

A New Start for the EU's Area of Freedom, Security and Justice? Setting of Priorities for the New European Commission

Sergio Carrera and Elspeth Guild

23 September 2014

The new institutional shapes of the Juncker Commission portend important and somewhat surprising changes in Justice and Home Affairs (JHA) portfolios. One of the more far-reaching innovations is the nomination of a First Vice-President (Frans Timmermans) in charge of rule of law and the EU Charter of Fundamental Rights. The First Vice-President will be the right hand of Juncker and will act as a 'watchdog' upholding fundamental rights and the rule of law in all the Commission's activities and those of EU member states. Juncker has introduced a triangular relationship in the Commission's JHA portfolios. The First Vice-President will guide and coordinate the two other JHA Commissioners: Věra Jourová, Commissioner for Justice, Consumers and Gender Equality (DG Justice); and Dimitris Avramopoulos, Commissioner for Migration and Home Affairs (DG Home Affairs). Timmermans will manage and coordinate 'the Commission' in the JHA Council. Will the Juncker Commission herald a new start for JHA cooperation in the EU?

The new Commission configurations offer interesting potential for policy optimisation. It is welcomed that a new fundamental rights and rule of law First Vice-President will exercise a coordination and advisory role over the other two JHA Commissioners. CEPS proposed a similar institutional design in 2009.¹ Challenges in rule of law and fundamental rights found in certain EU JHA policies and some member states were calling for stronger EU political action. His new mission as rule of law and fundamental

¹ [Didier Bigo](#), [Sergio Carrera](#), [Elspeth Guild](#), "The CHALLENGE Project: Final Policy Recommendations on the Changing Landscape of European Liberty and Security", CHALLENGE Paper, September 2009 (www.ceps.be/book/challenge-project-final-policy-recommendations-changing-landscape-european-liberty-and-security).

Sergio Carrera is Senior Research Fellow and Head of the Justice and Home Affairs unit at CEPS. Elspeth Guild is Senior Associate Fellow at CEPS and Jean Monnet Professor ad personam, Radboud University, Nijmegen and Queen Mary, University of London. This commentary is one of a series prepared by senior CEPS researchers aimed at contributing to the selection and review process of the new European Commission. A more detailed version was published as a CEPS Essay, "The Juncker Commission: A New Start for EU Justice and Home Affairs Policy", 18 September 2014.

CEPS Commentaries offer concise, policy-oriented insights into topical issues in European affairs. The views expressed are attributable only to the authors in a personal capacity and not to any institution with which they are associated.

Available for free downloading from the CEPS website (www.ceps.eu) • © CEPS 2014

rights supervisor constitutes a clear signal that these will be top priorities for the new Commission. Yet, it is yet to be shown whether this new role and triangular relationship will effectively work in practice.

Stronger EU supervision over rule of law and the EU Charter is expected to meet resistance from member states. These have often alluded to national sovereignty and subsidiarity as grounds for evading supranational oversight of their compliance with EU founding principles. Also, mainstreaming fundamental rights across the Commission services may prove to be difficult beyond formalistic allusions and assessments about compliance. 'Guiding' and 'coordinating' DG Justice and DG Home Affairs from a rule of law and fundamental rights angle might encounter similar difficulties. These policies are still too much centred on fighting criminality, policing and national security considerations.

Against these frictions, a central 'motto' for the First Vice-President should be 'evidence-based policy-making' in all these domains. Any new initiative taken by the European Commission should be based on the best independent research, evaluation and statistical evidence available, and not on anecdotal information and/or political fears. The relations between the new Commission and the new European Parliament are expected to grow during the 8th legislature.² The First Vice-President's mission to coordinate relations with the European Parliament, in particular strategic programming, could also be critically important in overcoming some of these frictions.

A key priority should be for the First Vice-President to develop a new Commission policy and legislative program on AFSJ policies for the coming years, which should be driven by faithful and effective implementation of the Lisbon Treaty and existing EU secondary legislation, as well as better safeguarding of the rule of law in the EU and ensuring accessibility to the EU Charter. In addition to close cooperation with the European Parliament, this should go hand-to-hand with institutionalised collaboration with non-EU bodies, such as the United Nations or the Council of Europe, and bodies like the Venice Commission on the rule of law or the Commissioner for Human Rights. The EU should commit itself to promote these international standards.

The Union is in need of a new rule of law mechanism to address challenges to the rule of law.³ This should be an integral part of the 'rule of law, democracy and fundamental rights Copenhagen Policy Cycle', guaranteeing linkages with the European Semester of Economic Governance. The Snowden revelations on PRISM and surveillance programmes in the US and the EU have also exposed profound rule of law deficits. A testing ground for the new Commission will be re-building trust over issues related to privacy and closing the negotiations of the EU data protection reform package. The First Vice-President and the Justice Commissioner should ensure a strong EU data protection legal framework, focusing on clear rules on data processing for third countries, better enforcement and accessibility to information and legal remedies by data subjects and data protection of EU citizens in the US.

² Sergio Carrera and Elspeth Guild, "The European Council's Guidelines for the Area of Freedom, Security and Justice 2020: Subverting the 'Lisbonisation' of Justice and Home Affairs?", CEPS Essay, July 2014 (www.ceps.be/book/european-council%E2%80%99s-guidelines-area-freedom-security-and-justice-2020-subverting-%E2%80%98lisbonisation%E2%80%99).

³ Sergio Carrera, Elspeth Guild and Nicholas Hernanz, "Rule of law or rule of thumb? A New Copenhagen Mechanism for the EU", CEPS Policy Brief, November 2013 (www.ceps.be/book/rule-law-or-rule-thumb-new-copenhagen-mechanism-eu).

The appointment of a Commissioner for Migration and Home Affairs offers interesting prospects. The First Vice-President should take care that the mixing of 'migration' with home affairs does lead to a contamination of issues related to labour mobility and asylum with policing and criminality. Priority should be given to safeguarding free movement of EU citizens and building a genuine common labour immigration policy that critically reassesses the EU's attractiveness as a destination for work, study and tourism. A partnership between the Migration Commissioner and the one for Employment, Social Affairs, Skills and Labour Mobility will be critical. Adopting an immigration corpus codifying the dispersed EU immigration rules and addressing their shortcomings will be central. The implementation of the principle of solidarity calls for careful reflection. Priority should be given to reconfiguring the Dublin asylum system and improving first-line reception conditions for asylum seekers. The future of a Frontex Plus Agency and the development of a common European border service should be carefully examined.