

GREENS/EFA

PROPOSALS FOR
A **HUMAN-AND**
 **RIGHTS-BASED**
APPROACH FOR
EU INTERNAL
SECURITY 
POLICIES



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A GREEN VISION OF EUROPEAN INTERNAL SECURITY

The Greens/EFA are not traditionally visible and outspoken in the fields of home affairs and internal security, whether in the European Parliament or at national level. These fields have mainly been occupied by conservative and far-right parties over the last few decades. In addition, we see that Socialist home affairs ministers and Commissioners also tend to be more on the repressive side. Facing stronger challenges from right-wing extremists and organised crime, it becomes all the more apparent that the police has a role to play in defending our democracy against attacks by those who want to silence feminist, anti-fascist and pro-civil rights voices. Our defence of fundamental rights against online hate needs public security services that act online as effectively as they do offline. With this renewed interest, we do not want to leave it to conservative and far-right parties to dominate the debate, leaving progressive forces in defensive mode. This paper is a response to those challenges.

Over the last 22 years, the widening and deepening of the Area of Freedom, Security and Justice (AFSJ) has been driven by a securitarian agenda, which guided the Union's policy and legislative responses in the wake of the terror attacks in New York and Washington DC in 2001, and even more following those in Paris in 2015 and in Brussels in 2016. The European Union (EU) and Member States have been adopting multiple layers of legislation, from the creation of multiple security databases to the continued expansion of EU agency competences in the fields of justice and home affairs.¹ Such a wide array of measures has progressively established a system of surveillance measures that neglects effective targeted and social measures. In parallel, judicial cooperation in criminal matters developed through the adoption of a wide range of instruments of mutual recognition, which enabled the quasi-automatic recognition² of criminal justice decisions issued by Member States' judges and prosecutors. Most recently, new forms of private-public cooperation to enable law enforcement access to and collection of data have also been created at EU level.

Yet while big data security policies have received full attention, the bread and butter business of law enforcement and social cohesion have suffered. Conservative financial policies led to stagnation in the financing of police and justice, equipment, training and working conditions. Social

1 This agenda was established in different phases - from the principle of availability of information and the adoption of a Passenger Names Record Agreement, to interoperability of databases on migration, borders and asylum and their interconnection with law enforcement databases, followed by the extension of data retention periods and development of automated data exchange for police cooperation through Prüm II - which followed the terror attacks.

2 Starting with the European Arrest Warrant

services have suffered immensely from under-financing, fuelling social precariousness that may lead to an increase in criminality. The ongoing disinvestment in public services associated with neoliberal policies as well as the lack of a global approach prevent the effective fight against financial and drug crime. This has also led to police forces having to undertake missions resulting from a lack of social assistance, including caring for homeless people or those suffering from addictions.

Throughout the past legislatures, the Greens/EFA group provided a critical contribution to the development of the Union's role in the field of security and criminal justice. Our work made a difference, by ensuring concrete and effective measures to tackle serious crime at EU level while securing better safeguards for fundamental rights and respect for EU legislation on data protection. We believe there are many effective ways in which the EU can and should invest more to increase security and fight crime, for instance through increased cooperation among Member States in the fight against corruption, money laundering and financial crime, including by strengthening the role of the European Public Prosecutor's Office and judicial actors in this field in Member States, and enhancing cooperation between law enforcement services. At the same time, we are witnessing critically how EU internal security policies increasingly and disproportionately focus on the surveillance and criminalisation of specific groups and categories of individuals, including migrants, asylum seekers, ethnic minorities and civil society actors. The progressive enhancement of investigating and prosecuting authorities' powers and ability to use technologies and data for the purpose of fighting terrorism and crime at Union level, shows that in many cases, law enforcement and internal security logics have taken precedence over the objective of respecting basic fundamental rights guarantees, and promoting better ways of administering criminal justice. The competences and capabilities in the area of internal security have significantly expanded, but this has not gone hand-in-hand with strengthened procedural safeguards to protect the fundamental rights of victims and suspects to match this new reality. Also, the general assumption that the protections afforded by the EU Member States' law enforcement and criminal systems are equivalent, and criminal defence rights are protected adequately and in a comparable way across the EU is not in line with reality, and this is only being further exacerbated by backsliding in the rule of law in several EU countries.

We believe that the current internal security legislation, discourse and agenda are not moving in the right direction. **We want to use our experience and expertise to address these shortcomings, and propose a change of narrative in ways that can realistically address the multidimensional nature of crime and security.** Until now, the EU co-legislators' agenda on security largely prioritised policy and legislative efforts aimed at strengthening the protection of borders, and at tackling irregular migration through surveillance and containment of mobility. In turn, EU initiatives related to freedom and justice have been neglected.³

Against this backdrop, it has emerged that the concept of security is often not clearly defined, nor understood comprehensively and taken in its complexity. Too often it is a one-sided and short-sighted vision of security that is used. What does it mean to feel secure? Is that feeling the same for everybody? What does it mean to provide security from a law enforcement angle? Also, how can the EU ensure that security goes hand in hand with justice in criminal matters?

³ The change of wording from "area of freedom, security, and justice" as in Title V TFEU to only "security" is quite telling in that regard

We argue that security is a social construct involving many factors. Security from crime in the justice and home affairs context is a component of those factors, but not the only one. Consequently, fighting for security does not only mean fighting against the crime itself, but should involve tackling its root causes. Having a reactive approach towards crime will not solve the security issue. Criminalising certain groups of individuals because of their immigration status, ethnic origins or racial background risks widening divisions and fuelling intolerance within our societies. Causes of criminality are well documented and should be properly addressed in EU policies. Without fighting its root and complex causes, while at the same time accounting for the need to ensure social cohesion while protecting the rights and addressing the needs of affected communities, internal security policies are bound to fail. **The EU needs a concept of security based on evidence, subject to democratic scrutiny and increased accountability, as this paper suggests. We advocate a paradigm shift towards a progressive and rational security, police and crime policy that is based on facts instead of monitoring citizens without cause and giving security authorities excessive powers.**

We have to be careful, however, not to expand the “security” narrative to different policy fields, since it is often used to legitimise extraordinary measures. We need to remember that the “right to liberty and security” in Article 6 of the Charter of Fundamental Rights⁴ is no “super-fundamental right” in the sense that security beats other fundamental rights. This right in Article 6 of the Charter is a protection against unreasonable and disproportionate intrusions by the state into our private sphere.

With this paper, we explain our vision of security for the coming years and make concrete policy proposals. We do not address specific crime sectors. We identify transversal and crosscutting issues that concern all areas of crime, and make transversal proposals to be applied to all areas of crime. This paper is also intended to help set our agenda from the beginning of the next European Parliament term and the next mandate.

4 https://www.europarl.europa.eu/charter/pdf/text_en.pdf

PROPOSALS

1

ENHANCE COOPERATION AND PRIORITISE THE FIGHT AGAINST FINANCIAL CRIMES

Corruption and other sorts of organised crime cost many Europeans opportunities in life, destroy businesses and cause economic harm even to whole regions. As Greens/EFA, we want to fight organised and financial crime as effectively as possible. We are critical of wasting limited public resources for EU internal security on policies with an increasingly and disproportionately focus on the surveillance and criminalisation of groups and categories of individuals with less financial resources and political power, including migrants, asylum seekers, ethnic minorities and civil society actors; while we still do not prosecute those who organise and profit most from crime as much as we could. Many alternative avenues for ensuring security and fighting crime, particularly financial crimes, are insufficiently explored and should be harnessed more by the EU. We believe the **EU should shift its focus to increased actions that tackle serious and financial crimes**, such as corruption, organised crime and money laundering, which are the necessary basis for all other sorts of murderous crime and have severe socio-economic impacts on communities and our economy. **This needs a shift in resources**, from mass surveillance of mostly innocent individuals to targeted action where there are suspicious indications for crime. This increased focus on tackling serious and financial crimes also requires shifting valuable resources away from other areas of criminal law, which are less effective, such as enforcement against the use of (soft) drugs. **We would like to invest in further research into the legalisation of (soft) drugs, not only to enhance the effectiveness of drug policies but also to free up law enforcement capacity for more serious crimes.** While substantial financial and staff resources currently flow into the collection of big amounts of data, the exchange of specific information on concrete cases is too often slower than it could be to help police investigations. Limited resources must prioritise the support of specific investigations over the gathering of big data for abstract goals.

Police authorities and criminal justice actors across the Union currently dispose of effective means that can be used in the fight against criminal activities negatively impacting our societies, including environmental crime, corruption, money laundering and terrorism financing, and those affecting the EU's financial interests.

The creation of the European Public Prosecutor's Office (EPPO) was a key reform to strengthen justice in the EU. The EPPO already has many more cases than staff who can properly follow them up.

The EPPO should be better equipped to ensure that it has competence in all cases where the EU's financial interests are affected e.g. by organised crime. We also believe that participation in the EPPO should be mandatory for all Member States that want to benefit from EU funds.

Increased cooperation among Member States in the fight against corruption, money laundering and financial crimes and the strengthening of the role of judicial actors in this field in Member States is necessary. The Commission proposal for an EU Anti-corruption Directive takes welcome steps to crack down on corruption by harmonising criminal law. It must include attempts to bribe politicians and politicians that accept bribes. Both Member States and EU institutions must be effectively covered. This must go hand in hand with additional actions, such as the increased use of the Rule of Law Budget Conditionality Regulation and other conditionality tools to protect the EU's financial interests, in order for this fight to be truly effective.

2

CONDUCT AN INDEPENDENT AUDIT OF EXISTING EU SECURITY POLICIES, INCLUDING REGULATIONS, DIRECTIVES AND FUNDING, ON THE RULE OF LAW & FUNDAMENTAL RIGHTS

As a preliminary point, **we would like the European Commission to conduct a thorough and comprehensive assessment of existing legislation.** Studies of this type already exist and could be taken as examples for this review.⁵ This process should involve civil society organisations, academia and agencies involved in the field of justice and home affairs. Over the last two decades, numerous proposals have been put forward and adopted at European level, and then transposed and implemented at national level. We believe that assessing their implementation at national level, their cost effectiveness, their impact both in terms of objectives pursued and consequences on fundamental rights and the rule of law, but also their consistency in the European architecture of the field of internal security, is key. This is also important in ensuring that opportunities that already exist under the current legislative framework, for instance in the area of cross-border cooperation, are effectively utilised before laws that further expand such capacities are introduced.

As a reminder, the Commission applies the “evaluate first” principle. This principle states that an evaluation of previous legislation is necessary in order to ensure any policy decisions take due account of lessons from past EU action. Moreover, according to the Financial Regulation, an evaluation is mandatory for all programmes and activities entailing significant overall spending,⁶ which is often the case with EU security policies. The necessity, proportionality, effectiveness, legal consistency and compliance with fundamental rights of EU initiatives must be rigorously ensured.

5 Fondazione Brodolini, Fundamental rights review of EU data collection instruments and programmes https://www.fondazione-brodolini.it/sites/default/files/final_report_0.pdf

6 European Commission, Better Regulation Guidelines, 2021, p. 24. Available here: https://commission.europa.eu/system/files/2021-11/swd2021_305_en.pdf

3

CONDUCT AN EX-ANTE RULE OF LAW & FUNDAMENTAL RIGHTS EVALUATION AND IMPACT ASSESSMENT PROCESS FOR EVERY NEW LEGISLATIVE PROPOSAL

In line with the previous proposal, the European Commission should conduct an ex-ante evaluation and impact assessment process, including on the rule of law and fundamental rights, for every new legislative proposal that will be published. Recent initiatives have often been introduced without a detailed ex ante assessment of their legal and societal implications and interferences with fundamental rights, including privacy, fair trials and non-discrimination safeguards. There should also always be an assessment of whether new initiatives are truly necessary or if the same aims could be achieved by making more effective use of existing laws.

A comprehensive and transparent consultation process should always take place. Attention should be paid to consulting widely with civil society organisations, including stakeholders representing marginalised groups in order to ensure all voices are heard and that new proposals would not have detrimental consequences on the human rights of people in vulnerable situations. Working groups with stakeholders organised by the European Commission should be open and transparent in order to allow broad dialogue among security actors.

4

ENSURE RIGHTS AND RESTORATION FOR ALL VICTIMS OF ALL TYPE OF CRIMES

While no society can prevent all crimes from taking place, public authorities can ensure all victims of all crimes are recognised, protected, restored and their rights fulfilled.

The current framework⁷ establishes minimum standards on the rights, support and protection of victims of crime, and ensures victims' recognition. Unfortunately, these provisions are hardly implemented⁸ at national level, with significant gaps and differences existing among Member States. Primarily, the focus should be placed on the implementation and enforcement of the existing provisions to ensure proper implementation of victims' rights in all Member States. The increasing competences and powers of the EU in the area of security and criminal justice cooperation must be matched by a strong and harmonised framework for victim rights.

7 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Other EU acts in the area of victims' rights include: Directive 2004/80/EC (relating to compensation to victims of crime), Regulation 606/2013/EU (on the mutual recognition of protection measures in civil matters), and Directive 2011/99/EU (on the European protection order). The EU has also adopted several instruments that deal with the needs of victims of particular types of crime (such as victims of terrorism, victims of human trafficking, child sexual exploitation or victims of non-cash payment fraud). On 8 March 2022, the European Commission adopted a legislative proposal on combating violence against women and domestic violence. See [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747432/EPRS_BRI\(2023\)747432_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747432/EPRS_BRI(2023)747432_EN.pdf)

8 European Commission, Victims' rights: Commission urges 9 Member States to fully implement EU legislation, July 2019, https://ec.europa.eu/commission/presscorner/detail/en/inf_19_4251

The newly published directive⁹ is a step in the right direction, but it would need to be strengthened in terms of enforcement at national level and scope. While we welcome the inclusion of all victims in the text of the directive, including undocumented migrants and detainees, we should make sure specific attention is paid to victims of vulnerable groups or persons in vulnerable situations; consistency with other sector texts should be ensured, and human and financial resources for victim support should be guaranteed. Attention to the victims of public authorities, including those of police violence, should be increased.

We believe punitive justice is not the only answer expected from victims of crimes and retribution should not be used under the pretext of protecting victims. **We want to see a victim-centred approach that would include stronger focus on reparation and restoration, notably developing further restorative justice mechanisms that have proven to be very efficient for victims, as well as for convicted persons, and society at large.**

We want to support EU Member States' national jurisdictions in pursuing perpetrators of international crimes, such as genocide or war crimes, under the principle of universal jurisdiction. We also want to further strengthen the legal and institutional frameworks in this field, including by adding those crimes to the list of "EU crimes", and by supporting Eurojust's Network Against Genocide.

5

ENSURE EU JUSTICE AND HOME AFFAIRS (JHA) AGENCIES' WORK IN STRICT ACCORDANCE WITH EU VALUES AND FUNDAMENTAL RIGHTS

European police and criminal justice cooperation has been growing over the last two decades, and EU agencies in the field of justice and home affairs have been given more competences and powers. While we welcome the strengthening of cooperation, as it ensures higher levels of efficiency and sharing of intelligence, we should ensure that EU agencies are rightly monitored and their activities scrutinised, but also become accountable to the European Parliament. We should avoid "European laundering", activities that are not legal at national level or strictly regulated should not be made more flexible at European level. EU agencies should lead by example and show the highest level of transparency and accountability. Fundamental rights and a culture of ethics should be our guiding principles. We have seen in the case of the border control agency Frontex where systemic disrespect for European values and principles can lead, and similar situations have to be prevented in the future.

Before any revision of Agency mandates, an evaluation of the existing competences should be conducted by the European Commission to identify potential gaps to be complemented and needs

⁹ Proposal for a directive of the European Parliament and of the Council of 12 July 2023 amending Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023PC0424>.

to be improved. This should be done on a regular basis. As is the case at national level, authorities involved in law enforcement should be democratically scrutinised. Scrutiny of national police usually means one responsible minister is held accountable by one parliament, which can summon him and start a committee of inquiry requesting persons and documents where necessary. Scrutiny of EU police cooperation currently focuses on executive directors responsible to 27 ministers controlled by 27 national parliaments and involves the European Parliament in very loose cooperation, with meetings twice a year. Parliamentary control at EU level must be as fast, effective and powerful as on national level to guarantee the efficiency and quality of work at EU level as much as at national level. The current Joint Parliamentary Scrutiny Group on Europol should see its powers strengthened and its scrutiny enhanced, including access to documents which is instrumental to ensuring proper scrutiny. When an Agency is acting outside of its mandate, there should be no de facto legalisation of those wrongdoings afterwards. **In order to increase parliamentary control over EU JHA agencies, we propose the European Parliament should have a binding say in executive director nominations instead of a simple opinion, as is the case for the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.¹⁰ On EU level, we should learn from best practice examples at national level: the European Parliament should elect a person to oversee European police cooperation and Europol etc.: e.g. as the Greens have achieved in Germany. This “police commissioner” serves as a permanent oversight mechanism and point of contact for possible victims of police action (or inaction). It allows police officers to contact someone who is not part of their direct hierarchy and thereby involved in their next career steps.**

When a JHA agency is deemed to have breached fundamental rights when implementing its mandate or in its daily functioning, the European Parliament and Council of the EU, as EU budgetary authorities, should take appropriate measures such as not granting the budgetary discharge and/or putting some parts of the agency’s budget into a reserve where this does not affect citizens’ day-to-day security. This reserve would be released once the JHA agency again complies with its fundamental rights obligation.

6

INFORMATION EXCHANGE AND MUTUAL RECOGNITION NEED BOTH EFFICIENCY AND SAFEGUARDS

For far too long, information exchange between national police forces was too slow and cumbersome. Too often, requests for information about suspects wait for an answer not just days but weeks, sometimes months. Even cases of terrorism might have been able to be prevented had information exchange worked better. Fast replies must be an obligation, if positive or negative, and there must be sufficient staff to ensure this. However, efficiency must not come at the expense of losing sufficient protection of fundamental rights safeguards. In the last 15 years, there has been a trend towards giving police authorities access to more and more data, including data that is not initially related to a crime or an investigation. This includes air passenger data through passenger

¹⁰ Briefing European Parliament Research Service, The European Parliament’s appointing powers (May 2021) [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690613/EPRS_BRI\(2021\)690613_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/690613/EPRS_BRI(2021)690613_EN.pdf)

name records, data held in border management databases (Visa information system, entry/exit, ETIAS, etc.), genetic (DNA) data and vehicle registration data. Often the data is retained for up to five years for all passengers or travellers, without any initial suspicion. The Court of Justice has already several times ruled that such suspicion-less data retention and access is in breach of the Charter of Fundamental Rights. The Greens/EFA have consistently opposed such mass surveillance policies and will continue to fight their expansion, including to facial recognition databases. Linked to this, there is also a growing tendency to give police authorities in one Member State cross-border access to data held in another Member State. This ranges from data held by police authorities themselves (“Prüm” and related frameworks) to data held by private entities in another Member State (“production orders” for electronic evidence). These laws are often adopted without any safeguards to protect against their misuse.

Such automatic execution of cross-border measures is also found in other areas, for example the direct cross-border effect of removal orders for “terrorist content online”. With regard to the surrender of persons wanted for prosecution or execution of sentences in another Member State, the current trend is to go towards the automatic recognition and execution of European Arrest Warrants. This means that there must be a lower level of review of compliance with EU values in law enforcement cooperation and criminal justice proceedings. With ongoing problems regarding the rule of law in certain Member States, this is unacceptable. Why should the Hungarian police be able to directly order an online hosting service provider in Germany to delete certain content, just by claiming it is “terrorist”? Also, why should criminal justice authorities rely on a fictionally or “blindly” high level of trust that is presumed for efficiency purposes, without there being an actual basis for it in reality? Eurojust President Ladislav Hamran already commented on this in September 2019 in the Civil Liberties, Justice and Home Affairs Committee of the European Parliament: “We have moved from a situation of blind trust to “trust and verify.” We need verification in the receiving Member State, not automatic execution of cross-border police measures.

7

ENSURE THE HIGHEST FUNDAMENTAL RIGHTS AND RULE OF LAW STANDARDS IN THE FIELD OF SECURITY

The EU has put in place a framework of law and practices ensuring fundamental rights in certain fields. For example, in data protection and artificial intelligence, it has taken a leading global role in setting new rules. The EU has the highest standards in the world when it comes to human rights and democracy, and claims to lead by example in these fields.

In keeping with this stance, we should acknowledge that certain red lines will never be crossed at any cost. While certain law enforcement and social control practices are developing throughout the world, the EU should stand by its principles and ban certain technologies or practices. The AI act has been an opportunity to set strict rules and ban certain practices, notably restricting real-time facial recognition in the public space, predictive policing and social scoring, for example.

The EU should also take a leading role in putting in place an international framework on certain

technologies, such as the use, import and export of arms and dual-use technologies including cyber-surveillance technologies and spyware. Conversely, security authorities need software to analyse data, and the EU currently relies on non-EU companies. **To ensure high standards of fundamental rights and the rule of law, the EU should invest in the necessary technologies itself. For such EU-software, principles such as “public money, public code”, privacy by design, fundamental rights compliance including on non-discrimination and the transparency of research, development and procurement should be adopted.**

The EU and in particular the Member States should finally accept that collecting data, including on the content of communications, on a large scale without any specific suspicion, is not compatible with our fundamental rights, as has been decided multiple times by the Court of Justice of the European Union, including on telecommunications data retention, communications surveillance, flight passenger information and much more.

Case laws in European and national jurisdictions should be strictly implemented and taken into account for future legislation in accordance with rule of law principles.

8

RESPECT FOR DEFENCE RIGHTS AND THE HIGHEST STANDARD FOR PRISON CONDITIONS

Detention should aim at rehabilitation and reintegration. In order to ensure this is possible for people in detention, respect for fundamental rights and rule of law should prevail in places of detention. As well documented by civil society and international organisations, prison conditions in Europe exacerbate discrimination, exclusion and poverty, as well as subsequent offensive and violent radicalisation. Efforts should be made to improve living conditions, restore the rights and dignity of prisoners and ensure rehabilitation through the detention process, as well as reintegration after detention. Many Member States have been condemned repeatedly for their detrimental prison conditions, including prison overcrowding and significant violations of detainees' fundamental rights, by the European Court of Human Rights and United Nations bodies. In addition, most prisons are designed without a gender and intersectional approach. Because of this, the detrimental impact of prison conditions on individuals and groups in vulnerable situations, such as women, racialised people and LGBTIQ+ people, is much bigger. Moreover, prisons are often associated with drug use, but this association is created from a criminalisation perspective. Reports show how drug policies designed and implemented using a criminalisation perspective particularly harm disadvantaged groups and are not effective measures to solve the problem. The drug phenomenon should be addressed holistically, incorporating a human rights, public health, gender, social and sustainable development perspective.

The use of detention as a last resort should be reaffirmed and alternatives to detention should be explored and prioritised in future internal security and legislative and policy proposals.¹¹ In many

¹¹ Conclusions, Finnish Presidency, Future of Justice: detention and its alternatives, 18-19 July 2019, <https://valtioneuvosto.fi/documents/11707387/14557119/Future+of+justice+-+Detention+and+its+alternatives.pdf/7e583643-b093-4d1e-dab1-0df-d52335c26/Future+of+justice+-+Detention+and+its+alternatives.pdf.pdf>.

studies, alternatives to detention have resulted in more security for the society by reducing cases of recidivism. All policies and measures should have a gender and intersectional approach.

The significant expansion of EU competences and capabilities in the area of police and criminal justice cooperation makes the harmonisation of criminal procedural safeguards to protect the fundamental rights of defendants ever more important. Existing procedural rights¹² applying to persons suspected of crimes should be extended to persons in detention, whether administrative detention, pre-judicial detention or detention for condemned people. **In addition, minimum standards for people in prison and places of detention should be centralised in an EU directive to ensure similar standards across the EU and facilitate judicial cooperation.** There have been cases in the EU where arrest warrants have been refused by a judge due to the poor detention conditions in the requesting country.

When a Member State plans to use EU cohesion funds to develop or renovate prison infrastructure, the European Commission should ensure enabling conditions, in particular those ensuring the effective application and implementation of the Charter of Fundamental Rights and the application of the UNCRPD are being respected.

Those standards should apply to all places of detention, including police stations or migration centres. This includes building stronger links to the Council of Europe and its normative and institutional framework in this field, for instance in relation to the work of its “Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment” (CPT). Similarly, independent external visiting mechanisms such as that under the Council of Europe’s CPT and the UN’s “Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” and those by civil society organisations should be further supported. The European Commission’s annual rule of law report should include an assessment of fundamental rights compliance of prison conditions and pre-trial detention.

9

CLEAR FRAMEWORK FOR THE USE OF DIGITALISATION AND USE OF ARTIFICIAL INTELLIGENCE

As our societies are becoming increasingly digitalised, the security field is following the same path. We believe digitalisation is important. While there are benefits to it – digitalisation may help police work gain in efficiency, facilitating the process and allowing engagement with specific groups. The police must be able to counter growing digital crimes, from hate crimes to fraud, with sufficient tools and means. At the same time, it is important to acknowledge that it has detrimental effects on fundamental rights – technology is never neutral –, in terms of costs – technology is never for free and we do not believe that technology can replace humans – but also for people involved in police and justice systems – whether crime suspects or victims.

¹² https://commission.europa.eu/aid-development-cooperation-fundamental-rights/your-rights-eu/know-your-rights/justice_en

The use of AI applications in the criminal justice domain may have far-reaching negative implications on the rights of individuals and the fairness of criminal proceedings. The main problem with AI (particularly the kind represented by machine-learning algorithms) is that the machine will perform its functions and make decisions based on data and codes that are biased, and will discriminate on grounds including the ethnic origin or socio-economic status of the person involved. This is unacceptable in an area like criminal justice, where the state's investigative, prosecuting and punitive machinery must be kept under the scrutiny and control of human beings, in particular independent judicial authorities, who remain ultimately responsible for the delivery of justice in rule of law-based systems and societies.

These tools can upset the logic underlying adversarial proceedings, since defence lawyers can de facto be deprived of the possibility to effectively comment or challenge the evidence used against the defendants. Another major problem that AI poses from a defence perspective relates to the opacity that characterises these tools. The precise reasoning and justification behind a decision enabled or supported by AI are not always transparent and become difficult for the defence to challenge. Technology is never neutral, nor perfect.

We have therefore successfully negotiated into the Artificial Intelligence Act a ban on “social scoring” and on predictive policing based on profiling (“to assess or predict the risk of a natural person to commit a criminal offence”), and have added emotion recognition and AI support for the judiciary in the “high risk” category, which requires specific safeguards for such AI applications. **We will continue to fight for a full ban on remote biometric identification in publicly accessible spaces (often referred to as “face surveillance”, but which can also include gait recognition etc.).**

We advocate a “justice by design” approach instead of “security by design” in setting new technology and ask the EU to provide funding for research in this field. New technologies should be rule of law- and fundamental rights-proofed. A high level of technical protection is in particular required to prevent risks of manipulation of information in criminal investigations and prosecutions, and to avoid interference with the integrity of criminal proceedings. Digital markers certifying the chain of custody of the data and clearly showing which authorities accessed the data concerned should also be developed. These digital markers would allow competent judicial authorities, as well as suspects and accused persons, to check where the information comes from, and to verify whether it has been collected and processed in line with applicable data protection and criminal justice rules and standards.

10

ENSURE FUNDAMENTAL RIGHTS-COMPLIANT COOPERATION WITH THIRD COUNTRIES

In an increasingly globalised world, the need for international cooperation in the field of law enforcement and security is important. The drug trade links Latin American cartels and their abhorrent human rights abuses with smuggling in Europe's ports and sales networks all across the EU. Drug gangs kill each other even on the streets of Europe's capital and too often passers-by are

also killed. While criminals organise in transnational networks, and victims and perpetrators can be found on two different sides of the planet, it is important to develop international cooperation. To be effective and in line with EU international obligations, it is key that this cooperation is in line with fundamental rights and data protection. Cooperation agreements between third countries and Europol on the exchange of personal data are multiplying, but there are no fundamental rights impact assessments nor consultation with civil society. It is of the utmost importance that personal data analysed by EU law enforcement are obtained legally; this is highly questionable in some countries where torture or other forms of ill-treatment is common practice. Personal data shared with third countries or agencies such as Interpol should also respect strict standards of legality, including necessity and proportionality principles.

We also believe that security cooperation agreements with external partners are often used to instrumentalise migration policy, and strongly believe that these fields should not be linked and that EU external funding in the field of security should never be used for migration purposes.

The EU should use certain agreements as models, such as the New Zealand-Europol exchange of data agreement¹³, and should set similar standards for similar agreements in the future. Agreements currently negotiated with authoritarian governments, such as some from the MENA region including Egypt and Algeria, should be put on hold. Agreements should always respect international law: in the case of Israel and Morocco, occupied territories should be explicitly excluded from the application of the agreements with these countries.

The presence of liaison officers and their activities with EU agencies, within the limits set by their profession, should be made public. The presence of foreign services within the EU should be communicated to the relevant national and European parliamentarians in charge of scrutinising EU law enforcement agencies. The possibility for them to display practices not permitted or illegal in Europe should be forbidden (e.g. Clearview presentation by the FBI at the Europol conference). We are calling for clear guidelines for international cooperation, transparency around the negotiations of those agreements and regular information provided to the European Parliament, reporting and statistics on the exchange of data with third countries, human rights impact assessments and evaluations of needs, consultation with civil society from third countries and a moratorium on negotiations with third countries that employ practices against EU Member States (e.g. Pegasus spyware).

11

PUT AN END TO POLICE VIOLENCE AND DISCRIMINATION IN THE EU

The police are being granted increasing power and room for manoeuvre. At the same time, more and more cases of police violence have been made public over the last few years, with very dramatic consequences for the individuals concerned, their families but also society as a whole. It is

¹³ Agreement between the European Union, of the one part, and New Zealand, of the other part, on the exchange of personal data between the European Union Agency for Law Enforcement Cooperation (Europol) and the authorities of New Zealand competent for fighting serious crime and terrorism, 20 February 2023, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex-%3A22023A0220%2801%29>.

imperative that this topic gets more attention, since public awareness is the first step in combatting these problems.

We also observe the increasing trend of reported police violence against political activists (including climate activists) and journalists¹⁴, as well as marginalised groups, in particular, people from minorities and people in vulnerable situations. Racialised people are repeatedly being mistreated by police forces and targeted by discriminatory law enforcement practices. As evidenced by many studies, they are more likely to be confronted with the police and justice system in the EU¹⁵. Their over-representation illustrates the fact that they are often considered by nature to be crime suspects and more criminalised.

Police violence and discrimination by law enforcers is an issue that has to be tackled if we want to ensure respect for fundamental rights and the rule of law. However, our goal is not only to point out issues, but also to offer progressive solutions. For instance, justice and home affairs activities should be included in EU anti-discrimination policies. In addition, respect for fundamental rights by the police forces should be included in the rule of law annual review. The European Commission should also ensure the rights of victims are strictly enforced in the case of police violence and crime from the authorities on their citizens.

Law enforcement forces should lead by example when it comes to fundamental rights, and the use of force should be strictly limited to a practice of last resort, and should not end in the death of citizens. **The EU should create an independent expert group tasked with developing an EU Code of Police Ethics that provides a set of principles and guidelines for the objectives, performance, oversight and control of the police in democratic societies, as already requested by the European Parliament¹⁶, draft some guidelines on policing in the public space based on best practices and organise working groups that bring together law enforcement representatives with civil society.**

EU budget/funds should be dedicated to collecting data on police violence by EU police forces. As it stands now, the burden of collecting data falls on civil society organisations, academics and investigative media. **EU funds should also be used to actively fight racism, sexism and other forms of discrimination and radicalisation in security authorities.**

The growing need to end police violence and discrimination has led to some reforms in the law enforcement sector. We want to support efforts and collect best practice measures. To this end, we need to ensure there is a structured and continuous dialogue with security authorities, law enforcers, but also representatives from research and civil society, to find practical and sustainable solutions.

¹⁴ European Commission, Recommendation on the protection, safety and empowerment of journalists, September 2021, <https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists>

¹⁵ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2023-fundamental-rights-report-2023_en_1.pdf, p.95 ; https://fra.europa.eu/sites/default/files/fra_uploads/fra-2021-fundamental-rights-survey-police-stops_en.pdf ; <https://www.hrw.org/sites/default/files/reports/france0112frForUpload.pdf> ; https://www.enar-eu.org/wp-content/uploads/enar_report_-_the_sharp_edge_of_violence-2.pdf; https://www.lemonde.fr/police-justice/article/2017/01/20/le-defenseur-des-droits-denonce-les-controles-au-facies_5066029_1653578.html

¹⁶ European Parliament resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd, para. 31 https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html

In order to put an end to police violence and discrimination, and to restore citizens' trust in law enforcers, we need a strong, transparent and citizen-centred police force. To achieve that, the police force should reflect the diversity of our societies and marginalised groups should be allowed and encouraged to work in this field. Similar concerns should apply to EU agencies and law-making in this field at EU level, and diversity should be promoted further, as encouraged by the discharging authority. Among other practices that should be shared among Member States, we would suggest the creation of control receipts for those who get stopped by the police, externally supported checks on those who want to become police officers and those who want to be selected for leadership positions, and the creation of independent reporting channels within police forces for cases of wrongdoings.

We are aware that some of these measures fall mainly within the competence of Member States. However, we want to use EU-wide cooperation and training structures to facilitate an exchange about them and encourage such measures.

12

LAW ENFORCERS HAVE TO LEAD BY EXAMPLE

We cannot talk about internal security without talking about the women and men working in the field of law enforcement as well as the workers involved in related fields including social and economic inclusion, prevention, etc. As with many professions in public and associative sectors, we have seen a substantial deterioration in their working conditions. The result-oriented policy drives workers to prefer short-term visible results rather than mid- or long-term results with a meaningful impact. The policy of setting target figures results in the quantitative aspect having priority over long-term work, such as arresting street drug dealers over a long investigation resulting in stopping criminal networks from operating. There should be a change of policy and law enforcement should work closely with ground actors to ensure a real multidimensional approach. EU level should be the place to exchange best practices and coordinate such actions between representatives of sectors organised at EU level.

This is key to restoring the damaged relationship between law enforcement agencies and the population. The current paradigm should be challenged to allow for real change; we mentioned the target/results-oriented culture, but the culture of impunity, lack of transparency and intolerance also have to be profoundly addressed. In order to increase citizens' trust in law enforcement agents, the culture of racism and misogyny within police forces needs to be eradicated. **Training on fundamental rights and anti-discrimination should be part of the curricula, but also mandatory for all agents. Working groups at EU level should be created to issue guidelines and share good practices. EU agencies involved including CEPOL and Europol should integrate these dimensions in their work and training for agents at all levels. Reports should be produced to assess progress and the issues to be addressed.**

We also believe in the importance of human resources among law enforcement rather than their

replacement by artificial intelligence tools and technologies. Digitalisation may be of great help, but cannot be to the detriment of human intelligence and employment. Support for people working in these fields should be established to avoid professional distress and burnout, which often have very dramatic consequences (e.g. suicide).

Scaling up the response to transnational crime also supposes that we strive for a common European law enforcement culture and a shared understanding of internal security at European level. We propose setting up an Erasmus programme for law enforcement officers. This would allow junior and low-grade police officers who do not necessarily have experience in collaborating with their counterparts in other Member States to acquire additional experience and observe best practices on how to fight cross-border crime more effectively. This would result in practitioners on the ground exchanging information with their counterparts in other EU Member States more spontaneously. The programme could then be extended to other security and correction officers.

13

AN EU INTERNAL SECURITY BUDGET COMPLIANT WITH FUNDAMENTAL RIGHTS

Pushing for internal security legislation and policies compliant with fundamental rights also means using the EU budget accordingly. That includes EU funding programmes, be they directly or indirectly managed by the European Commission or managed jointly with Member States, as well as the budget allocated to JHA agencies.

For that, it is of the utmost importance that the whole architecture of the Multiannual Financial Framework (MFF) is compliant with fundamental rights, with strong safeguards included in the regulations setting up the EU funding programmes and establishing their governance.

More specifically, in the current MFF (2021-2027), **EU funding programmes such as Horizon Europe should not support research and innovation aiming to develop further technologies contributing to mass surveillance or other violations of human rights and international law, including by third countries.**

Furthermore, strong safeguards should be put in place when EU funds are used to develop the use of technologies by law enforcement authorities and the judiciary.

We are therefore calling on the European Commission to conduct an audit and ensure full transparency about how directly-managed EU funding programmes related to internal security in the current MFF (2021-2027) have impacted fundamental rights so far.

Concerning EU funding programmes under shared management, the European Commission

should ensure Partnership Agreements (PAs) with Member States, channelling EU cohesion funds for internal security purposes, including to renovate or modernise prison infrastructure, comply with the Common Provisions Regulation's enabling conditions, in particular, those aiming to ensure respect of the EU Charter of Fundamental Rights and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

As the preparation of the next MFF will kick off in 2024, we are also calling on the European Commission to ensure future budget proposals aimed at promoting internal security are compliant with fundamental rights. The next MFF will also be an opportunity to close current loopholes, such as the lack of data on police violence (see section 10).

As outlined in section 5, the growing power and competencies of justice and home affairs agencies can lead to breaches of fundamental rights when implementing their mandate. In these cases, when a justice and home affairs agency is deemed to breach fundamental rights when implementing its mandate or in its daily functioning, the European Parliament and Council of the EU, as EU budgetary authorities, should take appropriate measures, such as not granting the budgetary discharge and/or putting some parts of the agency's budget into a reserve. This reserve would be released once the justice and home affairs agency is again compliant with its fundamental rights obligation.

SUMMARY

OF KEY GREENS/EFA DEMANDS

- We want the EU to shift its focus and resources allocation to increased actions that tackle serious and financial crimes, such as corruption, organised crime and money laundering, which are the necessary basis for all other sorts of murderous crime and have severe socio-economic impacts on communities and our economy.
- We are convinced that the EPPO should be better equipped to ensure that it has competences in all cases where EU financial interests are affected e.g. by organised crime. We also believe that participation in the EPPO should be mandatory for all Member States that wish to benefit from EU funds.
- We want the European Commission to conduct an independent rule of law and fundamental rights audit of existing EU security policies, including regulations, directives and funding.
- Equally, we want the European Commission to conduct an ex-ante rule of law and fundamental rights evaluation and impact assessment process for every new legislative proposal.
- We want to see a victims-centred approach that would include a stronger focus on reparation and restoration, notably developing further restorative justice mechanisms that have proven to be very efficient for victims, as well as for convicted persons and society at large. The new directive is a step in the right direction for victims' rights, but its enforcement at national level and scope needs to be strengthened.
- We propose that, in order to increase parliamentary control over EU JHA agencies, the European Parliament has a binding say in executive director nominations instead of a simple opinion, as is the case for the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.
- We consider that the EU should take a leading role in putting in place an international framework on certain technologies, such as the use, import and export of arms and dual-use technologies including cyber-surveillance technologies and spyware.

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- In order to ensure high standards of fundamental rights and the rule of law, we believe the EU should invest in the necessary technologies itself. For such EU software, principles such as “public money, public code”, privacy by design, fundamental rights compliance including on non-discrimination and transparency of research, development and procurement should be adopted.
 - We insist that minimum standards for people in prison and places of detention should be centralised in an EU directive to ensure similar standards across the EU and facilitate judicial cooperation.
 - We advocate a “justice by design” approach instead of “security by design” in setting new technology and ask the EU to provide funding for research in this field. New technologies should be rule of law- and fundamental rights- proofed. A high level of technical protection is in particular required to prevent risks of manipulation of information in criminal investigations and prosecutions, and to avoid interference with the integrity of criminal proceedings. Digital markers certifying the chain of custody of the data and clearly showing which authorities accessed the data concerned should also be developed.
 - We believe that the EU should use certain agreements as models, such as the New Zealand-Europol exchange of data agreement and set similar standards for future similar agreements.
 - We would like the EU to create an independent expert group tasked with developing an EU Code of Police Ethics that provides a set of principles and guidelines for the objectives, performance, oversight and control of the police in democratic societies, as already requested by the European Parliament¹⁷, draft some guidelines on policing in the public space based on best practices and organise working groups that bring together law enforcement representatives with civil society.
 - We advocate for training on fundamental rights and anti-discrimination to be part of the curricula and mandatory for all agents. Working groups at EU level should be created to issue guidelines and share good practices. EU agencies involved including CEPOL and Europol should integrate these dimensions in their work and training for agents at all levels. Reports should be produced to assess progress and the issues to be addressed.
 - We oppose the fact that EU funding programmes such as Horizon Europe support research and innovation aimed at developing further technologies contributing to mass surveillance or other violations of human rights and international law. In this regard, we call on the European Commission to conduct an audit and ensure full transparency about how directly-managed EU funding programmes related to internal security in the current MFF (2021-2027) have impacted fundamental rights so far.

¹⁷ European Parliament resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd, para. 31 https://www.europarl.europa.eu/doceo/document/TA-9-2020-0173_EN.html

A GREEN VISION OF EUROPEAN INTERNAL SECURITY

This paper is based on inputs received from stakeholders' organisations including civil society representatives, academics and law enforcement agency representatives.¹⁸ Two consultations meetings, on 28 April 2023 and 30 May 2023, were organised, followed by internal discussions. This paper was drafted collaboratively between MEPs involved in the field of internal security and advisers from the LIBE team of the Greens/EFA group.

¹⁸ See full list of organisations and dates of meetings in annex.

ANNEX

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