject the “concept of predicting policing without an initial suspicion, in particular the EU passenger name record proposal and the idea of an EU terrorist finance tracking system; calls on the Commission to repeal the Data Retention Directive”;⁵⁰ and
- further ensure the procedural rights of suspects and accused persons in criminal proceedings, with particular focus on the effective provision of legal aid, effective implementation of the access to a lawyer directive, the protection of witnesses and whistleblowers, and the establishment of minimum and enforceable standards in relation to pre-trial detention through EU legislative action.⁵¹

In light of the deficiencies cited above, the shape of the European Council Guidelines is more strikingly revealed by its omissions than by the set of priorities expressly included in the text. The strategy to ‘de-Lisbonise’ the AFSJ field has direct repercussions for the substantive components envisaged for the next phase of the EU AFSJ. The European Council’s policy priorities for the next five years lack an EU Charter of Fundamental Rights and rule of law perspective. By doing so, not only are the interests of the individual denied proper consideration, but the legal principles on which the EU integration project is based and laid down in Article 2 TEU (human dignity, freedom, democracy, equality, the rule of law and respect for human rights) are equally neglected.

3. Conclusions

The European Council Strategic Guidelines for legislative and operational planning are now set for the next phase of the EU’s AFSJ 2015-2020. This Essay has argued that the Guidelines constitute a strategy to ‘de-Lisbonise’ the more pluralistic AFSJ inter-institutional setting that emerged from the Lisbon Treaty almost five years ago. The new Treaties removed exclusive ownership over the legislative and policy agenda-setting in justice and home affairs from the hands of the JHA Council, and liberalised it with a stronger European Commission, a European Parliament acting as co-legislator and a Court of Justice with widened jurisdiction to review EU AFSJ legislation.

‘Lisbon’ deeply affected the classical power relationship and institutional design in AFSJ cooperation in the EU, making the Council’s wishes not always the guiding motor of European

⁴⁶ Paras 88-94 of the EP Report.

⁴⁷ Paras 91-95 of the EP Report.

⁴⁸ Para. 77 of the EP Report.

⁴⁹ Para. 80 of the EP Report.

⁵⁰ Para. 66 of the EP Report.

⁵¹ See paras 33-54 of the EP Report.

integration. The re-structuring of the EU AFSJ institutional and actors foundations brought a formal end to the monopoly and discretion exercised by national Ministries of Interior and Justice in decision-making in these nationally-sensitive domains. This development led to a number of inter-institutional conflicts in the course of the 7th EU legislature, such as the European Commission going beyond the agenda framed in the 2009 Stockholm Programme and not carrying out an exhaustive *ex post* evaluation of its implementation. This has also been a period in which supranational democratic and judicial accountability has been increasingly ensured by the European Parliament and the Court of Justice of the EU, provoking several inter-institutional clashes, which reflect a healthier and more democratic decision-making institutional setting. The role of the European Parliament has been particularly central in ensuring democratic scrutiny of legislative decisions and as a policy-agenda setter.

The JHA Council and member state representatives, however, have found it difficult to accept the practical and daily implementation of the Treaty of Lisbon innovations over the AFSJ during last five years. The fierce political struggles raised by certain Member States' governments and the stubborn resistance by the UK to the nomination of Junker as the candidate for President of the new Commission may well reveal these difficulties to digest key Lisbon Treaty innovations, including the need to take into account the results of the elections to the European Parliament and a more democratic, legal and judicially accountable sphere of European cooperation in many policy fields such as the AFSJ.

The European Council Guidelines need to be read against this background in which divergent legislative and policy agendas have emerged. They appear to have been based on an old Third Pillar working logic and a strategy to limit the emergence of competing institutional agendas and strategies, and to pose obstacles to the effective operability of EU accountability over AFSJ policies. The European Council Conclusions have been closely linked to the appointment of the new Commission with the multi-annual programming and legislative planning set by member states' national interests. The process by which the Guidelines were adopted, which excluded any involvement by the European Parliament, was devoid of any democratic scrutiny or open debate about their European added value and their possible impact on the rights and liberties of the individual.

This Essay has demonstrated that the inter-institutional components behind the Guidelines have also direct effects over *the kind* of policies that have been given priority for the years to come. The European Council's strategy sidelines the impact of the EU Charter of Fundamental Rights and makes no reference to a whole series of policy issues and proposals inspired by a commitment to uphold fundamental rights and rule of law. This picture stands in sharp contrast with the priorities advanced by the European Commission and European Parliament in their respective reflections on the 'post-Stockholm Programme' as comparatively examined in Section 2 and outlined in Annex 1 of this paper.

The most important challenge facing the AFSJ policy agenda 2020 is therefore to effectively put into practice the full operability of the institutional, decision-making and substantive innovations introduced by the Lisbon Treaty. Removing the obstacles to a more democratic, transparent and rule of law-based working methods at EU level should be the central priority for the years to come. What is at stake is the very legitimacy of the AFSJ itself and the trust that has been bestowed in the further development and value of this political project.

True, the Lisbon Treaty may not provide an all-encompassing 'solution' to the challenges affecting current EU AFSJ policies and legislation. Yet its effective implementation in the spirit

of loyal cooperation would constitute a central contribution to enable a healthier AFSJ which upholds the rule of law in the EU institutional setting and the liberty, security and justice of the individual in European integration, as laid down in the EU Charter of Fundamental Rights.

The European Council should therefore in the spirit of sincere and loyal cooperation with its inter-institutional colleagues refrain from limiting or jeopardising the effective exercise by the new European Commission of its attributed powers and autonomy as outlined in the Treaties, and the democratic scrutiny by the new European Parliament of EU AFSJ decision-shaping and decision-making processes.

A new European Commission that obediently abides with the Guidelines by the European Council and member states' justice and home affairs agendas would not only go against the powers attributed to it in the Treaties. It would also undermine the whole objective behind the Lisbon Treaty's liberalisation of the ownership over AFSJ legal and operational planning and decision-making beyond intergovernmentalism. Instead, the new Commission should continue to develop its own AFSJ policy agendas, with a view to fostering 'the European interest' and safeguarding the faithful implementation of the Treaties *and* the EU Charter of Fundamental Rights. This should go hand-to-hand with first, stronger fundamental rights and rule of law assessments of member states, and second, better internal fundamental rights monitoring/evaluations across all Commission DGs and Services and of existing and future legislative and policy instruments. The new Commission should also more fully and effectively exercise its powers to launch infringement proceedings against member states that fail to comply with their obligations under primary and/or secondary law.

The members of the new European Parliament and its Civil Liberties, Justice and Home Affairs (LIBE) Committee are now in place. The Parliament, in its role of directly representing the citizens of the Union,⁵² should primarily continue to serve the interests and fundamental rights and freedoms of citizens and residents in Europe, and ensure that EU decisions "are taken as openly as possible and as closely as possible to the citizen."⁵³ The new European Parliament should stand firm and consistently follow the priorities and recommendations of its predecessor. It should also adopt an internal horizontal 'accountability, transparency and fundamental rights strategy'. The strategy should focus on putting into effect new ways of ensuring a higher degree of democratic accountability of its working methods, a stronger consistency between its policy-setting priorities and those presented in legislative files, and a stronger concentration of protecting and monitoring fundamental rights during decision-making procedures. The new LIBE Committee should also continue to carry out its key responsibilities in the democratic scrutiny and protection of citizens' rights, human rights and fundamental rights, including the protection of minorities, as laid down in the Treaties and the EU Charter of Fundamental Rights.

The working relationship and cooperation between the new European Commission and the European Parliament can be expected to increase and further develop during the 8th Legislature, with both institutions moving even closer in their strategies and agendas.⁵⁴ Moreover, the Court

⁵² Article 10.2 of the Treaty on the European Union, Part II (Provisions on Democratic Principles).

⁵³ Article 1 of the Treaty on the European Union.

⁵⁴ This is especially so in light of Martin Schulz's support to Juncker's candidacy as President of the European Commission. See <http://www.spiegel.de/international/europe/cameron-and-juncker-fight-over-role-in-european-commission-a-975528.html>

of Justice in Luxembourg is also increasingly countering the Council's traditional role and discretion in JHA cooperation, including its 'secretive' and unaccountable ways of working.⁵⁵

A central question is what political space will be now left to the European Council in this new AFSJ institutional setting. An AFSJ based exclusively on the European Council Guidelines would place the AFSJ in tension with the EU Charter of Fundamental Rights and the founding principles enshrined in the Treaties, including the respect of rule of law and fundamental rights at EU level. As one of the key actors in EU AFSJ cooperation, the Court of Justice of the European Union will be called upon to function in the last instance as a fundamental rights court, to interpret or review legislative decisions that may contradict the EU Charter and rule of law (Guild & Carrera, 2014; and Carrera et al., 2012).⁵⁶

⁵⁵ This has been evidenced for instance in the recent *In't Veld v Council* judgment of July 2014 See Court of Justice of the European Union, C-350/12, *In't Veld v Council*, 3 July 2014.

⁵⁶ This has been the case for instance in the Court of Justice of the EU Case C-293/12 & C-594/12, *Digital Rights Ireland*, April 2014, Court of Justice of the European Union. For an analysis of the judgment, see. Guild & Carrera (2014). For an assessment of the Court of Justice as a fundamental rights court see Carrera, De Somer & Petkova (2012).

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ANNEX 1

POLICY AGENDAS AND PROGRAMMES FOR THE NEXT EU AFSJ

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
Horizontal / Institutional Priorities	<p>Paragraph 3</p> <ul style="list-style-type: none"> Ensuring consistent transposition, and effective implementation and consolidation of the legal instruments and policy measures in place. Intensifying operational cooperation while using the potential innovations of Information and Communication Technologies. Enhancing the role of the different EU agencies Ensuring the strategic use of EU funds 	<p>DG Home Affairs Communication, COM (2014) 154</p> <p>Introduction</p> <ul style="list-style-type: none"> Ensuring the correct transposition, full implementation and enforcement of existing instruments Monitoring and evaluating the effectiveness of legislation and making policies an integral part of the policy cycle <p>Further Strengthening the Global Approach to Migration and Mobility (GAMM)</p> <ul style="list-style-type: none"> The capacities of the EEAS, including the EU Delegations, should be fully exploited to ensure the efficiency and coherence of EU action in the context of the GAMM 	<p>Paragraph 1</p> <ul style="list-style-type: none"> Believes that the Treaty of Lisbon and the EU Charter of Fundamental Rights have brought significant improvements to allow the Commission and the Council Presidency to better fulfil their obligation to inform Parliament "immediately and fully at all stages of the procedure" leading to the conclusion of international agreements; regrets the delays in bringing the acts of the former third pillar in line with the new hierarchy of norms in accordance with the Treaty of Lisbon

⁵⁷ Commission Communication, "An Open and Secure Europe: Making it Happen", COM(2014) 154, 11 March 2014.

⁵⁸ Commission Communication, "The EU Justice Agenda for 2020 – Strengthening Trust, Mobility and Growth within the Union", COM(2014) 144, 11 March 2014; and Commission Communication, A New EU Framework to Strengthen Rule of Law, COM(2014) 158, 19 March 2014.

⁵⁹ European Parliament, Report on the Mid-Term Review of the Stockholm Programme (2013/2024(INI), 4.3.2014, Rapporteurs: Luigi Berlinguer, Juan Fernando Lopez Aguilar, Carlo Casini.

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>DG Justice, Commission Communication COM(2014) 144</p> <p>Section 4</p> <ul style="list-style-type: none"> • Consolidating what has already been achieved, and, when necessary and appropriate, codifying EU law and practice and complementing the existing framework with new initiatives • The diversity of legal systems and traditions in the EU has to be preserved; subsidiarity and proportionality have to be respected as well as the need to base all EU action, and notably EU action in the field of justice policies, firmly on the EU Charter of Fundamental Rights <p>DG Justice, Commission Communication COM(2014)158</p> <ul style="list-style-type: none"> • A new EU Framework to strengthen the Rule of Law for systematic threats to rule of law 	<p>Methods, Tools and Processes</p> <ul style="list-style-type: none"> • Deplores the absence of an objective evaluation of progress towards an AFSJ and of reliable information on the member states' implementation of the <i>acquis</i>; and proposes a systematic, objective and independent <i>ex-post</i> evaluation of legislation and its implementation, and the importance of conducting impact assessments at the Commission, Parliament and Council • Asks the Commission to put more emphasis on overseeing and ensuring the correct implementation of EU law by member states • Any strategic planning must draw on the experience of past implementation and such planning must therefore not consist merely of a list of objectives and priorities but must, rather, plan ahead with a view to assessing implementation; where the rights of citizens and residents are concerned, this needs to be done as of the first day an act enters into force. • More needs to be done to

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<p>achieve proper implementation including by means of coordination and cooperation between the Commission, member states and agencies, and assisting member states with guidelines, practical support and exchange of practices; the reasons for non-implementation should be identified, including through infringement proceedings.</p> <ul style="list-style-type: none"> • Calls for better inter-institutional coordination, and regrets the fact that the Council does not involve Parliament more closely in the drawing up of strategy documents (para. 112) <p>Next Steps</p> <ul style="list-style-type: none"> • Believes that the multiannual programming should be based on an interinstitutional agreement, as provided for in Article 17(1) TEU; expects the Commission, therefore, to submit a proposal on this basis (para. 114).

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
Fundamental Rights	<p>Paragraphs 4 and 12</p> <ul style="list-style-type: none"> • Data Protection: Adopting the EU General Data Protection framework by 2015 • Free Movement: to protect it “including from possible misuse or fraudulent claims” 	<p>Commission Communication COM(2014) 144</p> <p>Section 4.1(i) Upholding Fundamental Rights (DG Justice</p> <ul style="list-style-type: none"> • To ensure that the EU remains exemplary in the application of the EU Charter of Fundamental Rights, all European institutions and member states when implementing EU law to promote the effective application of the Charter and of secondary legislation addressing specific rights • Addressing specific rights such as the protection of personal data, gender equality, citizens’ rights, fair trial rights or children’s rights, and rights of persons belonging to minorities or those of persons in particularly vulnerable situations such as children, victims of crime and persons with disabilities • A continued common determination to fight xenophobic or racist hate speech and crimes within the EU • The role of the EU Fundamental 	<p>Fundamental Rights (Paragraphs 15-32)</p> <ul style="list-style-type: none"> • Calls for stepping up Implementation of the highest level of protection of human rights and fundamental freedoms • Calls for measures to address the so-called ‘Copenhagen Dilemma’; to create a Copenhagen Commission composed of independent high-level experts on fundamental rights, to be appointed also by Parliament, and whose aims must be to secure compliance by all member states with Article 2 TEU, to ensure the continuity of the ‘Copenhagen criteria’ and to advise and report on matters relating to fundamental rights • Calls for paying greater attention to r the particular situation of vulnerable groups and strengthening the fight against racism, xenophobia, anti-Semitism, religious intolerance, Islamophobia, anti-Roma sentiment, homophobia

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>Rights Agency is here important</p> <ul style="list-style-type: none"> • Ensuring equality between men and women in pay, pensions and labour market participation <p><i>Section 4.3. (Complement)</i></p> <ul style="list-style-type: none"> • To overcome the last hurdles in the EU’s accession to the ECHR, and speedily conclude the negotiations and complete the ratification process 	<p>and transphobia</p> <ul style="list-style-type: none"> • Effective implementation of legislation tackling hate crime and hate speech, and those who promote, support and commit hate crimes and hate speech • Member states to step up their efforts to enforce the fundamental rights and social inclusion of Roma by implementing, as soon as possible, the recommendations set out in the Council Recommendation on effective Roma integration measures in the member states; and the Commission and the member states to support Roma organisations financially and to involve them in all policies affecting Roma • Urges the Council to adopt the proposal for antidiscrimination directive • To carry out an in-depth investigation, identification and prosecution of such severe violations of human rights; and member states to effectively implement the European Protection Order and Anti-Trafficking Directives

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<ul style="list-style-type: none"> • On electronic mass-surveillance of EU citizens, to organise proper and effective parliamentary and judicial oversight and security at EU and national levels, and more checks and balances in place; and action must be taken against surveillance against the internal security of the Union • To adopt the EU legal framework on data protection • Calls on the Commission to propose an accountability mechanism aimed at strengthening the capacity of the EU and of its member states to prevent, investigate and redress human rights violations at EU level, in particular those committed in the context of the alleged transportation and illegal detention of prisoners in European countries by the CIA • Deplores the fact that the EU has not yet acceded to the European Convention for the Protection of Human Rights and Fundamental Freedoms, and calls for rapid ratification by the European Parliament and the Council, and member states to accelerate the

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<p>procedures of accession</p> <ul style="list-style-type: none"> • To review the access to documents regulation in light of the European Parliament’s proposals • To develop specific tools based on new information and communication technologies in order to share best practices in the fight against discrimination at European level; • To take the gender dimension into consideration in all the rest of strategies in AFSJ policies <p>The External Dimension of the Area of Freedom, Security and Justice (Paragraphs 101 and 102)</p> <ul style="list-style-type: none"> • Stresses that the Treaty on European Union (TEU) places human rights, democracy and the rule of law at the centre of both internal and external EU policies (Para. 99 of the Report) • Strongly believes that the EU and its member states should not sign agreements with third countries in the field of freedom, security and justice (FSJ) where there is a serious

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<p>risk of human rights violations and where the rule of law is not upheld; stresses that any agreements in this field should be concluded after a careful human rights impact assessment and should include a suspension clause relating to human rights</p>

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
<p>Legal Immigration and Integration</p>	<p>Paragraph 6</p> <ul style="list-style-type: none"> • Developing strategies to maximise the opportunities of legal migration through coherent and efficient rules, and informed by a dialogue with the business community and social partners • Supporting member states' efforts to pursue active integration policies 	<p>DG Home Affairs Communication, COM (2014) 154</p> <p>Section 1.1</p> <ul style="list-style-type: none"> • To consolidate the existing common (sector-by-sector) legal framework • Joint assessment of labour market needs and a platform for coordination at EU level; improving and extending existing job-matching mechanisms such as EURES and EU Skills Panorama • Pre-departure measures to assist migrants with information, training or recognition of qualifications but not as condition for entry into the EU • Facilitating migrants' entrepreneurship by ensuring stability of permits and easy access to information and networking opportunities • Portability of pension rights and social entitlements by third country nationals (transfer of occupational pensions rights between the EU and third countries) • Encourage and enhance the recognition of foreign qualifications and 	<p>Asylum and Migration (Paragraphs 85-87)</p> <ul style="list-style-type: none"> • Expects further progress in the adoption of legislation in the field of legal migration and calls for greater efforts in the future; and believes that the integration of migrants requires further attention • Calls on raising awareness through the EU immigration portal • Calls on the Commission to monitor the transposition of the EU Blue Card and report on its application • Calls for more transparency requiring each member state to report annually on the progress of each specific minority group in matters of labour market integration and equality policy impacts; encourages the European Commission to deliver an 'annual trend report' reflecting the comparable indicators on social cohesion that have been agreed upon and put forth as targets, including EU-wide monitoring of the situation

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>professional skills</p> <ul style="list-style-type: none"> • Easier and faster visas for researchers and students • Evaluation of current legislation on legal immigration to identify gaps and ensure consistency • Codify and streamline the substantive conditions for admission and rights of third country nationals • A single area of migration, facilitating intra-EU mobility of third country nationals and mutual recognition of national permits • Fair treatment and non-discriminatory access to labour market • Targeted support for the integration of vulnerable immigrants, in particular women, young migrants and unaccompanied minors (in compliance with the UN Convention on the Rights of the Child) • To identify successful integration policies and disseminate best practices • Further work on capacity building and engaging the local and regional authorities <p>Further Strengthening the Global Approach to Migration and Mobility</p>	<p>of newcomers, long-term residents, naturalised migrants and the children of migrants, broken down by equality grounds, so as to measure progress in social inclusion policies over time</p>

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>(GAMM)</p> <ul style="list-style-type: none"> The EU must strengthen partnerships with third countries on migration and mobility: Mobility Partnerships can play an important role in addressing skills and labour market shortages and to facilitate trade-related mobility 	

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
Asylum	<p>Paragraph 7</p> <ul style="list-style-type: none"> • Full transposition and effective implementation of the Common European Asylum System (CEAS) • Reinforced role of the European Asylum Support Office (EASO), in particular the uniform application of the <i>acquis</i> 	<p>DG Home Affairs Communication, COM (2014) 154</p> <p>Section 3</p> <ul style="list-style-type: none"> • Consolidation of the CEAS: effective transposition and coherent implementation • EASO's role to be developed • New rules on the mutual recognition of asylum applications and a framework for transfer of protection • Relocation of the beneficiaries of international protection and joint processing of asylum applications; and pooling of reception places in times of emergency • Proper application of the mechanism for early warning, preparedness and crisis management is now anchored within the Dublin Regulation (more data collection and risk analysis) • Evaluating and potentially amending the existing framework on temporary protection to make it a more practical and flexible instrument • To expand the scope of existing Regional Protection Programmes (RPPs) 	<p>Asylum and Migration (Paragraphs 88-94)</p> <ul style="list-style-type: none"> • Calls on the Commission to monitor the implementation of the Asylum Package and ensure that national legislation is in line with case law; and that EASO includes this legislation in its training programmes • Calls for the establishment of a gender focal point in EASO • Believes that, in the context of the Dublin system, the possibility of suspending transfers to member states under significant pressure should be considered in the future • Calls for new measures to implement the principles of solidarity and fair sharing of responsibility and "calls for the introduction of a coherent, voluntary permanent intra-EU relocation scheme for beneficiaries of international protection" (para. 93) • Regrets limited involvement of member states in resettlement • Calls for expanding the external dimension of asylum policy

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>to reinforce the capacity of national authorities to address human displacements</p> <ul style="list-style-type: none"> • To increase its commitment to resettlement; Protected entry procedures, starting with a coordinated approach to humanitarian visas and common guidelines • A feasibility study on the possibility of joint processing of protection claims outside the EU 	<p>in relation to “resettlement and protected entry procedures”</p>

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
Irregular Immigration	<p>Paragraph 8</p> <ul style="list-style-type: none"> • Cooperation with countries of origin and transit (strengthening migration and border management capacity) • Migration policies to become a more integral part of external and development policies in the scope of the Global Approach to Migration and Mobility (GAMM) • Strengthening and expanding Regional Protection Programmes and increasing contributions to global resettlement efforts. • Addressing smuggling and trafficking in human beings more forcefully, with a focus on priority countries and routes • Establishing an effective common return policy and enforcing readmission obligations in agreements with third countries • Implementing the actions identified by the Task Force Mediterranean 	<p>DG Home Affairs Communication, COM (2014) 154</p> <p>Section 1.2</p> <ul style="list-style-type: none"> • An evaluation of current rules on smuggling and a new comprehensive strategy be adopted • More preventive measures, including information campaigns in countries of origin and transit to alert persons to the risks of irregular immigration • European assisted voluntary return and reintegration measures • Full application of existing readmission agreements and conclusion of new agreements • Enforce return policy based on common standards <p>Further Strengthening the Global Approach to Migration and Mobility (GAMM)</p> <ul style="list-style-type: none"> • The EU should continue to assist countries of origin and transit to strengthen their capacity to prevent irregular migration and combat migrant smuggling and trafficking in human 	<p>Asylum and Migration (Paragraphs 91-95)</p> <ul style="list-style-type: none"> • Regrets the continuing practice of detaining migrants in detention centres; and calls for alternatives to detention to be further developed, including regularisation of undocumented migrants on the basis of clear criteria (Para. 91) • Expresses deep concern about the fate of third-country nationals and stateless persons readmitted under EU readmission agreements, including cases of indefinite detention, legal limbo or refoulement to their country of origin, and requests the exclusion of TCN clauses from these agreements; underlines the importance of implementing the recommendations made in the Commission's evaluation of readmission agreements

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>beings, improve border management, as well as asylum and reception capacities</p> <ul style="list-style-type: none"> • The EU must strengthen partnerships with third countries on migration and mobility: Mobility Partnerships can play an important role and their further implementation should be ensured • The EU should continue to invest in regional migration dialogue processes and bilateral relations with priority countries beyond the neighbourhood • Attention should be given to maximising the development impacts of South-South migration, mainstreaming migration policy into national development and poverty reduction plans, strengthening Policy Coherence for Development, as well as promoting reintegration measures for returning migrants. 	<p>The External Dimension of the Area of Freedom, Security and Justice (Paras 97, 98, 102, 103 and 104)</p> <ul style="list-style-type: none"> • Points out that the Union should continue to integrate immigration in development cooperation and strengthen partnership agreements “with a view to promoting cooperation with third countries of origin and transit on tackling people-trafficking and irregular immigration, the restoration of family ties, return and readmission” • Stresses the need to encourage voluntary return policies • Expresses concern at the increasing demands being placed on neighbourhood countries in connection with the EU’s migration and border management policies; calls for a human rights-based approach to EU migration and border management such that the rights of regular and irregular migrants and other vulnerable groups are always the first consideration; recalls the

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<p>extraterritorial application of the European Convention on Human Rights in the implementation of EU migration policy, as ruled by the European Court of Human Rights (para. 102)</p> <ul style="list-style-type: none"> • Calls for better coordination between human rights dialogues and the subcommittees on ‘justice, freedom and security’ established under agreements with third countries, including readmission agreements • Calls on the Commission to propose actions to protect and provide assistance to women who are victims of trafficking

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
<p>Schengen, Borders and Visas</p>	<p>Paragraph 9</p> <ul style="list-style-type: none"> • To ensure smart border management with an entry-exit system and registered travellers programme and supported by the new Agency for Large Scale IT Systems (eu-LISA) • Reinforce operational assistance by FRONTEX to member states with strong pressures at the external borders and increase its reactivity towards rapid evolutions of migration flows • Making full use of EUROSUR • To study the possibility in the long-term development of FRONTEX of setting up a European system of border guards • To modernise current visa policy by facilitating legitimate travel and reinforcing local Schengen consular cooperation 	<p>DG Home Affairs Communication, COM (2014) 154</p> <p>Section 2</p> <ul style="list-style-type: none"> • Effective implementation of the new Schengen governance instruments • To ensure the smooth operation of the Schengen Information System II • The EU Agency for large-scale systems (EU-LISA) to deliver effective operability of existing and future IT systems, and seek synergies between other EU Agencies as regards IT security and development systems • To facilitate travel of legitimate travellers and make the Schengen area a more attractive destination • Revising the Schengen Visa Code to ensure more convergence on how Schengen visas are processed and by completing the world-wide roll-out of the Visa Information System (VIS) • To consider moving towards a system based on the assessment of individuals rather than on nationality • To encourage local consular cooperation and exchange of information 	<p>Borders and Visas (Paragraphs 71-84)</p> <ul style="list-style-type: none"> • Calls the Commission to effectively play its role as coordinator of Schengen evaluations, and that member states fulfil their obligations under the Schengen Borders Code • Asks the European Commission to pay particular attention to the absence of internal border controls “and firmly rejects all attempts to limit the free movement of people which are not in line with the <i>acquis</i>” (para. 72) • Calls for a long-term reflection on the further development of the Schengen area and believes that in the future the common EU external borders should be guarded “with the support of European border guards” whose training includes human rights standards • Welcomes the reinforced mandate of Frontex and the agreement on Eurosur; calls for the

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>for a swifter and more harmonised delivery of visas</p> <ul style="list-style-type: none"> • To increase and rationalized the presence of member states in third countries for collecting and devising visa applications • To carry out regular reviews of the Schengen negative visa list • To offer visa facilitation agreements where visa liberalisation cannot be envisaged, and continue the practice of concluding in parallel the signature of a readmission agreement and a visa facilitation agreement • Implementation of the smart borders package as a priority • New approaches to effective border management in light of the assessment of the feasibility of establishing a European system of border guards 	<p>agreement on common rules of search and rescue at sea and priority given to saving lives and respecting human rights of migrants and asylum seekers; recalls that international law should be observed by the Union and its member states in the context of interventions on the high seas or when issuing rules on the surveillance of EU external borders</p> <ul style="list-style-type: none"> • To adopt a coordinated approach based on solidarity and responsibility supported by common instruments • Calls on the Commission to provide information on detention centres, including the respect of human rights • Asks the Commission to inform Parliament prior to the conclusion of any agreement between Frontex and a third country and “insists that such agreements must provide for stringent safeguards to ensure full respect for human rights standards, including with regard to return, joint patrolling, search and rescue, and

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<p>interception operations” (para. 77)</p> <ul style="list-style-type: none"> • Recalls the key role of Frontex in training law enforcement officials and border guards on human rights of migrants • Regrets the late implementation of the Schengen Information System (SIS II) and the costs incurred; all existing large-scale systems need to pass the test of everyday usage • Reiterates that “new border management instruments or large-scale data storage systems should not be launched until the existing tools are necessary, fully operational, safe and reliable” (para. 80) • Calls for a discussion on the outsourcing activities related to the management and operability of large-scale European IT systems • Calls on the Commission to present evaluations on these systems (Para. 80) • Calls for better implementation of EU visa rules • Calls for an interinstitutional discussion on the objectives of the common visa policy to define the

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
			<p>steps to be taken towards further harmonisation of visa procedures, including common rules on the issuing of visas</p> <ul style="list-style-type: none"> • Calls for the conclusion of further visa facilitation agreements and the monitoring and improvement of existing ones; and work towards visa-free travel with the EU's eastern neighbours. • Calls on EU member states to make use of the provisions in the Schengen Borders Code and the Visa Code allowing the issuing of humanitarian visas and the temporary shelter of human rights defenders • Calls on the EU and member states to facilitate workers' mobility by allowing temporary visas and facilitating the re-application process

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
<p>Police Cooperation, Terrorism and Organised Crime</p>	<p>Paragraph 10</p> <ul style="list-style-type: none"> • Reaffirms the role of the EU Counter-Terrorism Coordinator • Reinforced coordination role by Europol and Eurojust • Review and update the EU Internal Security Strategy by mid-2015 • Improving cross-border information exchanges, including criminal records • Cyber security and cybercrime • Preventing radicalisation and extremism and action to address the phenomenon of foreign fighters, including through the effective use of existing instruments for EU-wide alerts • The development of the EU Passenger Name Record system 	<p>DG Home Affairs Communication, COM (2014) 154</p> <p>Section 5 (A Europe that Protects)</p> <ul style="list-style-type: none"> • An updated version of the Internal Security Strategy reviewing the actions under each objective for 2015-2020 • An increased effort in supporting research in the field of security in Horizon 2020 and the European security sector <p><i>Disruption of International Criminal Networks</i></p> <ul style="list-style-type: none"> • Operational cooperation between member states' authorities, focusing on priorities agreed at EU level within the Policy Cycle for Serious and Organised Crime is essential • The use of Joint Investigation Teams (JITs) and other joint operations should be increased, supported by EU funds and agencies • Information exchange to be stepped up between member states' law enforcement authorities with relevant EU agencies and among EU agencies • Strengthening Europol's role as a hub for information exchange and 	<p>Internal Security (Paragraphs 55-70)</p> <ul style="list-style-type: none"> • Further progress is needed in all the fields falling under the scope of the Internal Security Strategy • Calls on the Commission to start preparing a new Internal Security Strategy for 2015-2019 taking into account the Lisbon Treaty and the EU Charter of Fundamental Rights and "calls on the Council to take proper account of Parliament's input in respect of the new ISS before adopting the new strategy" (para. 64) • Regrets that the latest Commission evaluation of the implementation of the Internal Security Strategy fails to take into account the consequences of the incorporation of the EU Charter of Fundamental Rights • Calls on member states to increase their efforts to curb trafficking of human beings by ensuring that a common, coordinated and ambitious

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>member states to set up Single Points of Contact</p> <ul style="list-style-type: none"> • Information exchange systems to be made more interoperable • Develop EU-level training of law enforcement personnel and fully implemented the European Law Enforcement Training Scheme • Member states should follow the suggestions made in the EU Anti-Corruption Report, and anti-corruption measures should be better linked to EU policy areas and EU funding should support institutional and administrative capacity building, as well as cooperation with international organisations • Transposing and implementing the Directive on the freezing and confiscation of proceeds of crime in the EU by all member states without delay • Stepping up Asset Recovery Offices, law enforcement, judicial and administrative authorities, such as tax or licensing bodies to improve tracing of assets • The proposal for a fourth Anti-Money Laundering Directive must be adopted, transposed and implemented soon and the need for EU criminal anti- 	<p>European strategy, along with necessary legislation, are developed and implemented; the focus needs to be on the root causes</p> <ul style="list-style-type: none"> • Calls on EU and member states to strengthen regional and European-level cooperation and coordination in chemical, biological, radiological and nuclear security (CBRN), and more coordination between national authorities and the EU counter-terrorism coordinator • Urges the Commission to intensify and reinforce its efforts to protect the Union’s financial interests and to complete the delayed reform of the European Anti-Fraud Office • Calls for the EU’s counterterrorism policy to address the radicalisation of groups/individuals in European societies and the apparent trend towards the individualisation of terrorist activities in our societies; calls for better coordination of all EU services with responsibilities in the implementation of the EU’s

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>money laundering legislation must be examined</p> <ul style="list-style-type: none"> • Adopting a post-2016 Anti-Trafficking Strategy and prolonging the role of the EU Anti-Trafficking Coordinator • To further implement the EU Drugs Strategy by the adoption and implementation of the legislation proposed by the Commission to withdraw psychoactive substances from the market • Transposing and implementing the EU Directive on online exploitation of children and examining the need for an EU Strategy protecting children against sexual crimes • Reviewing existing EU legislation on the sale and intra-EU transfer of firearms, combined with stronger practical law enforcement efforts • Review and (if necessary) further develop existing agreements and arrangements for the sharing of law enforcement information with third countries; EU Passenger Name Record to be adopted and implemented • To review the Data Retention Directive, in parallel with the revision of 	<p>counterterrorism policies, namely the EU Counter-terrorism Coordinator, Europol, the Council Standing Committee on Operational Cooperation on Internal Security (COSI), the Working Party on Terrorism (External Aspects) (COTER) and Eurojust</p> <ul style="list-style-type: none"> • Recalls that Parliament is now a fully fledged institutional actor in the field of security policies, and is therefore entitled to participate actively in determining the features and priorities of the ISS, and in evaluating those instruments • Calls for a proper evaluation of the implementation, effects and concrete results of policies and legislation in the internal security field, an analysis of the security threats to be addressed, consideration of the principles of proportionality and necessity, and a democratic debate are essential conditions for an effective ISS • Calls for a future-oriented vision of how to shape and

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>the e-Privacy Directive, taking into account the negotiations of the Data Protection Framework</p> <p><i>Prevention of Terrorism and Addressing Radicalisation and Recruitment</i></p> <ul style="list-style-type: none"> • To update the EU Strategy to Combat Radicalisation and Recruitment to Terrorism • Countering violent extremisms should continue being part of EU development and security assistance to third countries • Strengthening the Radicalisation Awareness Network (RAN) • To take forward the work of ATLAS (an EU network of anti-terror intervention forces) both at operational and strategic levels • Better trained and more law Enforcement authorities responsible for handling terrorist attacks. • To implement in effective way the EU legislation on access precursors to produce explosives • To support the work of the High Representative/EEAS on EU external relations, in particular in fostering better communication between the Union and 	<p>optimise law enforcement data-sharing in the EU while guaranteeing fundamental rights, including a robust level of data protection</p> <ul style="list-style-type: none"> • Rejects the concept of predicting policing without an initial suspicion “in particular the EU passenger name record proposal and the idea of an EU terrorist finance tracking system; calls on the Commission to repeal the Data Retention Directive” (para. 66) • Calls on the Commission to come forward quickly with proposals for bringing cross-border police cooperation instruments adopted under the former third pillar – such as the Prüm Decision and the Swedish Initiative – under the legal framework of the Lisbon Treaty • Welcomes the revision of Europol mandate

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>third countries</p> <p><i>Raising Levels of Security for Citizens and Business in Cyberspace</i></p> <ul style="list-style-type: none"> • To continue supporting the development of the European Cybercrime Centre (EC3) within Europol • To assist member states in developing their capacities to fight cybercrime (all member states should be equipped with a cybercrime centre) • To put into action the EU Cyber Security Strategy • To effectively implement EU legislation on cybercrime • Stepping up cooperation with the private sector • To clarify jurisdiction in cyberspace and EU member states to ratify the Council of Europe's Budapest Convention on Cybercrime <p><i>Strengthening security through border management</i></p> <ul style="list-style-type: none"> • To update the EU integrated border management strategy • To consider how existing systems and platforms could be better integrated and furthering cooperation between 	

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>border guards and other authorities working at the border</p> <p><i>Increasing Europe's resilience to crisis and disasters</i></p> <ul style="list-style-type: none"> • To fully implement the new civil protection legislation • To agree modalities for the use of the solidarity clause • To mainstream disaster management considerations to other policies and funds, and strengthening the input of science and innovation into disaster management • To address operational challenges such as interoperability of equipment and communication systems <p><i>Building internal security in a global context</i></p> <ul style="list-style-type: none"> • EU internal security concerns to be more addressed as part of EU external policies, linked to EU assistance and cooperation programmes and other policies tools of international cooperation • Providing assistance in law enforcement capacity building, by offering training, by sharing knowledge and best practices 	

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<ul style="list-style-type: none"> • To reinforce development cooperation with third country partners • To strengthen cooperation with the External Action Service (EEAS) 	

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
JUSTICE Judicial Cooperation in Criminal and Civil Matters	<p>Paragraph 11</p> <ul style="list-style-type: none"> • The promotion of the consistency and clarity of EU legislation for citizens and businesses • To simplify access to justice; promote effective remedies and use of technological innovations including the use of e-justice • To strengthen the rights of accused and suspect persons in criminal proceedings • To examine the reinforcement of the rights of persons, notably children, in proceedings to facilitate enforcement of judgements in family law and in civil and commercial matters with cross-border implications • To reinforce the protection of victims • To enhance mutual recognition of decisions and judgments in civil and criminal matters • To reinforce exchanges of 	<p>DG Justice, Commission Communication COM(2014) 144</p> <p>Section 4.1 <i>Section 4.1(ii) Ensuring effective remedies</i></p> <ul style="list-style-type: none"> • To pursue a continued common determination to fight xenophobic or racist hate speech and crimes within the EU • To facilitate the rapid resolution of disputes, so to promote member states' uses of non-judicial redress and remedies mechanisms such as mediation, alternative dispute resolution, online dispute resolution, SOLVIT, the European Small Claims Procedure and the newly agreed European Account Preservation Order • To ensure the independence of national enforcement authorities, close cooperation between national authorities and administrative bodies and to better tackle EU-wide breaches of consumer protection law 	<p>Judicial Cooperation in Civil and Criminal Matters (Paragraphs 33-54)</p> <ul style="list-style-type: none"> • Calls for the adoption and implementation of all the legislative initiatives contained in the Stockholm Programme in civil law such as those relating to the mutual recognition of the effects of civil status documents and the 14th company law directive, and a greater focus on procedural law. • The Commission to work effectively towards the establishment of an International Judgments Convention • Stresses the need to combat the persisting 'glass ceiling', which remains one of the main obstacles to the development of women's career paths • The Commission to issue a proposal for a regulation on the mutual recognition of the effects of all civil status documents in the EU • Calls for the adoption of a European code of private international law

	European Council Strategic Guidelines	European Commission (DG Home Affairs⁵⁷ & DG Justice⁵⁸)	European Parliament⁵⁹
	<p>information between the authorities of the member states</p> <ul style="list-style-type: none"> • To fight fraudulent behaviour and damages to the EU budget, including by advancing negotiations on the European Public Prosecutor's Office • o • Facilitate cross-border activities and operational cooperation, and enhance training for practitioners • To mobilise the expertise of relevant EU agencies such as Eurojust and the Fundamental Rights Agency (FRA) 	<p><i>Section 4.1 (iii) Judicial Training</i></p> <ul style="list-style-type: none"> • Training of legal practitioners on EU law, and to actively involve court staff and legal practitioners in EU law • To consolidate the experience of the European Judicial Training Network • To financially support EU training networks <p><i>Section 4.2 (iv) Information and communication technologies</i></p> <ul style="list-style-type: none"> • The E-justice and other relevant portals informing citizens and businesses on their rights such as Your Europe, should continue to develop into operational tools that facilitates access to justice • To support initiatives on Direct electronic communication between citizens, legal practitioners, businesses and courts, and use of electronic tools to access the case-law of Courts <p><i>Section v (Operational Cooperation)</i></p> <ul style="list-style-type: none"> • Existing mechanisms and networks in civil and criminal matters, 	<ul style="list-style-type: none"> • Calls on the Commission to develop the e-Justice programme further in order to allow citizens direct online access to legal information and justice; • Calls for timely and correct transposition of the EU Directives on suspects rights in criminal proceedings • Strongly believes that legal aid in particular must be effectively guaranteed in order to ensure effective implementation of the Directive on the right to access a lawyer; calls for a discussion on the protection of witnesses and whistleblowers; calls for the strengthening of the procedural rights of suspects and accused persons in criminal proceedings to be a priority for the post-Stockholm programme and recalls that the roadmap is not exhaustive • Regrets that work remains outstanding in pre-trial detention, administrative detention and the detention of minors • Calls for an assessment of the effectiveness of non-legislative

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>such as the European Judicial Networks, should be strengthened and their potential fully exploited</p> <ul style="list-style-type: none"> • Eurojust as an important body for coordinating the prosecution of crime after the establishment of the European Public Prosecutor’s Office and the use of joint investigation teams to the maximum <p><i>Section 4.2. (Codify) (DG Justice, Commission Communication COM(2014) 144)</i></p> <ul style="list-style-type: none"> • To examine whether codification of existing legal instruments in civil and commercial matters could be useful, in particular in the area of conflicts of laws • Following an assessment of the overall functioning of the Consumer Rights Directive and the related <i>acquis</i> in the field of consumer legislation, codification initiatives based on existing legislation should be explored and assessed • To examine the need for codifying criminal procedural rights into one instrument 	<p>work on existing framework decisions, for widespread recognition of the problems with pre-trial detention law and practice across Europe identified as part of the Commission’s consultation, and for a commitment to revisit the case for establishing minimum and enforceable standards in relation to pre-trial detention through legislative action; and calls on the Commission to revisit legislative action in these areas</p> <ul style="list-style-type: none"> • Welcomes the proposal for a Council regulation on the establishment of the European Public Prosecutor’s Office, and should its establishment be a success, the Council should consider making use of Article 86.4 TFEU to expand the powers of the office to cover serious crimes having a cross-border dimension. • Welcomes the ongoing revision of Eurojust mandate • Encourages all EU member states to conclude framework agreements with the International Criminal Court (ICC)

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p><i>Section 4.3. (Complement)</i></p> <ul style="list-style-type: none"> • To examine the need to reinforce civil procedural rights as regards the service of documents or the taking of evidence and ensuring the best interests of the child • To strengthen the mutual recognition of instruments in criminal matters such as in financial penalties, confiscation orders and disqualifications • Once the European Public Prosecutor Office is in place, the need for complementary measures will be examined • To develop an EU rescue and recovery culture for insolvencies and minimum standards • Matching technological developments with EU civil law • Strengthening the enforcement and clarifying existing consumer protection laws to strengthen consumers’ trust • To examine the need to adopt provisions adding to the citizenship rights referred to in the EU Treaties • To assess the need for further action as regards EU citizens’ obstacles, 	<ul style="list-style-type: none"> • Stresses the need to provide training to officials likely to come into contact with cases in which a person’s physical, psychological and sexual integrity is considered to be at risk, especially cases involving women who are victims of gender-based violence; and calls on member states to support the work of civil society • Calls on the member states to ratify the Istanbul Convention on preventing and combating violence against women and domestic violence, and on the Commission to propose negotiating guidelines for the EU’s accession to that convention without any further delay <p>Methods, tools and processes</p> <ul style="list-style-type: none"> • Welcomes the initiative of the Commission in drawing up an EU Justice Scoreboard (paras 108 and 109) • Calls, with this in mind, for much greater emphasis on, and funding for, EU judicial training for all legal professionals; notes the importance of using a ‘bottom-up’

	European Council Strategic Guidelines	European Commission (DG Home Affairs ⁵⁷ & DG Justice ⁵⁸)	European Parliament ⁵⁹
		<p>such as rules on family names or acceptance of public documents</p> <ul style="list-style-type: none"> • To explore further action for victims to benefit from a satisfactory level of compensation • National Roma Integration Strategies to be translated into concrete actions at local and national level, including the optimisation of the use of funds and how to ensure better targeting of EU funds for Roma inclusion • To promote effective justice systems in particular in enlargement and neighbouring countries, and more efficient cooperation with the Hague Conference on Private International Law 	<p>approach for judicial training schemes of ensuring greater accessibility of European law information resources via web technology (i.e. an e-justice portal), of improving knowledge of European law and language skills among the judiciary, of establishing and maintaining networks in this field, and of any other measures to facilitate judicial cooperation on a day-to-day basis (para. 113)</p>

Source: Authors' own elaboration.

ANNEX 2

EU POLICY STRATEGIES, ROADMAPS AND AGENDAS ON EU AFSJ POLICIES

SECURITY

EU Internal Security Strategy

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/index_en.htm

http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/internal-security/internal-security-strategy/index_en.htm

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http://ec.europa.eu/justice/anti-drugs/european-response/strategy/index_en.htm

Council, EU Drugs Strategy (2013-2020), (2012/ C 402/ 01), 29.12.2012

EU Cybersecurity Strategy

http://eeas.europa.eu/policies/eu-cyber-security/index_en.htm

<http://ec.europa.eu/digital-agenda/en/cybersecurity>

Council, Council conclusions on the Commission and the High Representative of the European Union for Foreign Affairs and Security Policy Joint Communication on the Cybersecurity Strategy of the European Union: An Open, Safe and Secure Cyberspace, 12109/13, 22 July 2013.

FUNDAMENTAL RIGHTS AND JUSTICE

An EU Framework for National Roma Integration Strategies up to 2020

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