

**Beyond Stockholm: In Search of a Strategy for the European Union's Area of Freedom,
Security and Justice**

**Sarah Léonard, School of Social Sciences, University of Dundee, Dundee, Scotland,
United Kingdom**

**Christian Kaunert, School of Social Sciences, University of Dundee, Dundee, Scotland,
United Kingdom**

Contact: Sarah Léonard – email: s.l.leonard@dundee.ac.uk

Keywords: European Union; Area of Freedom, Security and Justice; Justice and Home Affairs; Internal security; Strategic guidelines

Abstract:

The development of the European Union's Area of Freedom, Security and Justice (AFSJ) has been identified by the Lisbon Treaty (2009) as one of the key objectives of the European Union (EU). Recent events have also highlighted the saliency of several of the policy issues at the heart of the AFSJ. Amongst them, one can mention the terrorist attacks in 2015 in Paris and the ongoing refugee crisis in the Mediterranean region. At the same time, the end of the Stockholm programme, which provided the strategic framework for the development of the AFSJ between 2010 and 2014, has been followed by the adoption of new 'strategic guidelines', which can only be described as a short, vague and general document. It is therefore paradoxical that, at a time when AFSJ matters - such as asylum, migration, borders,

terrorism, police and judicial cooperation – have never been so salient, the EU finds itself, for the first time ever, devoid of any significant, over-arching strategy for the development of its AFSJ.

Introduction

The development of the European Union's Area of Freedom, Security and Justice (AFSJ) has been identified by the Lisbon Treaty (2009) as one of the key objectives of the European Union (EU). Article 3(2) of the Treaty on European Union reads as follows: 'The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime'. The fact that the development of the AFSJ is listed amongst the key objectives of the EU and even before that of establishing the internal market testifies to the central place of the AFSJ in the EU integration process.

This has also been confirmed by recent events, which have highlighted the salience of several of the policy issues at the heart of the AFSJ. In 2015, Paris saw several deadly terrorist attacks, which left almost 150 people dead and hundreds more injured. These attacks have had important consequences, including the adoption of new and controversial counter-terrorism measures in France, renewed calls for strengthened counter-terrorism cooperation in Europe, as well as an extraordinary security lockdown in Brussels as the police searched for several terrorists on the run. In September 2015, shocking images of a drowned Syrian little boy sparked anguish and outrage at the ways in which European states and the EU have been handling the refugee crisis that has been ongoing in the Mediterranean region for months. As a result, various policy measures to address the crisis and to increase solidarity

amongst EU Member States have been discussed, although they have generally been seen as falling short of expectations.

Those are only two examples, amongst many, of the importance of the AFSJ in public and policy debates, not only in Brussels, but also across the entire EU. Against this backdrop, this special issue gathers contributions that examine some of the key questions and challenges pertaining to the ongoing development of the AFSJ. The next section sets out the scene for the various research articles by presenting the general EU strategic framework in which the evolution of the AFSJ has taken place in the last few years.

The AFSJ after the Stockholm programme: In search of a new strategy?

Scholars researching the AFSJ had long been used to charting its development through distinct periods or eras, including the ‘Tampere’, ‘The Hague’ and ‘Stockholm’ periods. Those corresponded to five-year policy programmes that were adopted at European Council summits respectively held in Tampere (1999), The Hague (2004) and Stockholm (2009). Initially, it had been widely expected that the agenda succeeding the Stockholm programme would be known as the ‘Rome programme’, as it was thought that it would be adopted during the Italian Presidency of the Council of the EU in the second half of 2014 (see, for example, House of Lords, 2014: 61). However, in a somewhat surprising turn of events, an acceleration of the debates took place, which led to the adoption of a set of so-called strategic guidelines for legislative and operational planning’ at the European Council meeting held in Ypres on 26-27 June 2014 (European Council, 2014). Thus, the Stockholm programme has not been succeeded by a fully-fledged and detailed programme for the further development of the AFSJ, but merely by a short set of guidelines.

There are various factors accounting for this outcome. Firstly, many shared the view that the Stockholm programme, which was 81-page long, was too detailed and took too much the form of a ‘shopping list’ (House of Lords, 2014: 13). In so doing, it was believed, it failed to identify any key priorities, as too many aims and initiatives were listed. In contrast, the AFSJ strategic guidelines are only five-page long and far more general. Secondly, it emerged in the preparatory discussions of these guidelines that a significant number of actors considered that the next phase of the development of the AFSJ should focus on consolidation, rather than expansion. It was perceived that priority should be given to the transposition and correct implementation of the significant number of instruments that had been adopted over the years, rather than the adoption of new policy measures (see European Council, 2014: 2). Some therefore argued that it was not necessary to adopt a new programme for the development of the AFSJ, as it had already reached a state of maturity.

One could therefore think, at the first sight of these short ‘strategic guidelines’, that the criticisms of the Stockholm programme had been answered. However, it can be argued that the guidelines have not met general expectations because, whilst avoiding the pitfall of the ‘shopping list’, they fail to deliver a strategic vision. They do not set out any precise objectives and are couched in very general terms. It is difficult to identify their added value compared to the AFSJ documents already in circulation at the time of their publication.

Guideline 4 highlights the importance of ‘[ensuring] the protection and promotion of fundamental rights, including data protection, whilst addressing security concerns’ (European Council, 2014: 2), which echoes the traditional view of the AFSJ as a policy area where security, justice and freedom are on an equal footing. In the area of asylum, migration and borders, it is stated that ‘the Union needs an efficient and well-managed migration, asylum

and borders policy, guided by the Treaty principles of solidarity and fair sharing of responsibility’ (European Council, 2014: 2). Nothing more specific is said about how solidarity and fair sharing could be implemented in practice, although it is well-known that those have proved to be particularly challenging objectives for the EU, as discussed in Karageorgiou’s contribution to this special issue. A ‘comprehensive approach’ to migration flows is also required, alongside ‘active integration policies’ (European Council, 2014: 2) – again, those statements are exceedingly vague and do not constitute innovative ideas. In the area of asylum, the strategic guidelines emphasise that ‘[the] full transposition and effective implementation of the Common European Asylum System (CEAS) is an absolute priority’ (European Council, 2014: 3). No new legislative measure is called for. This is in contradiction with the idea also expressed in the guidelines that the transposition and correct implementation of the existing EU asylum legislation would be sufficient to create ‘a level playing field where asylum seekers are given the same procedural guarantees and protection throughout the Union’ (European Council, 2014: 3). Actually, given the current state of the CEAS, new legislation would be required to attain this objective. In addition, the idea of mutual recognition of asylum decisions, which had been discussed at some point, did not make its way into the final version of the text. The strategic guidelines merely state that a ‘uniform application of the *acquis*’ will be promoted by a reinforced European Asylum Support Office (EASO) (European Council, 2014: 3).

As for the issue of irregular migration, the strategic guidelines reiterate some EU’s long-standing views on the issue, including the necessity to address the ‘root causes of irregular migration flows’, to intensify cooperation with countries of origin and transit, to address human trafficking and smuggling more strongly, and ‘[to establish] an effective common return policy’, as well as ‘enforcing readmission obligations in agreements with third

countries'. Very little is said about the humanitarian dimension of irregular migration, apart from the fact that tackling the root causes of irregular migration and '[preventing and tackling irregular migration] will help avoid the loss of lives of migrants undertaking hazardous journeys' (European Council, 2014: 3).

It is in the area of external borders, which are the object of Guideline 9, that one can identify, not new ideas – for those have already been aired for a few years – , but at least some specific objectives for the next few years, including the adoption of an entry-exit system and a registered travellers programme. The reinforcement of the agency Frontex is also mentioned, whilst the 'possibility of setting up a European system of border guards to enhance the control and surveillance capabilities at our external borders should be studied'. The latter idea is not original, as it was already given serious consideration prior to the 2004 enlargement of the EU.

Guideline 10 on policing is also generally worded, as it calls for '[improving] cross-border information exchanges' and '[further developing] a comprehensive approach to cybersecurity and cybercrime' (European Council, 2014: 5). The only specific new instrument that is mentioned is the EU Passenger Name Record system, the adoption of which has proven very controversial to date. The guidelines remain very vague on the topic of judicial cooperation, as it is mainly observed that 'mutual trust in one another's justice systems should be further enhanced' (European Council, 2014: 5). It is also noted that negotiations on the European Public Prosecutor's Office should be advanced (European Council, 2014: 6).

Generally, one can therefore conclude that these strategic guidelines signal a lack of ambition for the development of the AFSJ, at least when it comes to the Member States. The European

Commission (2014), in its Communication on ‘An Open and Secure Europe: Making it Happen’ had put some original ideas forward, including, for example in the area of asylum, enhancing the relocation of refugees within the EU, processing asylum applications jointly, developing EU resettlement opportunities, and establishing protected entry procedures for those in need of international protection. However, as previously explained, the final version of the strategic guidelines is characterised by the absence of such innovative ideas overall.

Thus, in contrast with the previous AFSJ programmes, the 2014 AFSJ strategic guidelines can only be described as a short, vague and general document. One therefore witnesses the paradoxical situation where, at a time when AFSJ matters - such as asylum, migration, borders, terrorism, police and judicial cooperation – have never been so salient, the EU finds itself, for the first time ever, devoid of any significant, over-arching strategy for the development of its AFSJ. It remains to be seen whether the European Agenda on Security, which was adopted by the European Commission (2015) in April 2015 and sets out the main actions envisaged by the Commission to respond to the main security threats to the EU over the period 2015-2020, will manage to at least partially fill this void.

Outline of the special issue

This special issue presents original and thought-provoking research findings on various aspects of the development of the AFSJ. It testifies to the multiplicity of theoretical approaches used by scholars nowadays, as well as the advantages inherent to using interdisciplinary frameworks. It is hoped that this special issue, which gathers contributions informed by various disciplines, including political science, law and anthropology, will contribute to fostering a vibrant interdisciplinary dialogue on the development of the European Union’s internal security policies.

The first article by Santino Lo Bianco complements very well what has been hitherto discussed in this introduction by emphasising the importance of also considering everyday decision-making. In his view, policy change in the EU is not only the consequence of key moments, such as treaty reforms, but also of specific dynamics in policy deliberations. In order to analyse those, Lo Bianco suggests applying a framework combining insights from both constructivism and communication theories, which emphasises the role of language. He then applies his theoretical framework to two cases, namely the adoption of the Framework Decision on the European Evidence Warrant and the negotiation of the 2008 Council Decision regarding the access of law enforcement authorities to the Visa Information System (VIS). Lo Bianco's analysis identifies the specific circumstances under which reorientation in the discussions amongst policy-makers takes place through deliberation, which subsequently leads to the adoption of new policy instruments.

Maria O'Neill's contribution focuses on an increasingly important and extremely complex aspect of the AFSJ, namely its external dimension. In recent years, there has been a growing recognition that tackling the transnational security threats that affect European states requires the EU's cooperation with a range of third countries, including its neighbours and key international players, such as the United States. O'Neill's article explores the range of difficulties inherent to such an endeavour, including the uncertainties stemming from the remaining differences between the AFSJ and Common Foreign and Security Policy (CFSP) legal regimes in the post-Lisbon era, the complexities of the web of institutions and agencies involved in the AFSJ and in its external dimension, as well as important concerns regarding the respect for fundamental rights and due process.

Oliveira Martins also takes us beyond the confines of the EU by locating the development of one of the EU's most prominent internal security policies – the EU's counter-terrorism policy – in the broader context of the United Nations (UN) cooperation in this policy area. He identifies the existence of a two-track relationship between the EU and the UN in counter-terrorism. On the one hand, UN norms and instruments have had a significant impact on the EU's counter-terrorism policy. On the other hand, following some EU judicial decisions, the EU was prompted – and managed - to influence certain UN counter-terrorism procedures. In addition to contributing to the debate on the EU's counter-terrorism policy, these somewhat counter-intuitive research findings are also interesting to those studying the EU as a security actor on the international stage.

Karageorgiou explores another challenge faced by the EU in the development of the AFSJ, namely how solidarity and sharing can become reality amongst EU Member States. She examines this thorny issue in the area of asylum and focuses in particular on the case of Syrian refugees. Her article explores the various EU responses to the Syrian refugee crisis so far, including the sharing of money, norms, people, and expertise. It highlights that there is currently no mechanism ensuring a balanced distribution of responsibilities towards asylum-seekers in the EU. As a result, the EU has been unable to meet the needs of those who require international protection. Karageorgiou concludes by calling for more research into the extent to and the ways in which solidarity may constitute a mandatory norm of conduct in the EU.

Alongside 'solidarity', 'prevention' is another concept that has become increasingly prominent in the EU debates on the development of the AFSJ. In her contribution, Herlin-Karnell analyses the current trend in the EU towards promoting a criminal justice model underpinned by prevention. She questions the extent to which such a strategy can be

reconciled with the values of freedom, security and justice, which are officially presented as having equal value in the EU. She also highlights that the strong focus on security in the development of the AFSJ to date has created some tensions for the EU in the development of its external action, which has traditionally sought to promote the rule of law and respect for human rights. Herlin-Karnell concludes by calling for a more nuanced and sophisticated approach to the development of EU criminal law.

In the following article, Bossong and Hegemann analyse an important, but hitherto neglected, development in EU internal security governance, namely the growing significance of risk assessments. Their contribution offers a nuanced and balanced assessment of this phenomenon. They highlight that the emphasis placed on risk assessments can be seen as a positive trend in some respects, as they epitomise the fact that greater importance is now given to evidence and planning in the development of EU internal security policies. This is to be welcomed in a policy area where crisis has tended to be the main driver for policy change. However, Bossong and Hegemann argue, it is crucial to remember that risk assessments are not apolitical, but are actually deeply contested and political instruments. The authors also raise important questions about the capacities of the EU and its Member States to produce sound risk assessments across the whole range of security issues currently facing the EU. Bossong and Hegemann therefore sound a note of caution about this trend towards more technocracy in the realm of internal security.

In line with the previous article, the focal point of Satoko Horii's contribution is also the concept of 'risk', but with a particular focus on the use of risk by the External Borders agency Frontex. This agency plays a key role in supporting the Member States of the European Union in the management of their external borders by supplying them with risk analysis

reports. Horii analyses the various risk-related activities of Frontex. Those include identifying which parts of the EU's external borders are most at risk, which in turn affects the allocation of EU financial resources to Member States. In addition, the agency now plays a role in the reinstatement of border checks at the internal borders of the Member States. Horii concludes that the risk-related activities of Frontex should not merely be seen as the collection and aggregation of data, but as the production of new knowledge that has important political effects.

Whilst the concept of 'risk' has become increasingly prominent in the scholarship on the EU's internal security policies, as illustrated by the two previous articles, some scholars prefer to draw on one of the most popular approaches in security studies in the last two decades, namely securitization theory. In that vein, Schwell analyses how the social construction of terrorism, migration and organised crime as security threats that has underpinned EU cooperation in these issues has travelled from the 'old' EU Member States to the 'new' ones, with a particular focus on the case of Poland. Her article explores the dynamics at play in this process, including conditionality and socialisation processes in bureaucracies, as well as the tensions that bureaucrats face in their everyday work as a result. Schwell's contribution offers very interesting empirical findings and paves the way for future research into the process of travel, translation and adaptation of security concepts.

References

European Commission (2014) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – An Open and Secure Europe: Making it Happen*, Brussels: European Commission, COM(2014) 154, 11 March 2014.

European Commission (2015) *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – The European Agenda on Security*, Brussels: European Commission, COM(2015) 185, 28 April 2015.

European Council (2014) *Conclusions of the European Council (26/27 June 2014)*, Brussels: European Council, EUCO 79/14, 27 June 2014.

House of Lords (2014) *Strategic Guidelines for the EU's Next Justice and Home Affairs Programme: Steady as She Goes*, London: The Stationery Office Limited, HL Paper 173.

Acknowledgments

Research for this article was supported by two Marie Curie Career Integration Grants within the 7th European Community Framework Programme, which have been awarded to Christian Kaunert and Sarah Léonard respectively.