

Local and Regional Authorities in the Future Area of Freedom, Security and Justice:

**Towards a multilevel governance strategy
for the Stockholm Programme?**

**The report was written by Sergio Carrera, Centre for European Policy Studies (CEPS) and Gemma Pinyol (CIDOB Foundation).
It does not represent the official views of the Committee of the Regions.**

More information on the European Union and the Committee of the Regions is available online at <http://www.europa.eu> and <http://www.cor.europa.eu> respectively.

© European Union, November 2009

Partial reproduction is allowed, provided that the source is explicitly mentioned.

TABLE OF CONTENTS

1.	Introduction.....	4
2.	The Local and Regional Dimensions in the Next Phase of the AFSJ.5	
3.	Towards a European Strategy for LRAs in the AFSJ? The Political Elements of the Communication COM(2009) 262.....	9
4.	Features and Deficits of the Communication COM(2009) 262.....	10
4.1.	STRENGTHENING FREEDOM AND SOLIDARITY.....	11
4.1.1.	A Common Area of Fundamental Rights for All?.....	11
4.1.1.1.	Fundamental Rights and European Citizenship.....	11
4.1.1.2.	Freedom of Movement and Data Protection.....	13
4.1.1.3.	Participation in the Democratic Life of the Union.....	14
4.1.2.	Rights and Freedoms of Non-European Citizens.....	15
4.1.2.1.	Integration, Diversity, Equality and Non-discrimination.....	18
4.1.2.2.	Asylum.....	20
4.1.2.3.	Consolidating the Global Approach to Migration.....	22
4.2.	STRENGTHENING SECURITY.....	25
4.2.1.	Borders.....	27
4.2.2.	Irregular Immigration.....	29
4.2.3.	Labour Migration and Security.....	32
4.2.4.	Security Professionals, Exchange of Information and Terrorism.....	34
4.3.	STRENGTHENING JUSTICE AND RULE OF LAW.....	39
5.	Conclusions.....	44
6.	Policy Recommendations.....	46
7.	References.....	50
8.	Abbreviations.....	53
9.	Appendix 1: Practices of LRAs on Freedom, Security and Justice.....	54

1. Introduction

The European Union's Area of Freedom, Security and Justice (AFSJ) is entering a decisive phase of the European integration process. Ten years have passed since the Amsterdam Treaty transferred to (shared) Community competence in some policy domains that traditionally fall within the remits of Member States' national administrative competences, such as immigration, borders, asylum, etc. The level of policy convergence achieved so far at EU level over these areas has been impressive. Issues relating to 'police and judicial cooperation in criminal matters', however, continue to be driven by a prevailing intergovernmental logic of European cooperation, a high degree of mistrust and the unanimity rule inside the Council, which has made the enactment of EU legislation very difficult.

The 2009 Swedish Presidency of the EU is in charge of adopting the next multi-annual programme on the policy priorities for the EU's AFSJ in the coming five years (2010–2014), which has already been baptised the 'Stockholm Programme'.¹ This programme is expected to be formally adopted by the European Council in December of this year. The Stockholm Programme has already received several inputs, such as the European Pact on Immigration and Asylum² and the Future Group reports.³ This study aims to identify – from the perspective of local and regional authorities (LRAs) – the most significant features and missing elements in the European Commission's contribution towards the Stockholm Programme process, which has taken the shape of a Communication entitled *An Area of Freedom, Security and Justice Serving the Citizen: Wider Freedom in a Safer Environment* COM(2009) 262 and which was published on 10 June 2009 (hereinafter the Communication).⁴

The study starts with some general comments on the rationale and scope of the Communication. It then moves into an assessment of the most significant issues and specific weaknesses. The main approach guiding our analysis is that of the role and interests of LRAs. The study does not enter into a discussion of every single policy area included inside the body of the Communication; rather, it

¹ Work Programme of the Swedish Presidency of the EU, 1 July – 31 December 2009, 23 June 2009 (retrievable from <http://www.se2009.eu/en>).

² European Council, 2887th meeting of the Justice and Home Affairs Council, 11653/08, Presse (205), Brussels, 24 and 25 July 2008; see also European Council, European Pact on Immigration and Asylum, 13440/08, Brussels, 24.9.2008 and S. Carrera and E. Guild (2008), *The French Presidency's European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanism? Security vs. Rights?*, CEPS Policy Brief No. 170, Centre for European Policy Studies, Brussels, September 2008.

³ Report of the High-Level Advisory Group on the Future of European Home Affairs Policy (The Future Group), "Freedom, Security, Privacy: European Home Affairs in an Open World", June 2008. European Council, High-Level Advisory Group on the Future of European Justice Policy – Proposed Solutions for the Future EU Justice Programme, 11549/08, Brussels, 7.7.2008.

⁴ The European Commission launched a consultation procedure which ran from September to November 2008 entitled "*Freedom, Security and Justice: What will be the future?*", *consultation on priorities for the next five years (2010-2014)* in order to gather contributions from 'citizens, organizations and public authorities' about the future AFSJ (the contributions are available from the following link: http://ec.europa.eu/justice_home/news/consulting_public/news_consulting_0001_en.htm).

focuses on a selection of policies that can be of particular relevance to LRAs. On the basis of this assessment, we put forward a set of policy recommendations on how to enhance and improve the role of LRAs, and for the CoR, to design, implement and monitor the next phase of the EU's AFSJ under the Stockholm Programme's mandate. Annex 1 provides a selection of concrete examples of 'practices' by LRAs in a number of AFSJ domains relevant to LRAs.

2. The Local and Regional Dimensions in the Next Phase of the AFSJ

The EU's AFSJ has been structured by the multi-annual programmes adopted by the Council which set the policy agenda in the form of five-year implementation plans. Two multi-annual programmes have been adopted so far by the Council: The Tampere Programme (1999-2004)⁵ and the Hague Programme (2004-2009).⁶ The mandate of the Hague Programme will end at the end of this year and it will be the responsibility of the Swedish Presidency of the EU to adopt its successor. The new programme – entitled the Stockholm Programme – is the basis upon which the next five-year phase of the AFSJ will be further developed. This will be a decisive phase for developing new strategies that foster and improve LRAs' role at EU level around these important policy areas, while duly taking into consideration the potential entry into force of the Lisbon Treaty.⁷

Communication COM(2009) 262 represents the input from the European Commission towards the adoption of the Stockholm Programme. Overall, there are **four main weaknesses** in the Communication from the point of view of LRAs.

First, the Commission points out that for the next multi-annual programme to be implemented successfully it will need to follow *a method* based, on the one hand, greater attention to the gap between European norms and national implementation, which should be accompanied by practical support measures (e.g. upgrading of professional networks), and on the other, on improving the evaluation of the mechanisms that have been created. No reference is made to LRAs in this 'method'. LRAs could in fact, whenever relevant, perform a central role in establishing **new EU strategies and monitoring systems that aim to ensure EU law is transposed more effectively, satisfactorily and in full compliance with fundamental rights. They could also play a key function in the development and implementation of (ex post) evaluation**

⁵ European Council, Presidency Conclusions of the Tampere European Council, 15-16 October 1999, SN 200/99, Brussels, 1999.

⁶ European Council, The Hague Programme: Strengthening Freedom, Security and Justice in the European Union, 2005/C53/01, OJ C53/1, 3.3.2005.

⁷ For a study on the implications of the entry into force of the Treaty of Lisbon on an AFSJ, see S. Carrera and F. Geyer (2008), "The Reform Treaty and Justice and Home Affairs: Implications for the Common Area of Freedom, Security and Justice", in E. Guild and F. Geyer (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union*, Ashgate: Hampshire, pp. 289-308.

mechanisms focusing on *the kind* of AFSJ that is currently being developed at national, regional and local level in the light of the EU legal instruments been adopted, especially those where the principle of mutual recognition is at stake (e.g. asylum, criminal justice, etc.).

Secondly, the Communication **fails to acknowledge and support a clear policy strategy regarding the local and regional dimensions for the next phase of the EU's AFSJ**. The text makes only occasional reference to LRAs. This is the case for instance with:

1. **Immigration Policy** – ‘The Global and Comprehensive Approach’: The text refers to the mobilisation of EU funding in order to improve the capacity for migration management and support “*adequate protection*” by third country’s central, regional and local authorities.⁸

2. **Integration Policy** – ‘A Joint Coordination Mechanism’: The Communication stresses that it is only by strengthening integration policies that the cultural and economic benefits of immigration can be fully unleashed, and that “*such an improvement will call not only for greater efforts by national, regional and local authorities but also a greater commitment by the host community and the immigrants themselves*”.⁹

3. **Police Cooperation and Prevention of Crime**: The Communication states that one objective must be “*to prevent criminals from exploiting the frontier-free area to evade investigation and prosecution*”, and adds that “*In determining whether cooperation takes place at regional, national, European or international level, the key criterion must be operational effectiveness*”.¹⁰ The Commission also stresses the need to be able to compare data and prevent both organised crime and ‘localised crime’ through the creation of statistical tools to measure criminal activity, and a joint approach offering a framework for action by local and national players (law-enforcement authorities and civil society) on the basis of exchanges of information, as well as the drafting of common standards and evaluation methods.

Besides these particular references, the Communication fails to duly acknowledge **the role and competences of LRAs in the AFSJ**. The European Commission should have taken this opportunity to identify the LRAs as one of the policy dimensions where “*progress has been slow and less clear-cut*” during the last ten years of European integration. Indeed, while the role of the LRAs has often been described as pivotal in respect of some AFSJ policies at official level, the official recognition in the discourse has not been translated into a clear strategy in terms of substantive, financial and institutional implementation mechanisms. A good example of that ongoing tension is the apparent incapacity

⁸ Page 24 of the Communication.

⁹ Page 25.

¹⁰ Page 17.

of the European system to ensure that EU funding on FSJ does in fact reach local and regional players and stakeholders.

The Communication could have envisaged a **forward-looking policy strategy that focuses on new ways of making sure that the EU's official recognition of LRAs' role moves from mere discourse to effective action across the Union**. Such a strategy could have stressed the potentials of LRAs' role in the effective monitoring of national measures to transpose EU law as well as in a European system of evaluation (ex post) of the implementation conditions and structures at the national, regional and local levels of governance. It could have highlighted the need to guarantee an adequate and proportionate transfer of EU funds to the various multi-level governance levels involved in AFSJ policies – particularly when in connection with funds managed by the Directorate General for Justice, Freedom and Security (DG JFS) of the European Commission (e.g. the Fundamental Rights and Justice General Programme¹¹ and Solidarity and Management of Migration Flows¹²). Even though some of these funds already refer expressly to the LRAs in the implementation of EU policies (e.g. the European Integration Fund),¹³ it is at present far from clear how this political priority is actually being transposed by each Member State and the extent to which LRAs are truly benefiting from the EU's financial instruments in view of Member States' pursuit of (national) interests and the discretion of central governments.

Thirdly, the AFSJ includes a set of policy areas where the **principle of subsidiarity** continues to be of fundamental relevance, but this does not prevent further European harmonisation processes from moving forward. In some of these domains competences are shared between the EU and the Member States (e.g. borders, immigration, asylum, etc.), while others still remain purely intergovernmental in nature (e.g. criminal justice and police cooperation). Paradoxically, Member States' national governments often use the subsidiarity principle as an excuse to retain 'national' control over the funding developed at European level around these issues. This practice may be one of the main reasons why the role of LRAs in EU FSJ policies is not implemented and strengthened. Taking into account the distribution of competences in some Member States where LRAs' authorities are in charge,¹⁴ an effective understanding and implementation of the principle of subsidiarity in the EU

¹¹ This programme includes rights and citizenship, criminal and civil justice, Daphne III and drugs prevention (see http://ec.europa.eu/justice_home/funding/intro/funding_rights_en.htm).

¹² This programme includes the external borders fund, the integration fund, the return fund and the European refugee fund (see http://ec.europa.eu/justice_home/funding/intro/funding_solidarity_en.htm). Due consideration needs to be given also to those funds managed by DG Employment, Social Affairs and Equal Opportunities of the Commission (e.g. European Social Fund, etc.) in order to avoid double funding of related policy areas.

¹³ Council Decision establishing the European Fund for the Integration of Third-Country Nationals for the Period 2007 to 2013 as part of the General Programme "Solidarity and Management of Migration Flows", 2007/435/EC, 27 June 2007, OJ L 168/18, 28.6.2007.

¹⁴ See Committee of the Regions (2008), Study on the Division of Powers between the European Union, the Member States and Regional and Local Authorities, carried out by the European University Institute, Brussels.

legal system calls for the status of LRAs to be consolidated beyond the priorities and national politics of Member States' central governments . This will become crucial in light of the potential entry into force of the Lisbon Treaty, where the principle of subsidiarity will need to be more carefully monitored in relation to the EU's AFSJ.¹⁵

Fourthly, the Communication argues that the main thrust of the new multi-annual Stockholm programme should be **“building a citizens’ Europe”** and that all actions taken in the future should have ‘the citizen’ at their heart. The question may be raised as to who these ‘citizens’ are? It appears that the concept of citizen used by the Communication refers exclusively to those individuals who hold the nationality of one of the Member States of the Union, and consequently benefit from the supranational status of European citizenship.¹⁶ The personal scope of the AFSJ presented by the Communication is therefore too narrow and contradicts the notion of a Europe that promotes diversity and fundamental rights for all individuals irrespective of their nationality and administrative immigrant status. These fundamental rights are recognised, among other instruments, by the Charter of Fundamental Rights of the EU,¹⁷ the European Convention of Human Rights and Fundamental Freedoms (ECHR) and the jurisprudence of European Courts – European Court of Human Rights (ECtHR) in Strasbourg and the European Court of Justice (ECJ) in Luxembourg. Furthermore, every individual residing in the EU should be also the beneficiary of a *“Europe that protects”* life and safety as developed in Section 4 of the Communication COM(2009) 262.¹⁸

As emphasised in the Tampere Programme,¹⁹ a Europe of rights and justice cannot be limited to citizens if the Union wants to uphold its values of non-discrimination, fair and equal treatment and solidarity. LRAs are well aware of the fact that European societies are made up of a whole variety of individuals (some of whom are particularly vulnerable), who, independently of narrow legalities and administrative statuses at national level that define their nationality and immigration status, are *de facto* members of local communities who need to

¹⁵ Refer to Protocol on the Application of the Principles of Subsidiarity and Proportionality, OJ 306/150, 17.12.2007, appended to the Treaty of Lisbon.

¹⁶ Refer to Article 17 Treaty establishing the European Community. Declaration on nationality of a Member State attached to the final Act of the Treaty on European Union, OJ C 191, 29 July 1992. European Council, Conclusions of the Presidency, Edinburgh, 11 and 12 December 1992, Appendix 1: Decision of the Heads of State and Government concerning certain problems raised by Denmark on the Treaty on European Union, Section A: Citizenship.

¹⁷ Charter of Fundamental Rights of the European Union, OJ C303/1, 14 December 2007.

¹⁸ The Communication states in page 5 that *“Protecting citizens – a Europe that protects: A domestic security strategy should be developed in order to improve the security in the Union and thus to protect the life and safety of European citizens”*.

¹⁹ The Presidency Conclusions of the Tampere Council said, in point 3, that “This freedom [right to move freely throughout the Union] should not, however, be regarded as the exclusive preserve of the Union’s own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe’s traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory”.

be protected and socially included. Building a Europe *only for* citizens will lead to a Europe in conflict with the principles of diversity, heterogeneity and fundamental rights that lie at the heart of its identity. A more integrated Europe needs to benefit all residing individuals, not only citizens. This is even more vital if one considers the legally binding nature that the Lisbon Treaty would confer on the Charter of Fundamental Rights and the possibility for the EU to accede as a member of the ECHR on the basis of Article 6.2 of the new version of the Treaty on European Union.²⁰ Furthermore, even though the Communication alludes at the beginning to the establishment of **a common space of fundamental rights protection in the EU**, the text does not present a clear strategy on the way in which the Commission sees the further development and implementation of that ‘common space’ in practice. Certainly, while the strong political message of a potential EU membership of the ECHR is to be welcomed, it is not enough, and more concrete efforts are needed, especially as regards rights and liberties of suspects and accused persons in criminal proceedings, asylum seekers and refugees, undocumented and ‘legal’ migrants as well as the effects of the external dimensions of EU’s AFSJ policies (e.g. return and readmission) in third (cooperating) countries.

3. Towards a European Strategy for LRAs in the AFSJ? The Political Elements of the Communication COM(2009) 262

The Communication can be structured into two main parts: A first part (Section 1: Introduction) deals with ‘the political vision and ambitions’ of the European Commission for the Stockholm Programme; the second part (Sections 2 to 5) presents the specific priorities and measures that would be covered (and developed) for each of the relevant policy portfolios by DG JFS when implementing the Stockholm Programme: citizenship and fundamental rights (Section 2), criminal and civil justice (Section 3), security (Section 4) and immigration, integration and asylum (Section 5).

What are the main issues highlighted in the ‘political part’ of the Communication? Section 1 starts with a straightforward message: “*Freedom, Security and Justice are strong values that form an integral part of the European model of society*”.²¹ As highlighted above, the Commission then goes on to assert that the next phase of the EU’s AFSJ needs to focus on putting “*the*

²⁰ Article 6.2 of the revision carried out by the Lisbon Treaty of the Treaty on the European Union reads as follows: “The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. Such accession shall not affect the Union’s competences as defined in the Treaties”. Refer also to Protocol relating to Article 6(2) of the Treaty on European Union on the accession of the Union to the European Convention on the Protection of Human Rights and Fundamental Freedoms, OJ C306/155, 17.12.2007.

²¹ Page 2 of the Communication.

citizen” at the heart of the project. Section 1 is divided into four main subsections:

The first subsection presents what the European Commission considers as “*successes*” in the AFSJ over the last ten years. This includes among other things, the ongoing removal of internal border controls in an enlarged EU, laying down the foundations of a common immigration policy and a common European system of asylum, etc.

A second subsection deals with “*challenges*” that have been encountered so far and the areas in which the level of policy convergence has been considered to be “*slow and less clear-cut*”. On this point the Communication indicates that securing proper implementation at the national level constitutes an important challenge, and that in relation to criminal and family law matters, little progress has been achieved so far.

The third subsection identifies the challenges ahead “*to provide the best possible service to the citizen*”. It points out that the following policy priorities should guide the Stockholm Programme: first, promoting citizens rights – a Europe of rights; second, making life easier – a Europe of justice; third, protecting citizens – a Europe that protects; and fourth, promoting a more integrated society for the citizen – A Europe of solidarity.

Finally, Section 1 emphasises that for these priorities to be successfully implemented a specific *method* should be followed using five main tools: first, ensuring policy coherency with other EU policies; second, addressing the implementation gap at the national levels; third, improving the quality of European legislation; fourth, improving the use made of evaluation; and fifth, accompanying political priorities with adequate financial resources (including the evaluation of the effectiveness of current budgetary mechanisms).

4. Features and Deficits of the Communication COM(2009) 262

This section addresses the specific issues and deficits which characterise the second part of the Communication, and which we have structured under three main headings: strengthening freedom and solidarity, strengthening security, and strengthening justice and the rule of law. In contrast with the structure used by the European Commission, it is our view that this framework better reflects the actual priorities of the Communication, as well as of the overall EU’s agenda on an AFSJ. While at first glance the Communication appears to place political weight on ‘fundamental rights and justice’, when looking at the actual number and reach of policy measures (and next steps) proposed by the text, one realises where the priorities actually are, and where the EU will be more ‘active’ from a legal point of view in the coming five years. It is by looking deeper that one realises that the security and safety of the nation state (and its imagined

citizenry) – strengthening security – will still prevail over the liberty and security of the individual (fundamental rights and freedoms) in the next phase of the AFSJ.

4.1. STRENGTHENING FREEDOM AND SOLIDARITY

4.1.1. A common area of fundamental rights for all?

4.1.1.1. Fundamental Rights and European Citizenship

Section 2 of the Communication COM(2009) 262 is entitled **“Promoting Citizens’ Rights: A Europe of Rights”**. It starts by stating that the European system for protecting fundamental rights is already well developed at EU level, and that *‘the expertise’* developed by the European Union Fundamental Rights Agency (FRA) should further contribute towards their protection. Reference is also made to the push that the EU’s accession to the ECHR would give to the jurisprudence of Community Courts and the ECtHR. Section 2 is then divided into three subsections dealing with: first, the full exercise of the right to free movement; second, respect for diversity and protection of the vulnerable; and third, the protection of personal data and privacy.

The political message sent by the European Commission by positioning ‘a Europe of rights’ as a central principle, and by stating that the *“respect for the individual and for human dignity, referred to in the Charter, is a core value in the area of freedom, security and justice”*²² in the opening part of the Communication, is to be welcomed. The added value of the EU is indeed to *“play a role of facilitator”* and promoter²³ of the protection of the liberty and security of the individual in an enlarged common European space. **‘Strengthening Freedom and Solidarity’ of *the individual* (rather than exclusively those of ‘the citizen’) should therefore constitute the guiding principle to be adopted also by the Stockholm Programme.**

The protection of fundamental rights in the light of **the Charter of Fundamental Rights of the EU** (hereinafter the Charter) is increasingly relevant for LRAs’ competences in the scope of the EU’s AFSJ. , Article 41 of the Charter on the right to good administration and Article 22 on the right for cultural, religious and linguistic diversity illustrate this. In addition, several LRAs activities and competences over these areas present multiple implications for fundamental rights such as those of respect for private and family life (Article 7), protection of personal data (Article 8), right to asylum (Article 18), non-discrimination (Article 21), etc. Beyond the (still) non-legally binding nature of the Charter and the added value of the EU’s possible accession to the ECHR, fundamental rights already constitute core values and general principles of the Union’s AFSJ law based on Article 6 Treaty on the European Union and

²² Page 7 of the Communication.

²³ Ibid.

the jurisprudence of the ECJ. Moreover, it is important to point out that the Charter recognises rights and liberties some of which are **applicable to ‘everyone’**, irrespective of the person’s nationality and administrative residence status in the EU.

Three are **three major deficits** in the way fundamental rights protection are conceived in the Communication:

First, even though the European system of fundamental human rights is already well developed, the full respect and protection of these rights at times of Member States’ practical implementation of EU AFSJ law still remains at stake and an issue of concern. Fundamental rights cannot be taken for granted in the EU and further strategies should be foreseen for the years to come. This is especially true when assessing current and future AFSJ-related policies, where fundamental rights such as the liberty and security of the individual at stake. The Communication does not develop a clear European strategy on how to develop and guarantee a common area of fundamental rights both at EU institutional level (e.g. by strengthening and expanding the competences of the FRA, and its structured cooperation with LRAs)²⁴ as well as by Member States’ authorities when they implement and practise EU law. The text fails to go beyond formalistic and official allusions to the existing system of tools and institutional structures for fundamental rights and freedoms, and fails to present a proactive roadmap for the near future.

Secondly, the Communication does not pay any attention to the regional and local dimensions of ‘a Europe of fundamental rights’ in the AFSJ. Currently, there is a wide-reaching consensus on the crucial role played by LRAs in guaranteeing and informing (awareness rising) about the rights and liberties of individuals.

Thirdly, as we have underlined above, the Commission prioritises the rights of European citizens. While the existing barriers (and exceptions) to the full exercise of the liberties conferred by the status of European citizenship on EU nationals and their family members (whatever their nationality) still need to be overcome, an approach solely focusing on the rights of citizens marginalises a debate about the fundamental rights of non-citizens and residents. This approach is also difficult to reconcile with the principle of non-discrimination and of fair and equal treatment enshrined in the Tampere Programme adopted by the European Council Conclusions of October 1999. Further, the rights and protection of those third country nationals (TCNs) who do not fall within the narrow category of being ‘legally resident’, and thus have the status of “irregular residents” – undocumented migrants – should also be at the centre of of the

²⁴ For an illustration of the current informal and fragmented paths of cooperation between the FRA and LRAs, refer to the meeting that took place on 6 and 7 July 2009 between the FRA and local authorities to discuss implementation of human rights. The Agency met representatives from the Local Communities Network (LCN). See http://fra.europa.eu/fraWebsite/news&events/infocus09_0307_en.htm

EU's attention and social protection strategies, particularly considering their high degree of vulnerability and insecurity.

4.1.1.2. Freedom of Movement and Data Protection

The Communication identifies the right to fully exercise **free movement of persons** as one of the key ingredients of European citizenship. However, this right, which is recognised in Article 45 of the Charter of Fundamental Rights, constitutes an illustrative example of the shortcomings that persist as regards fundamental rights in the EU. The implementation of Directive 2004/38 on the rights of European citizens and their family members to move and reside freely in the EU²⁵ has been qualified by the European Commission, the European Parliament and external reports and experts as unsatisfactory and far from accomplished, even though the deadline for implementation was 30 April 2006.²⁶ Not all EU Member States have yet correctly and effectively transposed the Directive in its entirety into their national legal systems. The presumption that the mechanisms characterizing the EU legal system to ensure a correct transposition of EU law work in practice is therefore no longer sustainable and calls for innovative strategies. As stipulated in the Commission Communication on guidance for better transposition and the application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313, the freedom of movement of persons is one of the foundations of the EU, and derogations from that principle must be interpreted strictly.²⁷ Furthermore, it is necessary to strengthen existing structures and monitoring mechanisms. The experiences from LRAs could contribute towards the improvement and facilitation of current legal and administrative procedures covering the exercise of the right to free movement.²⁸ Also, the LRAs could play an important role in the evaluation of the correct implementation and application of EU AFSJ laws 'on the ground'.

²⁵ 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 amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC. J.Y. Carlier and E. Guild (eds), *The Future of Free Movement of Persons in the EU*, Collection du Centre des Droits de L'Homme de la'Université Catholique de Louvain, Brussels: Bruylant, pp. 79-101.

²⁶ See S. Carrera and A. Faure-Atger (2009), *Implementation of Directive 2004/38 in the context of Enlargement: A Proliferation of Different Forms of Citizenship?*, CEPS Special Report, Centre for European Policy Studies, Brussels, April 2009.

²⁷ Page 3 of the Communication COM(2009) 313. It appears that the Commission's immediate strategy is to distribute an EU guide informing European citizens about their rights and by meeting bilaterally with the Member States to discuss remaining open issues on implementation and application and to "use fully its powers under the Treaty". See Commission Communication, on guidance for better transposition and application of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, COM(2009) 313, 2 July 2009, Brussels.

²⁸ This would include, as the Communication mentions, the possibility to obtain the most important civil status documents more easily and at no extra cost. See page 7 of the Communication.

The LRAs are very well placed to ensure that EU policies are effectively transposed, and that they meet the principles of proportionality, necessity (added value) and compliance with fundamental rights on a daily basis.²⁹ An interesting case study could be that of EU policies on technologies and large-scale information systems based on the exchange and storage of personal data for security purposes and their effects on **the right to the protection of personal data** stipulated in Article 8 of the Charter. The potential of the local and regional dimensions in a European “*comprehensive protection scheme*” and “*a European certification scheme for ‘privacy-aware’ technologies, products and services*” mentioned by the Communication should be carefully considered and weighed up.³⁰ LRAs could cooperate closely with civil society organisations and relevant national authorities, such as data protection supervisors and ombudsmen, as well as with the European Data Protection Supervisor (EDPS), as regards the monitoring of fundamental rights protection in connection with the national implementation of ‘rights-sensitive’ AFSJ policies. As the Commission rightly points out, they could also receive more support from the EU to launch information campaigns about the European rights and freedoms of ‘the data subject’ falling within the scope of the application of these technology-oriented European policies and “*in particular to raise awareness amongst the most vulnerable*”.³¹ LRAs contribution towards informing individuals about their European rights (beyond that of data protection) and fundamental freedoms should have been further reflected upon and encouraged by the Communication COM(2009) 262.

4.1.1.3. Participation in the Democratic Life of the Union

The Communication emphasises the importance of European elections as “*the political expression of the concept of European citizenship*”, but recognises that, in practice, “*the exercise of this right leaves much to be desired*”.³² In fact, the low turnout in the recent European elections shows that there is a real need to tackle the growing sense of alienation from the European project experienced by so many EU citizens. Currently, one of the EU’s greatest challenges is the question of **how to enhance and maximise citizens’ participation in the democratic life of the Union**. There are several elements to be considered in this respect: the lack of trust in the EU institutions; the remoteness and complexity of the EU institutional architecture; fear of losing (national and/or regional) identity(ies), etc. In 2001, the Commission’s White Paper on European

²⁹ The Communication states that “*Technology is currently developing very fast. It is transforming communication between individuals and public and private organisations. A number of basic principles therefore need to be restated: purpose, proportionality and legitimacy of processing, limits on storage time, security and confidentiality, respect for the rights of the individual and control by an independent authority*”.

³⁰ Page 8 of the Communication.

³¹ Page 9 of the Communication.

³² Ibid.

Governance noted with concern that “*The Union is often seen as remote and at the same time too intrusive*”.³³ These and other factors may partly explain why the public are participating less and less in the democratic life of the Union.

According to the concerns expressed by the Commission in the Communication regarding the 2014 European elections, the instruments of participatory democracy require evaluation to ensure the broadest possible public participation.³⁴ At this point, it seems necessary to mobilise civil society in the EU, as well as to promote information and civic education initiatives on (but not only) active participation in the European Parliament elections,³⁵ which would encourage greater involvement in EU initiatives. The role of LRAs could be also crucial in achieving these objectives and so far has not been appropriately developed. Being so close to the citizens and residents, these administrations could easily contribute to the goal of disseminating information, knowledge, democratic values and encouraging active participation, which are inherent to the status of EU citizenship. New technologies could assist local and regional authorities to promote new methods of public and democratic participation. **European funds to promote these initiatives should be further developed**, although it should be noted that during the 2007-13 period the EU allocated €93.8 million to promote fundamental rights and democratic participation.³⁶ The evaluation of previous programmes and instruments should be a priority. Their impact, use and added value should be assessed. Finally, initiatives to draw young people into the EU project should be a key priority in this area. These could for instance take the form of debates on Europe’s future at regional and local levels.

4.1.2. Rights and Freedoms of Non-European Citizens

In Section 5.1.3 of the Communication, the Commission notes that a proactive [immigration] policy needs to be based on a ‘European status for legal immigrants’. The Communication justifies the need “*to ensure a uniform level of rights for legal immigrants comparable with that of Community citizens*” in order to maximise the positive effects of legal immigration for the benefit of all.³⁷ This is very much in line with the spirit of the 1999 Tampere Council Conclusions which underline the aim to ensure the right to move freely

³³ European Commission, European Governance. A White Paper, 25 July 2001, COM(2001) 428 final.

³⁴ The Communication states that “*With a view to the European elections of 2014, careful thought should be given to measures to encourage citizens: an ambitious approach based on electoral campaigns that focus on genuine European debates must be facilitated. It will be helpful if it can be made easier for citizens to take part in all stages of the voting procedure and to register on the electoral roll, and if the elections can be held in the week of 9 May*”. Page 9 of the Communication.

³⁵ Ibid.

³⁶ See http://ec.europa.eu/justice_home/funding/intro/funding_rights_en.htm

³⁷ Page 25 of the Communication. Refer to footnote 6 above.

throughout the Union in conditions of security and justice for all, and which stated:

This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration.³⁸

Thus, as the Communication rightly states, a proactive policy for legal migrants requires a "clear, transparent and equitable approach that respects human beings".³⁹ Further, the Communication proposes the adoption of an **Immigration Code** to guarantee the 'uniform level of rights' referred to above. This initiative should be carefully analysed. The existing proposal for Directive on a single application procedure for a single permit for third-country nationals to reside and work lawfully in the territory of a Member State, which is still under negotiation in the Council, also includes a common set of European rights for third-country workers legally residing in a Member State.⁴⁰ Developing new legislative instruments that differ from others relating to non-European citizens' rights could create confusion and inconsistencies, and even worse, it could potentially weaken the existing set of rights and guarantees held by foreign residents and workers in EU law. Nonetheless, further efforts should be made to guarantee and develop the rights of immigrants in Europe, especially in the light of existing international and European human rights instruments (e.g. United Nations and the Council of Europe). Effective mechanisms to ensure their correct application should be provided and made accessible to third-country nationals irrespective of their legal status and their geographical location inside Europe. Irrespective of the legal status as non-EU nationals (undocumented or not), TCNs are holders of fundamental human rights that go beyond the discretion of Member States, and that need to be respected and guaranteed at all levels of governance in the EU, including LRAs. This includes all rights in the Charter which refer to 'anyone' or 'everyone', e.g. Article 31 (fair and just working conditions), Article 12 (freedom of assembly and association), Article 14 (right to education), Article 35 (health care), etc. The discussion on the rights and freedoms of immigrants brings us to the need to reconsider the foundations of **European citizenship** and to move away from a nationality-based system towards one **rooted in the principle of residence**.⁴¹ This would prevent the

³⁸ Conclusions of the Tampere European Council.

³⁹ Page 25 of the Communication.

⁴⁰ Proposal for a Council Directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State. COM(2007) 638 final, Brussels, 23.10.2007.

⁴¹ Refer here to the 'alternatives' (such as that of 'civic citizenship') already proposed at EU level for granting the status of European citizens to residing TCNs. Refer to Commission Communication, on a Community Immigration Policy COM (2000) 757, 22.11.2000. COM(2000) 757 final, which states that "*The legal status granted to third country nationals would be based on the principle of providing sets of rights and responsibilities on a basis of equality with those of nationals but differentiated according to the length of stay while providing*

existence of an exclusionary EU citizenship that prevents plural forms of participation and membership in the European polity. The legal criteria for European citizenship, which is nationality of a Member State, is open to criticism and does not correspond with new forms of (*de facto*) citizenships emerging at the local and regional levels. Access to European citizenship should therefore instead be linked to domicile⁴² and could be a predominantly local and regional in nature, so that the access to the set of rights and freedoms conferred by the status of European citizenship would not be dependent on naturalisation or integration criteria/conditions left to the complete discretion of the nation-state. A local and regional dimension of European citizenship could guarantee that TCNs have access to equal rights and liberties as nationals of the EU Member States.

EU immigration law already confers a number of European rights and guarantees to TCNs who are 'legally residing',⁴³ e.g. family reunification (Directive 2003/86),⁴⁴ long-term resident status (Directive 2003/109),⁴⁵ students and scientists (Directives 2004/114 and 2005/71),⁴⁶ etc., some of which are also intertwined with fundamental rights such as Article 7 of the Charter (respect for private and family life) and Article 21 on non-discrimination. The Communication refers to the possibility of revisiting and amending existing legal provisions such as the Council Directive on **the right to family reunification**.⁴⁷ This priority should carefully consider the results of the last European Parliament elections as well as the rise of xenophobic (extreme right) parties (and sentiments) in Europe.⁴⁸ Any amendment to current European

for progression to permanent status. In the longer term this could extend to offering a form of civic citizenship, based on the EC Treaty and inspired by the Charter of Fundamental Rights, consisting of a set of rights and duties offered to third country nationals". See also the Opinion of the European Economic and Social Committee on Immigration, Integration and the Role of Civil Society, SOC/075, CES 365/2002, 21 March 2002, Brussels, rapporteur: Mr. Pariza Castañios.

⁴² For an overview of the academic discussion about this issue, see S. Carrera and M. Merlino (2008), *The European Court of Justice and Enacting Citizenship, State of the Art Report*, ENACT (Enacting European Citizenship), CEPS Special Reports, Centre for European Policy Studies, Brussels, April 2009.

⁴³ E. Guild (2004), *The Legal Elements of European Identity: EU Citizenship and Migration Law*, European Law Library, The Hague: Kluwer Law International.

⁴⁴ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 3.10.2003.

⁴⁵ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23.1.2004.

⁴⁶ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service, OJ L 375, 23.12.2004. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third country nationals for the purposes of scientific research, OJ L 289/15, 3.11.2005.

⁴⁷ See page 25 of the Communication.

⁴⁸ In its statement after the European elections, the British Equality and Human Rights Commission stated that "This is a sobering moment for our country. These elections mark a step into uncharted waters for the British people. It is beyond party politics when for the first time, nearly a million British people voted for an organisation which will not accept many voters as members because of the colour of their skins" (<http://www.equalityhumanrights.com/>). In addition, it is interest to refer to the European Parliament Resolution

legislation on foreigners' rights should be carefully analysed in order to avoid reducing existing EU rights and lowering EU standards that benefit TCNs under current EU immigration law.

4.1.2.1. Integration, Diversity, Equality and Non-discrimination

The Communication notes in Section 2.2, which is entitled “Living together in an area that respects diversity and protects the most vulnerable”, that “*diversity enriches the Union: it must provide a safe environment where differences are respected and the most vulnerable protected*”.⁴⁹ Integration, diversity, equality and non-discrimination have indeed become core elements in a ‘Europe of rights’.

Article 2 of the EC Treaty stipulates that one of the Community’s tasks is to promote equality between men and women. Article 13 EC Treaty included a general non-discrimination clause and thus gave the Council the opportunity to “*take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation on the basis of the proposals by the Commission*”. Since 2000, in addition to promoting equal treatment of both genders, **legal anti-discrimination initiatives** have been in place in the EU to ensure equal treatment and protection for those living and working in Europe, irrespective of ethnic origin, religion and belief, disability, sexual orientation and age.⁵⁰ The Council Directive 2000/43/EC of 29 June 2000 which implements the principle of equal treatment between persons irrespective of racial or ethnic origin is a keystone of this EU anti-discrimination legal framework.⁵¹ The European Commission should keep up its efforts to correctly ensure national transposition. Since its introduction, the Commission has initiated infringement procedures for 1) non-transposition and 2) incorrect transposition against a significant number of Member States. The most common problems relate to the lack of (or incorrect) definition of discrimination, the shift of the burden of proof and lack of indicators on the ‘success’ of legislation.

According to Article 151 TEC⁵² and Article 22 of the Charter of Fundamental Rights of the EU, diversity is one of the EU's strengths. In guaranteeing respect for fundamental rights, promoting equality and non-discrimination and preserving diversity, the EU institutions face a challenge which is not exclusively linked to migration. Thus, the Communication emphasises the need

on the European Union's position at the World Conference Against Racism and the current situation in the Union, Minutes of 21/09/2000, B5-0766/2000.

⁴⁹ Page 7 of the Communication.

⁵⁰ D. Schiek, L. Waddington and M. Bell (eds) (2007), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law*, Oxford: Hart Publishing.

⁵¹ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L180/22, 19 July 2000.

⁵² Article 151.1 TEC provides that “*The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore*”.

to implement measures to tackle discrimination, racism, anti-Semitism, xenophobia and homophobia in order to provide a safe environment where differences are respected and the most vulnerable protected.

Communication (2009) 262 identifies integration as another policy priority for the next AFSJ.⁵³ The European Commission refers explicitly to the local and regional dimension stating that the improvement of integration calls for “*greater efforts by national, regional and local authorities*”.⁵⁴ In particular, the European Commission calls for “*a joint coordination mechanism that would support the efforts of Member States using a common reference framework*”. The EU Framework on Integration represents an innovative multilevel setting of governance in the field of TCN integration at EU level, which involves interaction between a package of non-coercive regulatory tools and diversified supranational networks. This has given birth to a non-formalised or quasi-Open Method of Coordination (OMC) where exchanges of information between Member States take on overriding relevance.⁵⁵ Until now, this Framework has centred mainly on fostering exchanges of information and policy coordination between Member States’ national integration policies and programmes in the scope of the National Contact Points on Integration (NCPs).⁵⁶ There is a **lack of a sustainable and structured involvement and partnership of local and regional bodies and the Committee of the Regions** in the various policy instruments and venues that make up the EU Framework on Integration. The local and regional dimension could play a decisive role in channelling knowledge and experience to the national and EU arenas, and in monitoring the adequate, timely and consistent transposition/implementation of common EU policies on integration.⁵⁷

The main focus of the European policy on integration should be to ensure that **TCNs' fundamental rights are respected**. It should not be to use integration as a tool for immigration management or for practising a restrictive immigration policy aimed at limiting the numbers of legal entries or the security of residence of TCNs in the EU. Integration needs to be understood as guaranteeing social inclusion seen from a social affairs perspective and not a Justice and Home Affairs perspective. The EU Framework on Integration should therefore not become a trans-national venue that legitimises the practice and exchange of nationalistic normative practices and politics whereby integration is presented as

⁵³ Page 25 of the Communication states that “*The potential cultural as well as economic enrichment offered by immigration can be unleashed only by improving integration in the host society*”.

⁵⁴ Ibid.

⁵⁵ E. Guild, K. Groenendijk and S. Carrera (2009), “Understanding the Contest of Community: Illiberal Practices in the EU?”, in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Ashgate: Hampshire, forthcoming.

⁵⁶ S. Carrera (2008), *Benchmarking Integration in the EU: Analysing the Debate on Integration Indicators and Moving it Forward*, study commissioned by the Bertelsmann Foundation, Berlin.

⁵⁷ For an in-depth analysis, see S. Carrera (2009), *The Role and Potential for Local and Regional Authorities in the EU Framework on the Integration of Immigrants*, study commissioned by the Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice of the Committee of the Regions, Brussels.

a mandatory programme, course or contract for TCNs who wish to be 'legally residing' and bring members of their family into the EU.

LRAs should function as a rapid alert system to detect and fight racism, anti-Semitism, xenophobia and homophobia, and resource to promote campaigns to spread respect for fundamental rights and diversity in the EU should be found. LRAs also need to further develop measures to promote respect for freedom of thought, conscience and religion (Article 10 of the Charter), freedom of expression (Article 11 of the Charter) and equality between men and women (Article 23 of the Charter). Special measures should be taken to protect the most vulnerable, mainly children (Article 24 of the Charter), elderly (Article 25 of the Charter) and persons with disabilities (Article 26 of the Charter) and, regarding the migration scenario, unaccompanied minors and victims of trafficking. The involvement of LRAs in the RAXEN⁵⁸ network should be further promoted and developed.

4.1.2.2. Asylum

In Section 5.2, the Communication emphasises that: "*The EU must continue to build a true common area of protection and solidarity, based on respect for human rights*".⁵⁹ Asylum is the cornerstone of a common area of protection and solidarity, although emphatic official discourse on asylum contrasts with weak, real protection of this right in practice. Heavily protected by Charter (Article 18)⁶⁰ and different international conventions, asylum applications have dropped in the EU countries in recent years. Although the number of asylum seekers increased in 2008⁶¹ in the EU, 73% of first instance decisions were rejections.⁶² The false asylum presumption might actually constitute one of the main reasons for this situation.

The development of the first Common European Asylum System (CEAS) phase (1999-2005) culminated in the adoption of several legal instruments that set common minimum standards in areas such as reception conditions for asylum-seekers, asylum procedures, prerequisites for receiving international protection and rules for determining the Member State responsible for examining an

⁵⁸ Since 2000 the Fundamental Rights Agency collects data on issues regarding racism, xenophobia and related intolerances through its RAXEN National Focal Points (NFPs) covering all EU Member States (see <http://fra.europa.eu>).

⁵⁹ Page 26 of the Communication.

⁶⁰ Article 18 stipulates that "*The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as 'the Treaties')*".

⁶¹ According to the UNHCR, this increase in industrialized countries "*can partly be attributed to higher numbers of asylum applications by citizens of Afghanistan, Somalia and other countries experiencing turmoil or conflict*". UNHCR Briefing Notes, 24 March 2009

⁶² STAT/09/66 "Asylum in the EU in 2008. Around 20.000 asylum applicants registered each month in EU27", 8 May 2009

asylum application.⁶³ The creation of a CEAS, however, has not yet produced common results on the way in which asylum decisions are taken in different Member States. This lack of consistency even extends to refugees from the same country facing similar circumstances in their country of origin. According to the United Nations High Commissioner for Refugees' office (UNHCR), which keeps statistics on protection rates, there are increasing divergences among Member States as regards granting protection to nationals of the same country. Doubts arise also as to whether refugees can reach the EU at all to seek protection. In order to be recognised as a refugee, an individual must be outside his or her country of nationality and, paradoxically, the leading countries of origin of refugees worldwide (Afghanistan, Iraq, Colombia, Sudan and Somalia) are on the EU visa black list. As a consequence, no matter whether a national of any of these countries is a refugee or not, he/she cannot come to the EU without a visa. Hence, irregular arrival in the EU is the only option for many refugees.

The second phase of implementation of CEAS should be carried out and further developed to achieve the aim of establishing a single asylum procedure and a uniform international protection status no later than 2012. Intra-European solidarity and burden-sharing between Member States should be guaranteed and improved, enshrining the principle of mutual recognition as soon as possible (and by the end of 2014 at the latest) and distributing the financial resources of the European Refugee Fund. Furthermore, the principle of *non-refoulement* cannot be taken for granted, and Member States should improve the implementation and monitoring of instruments/professionals involved in the handling asylum applications.

The Communication includes a remarkable, albeit weak, proposal for the establishment of a mechanism for internal resettlement between Member States. Fostering a collective European Resettlement Programme⁶⁴ should be a major concern, and the role of local and regional authorities in this initiative could be crucial. In that sense, local or/and regional resettlement agencies should be the ones providing the services that help newly arrived refugees to become self-sufficient, and the resources needed for these services should be guaranteed. The evaluation of the European Refugee Fund,⁶⁵ which exists already for 10 years, could be a unique opportunity to identify new criteria for prioritising areas of intervention, and to include the role of LRAs in them.

⁶³ Council Directive 2001/55/EC, of 20 July 2001, on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof; Council Directive 2003/9/EC, of 27 January 2003, laying down minimum standards for the reception of asylum seekers in the Member States; Council Directive 2004/83/EC, of 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (transposition before 10 October 2006); Council Directive 2005/85/EC, of 1 December 2005, on minimum standards on procedures in Member States for granting and withdrawing refugee status.

⁶⁴ Page 28 of the Communication.

⁶⁵ Ibid.

Asylum policy and other forms of international protection have a clear impact on host societies. Despite being a national competence, LRAs play a key role in supporting and settling asylum-seekers and refugees in the EU. LRAs host refugees and asylum-seekers, and provide welfare and care services to them on behalf of central governments. Social services, housing, language support and other services are provided by LRAs, and it is therefore better mechanisms are needed to supply the resources required for such actions. In that sense, and in order to facilitate the integration of asylum-seekers in host societies, national, local, and regional authorities should further improve dialogue and cooperation in these fields. Information-sharing and cooperation protocols could be established as key instruments in these processes, and the identification of ‘practices to be promoted’ and experiences – analysing their real impact and their results – among local and regional authorities and practitioners could be also crucial. Further resources should be granted for the implementation of instruments and measures to ensure the integration and accommodation of refugees and asylum-seekers. A significant allocation could be granted to local and regional governments in order to guarantee equal services and high standards across all EU Member States.

The Committee of the Regions should advocate the harmonisation of Member State asylum systems and support efforts to define common standards on reception and integration that are granted to refugees and beneficiaries of subsidiary protection: this would help to reduce the secondary movement of applicants for asylum. Furthermore, the CoR should promote the further involvement of LRAs in the CEAS.⁶⁶

4.1.2.3. Consolidating the Global Approach to Migration

Communication (2009) 262 advocates the consolidation of the EU’s immigration policy driven by a “*global and comprehensive approach*”⁶⁷ where “*migration issues should be an integral part of the EU external policy*”.⁶⁸ Promoting dialogue with countries and territories of origin and transit has therefore been reconfirmed as an important contribution towards further common policy approaches at European level.⁶⁹ The Communication also points out the need to formulate additional initiatives on migration and development, mainly focused on facilitating transfers of remittances and promoting the role of

⁶⁶ G. Pinyol (2009), *The role of Local and Regional Authorities in the further development of the Common European Asylum System*, note requested by the Committee of the Regions’ Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice, 15 January 2009.

⁶⁷ S. Carrera (2007), *Building a Common Policy on Labour Migration. Towards a Comprehensive and Global Approach in the EU?*, CEPS Working Document No. 256, Centre for European Policy Studies, Brussels, February.

⁶⁸ Page 23 of the Communication.

⁶⁹ Page 24 of the Communication.

diasporas, following the principles established in the Tampere Programme.⁷⁰ Here, the Council acknowledged the importance of managing migration inflows in a global manner by establishing relations with the countries of origin or transit and jointly carrying out cooperation projects and activities with them.

In the scope of AFSJ policies, the EU's relations with third countries have been traditionally focused on readmission agreements and technical cooperation with these countries in order to help them manage their borders better. However, since 2005, the migration and development nexus has acquired a new relevance in the EU's policy discourse. In September of that year, the Commission adopted the Communication (2005)390 on "*Migration and Development: Some Concrete Orientations*",⁷¹ with the purpose of **linking EU immigration policy with the objectives of development policies** (economic and social promotion and civil rights protection). In October, after the EU Informal Summit at Hampton Court at the end of October, the Commission approved another Communication entitled "*Priority Actions for responding to the Challenges of Migration - First follow-up to Hampton Court*",⁷² in which it stated the importance of the link between migration and development and how the promotion of economic growth, good governance and human rights could provide a response to the so-called 'push factors' of migration. Furthermore, the Communication highlighted again the priority of strengthening dialogue and cooperation with countries of origin.

Three years later, the European Commission published a Communication entitled "*A Common Immigration Policy for Europe*" where the same line of discourse is followed. The Communication points out (yet again) the need to consolidate the global approach to guarantee a common European migration policy and to reiterate that "*migration issues should be fully integrated into the EU's development cooperation and external policies*".⁷³ Despite all these European Commission (soft-policy) initiatives and policy discourse, **further concrete and coherent legislative developments are needed to truly implement the 'migration and development nexus' in the framework of the common EU immigration policy.** Moreover, any further policy measures that address the development dimensions and implications of the EU's migration policy should not be driven by security-oriented priorities that focus on the management of irregular immigration and improved cooperation on border

⁷⁰ See footnote 7 above. Paragraph 11 of the Tampere Council Conclusions states that "*the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development*".

⁷¹ Commission Communication, Migration and Development: Some Concrete Orientations, COM(2005) 390 final, 1 September 2009, Brussels.

⁷² Commission Communication, Priority actions for responding to the challenges of migration: First follow-up to Hampton Court COM(2005) 621 final, 30.11.2005, Brussels.

⁷³ Commission Communication, A Common Immigration Policy for Europe: Principles, actions and tools, COM(2008) 359 final, 17.6.2008, Brussels.

controls, but instead on more specific efforts to establish better instruments and tools to promote regular migration, facilitate human mobility and access to rights, on the basis of dialogue and cooperation with third countries.

Although migration flows are normally analysed as state-to-state dynamics, **the economic and social impacts of immigration mainly take place (and are most visible) at the regional/local level as well as in regions/ municipalities of origin.** In that sense, it is to be welcomed that Communication (2009) 262 highlights the need to **increase the capacities** of non-Member States' central, regional and local authorities to manage migration issues.⁷⁴ However, the Communication completely neglects the role and capacities of LRAs within EU Member States. This territorial dimension should be taken into consideration, especially in connection with the external dimension of migration policies. Insofar as LRAs are not directly responsible for border control, their involvement in the external dimension of migration issues, while taking duly into consideration all the legal dilemmas that it could raise,⁷⁵ would help to establish a more coherent dialogue between EU and third countries, away from the security logic that tarnishes state-to-state relations. The Commission should note that LRAs could also play a key role in negotiations and relations with countries of origin and transit, especially in areas such as development cooperation. As several EU programmes (Aeneas,⁷⁶ Meda⁷⁷ and Tacis⁷⁸) have shown, LRAs strengthen contacts and knowledge of countries of origin and transit, thanks to immigrant communities and diasporas. Linking immigration with other policies such as those in the social, economic and trade fields also increases LRA's role. **Strengthening territorial solidarity should be a key contribution to the external dimension of AFSJ.**

4.2. STRENGTHENING SECURITY

Section 4 of the Communication defines security as “*A Europe that protects*”.⁷⁹ The European Commission underlines that:

⁷⁴ Page 24 of the Communication.

⁷⁵ M. Cremona (2008), *EU External Action in the JHA Domain: a Legal Perspective*, EUI Working Paper LAW No. 2008/24, European University Institute: San Domenico di Fiesole: Florence.

⁷⁶ Aeneas provided financial and technical assistance to third countries in managing migratory flows until 2007.

⁷⁷ The MEDA programme was the main financial instrument for the implementation of the Euro-Mediterranean Partnership. The European Neighbourhood and Partnership instrument replaced the MEDA programme (see http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/mediterranean_partner_countries/r15006_en.htm).

⁷⁸ The TACIS programme (2000-2006) aimed to promote the transition to a market economy and to reinforce democracy and the rule of law in the partner states in Eastern Europe and Central Asia. From the 2007-2013 EU Financial Perspective, the TACIS Programme has been replaced for the countries of the European Neighbourhood Policy and Russia by the European Neighbourhood and Partnership Instrument (http://europa.eu/legislation_summaries/external_relations/relations_with_third_countries/eastern_europe_and_central_asia/r17003_en.htm).

⁷⁹ One can find the guiding approach in the opening paragraph of the Communication in Section 1, which reads as follows:

*Action at European level is key to protecting its people against threats which do not stop at borders...The EU must devise an internal security strategy that respects fundamental rights and reflects a shared vision of today's challenges. This strategy must embody real solidarity between the Member States. It must provide a means of clarifying what comes under the remit of national authorities and what, on the contrary, will be achieved more effectively at EU level. It must be underpinned by decision-making mechanisms that serve to identify the operational priorities. It must make it easier to mobilise the requisite resources in coordinated fields of activity so that we can avert and contain the main threats to individuals and communities.*⁸⁰ (Emphasis added)

Some fundamental elements, and weaknesses that are inherent to the **European internal security strategy**, are on display in this paragraph. Who are “the people” to be protected at EU level? What are “the threats which do not stop at ‘Europe’s borders’? What is the “shared vision” of today’s challenges facing Europe? How can we better clarify and fine-tune the interplay between ‘more Europe’ and the principle of subsidiarity in the field of security? In addition to the uncertainties regarding the possible answers to these questions, the Communication COM(2009) 262 gives overriding priority to strengthening the security of ‘Europe’ and its ‘citizens’.⁸¹ This is evidenced by two factors:

Firstly, policies related to “A Europe that protects”, understood as the security rationale of the EU and its Member States, extend far beyond what has been formally included under Section 4 of the Communication COM(2009) 262.

Secondly, the compendium of policy initiatives which are aimed at ‘strengthening security’ prevail (and take predominance), both from a quantitative and qualitative perspective, over those on freedom and justice throughout the text of the Communication. Even though the Communication has been carefully drafted to reflect a ‘Europe of rights and justice’, it is in respect of a ‘Europe of security’ that more substantial and far-reaching measures have been proposed, most of which raise many issues regarding *the kind* of European AFSJ that will be developed in the years to come, and the role that liberty and rule of law will play there.

Section 4 covers the following three general domains:

1. “*Upgrading the tools for security professionals*”, which includes, “*forging a common culture*”, exchange of information and security technology focused on mobility (Section 4.1)

People want to live in a European Union that is prosperous and peaceful, where their rights are respected and their security protected. They want to be able to travel freely, and to move temporarily or permanently to another European country in order to study, to work, to found a family, to set up a business or to retire. *But they are disturbed to see that the context of stability and security that has prevailed in Europe in recent years is threatened by worldwide developments.* (Emphasis added). Page 2.

⁸⁰ Page 14 of the Communication.

⁸¹ It is interesting to note however that unlike page 5 of the Communication, where the Commission talks about “protecting citizens – a Europe that protects”, on page 14 reference is made not only to “citizens” but also to “Action at European level is key to protecting *its people* against threats which do not stop at borders” (Emphasis added).

2. The Communication then says that “*The internal security strategy must be constructed around three complementary and now inseparable fields of activity: stronger police cooperation, a suitably adapted criminal justice system and more effective management of access to EU territory*” (Section 4.2.). It therefore refers to:

- Police cooperation (Section 4.2.1)
- A criminal justice system (Section 4.2.2)
- “*More secure access to the territory: An integrated approach to controlling entry*” (Section 4.2.3): Borders control and surveillance (Section 4.2.3.1), information systems (Section 4.2.3.2) and visa policy (4.2.3.3)

3. Organised crime and terrorism (Section 4.3.)

In addition, Section 5 of the Communication, which formally falls outside the one supposedly dealing exclusively with ‘security’, and which deals with “immigration and asylum matters”, also includes issues directly related to “A Europe that protects”. That is clearly also the case in some of the policies presented in Section 5.1.4 which is entitled “Better controls on Illegal Immigration”. Also, the ways in which human mobility by non-EU nationals for labour-related purposes have been represented (both from the perspective of internal and external policy perspectives) mainly reflects the security of the Member States and the EU, and not so much the liberty of the persons on the move, who are often considered as economic units to be shaped according to selective and utilitarian immigration policies serving the (perceived) interests and demands of the European economy and labour markets. We argue, therefore that, “*the global and comprehensive approach to migration*” set out in Sections 5.1.1 and 5.1.2 of the Communication does indeed involve the question of security.

This Section has therefore been structured around the four core policy areas which aim to provide security for (or protect) Europe and its citizens: Firstly, borders; Secondly, irregular immigration; Thirdly, labour immigration and security; and fourthly, security professionals, exchange of information and terrorism.

4.2.1. Borders

Section 4.2.3 of the Communication is entitled: “More secure access to the territory” and it begins with the following assertion: “In a globalising world, the Union must facilitate mobility while ensuring personal safety as part of an integrated approach to controlling entry”.⁸²

⁸² Page 18 of the Communication.

We would like to make two preliminary comments here: Firstly, more ‘secure access’, but for whom? And secondly, whilst the need to ensure the “absolute respect” of human rights and international protection in the further development of the EU’s Integrated Border Management (IBM) strategy has been formally recognised,⁸³ this has not been accompanied by a proactive and tangible implementation strategy to guarantee it is properly applied in practice . This, as we have argued above, constitutes one of the main underlying deficits of the approach advocated by the Communication (2009) 262.

Border controls in Europe are undergoing a whole series of normative, technical and institutional processes that greatly diversify the nature and functions of frontiers. These transformations, which render obsolete the traditional conceptualisations about territorial borders as clearly defined lines demarcating ‘the inside’ and ‘the outside’, have far-reaching repercussions for the ways in which fundamental rights of individuals and the rule of law are maintained. Technology (e.g. biometrics – digitalized characteristics of the human body) and new surveillance techniques/tools are increasingly mutating the location of EU borders and challenging the adequacy (and effectiveness) of existing rights-protection systems.

Regarding the substantive components of the IBM, the EU now has a **Schengen Borders Code** (SBC) which sets out the harmonised standards and procedures that are to be adhered to in managing the movement of persons across internal and (especially) external EU borders.⁸⁴ The SBC also provides specific guarantees to those third country nationals who are refused entry (Article 13),⁸⁵ and the conditions in which border controls need to be carried out in Article 6.2 (compliance with the principle of non-discrimination).⁸⁶ The Code is accompanied by the establishment of a European community body – **FRONTEX** responsible for coordinating the management of operational cooperation on EU’s external borders.

Article 2.1 of the FRONTEX Regulation 2007/2004 stipulates that one of the main tasks of this Community body is “to coordinate operational cooperation between Member States in the field of management of external borders”.⁸⁷ The joint operations coordinated by FRONTEX raise a number of concerns from the

⁸³ Ibid.

⁸⁴ Regulation establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) of 15 March 2006, (EC) No. 562/2006, OJ L 105/1, 13.4.2006, Article 1.

⁸⁵ Article 13 states the need for national authorities to issue a substantiated decision stating the precise reasons for the refusal, and that those persons having been refused entry shall have the right to appeal.

⁸⁶ Article 6.2 of the SBC states that “While carrying out border checks, border guards shall not discriminate against persons on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

⁸⁷ Council Regulation EC/2007/2004, establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, 26 October 2004, OJ L 349/1, 25.11.2004.

point of view of **fundamental human rights and the rule of law**.⁸⁸ They often involve a strong external dimension involving an extra-territorialisation of control and prevention of mobility exercised by ‘would-be third country nationals’ outside the common European territory. The operations are legally based on bilateral agreements concluded between one EU Member State and third countries (mostly African states). These agreements, which have remained secret and are not subject to proper democratic control and scrutiny, allow for joint border surveillance and patrolling (identification and readmission of ‘would-be irregular immigrants’) within their own maritime territories. There are number of areas of tension between the external dimensions of the EU’s border control practices and the *non-refoulement* principle, the Geneva Convention on the status of refugees of 1951 as well as Article 18 (right of asylum) of the Charter of Fundamental Rights. The effects of pre-EU border surveillance also make compliance with the set of guarantees provided inside the SBC difficult.⁸⁹ These ‘open questions’ need to be addressed and overcome, and a fully independent evaluation of the dilemmas emerging from some of the FRONTEX activities carried out, before its operational capabilities are further strengthened.

The **2008 Commission Border Package**⁹⁰ constitutes a paradigmatic example of the modernisation of border controls in Europe and the belief that new (in)security technologies will provide the solution to every threat the Union is supposed to face from ‘the outside’. The Communication COM(2009) 262 refers to the initiatives that have been presented in the Border Package. It w refers to the development of a European Border Surveillance System (EUROSUR) – a satellite-based border surveillance system – and an electronic system to record entries to and exits from Member States’ territories of both EU and non-EU citizens, alongside ‘registered travellers’ programmes’ to obtain personal data from non-EU travellers through a pre-departure online check.⁹¹ The proposed technological and surveillance systems do not appear to stand up to the tests of proportionality that are essential for any new EU legislation in light of the general principles of EU law.⁹² Indeed, their huge impact on data protection will not only fundamentally transform the ways in which border controls take place in Europe; they will also raise many fundamental rights challenges. Further, the

⁸⁸ S. Carrera (2007), *The EU Border management Strategy Frontex and the Challenges of Irregular Immigration in the Canary Islands*, CEPS Working Document No. 261, Centre for European Policy Studies, Brussels, March 2007.

⁸⁹ In particular the conditions and treatment given to persons returned or readmitted to these third countries – most of which are not signatories to basic international and European human rights instruments).

⁹⁰ European Commission, Communication on preparing the next steps in border management in the European Union, COM(2008) 69 final, Brussels, 13.2.2008.

⁹¹ J. Jeandesboz, *Reinforcing the Surveillance of EU Borders the Future Development of FRONTEX and EUROSUR*, CHALLENGE Paper No. 11, Centre for European Policy Studies, Brussels, August 2008.

⁹² E. Guild, S. Carrera and F. Geyer, *The Commission’s new border package: Does it take us one step closer to a ‘cyber-fortress’ Europe?*, CEPS Policy Brief No. 154, Centre for European Policy Studies, Brussels, March 2008.

cost-effectiveness of these technological tools remains an issue of serious concern, of once considers the huge (and in our view disproportionate) amounts of EU funding that will be injected through the Seventh Framework Programme of DG Enterprise of the European Commission (Work Programme for 2010) into private companies to help them develop them in practice. The local and regional dimensions would be very well-positioned to assess the proportionality, added value (principle of subsidiarity) and cost-effectiveness of these new, technical security tools and information systems, as well as to identify the main practical dilemmas they raise with regard to the fundamental rights of data protection, privacy, non-discrimination and good administration.

4.2.2. Irregular Immigration

The Communication COM(2009) 262 points out that in order to “better control illegal immigration” in the EU two main areas need to be prioritised: Firstly, better cooperation on surveillance and border controls, and secondly, facilitating the readmission of irregular immigrants “by promoting support measures to return”.⁹³ EU policies on irregular immigration have favoured – and at times legitimised – its national depiction as an (in)security issue in need of repressive public techniques. Irregular immigration is still the subject of social construction and political usage as an ‘insecurity problem’.⁹⁴ It has been presented at official level as a risk to the safety and the cohesion of the EU and its Member States.

The EU continues to be one of the sole supranational actors which consistently uses the phrase “the fight against illegal immigration” when referring to human mobility that does not respect the (often rigid and restrictive) administrative national immigration rules for the legality of entry and residence in their territories. This particular depiction of the debate gives undocumented migrants an unacceptable status as criminals or the subjects of suspicion, which only increases their vulnerability and insecurity.⁹⁵ Further, the EU’s approach towards irregular immigration is fundamentally driven by the promotion of **the principle of expulsion** as a panacea, together with ‘better border controls’.

There is indeed a commonly shared official position at EU level according to which ‘illegality’ justifies expulsion to the country of origin, transit or (even) to any other third country outside common European territory. The EU uses two different normative terms to define the principle of expulsion, **return and readmission**. The intersection and implications of the processes comprising and preceding expulsion are at times taken for granted, notably in terms of human rights and rule of law compliance by Member States and third states with whom

⁹³ Section 5.1.4 of the Communication titled “Better Controls of Illegal Immigration”, p.24.

⁹⁴ M. Merlino (2009), *The Italian (In)Security Package: Security vs. Rule of Law and Fundamental Rights in the EU*, CHALLENGE Research Paper No. 14, Centre for European Policy Studies, Brussels.

⁹⁵ E. Guild (2004), “Who is an Irregular Immigrant”, in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*, Leiden: Martinus Nijhoff, pp. 3-28.

they (and the EU) cooperate. The human rights implications of these expulsion processes, especially towards countries who are not signatories of basic human rights instruments protecting asylum seekers and refugees, are all too often neglected. Indeed, the main official concerns tend to focus on ensuring economic efficiency for the state and the effectiveness of the expulsion measures, without paying due attention to the tensions that may arise because of the illiberal practices that the irregular immigrant may suffer at during detention and expulsion.

The Communication refers expressly to the returns Directive,⁹⁶ and states that “an effective policy removal and return in accordance to the law and with human dignity has to be formulated”.⁹⁷ It continues by saying that the implementation of the Directive by the Member States (which will come into force in December 2010) will be monitored by paying special attention to “the effective enforcement of expulsion measures, detention, appeal procedures and treatment of vulnerable people”. In view of the concerns we have raised in this study about the unsatisfactory domestic transposition of Directive 2004/38 on the rights of European citizens and their family members to move and reside freely in the EU, it is of the utmost importance that **new EU strategies and monitoring systems** are developed in the next phase of the EU’s AFSJ. This is to better secure the appropriateness of the transposition and application of EU law in light of the principles of subsidiarity, effectiveness, proportionality and fundamental rights. This is crucial in view of the legal nature of the Directive, which only represents the lowest common denominator. The ‘minimum standards’ approach might raise many questions about the considerable degree of discretion left to Member States’ authorities on how to implement and interpret some of the common rules on return and detention provided therein (e.g. Article 7.4 on risk of absconding).⁹⁸

Nonetheless, one should acknowledge that the Directive will provide a **common set of guarantees** at the EU level that go beyond the discretion of national policies and politics, such as safeguards pending return,⁹⁹ effective remedies to appeal against or seek review of decisions related to return “before a competent judicial or administrative authority or a competent body composed of members who are impartial and who enjoy safeguards of independence”,¹⁰⁰ and other

⁹⁶ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24 December 2008. A. Baldaccini, “The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Return Directive”, *European Journal of Migration and Law*, Vol. 11, No. 1, 2009, p. 2.

⁹⁷ Page 26.

⁹⁸ Article 7.4 states that “*If there is a risk of absconding, or if an application for a legal stay has been dismissed as manifestly unfounded or fraudulent, or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period for voluntary departure, or may grant a period shorter than seven days*”.

⁹⁹ Article 12 of the Directive.

¹⁰⁰ Article 13.

procedural safeguards like information about legal remedies and legal aid,¹⁰¹ etc. Member States will therefore not be allowed to set lower standards in their respective national immigration legislations and practices. However, further protection should have been provided in the Directive for those persons who are in a legal limbo pending their expulsion and are kept in detention (especially as regards basic subsistence standards).¹⁰² The period of detention is also considered to be too long. According to Article 15.5 of the Directive, the latter can last up to 6 months. However, in cases where the third country national does not cooperate, or there have been delays in getting the necessary information from ‘third countries’, the period can be extended by a further 12 months – so a total of 18 months!

The Communication refers to the need to “study national needs and practices and consider the possibility of establishing common standards for taking charge of illegal immigrants who cannot be deported” as well as paying special attention to the situation of unaccompanied minors. It also calls for further action.¹⁰³ Both initiatives are to be welcomed. Yet it is clear that **the legal status, security of residence and human rights protection of undocumented migrants are not current EU policy priorities**. For instance, when the Communication talks about a European status of rights and integration, it is in fact referring to a reduced group of people only: i.e. legally residing third country nationals. As we argued at the beginning of this study, a Europe of rights and justice must also cover all residing individuals, with a special focus on the status of the more vulnerable groups in society, such as undocumented migrants.

4.2.3. Labour Migration and Security

The Communication calls for “a concerted policy in keeping with labour market requirements”.¹⁰⁴ It asserts that immigration for labour purposes “should be better matched to the needs of the Member States’ labour markets”, and calls for a common European framework in the form of a “flexible admission system” that is “fully consistent with the Member States’ powers to determine the numbers of non-EU nationals admitted for employment purposes”.¹⁰⁵ That common framework, therefore, would be inspired by current national immigration legislations and driven by a prominent **selective and utilitarian approach** towards human mobility for labour-related purposes. These domestic policies are mainly based on the ‘perceived’ needs and labour market demands,

¹⁰¹ Article 14.

¹⁰² Article 15 of the Directive.

¹⁰³ In particular, the Communication stipulates that “*This will be followed by an action plan to underpin and supplement the relevant legislative and financial instruments and strengthen forms of cooperation with the countries of origin, including cooperation to facilitate minors’ return to their countries of origin*”. Ibid.

¹⁰⁴ Page 25, Section 5.1.2.

¹⁰⁵ Ibid.

and prioritise a treatment of non-nationals as economic units rather than human rights holders and workers in need of protection and inclusion. They therefore aim at preserving the security and safety of the State over that of the worker. The European Pact on Immigration and Asylum¹⁰⁶ adopted by the Council in October 2008 has been criticised for introducing supranational legitimacy to some of these national priorities, visions and laws (particularly those of France which held the EU Presidency at the time) and transforming them in European trends.¹⁰⁷ By following the Pacts' pattern the Communication opens itself to similar criticisms.

This same needs-based approach has also inspired the so-called **EU Blue Card Directive**,¹⁰⁸ which establishes a common fast-track and flexible procedure for the admission of third-country workers meeting the criteria for being considered as 'highly qualified employees', along with their family members. This includes the possibility of moving to a second Member State (intra-EU mobility). The system introduced by this Directive, which must be transposed into national law by June 2011, will justify a questionable disparity in treatment between workers defined as highly skilled and those considered as not highly skilled. The compatibility with the principle of non-discrimination provided in Article 21 of the Charter remains debatable. Only those deemed profitable and/or highly skilled will be offered a facilitated administrative path for admission, residence and family reunification, and a more secure legal status. The Directive leaves broad discretion to the Member States to define and specify the conditions and privileges attached to the EU Blue Card, including with regard to the possibility of moving to a second Member State. This raises questions about its actual added value.¹⁰⁹ The EU Blue Card has therefore institutionalised a fragmented, sectoral or selective approach, which, instead of covering all categories of immigrant workers without distinction, advocates a common normative framework (and set of European rights) for different categories of third-country workers. In the light of this distinction between workers, the European Commission will soon present two more legislative initiatives covering the status and conditions of entry and residence of seasonal workers, intra-corporate transferees and remunerated trainees.

The Communication COM(2009) 262 states that in order to ensure a match between 'supply and demand', consideration should be given to the establishment of a **European Platform for Dialogue**. This, in the Commission's view, would facilitate the management of labour migration and the adjustments

¹⁰⁶ Council of the EU, European Pact on Immigration and Asylum, 13440/08, 24 September 2008, Brussels.

¹⁰⁷ In particular, the Pact called for an immigration policy managed according to Member States' labour market needs, which draws upon the selective immigration policy of France (l'immigration choisie). See also S. Carrera and E. Guild (2008).

¹⁰⁸ Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L155/17, 18.6.2009.

¹⁰⁹ E. Guild (2007), *EU Policy on Labour Migration: A First Look at the Commission's Blue Card Initiative*, CEPS Policy Brief No. 145, Centre for European Policy Studies, Brussels, November 2007.

deemed necessary. The Communication stipulates that “It would bring together employers, unions and employment agencies of the Member States, recruitment agencies and other stakeholders”.¹¹⁰ A European Platform for Dialogue could constitute an interesting forum for discussing and evaluating current (and future) labour migration policies at local, regional, national and EU levels. Its success would very much depend on its capacity to go beyond Member States’ interests and politics, and to deliver an objective and independent input (from a practitioners’ perspective) to the debate. LRAs have not been expressly mentioned in the Communication, which is also unfortunate. The local and regional dimension should indeed play a fundamental role in this Platform if it is to succeed, as it is at this multigovernance level that labour immigration policies are actually implemented and practised. It is at this level that key players can determine the ways in which certain features of labour migration policies should be adjusted in order to better match social and economic realities.

In addition to its internal dimensions, the EU’s labour migration policy is experiencing dynamic policy processes of externalization in the context of a **‘global and comprehensive approach to migration’**. As stated in Section 4.1.2.3. above, the Communication argues that the EU and its Member States should “actively work to step up dialogue and partnership with countries, regions and continents outside the Union that involves the countries of origin, destination and transit at all stages”,¹¹¹ and conclude agreements covering issues of irregular immigration (return and readmission, as well as promoting cooperation surveillance and border controls), legal channels of human mobility and development cooperation. The Communication also refers to the **Mobility Partnerships** (MPs). These tools are non-legally binding agreements between the EU, a selection of interested EU Member States and a particular third country coordinated by the DG JLS of the European Commission. So far two MPs have been officially concluded with Moldova and Cape Verde. It appears that negotiations are ongoing with Georgia and Senegal, and countries like Mauritius and India have expressed interest. While MPs include provisions and specific projects dealing with the promotion of legal immigration paths (and sometimes visa facilitation for certain categories of migrant workers) and the impact of EU policies over the development of the countries of origin, the prevailing policy priorities driving their rationale and scope is still the security of the EU and the participating Member States, and not so much the liberty, security and justice of the person on the move. Indeed, one of the key conditions for any interested third country ‘to benefit’ from the MP regime is to show solid ‘commitment’ towards the EU in the management of irregular immigration and border control. This ‘commitment’ basically means implementing tougher policies on border surveillance and control and signing readmission agreements

¹¹⁰ Page 25.

¹¹¹ Page 24 of the Communication.

allowing the return of any undocumented migrant having entered the EU through their territory (independently of whether the person is a national or not of that state), since this is an area which the European Commission has faced major difficulties in promoting so far.¹¹²

4.2.4. Security Professionals, Exchange of Information and Terrorism

The Communication alludes to a European ‘internal security strategy’ which would combine - in addition to border controls (see Section 4.2.1, above) – the following main components: First, “a more integrated approach where security professionals share a common culture” and more effective police-cooperation; Second, exchange of information; third, new security technologies; and fourth, “reducing the terrorist threat”.¹¹³

As regards cooperation between security professionals, the Commission calls for an intensification of the exchange of experiences and ‘good practices’ at European level, with particular attention paid to ethical issues. It also advocates developing **training programmes** for police officers and border guards in European affairs and the setting up of **Erasmus-style exchange programmes**. These initiatives are to be welcomed in the light of the policy objective to develop a ‘common culture’ and mutual trust between law-enforcement authorities in Europe, especially as regards ethical matters and common EU standards in policing.¹¹⁴ Further, the Communication underlines that the primary goal of **police cooperation** is “to combat forms of crime that are typically cross-border in nature” and that it is here that the EU can display its added value. In the same vein, the Commission calls for “operational effectiveness” when it comes to determining whether cooperation needs to take place at international, European, national, regional or local levels, and suggests developing “cross-border cooperation experiments”.¹¹⁵ The role of local and regional players/practitioners (law-enforcement services) could be further consolidated as regards the delivery of all these proposals, along with the political impetus and financial support from the EU. LRAs, in close cooperation with key civil society organisations, would be the better placed to organise the training and exchange

¹¹² A. Roig and T. Huddleston (2007), “EC Readmission Agreements: A Re-evaluation of the Political Impasse”, *European Journal of Migration and Law*, Vol. 9, No. 3, pp. 363-387. See also M. Schieffer (2003), “Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations”, *European Journal of Migration and Law*, Vol. 5, No. 3, pp. 343-357.

¹¹³ Pages 15 and 22 of the Communication.

¹¹⁴ For a critical reflection about the non-existence of common policing standards in Europe, see P. Hobbing (2008), *Uniforms without Uniformity: A Critical Look at European Standards in Policing*, in E. Guild and F. Geyer (eds), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Ashgate: Hampshire, pp. 243-264.

¹¹⁵ In particular the European Commission suggests that “Experiments in cross-border regional cooperation must be taken further and networked; a model police and customs cooperation centre should be developed, which could prove useful at sporting events or large public gatherings (e.g. the 2012 Olympics, Euro 2012); and cross-border experiments should be set up for assessing the risks of crime”. Refer to page 17 of the Communication.

programmes, at a more operational level, in the evaluation of cross-border actions, as well as in contributing to common statistical tools and exchanging experiences at European level.

The Communication identifies the exchange of law-enforcement information as a central tool for guaranteeing security in the EU, and proposes the development of a **European Information Model** that would ensure “a more powerful strategic analysis capacity and better gathering and processing of operational information” while taking into account existing security systems.¹¹⁶ The EU already has a wide range of large-scale systems of information and (centralised and decentralised) databases containing digital information on various categories of individuals, which it uses for various purposes. Examples include the Schengen Information System (SIS),¹¹⁷ Eurodac,¹¹⁸ Customs Information System (CIS),¹¹⁹ etc. We can add to this the upcoming second generation of SIS (SIS II)¹²⁰ and the Visa Information System (VIS) – which will contain information on persons applying for short-term visas in the EU.¹²¹ Although all these systems cover different policy areas under the heading of AFSJ (and across the EC First and the EU Third Pillars), they nonetheless constitute tools that make exchanges of information between ‘competent national authorities’ on various categories of individuals possible. Their main function is to facilitate data exchanges for various security-related purposes.

One of the main challenges that such a European Information Model would face are the implications that such intrusive EU systems would have for the **fundamental right to protection of personal data** of individuals who are (and

¹¹⁶ Ibid.

¹¹⁷ A database used by the authorities of the Schengen Member States to exchange data on certain categories of people and goods, which has primarily been used as a database of third country nationals to be refused entry into the EU, and which has developed into the SIS + to include the 2004 Member States. Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, OJ L 239, 22.9.2000, p. 19 as amended by Council Regulation (EC)No. 871/2004 of 29 April 2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism, OJ L 162, 30.4.2004. See E. Brouwer (2008), *Digital Borders and Real Rights. Effective remedies for third-country nationals in the Schengen Information System*, Leiden/Boston: Martinus Nijhoff Publishers.

¹¹⁸ A database containing the fingerprints of all asylum applicants and of all persons apprehended while irregularly crossing an EU external border. Council Regulation (EC) No. 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin Convention, OJ L 316, 15.12.2000.

¹¹⁹ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the use of information technology for customs purposes, OJ C 316, 27.11.1995, p. 34; Council Act of 12 March 1999 drawing up, on the basis of Article K.3 of the Treaty on European Union, the Protocol on the scope of the laundering of proceeds in the Convention on the use of information technology for customs purposes and the inclusion of the registration number of the means of transport in the Convention, OJ C 91, 31.3.1999.

¹²⁰ Report from the Commission on the Development of the Second Generation Schengen Information System (SIS II) Progress Report – July 2008 – December 2008, COM(2009) 133, 24.3.2009, Brussels.

¹²¹ For a study, see F. Geyer (2008), *Taking Stock: Databases and Systems of Information Exchange in the Area of Freedom, Security and Justice*, CHALLENGE Research Paper No. 9, Centre for European Policy Studies, Brussels, May 2008.

will be increasingly) subject to these new security practices. These cover not only TCNs, but also EU citizens (See Section 4.1.1.2. above). Another issue of concern, which has not been addressed by the Commission, is the question of ‘who’ those ‘**competent national authorities**’ that are going to have access to information should be, and how to ensure that the principles of purpose limitation (data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes) and proportionality will be fully respected.

Ensuring that access to sensitive data is strictly limited to those authorities who should have access to is indeed a major issue of concern. The policy domains covered by the existing matrix of EU databases are very diverse in terms of their nature and status within the EU legal landscape. By way of illustration, the SIS contains data on suspected criminals and banned TCNs; Eurodac provides information about asylum-seeker applications; VIS provides data on visa applicants; etc. However, the differences between the nature and scope of each of these databases do not seem to correspond in practice to the kind of ‘authority’ that should have access to them. This jeopardises fundamental rights and the rule of law. For instance, while access to information on asylum-seekers provided in Eurodac must be limited to those authorities handling asylum requests, in practice its use for ‘other law-enforcement purposes’ (e.g. police) is not precluded. Similarly, the information that will contain VIS will not only be accessible to immigration-related authorities, but also to ‘other competent authorities’ (which might also include police and Europol) for the prevention of what has been labelled as ‘organised crime and terrorism’. The **blurring of competent authorities** having access to data shows how there is a clear risk of intertwining asylum and immigration with security and criminality issues, which raises many human rights concerns.

Therefore, before the EU Information Management Strategy is developed any further, an **independent assessment (and scrutiny)** of the EU matrix of databases is necessary to address their added value and cost-effectiveness, fundamental rights compliance (ethical implications) and proportionality/necessity. LRAs could also play a key role in this respect, in cooperation with relevant national authorities in charge of supervising data protection, as well as with the European Data Protection Supervisor (EDPS).¹²²

In addition, a clear picture should be established regarding the concept and designation of the (national, regional and local) ‘competent authorities’ that are to be given access to and use these databases, and how the personal data is to be handled and stored. Asylum and immigration-related information should not be used by law-enforcement authorities, in order to prevent these individuals from being treated and regarded as potential criminals and even ‘terrorists’.

¹²² <http://www.edps.europa.eu/EDPSWEB>

Furthermore, individuals must be adequately protected against the consequences of data inaccuracies or of lax data exchanges, and they must be **properly informed about their rights**. A 2008 Eurobarometer survey¹²³ showed that, while the majority of EU citizens (64%) are concerned about data protection issues, only a quarter of them (27%) are aware of the rights they enjoy in the case of misuse of their personal data, and that not even one third (29%) know that sensitive data like information about racial or ethnic origins receive special legal protection. The degree of protection granted at the EU level is far from homogeneous, as the rights of the data subject depend very much on the database under consideration, and the gap between the standards achieved in policy domains is still significant, depending on whether they fall under the First or the Third Pillar. The rights of the data subject therefore need to be carefully addressed and individuals properly informed. LRAs could be involved in information and awareness-raising campaigns that focus on the fundamental rights and administrative guarantees protecting the data subject, and take account of security technology developments at EU level.

Section 4.3.2 of the Communication is entitled “Reducing the terrorist threat” and one of the priority areas that have been identified is the **radicalization of violence**. The Communication underlines the fact that:

Cooperation with civil society needs to be strengthened in order to understand all the factors underlying the phenomenon and to encourage strategies that encourage people to give up terrorism. At the same time, intercultural and interfaith dialogue must be developed in order to promote awareness and understanding between different communities. Stepping up the fight against xenophobia will also help to eradicate radicalisation of this kind.¹²⁴

“Preventing people from turning into ‘terrorists’” constitutes one of the four key pillars of the EU’s Counter-Terrorism Strategy.¹²⁵ In 2005, the Commission also published a Communication addressing violent radicalisation and recruitment of terrorists and in 2006, set up an expert group on violent radicalisation.¹²⁶ Since then various implementation plans for the EU’s Action Plan on Radicalisation and Recruitment have been adopted by the Council.¹²⁷ One of the main

¹²³ The Gallup Organisation (2008), *Data Protection in the European Union. Citizens’ perceptions*, Eurobarometer, page 5.

¹²⁴ Page 23 of the Communication.

¹²⁵ Council of the European Union, *The European Union counter-terrorism strategy: Prevent, protect, pursue, respond – The European Union’s strategic commitment to combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice*, Council doc. 14469/4/05, 30.11.2005, pp. 7-9. Refer to EU-Counter Terrorism Coordinator, Report on the Implementation of the Strategy and Action Plan to Combat Terrorism, Council of the EU, 9715/1/09, 2 June 2009, Brussels.

¹²⁶ Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council concerning Terrorist recruitment: Addressing the factors contributing to violent radicalization*, COM(2005) 313 final, 21.9.2005; Commission decision of 19 April 2006 setting up a group of experts to provide policy advice to the Commission on fighting violent radicalisation, OJ L 111, 24.4.2006, pp. 9-11.

¹²⁷ Refer to Council of the EU, Revised EU Radicalisation and Recruitment Action Plan - Implementation Plan, 9915/09, 20.05.2009.

dilemmas when dealing with this topic is that of definition. What do we mean by ‘radicalisation’? The terminology of the ‘radicalisation of violence’ tries to outline the motivations of the players or the structures that seem to be leading to a change in the scale and targets of the violence deployed by small political organisations.¹²⁸ The use of this terminology prevents us from entering into a discussion about the broader transformations of social conflicts and their specific roots. Instead, the multiplicity of political, social and economic factors playing a role in increased political violence by specific groups needs to be taken into consideration before developing and implementing new policies.

In particular, careful attention needs to be paid to considering the ‘lack or failure of integration’ as a cause of ‘radicalisation’ and consequent acts of political violence qualified as ‘terrorism’. This continuum may endanger human rights and liberty in general, and put ‘the immigrant’, or those citizens still considered by some as such because of their particular ethnic origin, into a highly vulnerable position vis-à-vis the State and ‘the receiving society’. The ‘securitisation’ of the integration of immigrants needs to be condemned. It needs to be stated clearly that an immigrant is not a criminal, a threat or a security issue, and the multiplicity of factors that contribute to any social conflict, instability or acts of political violence at national and transnational level acknowledged. The EU should thus rethink its discourse and overall approach towards groups of its citizens (and non-citizens) who, irrespective of nationality, are still treated differently because of their racial and religious backgrounds. LRAs are best placed to promote awareness and understanding of this ‘difference’ and interculturalism between different communities, as well as to conduct the fight against discrimination and xenophobia in Europe.

4.3. STRENGTHENING JUSTICE AND RULE OF LAW

Communication 2009/262 emphasises: *“In an area of increasing mobility, the priority should be to develop and promote a European judicial area for citizens by removing the remaining restrictions on the exercise of their rights”*.¹²⁹ As we have argued since the beginning of this study, the Communication contains a remarkable, although rather weak and intangible, strategy on these sensitive policy areas, and as regards establishing a common European area where ‘rights’ and ‘justice’ are properly protected and consolidated. In contrast to certain security-related aspects that fall within the scope of police cooperation, efforts to advance Europeanisation in the justice dimension have been substantially

¹²⁸ D. Bigo and L. Bonelli (2007), *Preventing Violent Radicalization and Terrorist Recruitment in the EU: The Threat to Europe by Radical Islamic Terrorist Groups*, paper requested by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, Brussels.

¹²⁹ Page 10 of the Communication.

delayed over the last ten years.¹³⁰ Judicial cooperation at EU level is characterised by diverging operations and diverse approaches on the part of national legal systems and practices of Member State authorities. There is also a profound mistrust and a lack of confidence in supranational cooperation whenever it has a real impact at the national, regional or local levels, and more particularly as regards the rights of individuals. All this is combined with an intergovernmental approach in which the EU's competence and role remain very weak under the EU Third Pillar landscape (Title VI of the Treaty on European Union).¹³¹ Although LRAs' competences over judicial matters remain limited, there are some key aspects where their contribution could enrich the promotion of an 'Area of Justice' in an enlarged EU.

Firstly, as stated in Section 2 of this study, LRAs could play a role in improving the effectiveness of the transposition and practical application of EU law. European norms developed in the context of judicial cooperation in criminal matters, where the principle of mutual recognition has so far dominated the developments post-Tampere,¹³² could be particularly relevant in this regard taking into account the unsatisfactory nature of current mechanisms for monitoring the national transposition of Framework Decisions, such as the Framework Decision on the European Arrest Warrant (EAW),¹³³ at EU level. While the current state of European integration presents complicated challenges in this respect, moving forward with the debate on evaluation appears to us to be most pertinent if one considers the wording of Article 70 of the Treaty on the Function of the European Union (Title IV on the Area of Freedom, Security and Justice), which states:

The Council may, on a proposal from the Commission, adopt measures laying down the arrangements whereby Member States, in collaboration with the Commission, conduct *objective and impartial evaluation of the implementation of the Union policies referred to in this Title by Member States' authorities*, in particular in order to facilitate full application of the principle of mutual recognition. The European Parliament and national Parliaments shall be informed of the content and results of the evaluation. (emphasis added)

LRAs could become key players in any new EU evaluation (ex post) system that is set up to ensure the effectiveness of the EU legal instruments and identify obstacles to good administration and quality of justice in the light of the

¹³⁰ Similar proposals to the one provided by Communication could be already found in a speech delivered by the former Commissioner for Justice and Home Affairs, António Vitorino in 2000: "Towards a European judicial area". SPEECH/00/504, 13/12/2000.

¹³¹ E. Guild and F. Geyer (eds) (2008), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Aldershot: Ashgate Publishing.

¹³² The principle of mutual recognition involves the quasi-automatic recognition and execution of judicial decisions in criminal matters from one Member State to all the others in the EU, along with minimal formalities and restricted grounds of refusal.

¹³³ Council Framework Decision on the European arrest warrant and the surrender procedures between Member States 2002/584/JHA of 13 June 2002. E. Guild (2006), *Constitutional Challenges to the European Arrest Warrant*, Nijmegen: Wolf Legal Publishers.

structural and horizontal issues characterising national judicial systems.¹³⁴ Any potential system of this sort should therefore closely involve LRAs in a more structured and institutionalised manner. This should be accompanied by a stronger role and coordination of regional and local practitioners and local judicial authorities in venues such as the European Judicial Network¹³⁵ and the Justice Forum.¹³⁶ In such a context, the exchange of information¹³⁷ and the nature of these professional networks would need to be further developed. To achieve an efficient networking of judicial training, it might be more efficient to promote and reinforce the existing networks rather than to set up new ones. In that sense, dialogue with professional associations could be promoted.¹³⁸

Furthermore, as the Communication points out, “*the principle of mutual recognition is the cornerstone of European integration in the field of justice*”.¹³⁹ Indeed, emphasis has been placed on mutual recognition instead of full harmonisation of criminal laws in the EU. Less attention has been given to the issues that trust-building measures raise, the establishment of a common understanding of criminal justice systems and to basic questions related to rule of law standards.¹⁴⁰ The EU is supposed to be based on the inseparable **principles of respect for the rule of law, democracy and human rights** as established in Article 6.1 of the TEU.¹⁴¹ In this sense, it might be understandable why so much attention has been paid to ‘rule of law compliance’ of potential EU Member States before and right after accession.¹⁴² However, these efforts

¹³⁴ The Communication states that “*The Union should therefore support Member States’ efforts to improve the quality of their judicial systems by encouraging exchange of good practices and the development of innovative projects on the modernization of justice*”. Page 12 of the Communication.

¹³⁵ The EJN is made up of judicial contact points in each Member State of the European Union and inside the European Commission. It aims to help national judges and prosecutors to carry out cross-border investigations and prosecutions, thus improving judicial cooperation in relation to transnational criminality (http://ec.europa.eu/justice_home/fsj/criminal/network/fsj_criminal_network_en.htm).

¹³⁶ The Justice Forum constitutes a platform for dialogue among specialists (practitioners, representatives of national justice administrations and academics). It is a permanent mechanism for the European institutions to consult stakeholders, with a view to drawing up European policies and reviewing implementation of the instruments (see http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/1145_83_en.htm).

¹³⁷ According to the House of Lords’ report with evidence Judicial Cooperation in the EU: the role of Eurojust: “By having senior prosecutors from each Member State available full-time to facilitate communication between prosecutors, to provide a high level of expertise in mutual legal assistance procedures, and to co-ordinate complex cases, Eurojust meets an undoubted and growing need. Its work and potential were highly valued by all the practitioners from whom we received evidence”. HL Paper 138, 21 July 2004.

¹³⁸ W. Heusen, A network for European judicial training ERA-Forum, 4-2001.

¹³⁹ Page 10 of the Communication.

¹⁴⁰ V. Mitsilegas (2006), “Trust-building Measures in the European Judicial Area in Criminal Matters: Issues of Competence, Legitimacy and Inter-Institutional Balance”, in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe’s Future*, Ashgate: Hampshire, pp. 279-289.

¹⁴¹ Article 6.1 TEU states: “*The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.*”

¹⁴² Refer for instance to European Commission, *Interim Report on the Progress in Bulgaria under the Cooperation and Verification Mechanism*, COM(2009) 69, Brussels, 12.2.2009 and European Commission,

have not been accompanied by similar evaluation systems monitoring the effective protection and guarantee of rule of law, fundamental rights and other ‘basic’ liberal democratic principles in the entire Union. There is an unspoken presumption that the ‘traditional’ EU (15) Member States comply perfectly with these core principles. However, reality does not live up to this ideal situation. It seems that, actually, rule of law has been more an element conceived ‘to be exported’ to new EU members than a real issue shared by all Member States.¹⁴³ Few efforts have been made to create a true mutual trust system based on a constant evaluation of these ‘liberal standards’ as a precondition for mutual recognition and thus also for the rule of law inside the EU at 27.

The need to develop new strategies for the implementation and promotion of **mutual trust and mutual recognition** will remain a key open issue in the progressive setting up of a European area of justice. The principle of mutual recognition of decisions in criminal matters is one of the key elements in the construction of a European judicial area. Despite the 2000 Commission Communication on Judicial co-operation in criminal matters¹⁴⁴ and the Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust¹⁴⁵, Member States have been less than enthusiastic about moving European cooperation forward. This has been most visible in connection with the rights of the defendant in criminal proceedings.

As the Communication states, the need **to ensure the rights of defence in criminal proceedings at EU level**¹⁴⁶ and **to facilitate people’s access to Courts** remain open-ended priorities.¹⁴⁷ It is a serious concern that the EAW has been implemented and in operation for several years now without it having been coupled with proper EU individual rights guarantees for suspected and accused persons under this supranational regime of cooperation. The European Commission states in the Communication that progress is vital “*not only to uphold individuals’ rights, but also to maintain mutual trust between Member States and public confidence in the EU*”.¹⁴⁸ After the failure of the 2004 proposal for a Council Framework Decision on certain procedural rights in

Interim Report on Progress in Romania under the Cooperation and Verification Mechanism, COM(2009) 70, Brussels, 12.2.2009.

¹⁴³ S. Alegre et al., *Safeguarding the Rule of Law in an Enlarged EU: The Cases of Bulgaria and Romania*, CEPS Special Report, Centre for European Policy Studies, Brussels, 24 April 2009.

¹⁴⁴ Communication "Mutual recognition of Final Decisions in criminal matters". COM(2000) 495 final, not published in the Official Journal.

¹⁴⁵ Communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between Member States. COM(2005) 195 final, Brussels, 19.5.2005.

¹⁴⁶ Page 17 of the Communication entitled “A Criminal Justice System that serves to protect the public”.

¹⁴⁷ Page 5 of the Communication.

¹⁴⁸ *Ibid.*

criminal proceedings throughout the EU at the Council,¹⁴⁹ the Swedish Presidency has just developed a Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings focuses primarily on maintaining the standards enshrined in the ECHR and its Protocols.¹⁵⁰ Judicial cooperation in criminal matters will be a source of substantial conflict if the standards of criminal justice across the Member States are not generally improved so that those with the least effective and human rights-compliant practises are brought up to the standards of those that are more efficient and less prone to criticism at the ECtHR. The organising principle of the EU – supremacy of EU law over national law – may be placed at risk if there is more mutual recognition legislation without the improvement of rights standards. National police and courts will simply refuse to apply EU law as it will place them in an impossible position vis-à-vis their national constitutional obligations.

Moreover, the Communication remarks that “*The development of the European judicial area also requires a certain level of alignment of Member States’ laws and regulations*”.¹⁵¹ Cross-border cooperation is of particular interest in criminal matters such as trafficking in human beings, drug trafficking, money laundering, etc. LRAs could make a positive contribution to all of them. The **development of a common culture of fundamental rights** is another crucial element in this process, and LRAs’ involvement (and practical experiences) in developing a core of minimum common standards in criminal and civil matters could be useful. Furthermore, LRAs could play a key role in implementing the **European e-Justice Strategy**, by developing information plans to guarantee citizens’ access to justice.¹⁵²

Finally, the Communication points out: “*The European judicial area must allow citizens to assert their rights anywhere in the Union by facilitating their access to justice*”.¹⁵³ **Civil justice cooperation** aims at guarantee the good functioning of cross-border civil proceedings in the Member States, in order to help improve the daily life of people and their businesses. In a context of mobility, a European judicial area in which citizens can exercise their rights should be a priority. As

¹⁴⁹ Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union, COM(2004) 328, 28.4.2004, Brussels. This proposal established common minimum standards and a set of rights including for instance: the right to legal advice, right to interpretation and translation, etc. Refer to M. Jimeno-Bulnes (2008), “The Proposal for a Council Framework Decision on Certain Procedural Rights in Criminal Proceedings throughout the European Union”, in E. Guild and F. Geyer (eds), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Ashgate: Hampshire, pp. 171-202.

¹⁵⁰ Council of the European Union, Roadmap with a view to fostering protection of suspected and accused persons in criminal proceedings, 11457/09, Brussels, 1 July 2009.

¹⁵¹ Page 12 of the Communication.

¹⁵² Page 11 of the Communication states that “*Judicial authorities should also be provided with support tools, particularly those that use electronic means (translation, aids, creation of a secure communication space, videoconferencing, etc.*”.

¹⁵³ Page 10 of the Communication.

noted above, the principles of mutual recognition and mutual trust constitute a cornerstone of this process, mainly in matters relating to commercial, civil and family law, along with the need to establish a set of 'common standards'. The involvement of LRAs in the development of a European judicial area would prevent conflicts of jurisdiction and guarantee the principle of subsidiarity.

5. Conclusions

Communication COM(2009) 262 represents the input of DG JFS of the European Commission towards the adoption of the Stockholm Programme, which will provide the priorities for the next five-year phase of the EU's AFSJ. While some of the political elements and specific policy measures put forward by the Communication are to be welcomed – especially those relating to a 'Europe of Rights', the text contains several weaknesses which become apparent if one takes an LRA perspective. This report has studied the deficits and features of the Communication considering in particular the role and interests of the local and regional dimensions. One conclusion which we can draw from our assessment is that the territorial (multi-governance) dimension has not been adequately taken into consideration in the discussion on a new policy agenda for Europe on FSJ. Apart from very few express references to specific policy areas such as immigration and integration policies and police cooperation, LRAs have not been properly acknowledged. The Communication has not set out a clear path to ensure 'a move' takes place from official recognition in EU discourse about LRAs' role in the AFSJ towards effective implementation of the latter both at the normative and financial levels. In particular, a forward-looking policy strategy could have been drawn up by presenting innovative ways to guarantee LRA role in the effective monitoring of national transposition of EU law and in any (ex post) evaluation system(s) looking at the implementation conditions and good administration and rule of law structures (e.g. criminal justice, asylum and irregular immigration), along with the need to ensure an adequate transfer of EU funds on FSJ to local and regional authorities.

'The local and regional dimension deficit' in Communication COM(2009) 262 is surprising, especially if one takes into consideration the relevance of the principles of subsidiarity and proportionality in a majority of AFSJ policy areas, and the potential entry into force of the Treaty of Lisbon (along with a legally binding Charter of Fundamental Rights). Up until now, Member States' national governments have often used the principle of subsidiarity as an excuse to ensure the debates and discretion over EU policies, laws and funding schemes are kept at the national level. While this does not prevent further EU harmonisation, an effective understanding and implementation of the principle of subsidiarity calls for LRAs' status to be consolidated and promoted in the next phase of the EU's AFSJ.

The Communication emphasises that building a 'citizens' Europe' (Promoting Citizens' Rights: A Europe of Rights) is a priority and that the Stockholm Programme should focus on 'the citizen'. A Europe of rights and justice, however, can not only focus on such a limited group of individuals if further EU policy action is to fully comply with the principles of non-discrimination, fair and equal treatment, solidarity, and the Charter of Fundamental Rights. A more integrated Europe on FSJ needs to cover all residing individuals (irrespective of

their nationality and/or immigration administrative status of residence), who are *de facto* members of local citizenries in need of protection, inclusion, human rights and security of residence. LRAs are the level of government closest to individuals in Europe as they are responsible for implementing and delivery of a number of AFSJ-related policies.

The role and potential of LRAs could be crucial in developing further some of the major policy priorities which the Communication highlights. The local and regional dimension is also of key importance for the success of the Communication (its added value) in practice. Identifying new European venues, and developing existing ones, for channelling the experiences, 'knowledge' and monitoring role of local and regional authorities and practitioners in the construction of the EU's AFSJ might actually constitute one of the key conditions for the legitimacy and coherency of the AFSJ in the short and long-term .

6. Policy Recommendations

In the light of the above observations and the findings , we now put forward the following policy recommendations:

1. The EU should develop new strategies and monitoring systems, which could include an (ex post) evaluation mechanism, on policies related to an AFSJ focusing on the implementation and effects of all European legislative measures and structural (good administration and rule of law) conditions of national legal, administrative and judicial systems. This is essential to guarantee the effectiveness and added value of EU action over these areas. Such mechanisms should ensure the evaluation is objective and impartial , and takes into account relevant practical experiences and knowledge, as well as already existing tools in the context of the Council of Europe. LRAs should be at the front line in elaborating, implementing, evaluating and monitoring some AFSJ-related policies.

The implementation of an effective multilevel governance scheme for protecting and promoting fundamental rights could also represent a key issue within that system. The LRAs could play a decisive role in monitoring and implementing the results as part of the AFSJ, as well as in examining the added value, social and ethical impacts and practical effectiveness of common EU policies within that evaluation mechanism. Proper and formalised consultation mechanisms with practitioners at regional and local levels, including for instance judges, prosecutors, etc., should be further improved in order to take on board their views and practical concerns in the follow-up phases of EU policies.

2. The principle of subsidiarity should be duly guaranteed in the EU's AFSJ in a way that does not prevent further Europeanisation processes over these policy domains, and in light of a potential entry into force of the Treaty of Lisbon. In particular, EU legislation must not continue to be used as a mechanism to prevent an adequate distribution of power in the Member States within the scope of European law, and empowering the role of LRAs over those AFSJ-related policies presenting a prevailing local and/or regional dimension.

3. Mechanisms to protect fundamental rights of every individual residing in the EU vis-à-vis different administrations – EU institutions, national governments and regional and municipal authorities – need to be interlinked, strengthened and made to interact coherently. LRAs could actively participate in the protection, promotion and awareness-raising of fundamental rights in the EU as enshrined in the Charter of Fundamental Rights. This could be developed in the context of a more structured and improved framework of cooperation with the Fundamental Rights Agency in Vienna, other EU agencies such as the European Data Protection Supervisor and the European Ombudsman, as well as national networks of data protection authorities and ombudsmen.

4. Substantial differences in rights and freedoms between EU nationals and non-nationals still exist , which are most apparent in the privileged status of

those holding European citizenship. This rights gap needs to become a central priority for the next phase of the EU's AFSJ. Developing a concept of European citizenship that is mainly characterised by a local and regional focus, and granting prevalence to residence and/or domicile as connecting factors for having access to EU citizenship should be further explored and considered at European level. Further steps should be taken to guarantee a set of equal citizenship rights granting social cohesion in EU's societies.

5. The territorial dimension of the EU immigration policy should be reinforced, promoting cooperation and dialogue between regions inside Europe as well as between origin and destination. The Committee of the Regions has usually been neglected in the discussion of and implementation of EU migration and integration policies. In this sense, the CoR should further emphasise its involvement in this policy area and promote cooperation and dialogue with other EU institutions, in order to further develop participation in these and other related topics. This could be accompanied by the setting up of a European Platform for LRAs on Migration, Asylum and Integration, coordinated by the CONST Commission of the Committee of the Regions and financially supported by DG JFS of the European Commission. This Platform, which should play a decisive role in the exchange of experiences and practices around the implementation and development of EU policies, should bring together not only relevant representatives of the CoR, but also 'informal' EU networks and platforms of local and regional authorities. The Platform would avoid the current fragmentation and ensure an institutionalised unique venue for dialogue with EU institutions on these areas, as well as with relevant EU agencies (e.g. FRA, etc.), the European Integration Forum and other future EU institutional initiatives (e.g. European Asylum Support Office, European Platform for Dialogue on Labour Migration, etc.).

6. The policy coherence of the global approach to migration remains very much at stake. For instance, mobility partnerships with third countries need to comply with a *common* immigration policy, foster a rights-based and fair treatment approach, and should not only driven by a security rationale focusing s on return and readmission of irregular immigrants and border controls cooperation. These instruments must not take us back to the misconceptions of the 1970s when it was believed that migration is a temporary phenomenon that can be 'managed' *selectively* by the state. The temporary nature of migration policies (circular migration) might conflict with efforts to guarantee the security of (permanent) residence and the social inclusion of TCNs. Also, concrete and coherent legislative instruments implementing the migration and development nexus should be developed beyond policy discourses.

7. As regards the integration of TCNs, the 'exchange of information' between Member States on national integration policies and programmes within the EU Framework on Integration should not lead to a transfer of restrictive immigration policies from the national r to the European level, limiting access to

rights and security of residence, and thus leading to the social exclusion of TCNs. Further attention should be paid to the transposition of relevant EU laws, especially those related to anti-discrimination. The use of local and regional observatories against discrimination could be a powerful and useful tool in this area.

A sustainable and structured involvement and partnership of local and regional bodies and the Committee of the Regions needs to be guaranteed in the EU Framework on Integration. LRAs could play a decisive role in channelling knowledge and experience to the national and EU levels and in the evaluation of the adequacy and added value of EU integration policies. The local and regional dimension of integration needs to become a formalised and sustainable process for networking and partnership of local and regional authorities. Further, an EU network of local and regional contact points on integration could be set up for these purposes as part of any future joint coordination mechanism.

8. The creation of a Common European Asylum System has to be identified as a political objective in itself. In any case, asylum policy must not be an instrument of immigration-management policy. The establishment of mechanisms and instruments related to the reception and basic care of asylum-seekers and refugees needs to be linked to the role of LRAs in the EU asylum policy. Local and regional governments should therefore be granted the financial allocation needed to guarantee equal services and standards in all EU Member States. Sharing information, solidarity and burden-sharing between Member States should be guaranteed.

9. The new ways in which border controls are carried out inside and outside Europe raises various questions about fundamental rights and the rule of law. In particular, FRONTEX's activities must be more comprehensively subject to the principles of transparency and accountability. Before the integrated border management strategy is taken forward, an in-depth (independent) assessment should be carried out on the ways in which EU border controls are carried out in the EU, as well as in the territory of third countries under the coordination of FRONTEX, taking into account the local and regional dimensions/experiences. LRAs are well placed to carry out an in-depth assessment not only of the 'efficiency' of large-scale IT systems in the EU and the EU Information Management Strategy, but also of their legal implications and practical (ethical) dilemmas in light of the fundamental rights of data protection, privacy, non-discrimination and good administration. The questions of adequacy, added value, cost-effectiveness and proportionality of the flow of information equally need to be addressed from the perspective of the local and regional dimensions. In addition, a clear picture should be established as regards the concept and designation of (national, regional and local) 'competent authorities' having access and using all these information systems, and the protection granted to the data subjects.

10. The implications, and fundamental rights compliance, of return processes of undocumented migrants are often taken for granted. Careful attention needs to be paid to the transposition of the Returns Directive by the EU Member States to ensure that their domestic practices comply with the set of guarantees foreseen in the Directive and basic human rights principles developed in the context of the Council of Europe and the jurisprudence of the ECtHR. The monitoring of the national transposition of this Directive could be used as a first testing ground for empowering the LRAs towards a more effective evaluation system on implementation and fundamental rights compliance in the scope of the EU's AFSJ. Also, the knowledge, practical experiences and lessons learned from EU networks and local platforms regarding standards on human rights of undocumented migrants should constitute a central piece of information for further EU policy-making in this area.

11. The European Commission's initiative to develop training programmes for police officers and border guards on European affairs and ethical issues, and to set up Erasmus-style exchange programmes, could offer very interesting opportunities for the promotion of better standards, cooperation, and 'mutual trust' among police and law-enforcement authorities at EU level. LRAs are very well placed to contribute to the organisation of the training and exchange programmes, to the evaluation of cross-border actions needed at the more operation level, as well as to common statistical tools and exchanging practices/experiences to at European level. Similarly, in the context of the principle of mutual recognition of decisions in criminal matters between Member States, sharing information and promoting exchange programmes could be useful tools to promote mutual understanding and confidence in a European Justice Area.

7. References

- Alegre, S. et al. (2009), *Safeguarding the Rule of Law in an Enlarged EU: The Cases of Bulgaria and Romania*, CEPS Special Report, Centre for European Policy Studies, Brussels, 24 April.
- Baldaccini, A. (2009), “The Return and Removal of Irregular Migrants under EU Law: An Analysis of the Return Directive”, *European Journal of Migration and Law*, Vol. 11, 2009, No. 1, p. 2.
- Bigo, D. and L. Bonelli (2007), “Preventing Violent Radicalization and Terrorist Recruitment in the EU: The Threat to Europe by Radical Islamic Terrorist Groups”, paper requested by the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, Brussels.
- Brouwer, E. (2008), *Digital Borders and Real Rights. Effective remedies for third-country nationals in the Schengen Information System*, Leiden/Boston: Martinus Nijhoff Publishers.
- Carlier, J.Y. and E. Guild (eds), *The Future of Free Movement of Persons in the EU*, Collection du Centre des Droits de L’Homme de la’Université Catholique de Louvain, Brussels: Bruylant, pp. 79-101.
- Carrera, S. (2007), *The EU Border management Strategy Frontex and the Challenges of Irregular Immigration in the Canary Islands*, CEPS Working document No. 261, CEPS, Brussels, March.
- Carrera, S. (2008), *Benchmarking Integration in the EU: Analysing the Debate on Integration Indicators and Moving it Forward*, study commissioned by the Bertelsmann Foundation, Berlin.
- Carrera, S. (2007), *Building a Common Policy on Labour Migration. Towards a Comprehensive and Global Approach in the EU?*, CEPS Working Document No. 256, Centre for European Policy Studies, Brussels, February.
- Carrera, S. (2009), *The Role and Potential for Local and Regional Authorities in the EU Framework on the Integration of Immigrants*, study commissioned by the Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice of the Committee of the Regions, Brussels.
- Carrera, S. and A. Faure-Atger (2009), *Implementation of Directive 2004/38 in the context of Enlargement: A Proliferation of Different Forms of Citizenship?*, CEPS Special Report, Centre for European Policy Studies, Brussels, April.
- Carrera, S. and E. Guild (2008), *The French Presidency’s European Pact on Immigration and Asylum: Intergovernmentalism vs. Europeanism?*

- Security vs. Rights?*, CEPS Policy Brief No. 170, Centre for European Policy Studies, Brussels, September.
- Carrera, S. and F. Geyer (2008), “The Reform Treaty and Justice and Home Affairs: Implications for the Common Area of Freedom, Security and Justice”, in E. Guild and F. Geyer (eds), *Security versus Justice: Police and Judicial Cooperation in the European Union*, Ashgate: Hampshire, pp. 289-308.
- Carrera, S. and M. Merlino (2008), *The European Court of Justice and Enacting Citizenship, State of the Art Report*, ENACT (Enacting European Citizenship), CEPS Special Reports, Centre for European Policy Studies, Brussels, April.
- Cremona, M. (2008), *EU External Action in the JHA Domain: a Legal Perspective*, EUI Working Paper LAW No. 2008/24, European University Institute: San Domenico di Fiesole: Florence.
- Geyer, F. (2008), *Taking Stock: Databases and Systems of Information Exchange in the Area of Freedom, Security and Justice*, CHALLENGE Research Paper No. 9, Centre for European Policy Studies, Brussels, May.
- Guild, E. (2004), “Who is an Irregular Immigrant”, in B. Bogusz, R. Cholewinski, A. Cygan and E. Szyszczak (eds), *Irregular Migration and Human Rights: Theoretical, European and International Perspectives*, Leiden: Martinus Nijhoff, pp. 3-28.
- Guild, E. (2004), *The Legal Elements of European Identity: EU Citizenship and Migration Law*, European Law Library, The Hague: Kluwer Law International.
- Guild, E. (2007), *EU Policy on Labour Migration: A First Look at the Commission’s Blue Card Initiative*, CEPS Policy Brief No. 145, Centre for European Policy Studies, Brussels, November.
- Guild, E. and F. Geyer (eds) (2008), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Aldershot: Ashgate Publishing.
- Guild, E., K. Groenendijk and S. Carrera (2009), “Understanding the Contest of Community: Illiberal Practices in the EU?”, in E. Guild, K. Groenendijk and S. Carrera (eds), *Illiberal Liberal States: Immigration, Citizenship and Integration in the EU*, Ashgate: Hampshire, forthcoming.
- Guild, E., S. Carrera and F. Geyer (2008), *The Commission’s new border package: Does it take us one step closer to a ‘cyber-fortress’ Europe?*, CEPS Policy Brief No. 154, Centre for European Policy Studies, Brussels, March.
- Heusen, W. A network for European judicial training ERA-Forum, 4-2001.

- Hobbing, P. (2008), “Uniforms without Uniformity: A Critical Look at European Standards in Policing”, in E. Guild and F. Geyer (eds), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Ashgate: Hampshire, pp. 243-264.
- Jeandesboz, J. (2008), *Reinforcing the Surveillance of EU Borders the Future Development of FRONTEX and EUROSUR*, CHALLENGE Paper No. 11, Centre for European Policy Studies, Brussels, August.
- Jimeno-Bulnes, M. (2008), “The Proposal for a Council Framework Decision on Certain Procedural Rights in Criminal Proceedings throughout the European Union”, in E. Guild and F. Geyer (eds), *Security versus Justice? Police and Judicial Cooperation in the European Union*, Ashgate: Hampshire, pp. 171-202.
- Merlino, M. (2009), *The Italian (In)Security Package: Security vs. Rule of Law and Fundamental Rights in the EU*, CHALLENGE Research Paper No. 14, Centre for European Policy Studies, Brussels.
- Mitsilegas, V. (2006), “Trust-building Measures in the European Judicial Area in Criminal Matters: Issues of Competence, Legitimacy and Inter-Institutional Balance”, in T. Balzacq and S. Carrera (eds), *Security versus Freedom? A Challenge for Europe’s Future*, Ashgate: Hampshire, pp. 279-289.
- Pinyol, G. (2009), *The role of Local and Regional Authorities in the further development of the Common European Asylum System*, note requested by the Committee of the Regions’ Commission for Constitutional Affairs, European Governance and the Area of Freedom, Security and Justice, 15 January.
- Roig, A. and T. Huddleston (2007), “EC Readmission Agreements: A Re-evaluation of the Political Impasse”, *European Journal of Migration and Law*, Vol. 9, No. 3, pp. 363-387.
- Schieffer, M. (2003), “Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations”, *European Journal of Migration and Law*, Vol. 5, No. 3, pp. 343-357.
- Schiek, D., L. Waddington and M. Bell (eds) (2007), *Cases, Materials and Text on National, Supranational and International Non-Discrimination Law*, Oxford: Hart Publishing.

8. Abbreviations

AFSJ	Area of Freedom, Security and Justice
CEAS	Common European Asylum System
COM	European Commission
COR	Committee of the Regions
DG JFS	Directorate General Justice, Freedom and Security
EAW	European Arrest Warrant
EC	European Community
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EDPS	European Data Protection Supervisor
EU	European Union
FRA	European Union Fundamental Rights Agency
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
IBM	Integrated Border Management
JHA	Justice and Home Affairs
LRAs	Local and Regional Authorities
OMC	Open Method of Coordination
TCNs	Third Country Nationals
TEC Community	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

9. APPENDIX: Practices by LRAs on Freedom, Security and Justice

This appendix presents a selection of ‘practices and experiences’ by LRAs in relation to some AFSJ-policies where the local and regional dimensions are relevant. The information has been gathered from relevant publicly available sources including EU institutions, LRAs and civil society organizations. The practices presented should not be considered as ‘good’ or ‘best practices’. In our view this would be too subjective an exercise, which depends on the ideological viewpoint on ‘the standards’ against which their nature and ranking should be measured. Instead, our goal is to provide an overview of a number of practices which seem interesting, in order to substantiate the role that LRAs have in policy fields under the AFSJ.

1. Citizenship and Participation in the Democratic Life of the Union

European Local Democracy Week

The “European Local Democracy Week” (ELDW) is an annual European event with simultaneous national and local events organised by participating local authorities in all Council of Europe Member States. The purpose is to foster the knowledge of local democracy and promote the idea of democratic participation at a local level”.

Source: http://www.coe.int/t/congress/demoweeek/default_EN.asp

Dublin Migrant Voters Campaign (Dublin, Ireland)

This initiative aims to raise awareness among the immigrant populations in Dublin of the importance of voting. The campaign provides information of their legal right to vote and the practical steps on how to actually cast a ballot on Election Day.¹⁵⁴

Source: <http://www.dublin.ie/arts-culture/migrant-voters-campaign.htm>

The Generation Project (Amadora, Portugal)

The goal of this project was to change the options available for a generation living in this community, to tackle and to prevent the major factor of social exclusion that affects youngsters and instead, provide them with real opportunities. One of its main goals is “Empower the *next Generation* by harnessing the ingenuity of individuals to improve educational opportunities.”¹⁵⁵

¹⁵⁴ Taken from Cities of Migration (<http://citiesofmigration.ca/>)

¹⁵⁵ Taken from Cities of Migration (<http://citiesofmigration.ca/>)

Source: <http://thegenerationproject.org/>

Local Government Ombudsmen for England (UK)

The Local Government Ombudsman looks at complaints about councils and some other authorities, including education admissions appeal panels. The Local Government Act 1974 established the Local Government Ombudsmen (LGOs) for England and the three Ombudsmen each deal with complaints from different areas of the country, and allocate the areas between them so that each handles roughly the same number of complaints each year.

Source: <http://www.lgo.org.uk/>

Bristol Council e-Petitioner system (Bristol, UK)

e-Petitioner allows Bristol citizens to place their petition live on the Internet, rather than just on paper. This way, the petition and supporting information can be made available to a potentially much wider audience, giving the petitioners the opportunity to gather more names to support the petition. As has been mentioned before, new technologies could assist local and regional authorities to promote new methods and to reinforce old ones regarding citizenship and democratic participation.

Source: <http://epetitions.bristol.gov.uk/>

European Youth Forum

The European Youth Forum (YFJ) is an independent, democratic, youth-led platform, representing 99 National Youth Councils and International Youth Organisations from across Europe. The YFJ works to empower young people to participate actively in society to improve their own lives, by representing and advocating their needs and interests and those of their organisations towards the European Institutions, the Council of Europe and the United Nations. Local and regional authorities should promote and help these kind of associations, as useful mechanisms to enrich youth citizens' participation.

Source: <http://www.youthforum.org>

2. Promoting inclusion and diversity. Granting Rights and Freedoms to Non-European Citizens.

Network of Cities of Asylum: The International Cities of Refuge Network is an association of cities around the world dedicated to the value of Freedom of Expression. Writers have consistently been targets of politically motivated threats and persecution, and the network believes it is necessary for the international community to formulate and implement an appropriate response.

Source: <http://www.icorn.org/cities.php>

Network of Local Authority Observatory on Active Inclusion: The Network of Local Authority Observatories on Active Inclusion (NLAO) will investigate the role of quality social services within the active inclusion strategy. Particular emphasis will be put on quality assessment tools and governance arrangements for the implementation of services and also for the integration of the service into city-wide social inclusion strategies. Based on local input, the network will provide evidence for further EU policy development. By involving a broad range of stakeholders from the local, national and European level the project will also contribute to better governance and to coordination between all levels of government within the social Open Method of Coordination (OMC). The NLAO will deliver decentralised research in five European cities, namely Bologna, Prague, Rotterdam, Southampton and Stockholm, coordinated by the Eurocities Brussels office.¹⁵⁶

Source: <http://www.eurocities-nlao.eu/>

EuroPei

A transnational partnership between European cities from Bradford, Bremen, Copenhagen and Malmo. The partnership is part of EQUAL programme run by the European Social Fund. The aim of the partnership is to work in mutual collaboration to understand various concepts of equality and Diversity. By sharing the results of innovative actions carried out by the DPs at national level, transnational co-operation will provide real value-added for policy development at the national and European levels.

Source: <http://www.b-equal.com/transnationality.html>

SVILMA - Development of the Adriatic Labour Market

This 2004-2006 project dealt with fundamental issues for the development, co-operation and integration in cross-border Adriatic areas, in relation to

¹⁵⁶ Taken from Eurocities (www.eurocities.eu)

employment, the development of an integrated labour market and the management of migration flows between these territories. The project was lead by Veneto Lavoro, with the participation of regional and national authorities from Italy, Albania, Serbia and Bosnia and Herzegovina.

Source: www.svilma.net

Integration Barometer (Copenhagen, Denmark)

The Integration Barometer is a web-based tool developed by the City of Copenhagen to strengthen the coordination and planning of all activities in the field of integration that the municipality engages in. Integration Barometer includes the definition of goals, indicators, data sources and reporting mechanisms for each integration activity. The main goal of the Integration Barometer is to act as a data warehouse and reporting web-tool for the monitoring system and to make this information available to all.¹⁵⁷

Source: <http://www.kk.dk/integrationsbarometer>

Promenio (Turku, Finland)

The project aims to develop new ways of communication and cooperation between the migrant organisations and the authorities, in particular with the Employment Office of the Labour Ministry. The project focuses on the creation of new models of integration into Finnish society and working life.¹⁵⁸

Source: <http://www.turuntyoimatoimisto.fi>

Femmes, immigration et articulation des temps (France)

Implemented by the Research and Action Group for Rural Development, this project is supported by the Rouen Chamber of Commerce (France) and the Movement Against Racism. The project targets female immigrants in this area of Northern France in order to achieve a better compatibility between their different duties and help them to divide their time between their homes, vocational trainings, jobs, personal and family lives.

Source: http://www.olimpe.travail.gouv.fr/equal/FMPro?-db=annuaire.fp5&-format=index_ann_id_equal.htm&-lay=web&-Token.0=2004_HNR_35218&-view

¹⁵⁷ Taken from the European Web Site on Integration (<http://ec.europa.eu/ewsi>)

¹⁵⁸ Taken from the European Web Site on Integration (<http://ec.europa.eu/ewsi>)

Marketing Multiculturalism (Werdohl, Germany)

The City Werdohl saw the public relations and marketing campaign as a means to reach out and directly involve the Turkish community in city life and stop the increasing geographic and class segregation.¹⁵⁹

Source: <http://www.werdohl.de/>

Do your thing (Tilburg, the Netherlands)

The purpose of the project is to promote integration between different ethnic groups in Tilburg. ROC Midden-Brabant organises a regular, monthly event for young, old, immigrant and native people. Once a month youth present themselves on the catwalk of the Hall of Fame, an old factory in Tilburg. On Saturday evening, before nightlife begins, a lifestyle show is organised where young people can show their talents to the public. They themselves choose how to put themselves in the spotlights: by talking, dancing, sporting or rapping. “Do your thing” should provide a positive image among different ethnic groups. Through this, mutual understanding grows and safety on the streets increases.¹⁶⁰

Source: <http://www.roctilburg.nl/main.php>

Saudar (Portugal)

This project aims to tackle inequalities in access and provision of health services to immigrant populations, especially women. Stakeholders, institutions and migrants in the region of Coimbra are involved in the project.

Source: http://www.graal.org.pt/projectos/projectos_home.htm

Sona bé! (Lleida, Spain)

This project aims to bring together groups of young people of different origins and carry out distinct music workshops with the aim of strengthening their social integration.

Source: <http://www.paeria.es/joventut/>

Sheffield Positive Action Training Consortium (Sheffield, UK)

¹⁵⁹ Taken from Cities of Migration (<http://citiesofmigration.ca/>)

¹⁶⁰ Taken from the European Web Site on Integration (<http://ec.europa.eu/ewsi>)

Exploring the potential of local communities to reverse the situation of racism and social exclusion in the local labour market by providing dedicated support services for ethnic minority business starters and to help existing enterprises are the main aims of this project.

Source: The Danish Ministry of Refugee, Immigration and Integration Affairs: http://www.nyidanmark.dk/bibliotek/publikationer/rapporter/uk/cultural_diversity/kap03_1.htm

The Cardiff ESOL Police Project (Wales, UK)

Police ESOL is a course that teaches English as it builds relationships between law enforcement officers and the new migrant community. It also focuses on providing students with practical knowledge about law and policing in the UK.

Source: <http://www.idea.gov.uk/idk/core/page.do?pageId=9659842>

3. Irregular Immigration and Undocumented Migrants

The information provided in this Section has been provided by PICUM (Platform for International Cooperation on Undocumented Migrants). The authors are grateful to Michele Levoy (Director of PICUM) for her input to the appendix of this report. In particular, the practices below are part of Excerpts from PICUM Newsletter about local authority initiatives on undocumented migrants and the following two sources: PICUM (2008), *Undocumented Children in Europe: Invisible Victims of Immigration Restrictions*, Brussels, and PICUM (2007), *Access to Health care for Undocumented Migrants in Europe*, Brussels. Refer to www.picum.org

C.P.A.S Bruxelles (Brussels, Belgium)

The C.P.A.S. (Centre Public d'Action Sociale) Brussels is the local authority for public welfare in Belgium. It aims to provide material, social, psychological and medical support to those in need. Frequently confronted with undocumented migrants, it cooperates intensely with non-governmental organizations to implement a system of urgent medical care.

Source: <http://www.cpasbru.irisnet.be/>

Kinderen Zonder Papieren (Belgium)

A solidarity fund has been established in the town of St. Niklaas in Belgium to support schools in running special projects in support of undocumented pupils.

Jozef Hertsens of the NGO Kinderen Zonder Papieren said that “All the schools that have undocumented children put money into a general fund so they can support one another. The money comes directly from the schools, so even private schools have the possibility of participating in the fund. The funds are solidarity money, and the schools organize themselves (...) The main point is that a person without documents does not exist in the eyes of the Belgian state. Undocumented children can go to school, but they may not have the money to attend the school (books, school materials, public transportation etc.). These people come to organisations like ours to get the money to go to school.”

Source: <http://www.kzp.be/>

Hostel for undocumented minors (Amyglaleza, Greece)

The inauguration of a new hostel for undocumented minors took place on June 2008 in Amyglaleza, Greece. The hostel has the capacity to offer accommodation to 54 people. In the camp, there are facilities such as a sports field, library, health centre etc. The average stay ranges from seventeen to twenty days. After this period the undocumented minors are either deported or sent to other hostels run by NGOs. Emphasis should be put on the fact that it is the first time that the Ministry of Internal affairs and NGOs have worked together on the issue of undocumented migrants to create facilities under shared responsibility.

Source: http://news.kathimerini.gr/4dcgi/_w_articles_ell_2_17/04/2008_266853

SEF Mobile Service (Portugal)

The Service of Foreigners and Frontiers (Serviço de Estrangeiros e Fronteiras, SEF) and the Directory General of Prison Services (Serviços Prisionais, DGSP) signed a protocol to deepen and improve the connections between the two entities on 23 April. The protocol is part of the Plan for Immigrant Integration, which aims to increase awareness among detained foreigners, who represent 20% of the prison population, about the legal rules regarding the regularization of their paperwork. In an initial phase, the “SEF Mobile Service” will be displaced to prison facilities of Alcoentre, Carregueira, Lisbon and Pinheiro da Cruz, in order to speed up regularization processes in Portugal.

Sources: <http://ultimahora.publico.clix.pt/noticia.aspx?id=1376096&idCanal=62>
or <http://www.dgsp.mj.pt/>

Barcelona-Tanger (Barcelona, Spain)

The Catalan government promoted the “Barcelona-Tanger” project, funded by the European Commission Aeneas Programme from the 2006 call for proposals.

It was a project based on cooperation and co-development between regional and local authorities that lasted 3 years. The project focused on the re-insertion of Moroccan non-accompanied minors established in Barcelona in their city of origin.

Source: <http://www.gencat.net/benestar/organismes/immigracio/index.htm>

Newham Primary Care Trust (Newham, UK)

Newham Primary Care Trust is a national health service organisation that serves the community of the London Borough of Newham. It employs around 1,050 staff based across 23 sites, and encompasses 65 General Practitioners, 69 pharmacists, 55 opticians and 80 dentists in the borough. The Annual Budget is £439,556,000. Newham's population is 247,700. The overall objective of the Newham Primary Care Trust is to improve the health of the local population and address health inequalities also concerning differences between ethnic groups.

Source: <http://www.newhampct.nhs.uk>

4. Security Professionals and Terrorism

This Section provides information contained in the Discussion Paper drawn up by the EU Counter-terrorism Coordinator on the EU's Counter-Terrorism Strategy published in May 2009.

Belgium:

Belgium has joined Sweden in its groundbreaking work on the capacities of local police to recognise and prevent radicalisation. This project will focus on the key role of community policing. Its objective is twofold: first, to create a practical tool to support first line officers in detecting early on the signs of radicalisation and, second, to provide a concrete and operational working method to these police officers involving other local partners.

Denmark:

Regarding prevention of radicalisation, particularly among young people, Denmark has undertaken a project on de-radicalisation and disengagement based on the inspiration of their national Action Plan to prevent and counter extremist views and radicalization among young people. The project is being carried out by the Ministry of Integration in partnership with the security service and municipalities. Its aim is to develop practical tools such as coaching techniques and mentorship as well as enhancing the contact and interaction between law enforcement and municipal authorities.

The Netherlands:

On the role of local authorities in preventing radicalisation, the Netherlands is leading an initiative to look closer at how practical best practices at a local level can be shared among EU Member States. The project has taken its inspiration from the findings of a recently published project on recognising radicalisation. The aim is to develop concrete methods of assisting front line professionals and community activists in their work of understanding and preventing radicalisation.

Source: EU Counter-Terrorism Coordinator, EU Counter-Terrorism Strategy – Discussion Paper, Council of the EU, 9717/09, 14 May 2009, Brussels.