

Ten Recommendations on Freedom, Security and Justice for the European Parliament Elections

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The European Parliament (EP) elections will take place on 4-7 June 2009. The various political parties of the EU are now beginning to focus on their programmes for the upcoming campaign. Many areas of EU policy will be critical during these elections and the themes will vary substantially from one member state to another in an EU of 27 countries. Still, the issues that have become part of EU law over the past five years through the exercise of Treaty powers in the Area of Freedom, Security and Justice (AFSJ) will need to be addressed all across the Union. These policies lay at the heart of every person's interest and concern as they have deep implications for his or her degree of liberty and security.

The EP needs to view the upcoming elections as a unique opportunity to strengthen its role in the future development of an AFSJ. This is necessary for two main reasons: first, to guarantee **stronger democratic accountability** of the EU laws and practices being applied in this context; and second, to ensure the protection of **fundamental rights as recognised in the Charter of Fundamental Rights of the EU**. The rights and liberties of European citizens need to be at the heart of the election campaign. The purpose of this Policy Brief is to set out **ten recommendations on key issues** for the political parties in their campaign manifestos. There are five main policy areas in the AFSJ that we consider here: borders, asylum, immigration, data protection and criminal justice.

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1. Borders

The development of common European rules regarding the crossing of the EU's external frontiers (Schengen Borders Code) and the creation of FRONTEX (the EU's external frontier agency) has led to uneven border practices in spite of the fact that one of the objectives of the shared legal framework is equal treatment and respect for the rule of law. There is inadequate knowledge and public information about the ways in which the EU's external borders are being managed. The EP has insufficient supervisory powers with regard to FRONTEX. In order to address these two deficits we recommend the following:

1. The post of an **'EU border monitor'** should be created, which would have two main competences. The first would be to ensure that EU border controls, wherever they take place, are consistent with EU law and the Charter of Fundamental Rights. The second would be to monitor the conditions under which expulsions take place under the framework provided by the Return Directive.
2. FRONTEX must be subject to the **principles of transparency and accountability** before the EP; its budget should be separated from the general budget and subject to scrutiny.

2. Asylum

The creation of the Common European Asylum System (CEAS) has not yet produced any common results as regards to where and how asylum applications are made, or any consistency in decisions taken in different member states concerning refugees from the same country and facing similar circumstances in their country of origin. Furthermore, the situation of asylum seekers in the member states is characterised by social exclusion, not least because they often have no access to the labour market or education. The EP has succeeded in defending its procedural rights in relation to decisions on whether the countries of origin or transit of asylum seekers are in principle safe but these powers have not yet been exercised. We have three recommendations in this regard:

3. The CEAS must be modified so that **the country in which an asylum seeker makes his or her protection claim is the one responsible** for determining the substance of that claim. The system of sending asylum seekers from one state to another in order for their applications to be determined elsewhere in the EU is **counterproductive, expensive and inhumane** for the individual.

4. Asylum seekers should be given **the right to work and study** at the very latest **after six months of presence** in the territory of a member state. Exclusion from the mechanisms of social participation for a period that is any longer is not consistent with the right to dignity contained in the EU Charter of Fundamental Rights.

5. The EP should exercise great vigilance in legislating over which countries are safe countries of origin or transit for asylum seekers. Our own recent European history of being refugees should inform the decisions we take about presumptions of safety elsewhere.

3. Immigration

The EP should insist on the **positive implications of international human mobility, diversity and interculturalism**. All these phenomena represent inherent constitutive elements of a Union of 27 countries, and need to be **promoted as strengths of the EU**. Moreover, immigration needs to be detached from insecurity and illegality. So far, the EU has adopted legislative measures on long-term resident, third-country EU nationals and family reunification. Little progress has been made on a common admission system for third-country nationals to the EU for economic purposes. Yet the EU rules on family reunification are already under

pressure in some member states, resulting in ever starker divergences in the way the right to family life contained in the EU Charter of Fundamental Rights can be enjoyed. In this area, we have two recommendations:

6. **The right to family reunification is the right of families to live together and for children to be with both of their parents. As such, it forms the basis of society** and is a principle set out in the Universal Declaration of Human Rights. The vague and unsatisfactory notion of ‘reception capacities’ must not be used to interfere with the right to family reunification in Europe.

7. Integration measures must not be used as an immigration control mechanism preventing family reunification or designed to restrict the legal channels that enable families to live together. **Integration should favour the social and economic inclusion** of newly arrived family members *after* the family has been reunited in the EU.

4. Data protection

The dramatic development of electronic technical capabilities has given the impression that there is a technical fix for social problems. This is a false idea that leads to the stigmatisation of groups of individuals in communities based on the collection and use of their personal data. The ability to create databases that manipulate large amounts of personal data to search for persons with certain characteristics leads to racial and religious profiling, which violates the non-discrimination obligations contained in the Charter of Fundamental Rights. Nowhere is this more apparent than in the AFSJ with the development of the Schengen Information System (SIS II), the Visa Information System, the DNA database under the Prüm Treaty and the Council Decision 2008/616/JHA,¹ etc. At the same time, **the mechanisms put into place to protect the individual from misuse of his or her data are exceedingly weak and operate badly.**² This puts

¹ See Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, OJ L 210, 6.8.2008, pp. 12–72.

² See E. Brouwer, *Digital Borders and Real Rights*, Leiden: Martinus Nijhoff, 2008. According to data protection supervisors in some of the German Länder and the French CNIL, up to 40% of data they controlled from the SIS contravened the applicable data protection rules.

fundamental rights and the interests of the individual at risk. We thus have the following recommendations:

8. Privacy rules must be built into the programmes that run EU databases and systems of information (**data protection by design**). These programmes should i) include automatic deletion of data at the end of the permitted period; ii) prevent the copying of data for any purpose; iii) prevent all unauthorised access to the system and any duplication of images on computer screens, so that no more than one database can be viewed at a time; and iv) prohibit one too many searches of databases taking place except by order of a judge. These prohibitions should be built into the programme that runs the database.

9. Data collection systems **must not reveal sensitive data** about ethnic origin, religion or other aspects prohibited in EU non-discrimination law; disguised criteria indicating ethnic or religious distinctions, such as the birthplace of parents or the individual, or former nationality should be forbidden.

5. Criminal justice

10. The EP should **refuse to allow any further legislation** in the field of criminal justice to be approved until there is a satisfactory EU measure providing for the **rights of defence and fair trial**. The current proposal that the Council is considering does not even meet the minimum requirements of the European Convention on Human Rights.

The EP is the key democratic institution of the EU. MEPs must protect and defend the interests of EU citizens and their family members, ensure the protection of refugees and realise the European ambition to be an area characterised by justice, the rule of law, the protection of fundamental rights and openness to the world. The ten issues pointed out in this Policy Brief in relation to the construction of an AFSJ lay at the centre of the individual's interests and expectations. The June 2009 elections will offer a unique opportunity for the EP **to promote fundamental rights and democracy in an enlarged EU, and the positive impact that the EU could have here**. While these principles form the basis upon which the EU is being built, they cannot and should not be taken for granted or overestimated. The EP should strengthen its role in their consolidation and protection by raising awareness in national politics of the deficits and potential risks affecting current AFSJ-related policies.

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