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ALTERNATIVE
Developing alternative understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies

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Analysis of relevant EU policies

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Executive summary

As EU policies play an increasingly important role in the area of peace, security and justice in Europe, this research report aims to study the different policy areas dealing with the ALTERNTIVE project's main concepts, such as justice, security, conflict, diversity, interculturality and restorative justice at the EU level.

The European integration process started in the 1950s. From the initial economic cooperation of six countries by today the EU developed into a strong **economic and political union** of 28 Member States. With the deepening of the economic integration, the assurance of the free movement of persons and, later, the elimination of internal borders were necessary. These steps raised concerns about the internal security of the EU and on how to deal with cross-border and organised crime. The coordinated control of the EU's external borders and the common regulation of migration policies also became necessary. In the same time, due to its economic performance and to the overall globalisation trends, immigration grew and Europe became more and more **diverse**.

The most important policy area related to the concepts above is the EU's **Area of Freedom, Security and Justice** (AFSJ). Justice and home affairs, as well as common foreign and security policy gained legal basis at the EU treaty level in 1993, although available legislative mechanisms in these two pillars remained different from other EU policy issues until the Lisbon treaty, which came into force in 2009. With the elimination of the previous three pillars system and with the reform of the legislative procedures security, justice, migration and fundamental rights issues become part of the more democratic EU framework. Now, the decision-making follows the ordinary legislative procedure, in which the Commission's or Member States' proposals are adopted by the Council and the European Parliament, where unanimity voting has been replaced by simple or qualified majority voting. These changes intensified EU actions in these policy matters. Binding and directly applicable regulations, binding directives to be transposed by the Member States, decisions, recommendations and opinions constitute the legal acts, which establish and form EU policies. Nevertheless, soft policy tools, such as supporting activities, coordination and funding also shape these policy areas.

We could note that within the AFSJ the concept of **security** stays in the centre. The EU's internal and external security policies are interrelated, especially in issues such as terrorism and organised crime. The EU Internal Security Strategy mentions dialogue as the means of resolving differences in accordance with the principles of tolerance, respect and freedom of expression and integration, social inclusion and the fight against discrimination as key elements for EU internal security. However, concrete steps taken do not always reflect these statements and in many EU actions technological security solutions are preferred.

The rapidly developing EU policy field of **criminal justice** aims to strengthen mutual recognition of judicial decisions as well as setting up common minimum rules in Europe. Subsidiarity is significant limitation for the EU to act in this field as Member States regard criminal justice as an important field of their sovereignty. Therefore, the scope of EU's actions is limited to criminality with a cross-border element. More, the implementation of EU legislation in this field is often insufficient and slow in the Member States. Even so, important steps have been taken to approximate national rules of the criminal procedure. The recent Directive on victim's rights[1] enforces right to safeguards in the context of **restorative justice**[2] services. Proponents of restorative justice lack from the Directive the establishment of the right to access restorative justice services and the more balanced focus on restorative justice not only from the victim's, but from the offender's and the community's perspective.

The EU policy development in the field of **migration** shows a slow move from a strong security-based approach to a more balanced approach. Through decades the topic of migration was interrelated with concepts such as security, crime and control, which may contributed to the growth of intolerant and hostile attitudes towards immigrants in Europe. While supporting the Member States' activities in integration, the EU tries to

[1] Directive 2012/29/EU

[2] Restorative justice is mainly considered to be a way of responding to crime/conflict/harm, by bringing together – whenever possible – all stakeholders (victim, offender and/or members of the community). Affected persons in a conflict are invited to meet voluntarily in a neutral forum offered by a mediator(s) (or facilitator(s)), in the form of mediation, conferencing, or peacemaking circle. During this meeting, there is a great focus on dialogue, on the empowerment of the participants, on the reparation of the harm towards the victim, on the restoration of balance in relationships and on the reintegration of the offender into the community.

emphasise the economic added value and demographic necessity of migration. Actions aiming at the integration of immigrants more and more acknowledge that integration is a dynamic, **two-way process** of mutual accommodation by migrants and by the societies that receive them, therefore actions targeting only migrants are not sufficient. In this respect aiming for inclusion, instead of integration might be a step forward.

Inclusion of the Roma, who face deprivation, exclusion and discrimination all over Europe, raises similar challenges as of the inclusion of migrants. The EU became a strong leading force in the last years to further Roma inclusion, focusing on education, employment, health and housing issues. Both in case of the Roma and migrant inclusion punitive anti-discrimination measures have been proposed. Acknowledging that racism and xenophobia needs to be tackled, we argue that a more profound, everyday level of hostility and negative attitudes may exist in societies. As some EU instruments already highlighted the importance of intercultural dialogue, we also would like to emphasise the potential of restorative justice approaches to conflicts within intercultural settings. The new concept of **EU Citizenship**, granted automatically to nationals of EU Member States, besides implying new rights, has the potential to contribute to a formulation of a common European identity. Improvement of inclusion strategies are also important to contribute to meet the targets set out in the Europe 2020 strategy, especially concerning the aims of better employment rates, prevention of early school drop-out and reducing poverty.

The conclusion of the report is that restorative justice approaches in conflicts within intercultural settings may contribute to better understanding, mutual tolerance, more amicable relationships and formulation of common European values. Wider application of these approaches could also empower participants, lower societal tensions and promote active citizenship. While these outcomes certainly contribute to the societal stability and better economic performance of the EU, they are also relevant to further the democratic foundations of Europe.

EU policies on security, justice and relevant to intercultural conflict settings – is there a place for restorative justice?

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I. Introduction[4]

Acknowledging the fact that EU policies play an increasingly important role in the area of peace, security and justice in Europe, as well as taking the initiative within the ALTERNATIVE project to focus on the European level when dealing with concepts such us justice, security, conflict, diversity, interculturality and restorative justice approaches, this research report aims to study the different policy areas dealing with these key concepts at the EU level, identifies existing reference of the use of restorative justice approaches and attempts to bring all these together under one perspective, formulating recommendations towards a more extensive use of restorative justice approaches in the relevant European policy areas. In this way, on the one hand, the project aims to take into account the European level during its four core local case studies (WP 4-7) and in the comparative work carried out later in the project (WP 8). On the other hand, it aims to bring the European policy level into consideration to stir the project towards identifying policy recommendations at the EU level based on practical experiences gained through the local action research (case studies), on the outcomes of the theoretical research and on the comparative research.

The report first outlines broadly the developments of the economic, but recently more in-depth political cooperation project, called European Union. The basic introduction on the structure of EU and its legislative procedures has the purpose to give an overview on the context of the study, especially for those, who are not familiar with this area. After setting the scene, the next sections present the developments of different policy areas being highly relevant for the project, such as the area of justice (including developments in the field of restorative justice and mediation), security, policies with regards to migration and integration, Roma inclusion, the recently emerged concept of European Citizenship and the most important targets of the Europe2020 Strategy. The report concludes with highlighting the importance of restorative justice approaches in the light of the growth of

[4] The author would like to thank for the inspiring conversations to Jolien Willemsens and Alexander Hoefmans, for comments and feedback on the draft of this paper received from Ida Hydle, Borbála Fellegi, Christa Pelikan and Brunilda Pali and for the careful polishing of the text to Monique Anderson.

populist extremism, to promote tolerance and preserve the democratic foundations of Europe.

The ALTERNATIVE project is entitled 'Developing alternative understandings of security and justice through restorative justice approaches in intercultural settings within democratic societies'. The present report, therefore, focuses on conflicts in intercultural settings and on responses and solutions existing in the area of EU policies as an answer to these conflicts. The aim of this report is clearly not to evaluate these instruments or policy developments, but to draw a picture of how such a transversal topic as conflicts in intercultural settings is or can be dealt with in different policy fields. When talking about intercultural conflict settings, this research will not aim to include in its scope conflicts that exist in the external dimension of EU policies, namely the field of foreign diplomacies and external relations. (However, as we will see it later, this perspective cannot be considered as totally independent from the 'internal' policy developments of this topic.) But even in the restricted territory of conflicts in intercultural settings within the EU (focusing still on the micro-, meso- and macro level), this research task is demanding for the following reasons. First, to depict the policy developments in the justice and/or security fields requires a comprehensive study on its own. Second, 'conflicts in intercultural contexts' as such is not a policy area of the EU. Thus, to identify all the relevant policies influencing this complex social phenomenon makes our research even more challenging. A third aspect is the intense development in the security and justice policies at the EU level and the institutional complexity of the EU. To depict the real influence one policy development has on the other, as well as comparing all these regarding the implementation of EU policy at the national level is also a demanding task. A fourth aspect is the complexity of the instruments of policy realisation. While legislation is the most important tool for this, analysis on policy developments must take into account other instruments, such as communication on strategies, evaluation reports, establishing institutions, creating professional networks for certain policy areas or topics, offering grants for specific projects and request or support research on certain topics. Although the list is not complete, these 'soft' policy instruments also feedback and shape any legislative step the EU might take in the given policy areas. From a wider perspective, European legislation is not only relevant inside the EU, it can also offer considerable potential to

candidate countries and other neighbour countries, and guides their own reform efforts. Looking at all of these from a restorative justice perspective, a perspective which is based on certain values and principles[5] - some of them already grounded in the area of fundamental rights – makes this study even more complex. One more limitation of the present study is its focus on policy developments of the EU, while it has to be acknowledged, that in many related policy areas (such as criminal justice, minorities, intercultural dialogue) much has been done by the Council of Europe or by the United Nations. Council of Europe (CoE) initiatives will only be sparsely mentioned here, not reflecting the importance of the work done at that level. In the meanwhile, cooperation between the two bodies is important to mention (sometimes taking the form of joint programmes especially in the field of Roma integration and fundamental rights[6]), as well as the influence the CoE has on policy developments of the EU.

II. A short overview of the evolution of the EU and its policy making instruments

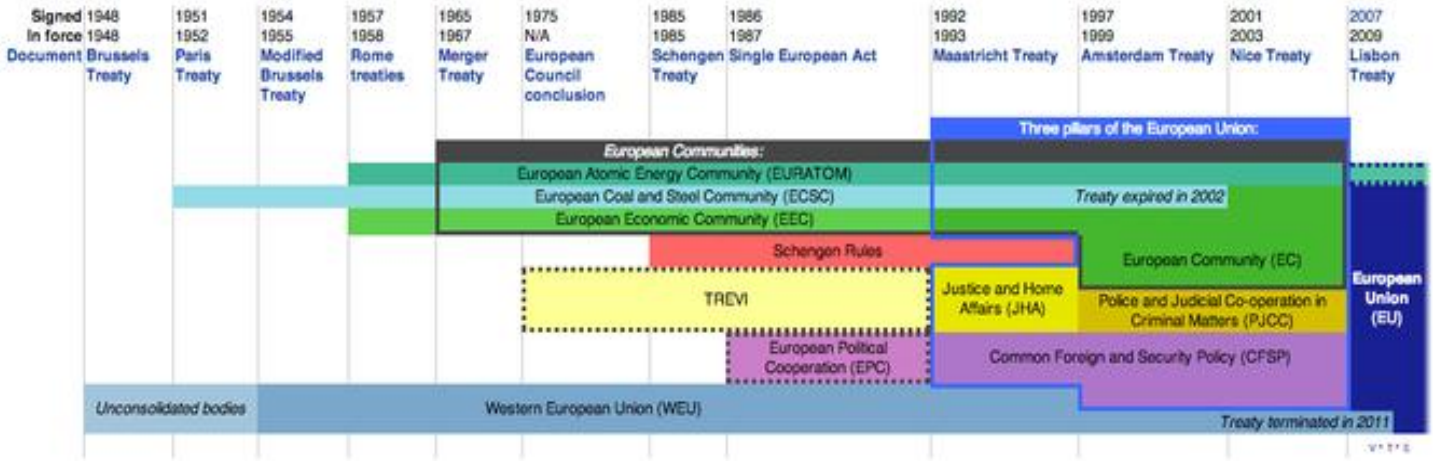
The European integration process started after the Second World War aiming to bring long lasting peace in the area. The first European Communities established in the 1950s (the European Coal and Steel Community, the Economic Community and the Atomic Energy Community) focused primarily on economic integration. Although other areas of common policies started to emerge in the 1970s (see for example the European Political Cooperation in foreign policy), from the 1990s a deeper, political integration started to evolve in Europe. The Maastricht Treaty, entered into force on 1 November 1993 established the European Union and its three pillars system. In the first, European Community (EC) pillar EU's supra-national institutions – the Commission, the European Parliament and the

[5] The definition of restorative justice we used for conducting a survey on experiences of applying restorative justice in intercultural conflict settings: „Restorative justice is mainly considered to be a way of responding to crime/conflict/harm, by bringing together – whenever possible – all stakeholders (victim, offender and/or members of the community). Affected persons in a conflict are invited to meet voluntarily in a neutral forum offered by a mediator(s) (or facilitator(s)), in the form of mediation, conferencing, or peacemaking circle. During this meeting, there is a great focus on dialogue, on the empowerment of the participants, on the reparation of the harm towards the victim, on the restoration of balance in relationships and on the reintegration of the offender into the community." (Törzs 2013, 7)

[6] For a full list of EU and CoE joint programmes see: http://www.jp.coe.int/CEAD/JP/

European Court of Justice – had the most power and influence. The second, Common Foreign and Security Policy (CFSP) pillar, and the third, Justice and Home Affairs (JHA) pillar were essentially more intergovernmental in nature with decisions being made by committees composed of member states' politicians and officials. However, the great step to introduce cooperation in justice and internal security matters within the EU has been made by the Maastricht Treaty (1993). Criticism towards the pillar system and its third pillar was based on the fact that many issues it involved, such as immigration, asylum, border controls touched on fundamental human rights, while the structure of this pillar was seen as the less transparent and democratic leaving the European Parliament (EP) out of the decision making, as well as excluding this area from the jurisdiction of the European Court of Justice (ECJ) (Craig and de Búrca 2011, 925). After decades of detailing the free movement of workers (or persons) within the Community the Maastricht Treaty also made a step forward in creating the citizenship of the European Union. The Amsterdam Treaty, which came into force on 1 May 1999 put a greater emphasis on citizenship and the rights of individuals, and attempted to achieve more democracy in the shape of increased powers for the European Parliament. The third pillar – based on the criticism above – has undergone major changes too, a large part of it, covering visas, asylum, immigration and judicial cooperation in civil matters was shifted to the first pillar (therefore under different decision making processes). The 'new' third pillar aiming to establish an area of freedom, security and justice dealt with and has then been entitled 'Police and Judicial Cooperation in Criminal matters (PJCC)'. The Amsterdam Treaty also introduced the reform of the institutions before the largest enlargement of the EU bringing in 10 new countries in 2004. The latter issue had significant importance in the content of the Nice treaty, coming into force on 1 February 2003, which introduced again changes in the Community's institutional structure. In the meanwhile considerable efforts were put in the construction of a treaty establishing a Constitution for Europe, which was signed in 2004 but has been never ratified due to its rejection by referenda in France and the Netherlands. Following a period of reflection, the Treaty of Lisbon was created to replace the Constitutional Treaty. This contained many of the changes that were originally placed in the Constitutional Treaty but was rather formulated as amendments to the existing treaties. Signed on 13 December 2007, the Lisbon Treaty entered into force on 1 December 2009. From the point of view of our topic, the most important change brought by the Lisbon Treaty is the

elimination of the three pillar system, including the former third pillar domains in the general treaty (Treaty on the Functioning of the European Union, TFEU) integrating it again with issues such as visas, asylum under Title V (TFEU) Area of Freedom, Security and Justice. A second, but for our topic also important aspect, is that the Lisbon Treaty made the Charter of Fundamental Rights of the European Union, proclaimed already in 2000 legally binding.



Source: https://www.boundless.com/marketing/the-marketing-environment/external-factors/political-environment/

Treaties are the core legal documents of the EU creating the scope of its possible intervention and legislation as it is explained below.

> The European Union is based on the rule of law. This means that every action taken by the EU is founded on treaties that have been approved voluntarily and democratically by all EU member countries. For example, if a policy area is not cited in a treaty, the Commission cannot propose a law in that area. A treaty is a binding agreement between EU member countries. It sets out EU objectives, rules for EU institutions, how decisions are made and the relationship between the EU and its member countries.[7]

As it is described, the treaties create the legal basis of the EU, defining the scope in which the EU can take legislative action and also the institutions and mechanisms available.

[7] http://europa.eu/about-eu/basic-information/decision-making/treaties/index_en.htm (Accessed on 8 December 2013)

While the pillar structure and the space where different policy areas were placed before Lisbon implied different roles for the EU institutions to act within areas, and also involved different legal instruments to be used, the elimination of the three pillar system does not mean that decision making is now identical in all policy matters. The Lisbon Treaty defines the EU competence as well as the decision-making mechanisms to be used at each policy area.

In terms of **competence**, three different systems are defined by the treaties, the exclusive, the shared and the supportive competence.

> The treaties list the policy areas in which the EU can take decisions. In some policy areas, the EU has **exclusive competence**, which means that decisions are taken at EU level (...). These policy areas cover customs, competition rules, monetary policy for the euro area, and the conservation of fish and trade. In other policy areas, there is **shared competence** between the Union and the Member States. This means that if legislation is passed at EU level, then these laws have priority. However, if no legislation is adopted at EU level, then the individual Member States may legislate at national level. (...) In all other policy areas the decisions remain with the Member States. Thus, if a policy area is not cited in a treaty, the Commission cannot propose a law in that area.[8]

In some other fields, such as culture and education the EU can **support**, coordinate or supplement Member States' efforts, and in others, the EU can carry out parallel activities, such as humanitarian aid programmes.

> The decision-making at EU level involves various European institutions, in particular: the **European Parliament**, which represents the EU's citizens and is directly elected by them; the **European Council**, which consists of the Heads of State or Government of the EU Member States; the **Council**, which represents the governments of the EU Member States; and the **European Commission**, which represents the interests of the EU as a whole.

[8] The European Union explained — How the European Union works (2012) (referred as EU expl. 2012), Luxembourg: Publications Office of the European Union, doi:10.2775/87270, 8

> The European Council defines the general political direction and priorities of the EU but it does not exercise legislative functions. Generally, it is the European Commission that proposes new laws and it is the European Parliament and Council that adopt them. The Member States and the Commission then implement them (EU expl. 2012, 5).

National parliaments also have a role in decision-making.

> National parliaments receive draft legislative acts at the same time as the European Parliament and the Council. They can give their opinion to ensure that decisions are taken at the most appropriate level. EU actions are subject to the principle of **subsidiarity**— which means that, except in the areas where it has exclusive powers, the Union only acts where action will be more effective at EU level than at national level. National parliaments therefore monitor the correct application of this principle in EU decision-making. (EU expl. 2012, 8)

An additional instrument introduced by the Lisbon treaty is the European Citizens' Initiative, by which 1 million EU citizens from at least one quarter of the EU Member States may invite the Commission to bring forward a legislative proposal on a particular issue[9].

The EU uses several **types of legal acts**, which – after the Lisbon treaty – consists of the following:

> A **regulation** is a law that is applicable and binding in all Member States directly. It does not need to be passed into national law by the Member States although national laws may need to be changed to avoid conflicting with the regulation.
>
> A **directive** is a law that binds the Member States, or a group of Member States, to achieve a particular objective. Usually, directives must be transposed into national

[9] The first eight European Citizens' Initiatives (ECIs) arrived at the end of their collection period on 31 October 2013. Three of them, Right2Water (aiming to implement the human right to water and sanitation), One of Us (aiming at protect and respect the dignity and integrity of the human embryo, and Stop Vivisection (which aims to abolish animal testing), declare having reached the target of one million signatures in the EU and a minimum number of signatures in at least seven Member States. The statements of support have still to be verified by the competent national authorities before the formal submission of these initiatives to the Commission. http://ec.europa.eu/citizens-initiative/public/welcome?lg=en

law to become effective. Significantly, a directive specifies the result to be achieved: it is up to the Member States individually to decide how this is done. (EU expl. 2012, 5)

Before the Lisbon treaty, the same aim was pursued by Framework decisions. As Werner Miguel Kühn Baca notes, „directives manage to strike the delicate balance between the need to approximate national laws while taking into account differences in traditions as well as the specificities of national legislation" (Kühn Baca, 9).

"A **decision** can be addressed to Member States, groups of people, or even individuals. It is binding in its entirety. Decisions are used, for example, to rule on proposed mergers between companies.

Recommendations and **opinions** have no binding force." (EU expl. 2012, 5)

The last aspect to reflect on is the **procedure by which legal acts are accepted**. As it was referred to above, different types of legislative procedures exist in the EU law. What is common that every European law must be based on a specific treaty article. This is referred to as the legal basis of the legislation. This treaty article also determinates which legislative procedure has to be followed.

> The treaty sets out the decision-making process, including Commission proposals, successive readings by the Council and Parliament, and the opinions of the advisory bodies. It also lays down when unanimity is required, and when a qualified majority is sufficient for the Council to adopt legislation. The great majority of EU legislation is adopted using the **Ordinary Legislative Procedure**. In this procedure, the Parliament and the Council share legislative power.
>
> The procedure begins with the Commission. When considering launching a proposal for action, the Commission often invites views on the topic from governments, business, civil society organisations and individuals. The opinions collected feed into a Commission proposal that is presented to the Council and Parliament. The proposal may have been made at the invitation of the Council, the European Council, the Parliament or European citizens, or it may have been made on the Commission's own initiative. The Council and the Parliament each read and discuss the proposal. If no agreement is reached at the second reading, the proposal is put before a 'conciliation

committee' comprising equal numbers of Council and Parliament representatives. Commission representatives also attend the committee meetings and contribute to the discussions. Once the committee has reached an agreement, the agreed text is then sent to Parliament and the Council for a third reading, so that it can finally be adopted as law. In most cases, the Parliament votes on proposals by simple majority and the Council by qualified majority voting, whereby each Member State has a certain number of votes in line with its size and population. In some cases, unanimous voting is required in the Council. (EU expl. 2012, 7)

It has to be noted that qualified majority voting replaced unanimity voting step by step through the different treaties. The Lisbon treaty replaced the requirement of unanimity voting in the Council for example in the policy area of border control and asylum. Qualified majority voting speeds up and widens the scope of legislation at the EU level as single member states do not have the right to veto any proposals.[10]

III. Policies under the Area of Freedom, Security and Justice (AFSJ)

III.1 Evolution of the AFSJ

The European Union (more precisely the former Communities) focused initially on economic integration and on the creation of a common market. Over time the basic principles that served this goal, namely the free movement of persons (initially labour), products, services and capital were improved. However, the gradual elimination of internal borders had consequences for other policy areas. One often cited argument is that the free movement and in addition the Schengen process, which started in 1985 to eliminate internal EU border controls opened up new opportunities for crime and the movement of criminals. In turn, this called for enhanced cooperation at the EU level regarding this new

[10] From 1 November 2014 a new qualified majority system, called 'double majority' will enter into force defined by the Lisbon treaty. The new qualified majority corresponds to at least 55% of the members of the Council, comprising at least 15 of them and representing at least 65% of the European population. A blocking minority may be formed comprising at least four members of the Council.
(source: http://europa.eu/legislation_summaries/glossary/qualified_majority_en.htm)

issue (Joutsen 2006, 7). Although with the setting up of the Trevi Group already in 1975 the member states of the EU started regular consultation on matters such as law and order, terrorism and international crimes (Willemsens 2008, 114) it was not until the Maastricht treaty in 1993 that the EU formally acquired the competence to pursue policies in two new areas, the common foreign and security policy (second pillar) and cooperation in the fields of justice and home affairs (third pillar, as explained above).

As Willemsens notes (2008, 114) the advantage of bringing these policy fields under the EU competence was that it allowed for more coherent action, involving all the European actors, even if the European Court of Justice's role remained very limited. However, as Elsen (2007, 15, cited by Willemsens 2008, 115) evaluated the weaknesses of the two new pillars are: „the legal instruments were to some extent inappropriate, the working structures in the Council were cumbersome, the objectives described in the Treaty as 'matters of common interest' (including judicial cooperation in criminal matters and police cooperation), were not clearly defined and the unanimity rule was a severe handicap". As it was mentioned above, the Amsterdam treaty restructured these policy areas bringing civil matters, immigration and asylum policy within the first pillar and renamed the third pillar as 'Provisions on police and judicial cooperation in criminal matters'. The Amsterdam treaty also increased the roles of the European Court of Justice and the European Parliament in the policy area of Justice and Home Affairs, as well as added 'Maintaining and developing the Union as an Area of Freedom, Security and Justice' as a new objective of the EU.

The European Council set out priorities and measures to be taken in order to achieve the area of freedom, security and justice in 1998 by the **Vienna Action Plan**[11]. According to this action plan, in the field of immigration, common provisions had to be drawn up for the conditions of entry, residence and return, more effective measures had to be taken against illegal immigration and the rights of nationals of non-member countries were to be defined as regards free movement within the Union. It also set the need for the introduction of a standard visa. As regards judicial cooperation in criminal matters, measures aimed to

[11] Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, text adopted by the Justice and Home Affairs Council of 3 December 1998, O.J. C19/01 of 23.1.1999.

simplify mutual assistance between national authorities, extradition between Member States and the mutual recognition of decisions and enforcement of judgments, and to strengthen action against money laundering. The harmonisation of criminal law was also looked into. In the area of criminal matters, the exchange of data (such as criminal records) was also mentioned to increase the effectiveness of the measures taken.[12] The European Council meeting in Tampere on 15 and 16 October 1999 focused on the creation of an area of freedom, security and justice and further defined the priorities and cemented the measures in a five years multi-annual programme, called the **Tampere Programme**[13]. What is important to note that in Tampere the European Council clearly engaged with the **mutual recognition** as the main tool of police and judicial cooperation in criminal matters.

Mutual recognition as the main principle for the EU policy in criminal matters

Mutual recognition means that besides approximation of national laws (harmonisation) and facilitating executive measures (through enhancing cooperation of national bodies as well as through European agencies such as Europol and Eurojust), the main priority is to make judgements and judicial decisions taken in any of the Member States automatically recognised by all the other member states without any additional procedure. It is clearly less far reaching than the goal to harmonise the criminal law provisions of the member states, although also revolutionary and probably the most the EU can achieve in light of the lack of political will to give up criminal law as an important part of the member state`s sovereignty. The first instrument accepted in the framework of mutual recognition – and although drafted before, clearly under the influence of the 2001 September 11 terror attacks, – was the European Arrest Warrant[14]. Since the coming into force of the Lisbon Treaty, the principle of mutual recognition in criminal matters has gained an explicit legal basis in Article 82 Paragraph 1 TFEU: "(j)udicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States." Although the EU preserved mutual recognition as the main principle for policy making in the area of justice, the main challenge is still the lack of mutual trust between the member states` authorities and also the slow and incomplete implementation of these EU decisions on the member states' level. One direction to overcome this challenge by the EU is the promotion (and funding) of training and networking of members of the judiciary to enable them to learn about other European legal systems and to build trust and partnership with each other, which would lead to better implementation of these EU level instruments. It seems, however, that this was not sufficient, as a recent press release of the Commission on a proposal of a package of new directives to further strengthen procedural safeguards for citizens in criminal proceedings stated: „Without minimum common standards to ensure fair proceedings, judicial authorities will be reluctant to send someone to face trial in another country.

[12] http://europa.eu/legislation_summaries/other/l33080_en.htm (accessed on 11 Dec 2013)
[13] Tampere European Council, 15 and 16 October 1999, Presidency conclusions
[14] Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

As a result, EU measures to fight crime – such as the European Arrest Warrant – may not be fully applied.[15]" Looking at this it seems that the EU may pursue a further step than mutual recognition and slowly turns to harmonisation at least to create a minimum level of common European standards in criminal law.[16]

It is noteworthy that it was also the Tampere European Council meeting that called for the setting up of a high-level body, including member states, members of the European Parliament and of national parliaments, to start drawing up a draft Charter of Fundamental Rights of the European Union.[17]

The Tampere Programme was followed by a second multi-annual programme, **The Hague Programme** for 2005-2009 and a third one, the **Stockholm Programme** for 2010-2014.

The policy area of AFSJ had undergone some major changes when the Lisbon treaty entered into force on 1 December 2009. As described above, the main change was the abolition of the pillar system bringing this policy area under the scope of the EC Treaty, while the field of foreign and security matters (former second pillar) remains still a more detached specific policy area placed under the amended version of the Treaty of the EU.

The Lisbon Treaty made, among others, the following changes (based on Willemsens 2008, 121-122):

- a strengthened role for the European Parliament through the increase of the co-decision procedure in policy making, which becomes the 'ordinary legislative procedure';

- a greater involvement of national parliaments, in particular through a mechanism to check that the Union only acts where results can be better attained at EU level (subsidiarity);

[15] The Right to… - a Fair Trial! Commission wants more safeguards for citizens in criminal proceedings. Press release of the European Commission - IP/13/1157 27/11/2013. http://europa.eu/rapid/press-release_IP-13-1157_en.htm

[16] For a more detailed overview on the concept of mutual recognition see Asp 2005

[17] Although the Charter was drawn up very quickly and was proclaimed in 2000, it has become legally binding only with the entry into force of the Treaty of Lisbon, in December 2009.

- a new High Representative for the Union in Foreign and Security Policy, supported by a new European External Action Service. This person will also be the Vice-President of the European Commission;

- the jurisdiction of the European Court of Justice is expanded to all the activities of the Union with the only express exception of common foreign and security policy, therefore including AFSJ in the jurisdiction of the Court;

- the Union gains a single legal personality in international law across its whole competence;

- a new hierarchy of norms is established which distinguishes between legislative acts, delegated acts and implementing acts;

- the Charter of Fundamental Rights becomes binding and has the same legal value as the Treaties.

The Lisbon Treaty also put AFSJ policies under the ordinary legislative procedure described above, and introduced decision-making by qualified majority voting to replace unanimity voting in the Council.

The Lisbon treaty replaced the previous Title IV on visas, asylum, immigration, and other policies related to free movement of persons with the heading 'AREA OF FREEDOM, SECURITY AND JUSTICE'. According to the Treaty it contains policy areas such as policies on border checks, asylum and immigration (Chapter 2), judicial cooperation in civil matters (Chapter 3), judicial cooperation in criminal matters (Chapter 4) and police cooperation (Chapter 5). In the general provisions (Article 61) the Lisbon treaty sets out the main aims of the AFSJ policies as follows:

> 1. The Union shall constitute an area of freedom, security and justice with respect for fundamental rights and the different legal systems and traditions of the Member States.
>
> 2. It shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on

solidarity between Member States, which is fair towards third-country nationals. For the purpose of this Title, stateless persons shall be treated as third-country nationals.

3. The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws.

4. The Union shall facilitate access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters.

As Kaczorowska (2013, 937) notes, there is no definition of the concepts of 'freedom', 'security' and 'justice'. Concerning *freedom*, the 1998 Vienna Action Plan specifies that „freedom means more than freedom of movement, it includes `freedom to live in a law-abiding environment in the knowledge that public authorities are using everything in their individual and collective power (nationally, at the level of the Union and beyond), to combat and contain those who seek to deny or abuse that freedom`[18]." As Kaczorowska argues (2013, 937) the concept of freedom is, therefore, linked to the concept of security and includes freedom from threats posed by criminal activity. The concept of *security*, according to her, has a similar meaning as under national law and means the freedom from crime. As for the concept of *justice*, she refers to the Conclusions of the Tampere Presidency, which states that the aim is to ensure, that EU citizens "are not discouraged or prevented from exercising their rights"[19]. It can be noted that in this framework the understanding of both freedom and justice are a very restricted one, restricted mainly to security concerns.

Schengen process	1985	Elimination of internal borders between EU Member States starts
Maastricht Treaty	1993	Creation of the 3 pillar system, including common foreign and security policy and justice and home affairs

[18] [1999] OJ C19/1. Quoted by Kaczorowska 2013, 937
[19] Bull. EU, 10-1999, para. 28. Quoted by Kaczorowska 2013, 937

Vienna Action Plan	1998	priorities and measures to be taken in order to achieve the area of freedom, security and justice
Amsterdam Treaty	1999	Removal of asylum and immigration issues to the first pillar; third pillar: police and judicial cooperation in criminal matters; new objective: EU as an Area of Freedom, Security and Justice
Tampere Programme	1999	Multiannual programme for the AFSJ for 2000-2004
EU Charter of Fundamental Rights	2000	Adopted, although legally not binding until the Lisbon Treaty
Nice Treaty	2003	Changes in the EU's institutional structure
European Security Strategy	2003	External security aspects
The Hague Programme	2004	Multiannual programme for the AFSJ for 2005-2009
Stockholm Programme	2009	Multiannual programme for the AFSJ for 2010-2014
Lisbon Treaty	2009	Creation of the European Union as a legal entity; Abolition of the EU's pillar system; EU Charter of Fundamental Rights is legally binding
EU Internal Security Strategy	2010	Internal security aspects (international organised crime, terrorism, border management, cyber-security, disasters)

Table 1. – Overview of the most important legal instrument in the evolution of the AFSJ

III.2 Decision-making and the role of the EU institutions in AFSJ

The AFSJ falls within **shared competence**, which means Member States cannot exercise competence in areas where the Union has done so. It has to be noted that "there are different ways in which the EU can intervene in a particular area. The EU may choose to make uniform regulations, it may harmonize national laws, it may engage in minimum harmonization, or it may impose requirements of mutual recognition. The scope for any Member State action will depend on which regulatory technique is used by the EU." (Craig and de Búrca 2011, 933).

The role of the different EU institutions in AFSJ policy-making:

1 - European Council

The European Council defines the strategic guidelines for legislative and operational planning within AFSJ. In reality the EC practiced this role from earlier through its 5 years programmes (Tampere Programme: 2000-2005, the Hague Programme 2005-2010 and the most recent Stockholm Programme 2010-2014).

2 – Council

The Council is the central actor within AFSJ. Article 74 of the TFEU empowers the Council to adopt measures to ensure administrative cooperation between the relevant departments of the Member States in the area covered by this title, as well as between those departments and the Commission. (Craig and de Búrca 2011, 934). The Council may, on proposal from the Commission, adopt measures laying down arrangements for Member States to evaluate the implementation of AFSJ policies, in particular to facilitate full application of mutual recognition.

Because of the volume and specialty of the field of AFSJ, the Council also builds on the expertise on specialised committees, such as CATS (police and judicial cooperation), the Strategic Committee on Immigration, Frontiers and Asylum and the COSI (Committee on Internal Security) set up after the entry into force of the Treaty of Lisbon. The COSI's

objective is to facilitate, promote and strengthen the coordination of operational actions of the EU Member States in the field of internal security.

3 – Commission

The Commission has the right to make proposals for legislation, however, uniquely in the AFSJ the Commission's right of initiative is shared with one quarter of the Member States, which means that Member States can initiate proposals without the Commission (Best 2008, 91).

Within the Commission, there are two commissioners (the European Commissioner for Justice, Fundamental Rights and Citizenship and the European Commissioner for Home Affairs) and, therefore, two Directorate Generals (DGs) involved in AFSJ policies.

The **DG Home Affairs** deals with policy areas such as immigration, asylum, border control, internal security, organised crime and human trafficking, crisis and terrorism, police cooperation and related international affairs.

In the meanwhile, the **DG Justice** deals with a wide range of policies, such as cooperation in civil and criminal justice, fundamental rights, Roma inclusion, EU citizenship, data protection, gender equality, tackling discrimination with an overarching aim to build a European area of justice. Quoting from the mission of the DG: "In a Europe of open borders, more and more people live, work and do business in other EU countries. The European Commission wants to make life easier for them by building an EU-wide area of justice. The aim is to offer practical solutions to cross-border problems, so that citizens feel at ease when moving around the EU and businesses can make full use of the Single Market." Practically, these policies aim to ensure respect for fundamental rights, equal treatment on the basis of sex, race or ethnic origin, religion or belief, disability, age and sexual orientation, data protection and access to justice (protection and support for victims of crime, fair trial and resolution of civil matters in cross-border situations).

4 – The European Parliament (EP)

As the AFSJ falls within the ordinary legislative procedure after Lisbon, the EP has the same weight in the decision-making as the Council. Proposals must be accepted by both

bodies to become legally binding. The procedure allows for several readings and amendments on the proposal, starting with the EP's first reading. If a legislative proposal is rejected at any stage of the procedure, or the Parliament and Council cannot reach a compromise, the proposal is not adopted and the procedure is ended. A new procedure can start only with a new proposal from the Commission. This change brought by the Lisbon treaty was highly welcomed after many critics concerning the democratic deficit of the former legislative procedure (as explained above). At the EP the Committee LIBE (Standing Committee on Civil Liberties, Justice and Home Affairs) is the owner of this policy area. According to Carrera, Hernanz and Parkin (2013, 1) "LIBE's contribution has materialised in concrete and visible inputs in the content of adopted EU AFSJ legislation, a higher degree of democratic scrutiny in EU AFSJ cooperation, and the development of new working methods and practices in the conduct of negotiations of complex legislative dossiers." However, their activity also faces criticism. Carrera, Hernanz and Parkin (2013, 4) found, that instead of turning to a democracy and fundamental rights watchdog, the LIBE started to adopt the working logic of the Council and the Commission, which manifests in a "trend towards greater flexibility, informalities and early compromise agreements with the rotating Presidency and Council in the course of legislative procedures in parallel with an increasing 'technocratisation' and a degree of depolitisation".

National parliaments also have role in the legislative procedure in AFSJ. National parliaments ensure that a proposal concerning crime and police cooperation comply with the principle of subsidiarity (Article 69 TFEU). As Craig and de Búrca (2011, 935) note: "This provision is new, and reflects the sensitivity of EU involvement in these areas."

After Lisbon the AFSJ falls under the jurisdiction of the Union Courts, which was very limited in this area before. This change is also seen as a positive step towards the democratic development of this area (Guild, Carrera and Balzacq 2008).

In the next parts of the study the latest developments of the most relevant policy areas within AFSJ for the ALTERNATIVE project, such as security, criminal justice, restorative justice and migration will be explained in more detail.

III.3 Security

As Trauner (2011,9) describes, "(n)ot all policies subsumed under the AFSJ are security-related, e.g. judicial cooperation in civil matters, yet the objective of providing European citizens with a high level of security has driven the cooperation and been the dominant one, if compared to the other objectives of providing 'freedom' and 'justice'. " This is in line with the above given restricted definitions of the concepts of freedom and justice in AFSJ by Kaczorowska.

Policies in the field of security should be distinguished whether they fall into the area of **internal or external** security of the EU. According to Trauner (2011, 7) "(i)n a traditional understanding, the field of 'internal/domestic security' (crime, public order, political stability) tended to be considered as separate from 'external/foreign' security (external peace, military engagement) regardless of acknowledged interdependencies (external peace promotes internal stability and vice versa)." However, as he argues that, "the increasingly transboundary nature of issues such as organized crime and terrorism, the challenge of uncontrolled migration and fundamental changes in the way societies are organized, have blurred the boundaries of internal/external security divide." This interdependence is clearly highlighted in the EU policy developments in the field of security. In December 2003, the European Union adopted the **European Security Strategy**, which looked at the external aspect of Europe's security. The European (external) Security Strategy is based on five identified security threats having two (terrorism and organised crime) falling also under the scope of internal security policy issues. In February 2010, the Council complemented the European security strategy by adopting the **Internal Security Strategy**.[20] This strategy describes the European security model as an internal security with a global perspective, which clearly represents the link between the internal and external dimensions of security policies in Europe. The 2010 Stockholm Programme also reflects on the external dimension of asylum policies, as well as devotes a separate chapter to the external dimension of freedom, security and justice.

[20] Internal security strategy for the European Union - Towards a European security model, Luxembourg: Publications Office of the European Union, 2010, ISBN 978-92-824-2679-1, doi:10.2860/87810

There is also a third level of security policies in Europe, the national level, which forms a strong part of the state sovereignty and this is acknowledged also in the treaties. Article 4.2 of the TEU[21] states: "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State." Therefore, the EU has to face a challenge to find a balance and coherence not only between its external and internal security policies, but also to respect the Member States' national security policies. This aspect also raises the question of how far the EU can go to safeguard the European values, principles and fundamental rights in the area of its Member States' national security initiatives. However, in this study the focus remains on the 'internal' security aspect of EU policies.

In the following part the content of the EU Internal Security Strategy and the action plan derived from it will be further explained. It was the Stockholm Programme adopted in 2010 which called for the creation of an internal security strategy. Point 4.1 of which gives the reasoning for such a strategy as follows:

> The European Council is convinced that the enhancement of actions at European level, combined with better coordination with actions at regional and national level, are essential to protection from trans-national threats. Terrorism and organised crime, drug trafficking, corruption, trafficking in human beings, smuggling of persons and trafficking in arms, inter alia, continue to challenge the internal security of the Union. Cross-border wide-spread crime has become an urgent challenge which requires a clear and comprehensive response. Action of the Union will enhance the work carried out by Member States' competent authorities and will improve the outcome of their work.

[21] Consolidated version of the Treaty on European Union, 2010.03.30. Official Journal of the European Union C 83/15

Therefore, the Council and the Commission are called to define a comprehensive internal security strategy based on the following principles:

- clarity on the division of tasks between the Union and the Member States, reflecting a shared vision of today's challenges,
- respect for fundamental rights, international protection and the rule of law,
- solidarity between Member States,
- reflection of a proactive and intelligence-led approach,
- the need for a horizontal and cross-cutting approach in order to be able to deal with complex crises or natural or man-made disasters,
- stringent cooperation between the Union agencies, including further improving their information exchange,
- a focus on implementation and streamlining as well as on improvement of preventive action,
- the use of regional initiatives and regional cooperation,
- the aim of making citizens aware of the importance of the Union's work to protect them.

While the preliminary reasoning mentions only serious cross-border crime as the main reason for the need of an internal security strategy, the document further states:

> In order to ensure the effective enforcement of the internal security strategy, it shall also cover security aspects of an integrated border management and, where appropriate, judicial cooperation in criminal matters relevant to operational cooperation in the field of internal security.
> The internal security strategy should also take into account the external security strategy developed by the Union as well as by other Union policies, in particular those concerning the internal market. Account should also be taken of the impact it may have on relations with the Union's neighbourhood and particularly with the candidate and potential candidate countries, since internal security is interlinked with the external dimension of the threats. In a global world, crime knows no borders. As the policies followed in the area of freedom, security and justice

> gradually reach maturity, they should support each other and grow in consistency. In the years to come they should fit smoothly together with the other policies of the Union.

Here, clearly the external dimension of security and its interconnectedness with the EU foreign policy are reflected, but in the same time, by including the integrated border management (the external borders of the EU), the matter is linked to immigration policies, even if migration is not necessarily linked to criminal activities. This linkage between internal security, crime and migration is quite obvious, in general, looking at the EU policies and will be further explicated under the section on migration.

The EU Internal Security Strategy was adopted by the Council in February 2010 and constituted a shared agenda for tackling common security challenges. It states: "Security has therefore become a key factor in ensuring a high quality of life in European society, and in protecting our critical infrastructure by preventing and tackling common threats." The Commission's Communication of November 2010 "The EU Internal Security Strategy in Action: Five steps towards a more secure Europe"[22] translates the strategy's principles and guidelines into concrete actions by identifying five strategic objectives: (1) to disrupt international crime networks, (2) to prevent terrorism and address radicalisation and recruitment, (3) to raise levels of security for citizens and businesses in cyberspace, (4) to strengthen security through border management and (5) to increase Europe's resilience to crises and disasters.

It is interesting to note, that the strategy reflects on the fundamental rights aspects of the security strategy stating that the "values and principles established in the Treaties of the Union and set out in the Charter of Fundamental Rights have inspired the EU's internal security strategy", highlighting, among others, two aspects of this influence, which are highly relevant for our topic: **dialogue as the means of resolving differences** in accordance with the principles of tolerance, respect and freedom of expression; and **integration, social inclusion and the fight against discrimination as key**

[22] Communication from the Commission to the European Parliament and the Council COM(2010) 673 The EU Internal Security in Action: Five steps towards a more secure Europe

elements for EU internal security (ISS, 20). This political text of the strategy is operationalised by the above mentioned action plan of the Commission, which sets out concrete objectives in the five priority areas defining the responsible actors and the timeline for action. However, looking at the text of the action itself, a first observation is that only a short paragraph refers to the need to respect the EU Charter of Fundamental Rights, but the text fails to mention dialogue, respect, tolerance, social inclusion or discrimination. A second observation is that while the action clearly states the need for a solid EU security industry, the strategy does not reflect on this aspect of security in the EU. Moreover, in 2012, the European Commission adopted a Security Industrial Policy and Action Plan. These observations might well illustrate the twofold picture of security policies in Europe. While in the strategy there is a high emphasis on fundamental rights, in reality, when operationalised, security policies are highly influenced by the logic of the security industry and technology. However, the fact that the strategy calls for dialogue and mentions integration and social inclusion as key elements for internal security can be seen as acknowledgement of the importance of approaches beyond technology. In this respect our aim in the ALTERNATIVE project to offer restorative justice approaches as a security solution for conflicts within intercultural settings fits within this framework. Further, it may offer useful tools to develop more concrete steps to meet the need for reflecting dialogue, tolerance and inclusion related to security matters in the EU. Moreover, the participatory methodology developed in the ALTERNATIVE project might provide a good basis for including security industries as stakeholders together with other societal security actors for future security policies.

With respect to the focus of our project on intercultural conflict settings, it is also important to highlight the action that the Commission proposes to address **radicalisation**, which – the Commission argues – can lead to acts of terrorism. This is a rather new approach to terrorism, which considers the social processes and reasons behind radicalisation and terrorism and includes new phenomena, such as extremist 'lone wolves' in the picture when describing terrorism. Within this new approach the Commission proposes interventions which aim to prevent the process of radicalisation and highlights the importance of ongoing **support for local community-based approaches** and

prevention policies.[23] This strategy is supported by previous research as part of the EU strategy for combating radicalisation and recruitment to terrorism[24] and further promoted by the setting up in 2011 of an EU radicalisation-awareness network (RAN)[25] consisting of policy makers, law enforcement and security officials, prosecutors, local authorities, academics, field experts and civil society organisations including victim groups. The Communication on the internal security strategy in action states (7-8): "Member States should use ideas generated through the network to create physical and virtual community spaces for open debates which encourage credible role models and opinion leaders to voice positive messages offering alternatives to terrorist narratives." The focus on the support of community spaces for dialogue resonates with our restorative justice approaches to dealing with conflicts within intercultural settings.[26] This assumption is further strengthened by a recent Commission Communication entitled 'Preventing Radicalisation to Terrorism and Violent Extremism: Strengthening the EU's Response' published on 15 January 2014 together with a collection of approaches compiled by RAN. The Communication explicitly mentions intercultural dialogue and personal exchanges as potential ways to develop resilience to extremist propaganda. The RAN publication[27] lists and explains several useful methods and strategies as well as best practices to break down and tackle violent extremism. The document lists among the key strategies 'bridging gaps through dialogue' as well as 'community engagement and empowerment'. In our view the ALTERNATIVE project, offering restorative justice approaches for conflicts in intercultural settings clearly contributes to the strategies highlighted above and will offer practices, which may contribute to the achievement of these aims.

[23] Communication from the Commission to the European Parliament and the Council COM(2010) 673 The EU Internal Security in Action: Five steps towards a more secure Europe (7)
[24] CS/2008/15175
[25] http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/radicalisation_awareness_network/index_en.htm
[26] It's worth to mention that the EU also supports a new, independent European Network of Deradicalisation, which was offcially inaugurated on 1 November 2013. It is a network of European NGOs to research and disseminate promising practices aiming to deradicalisation. http://www.european-network-of-deradicalisation.eu/
[27] Violent Extremism: Strengthening the EU's Response, RAN Collection, Approaches, lessons learned and practices. 2014

Although the Second report on the implementation of the EU Internal Security Strategy (ISS), adopted in 2013[28] states that terrorism has remained a priority for the European Union and highlights achievements in this area referring among others to several projects supported within the ISEC programme[29], it considers organised crime as the main challenge for EU internal security to address. This is supported by the statement of Cecilia Malmström, EU Commissioner for Home Affairs in a recent press release on the progress made in internal security: "One of the major threats to our internal security is organised crime and its detrimental effects on the European economy and the security of the European citizens. To go after the money, to disrupt organised criminal networks and reclaim the proceeds of crime, continues to be a key aim of the EU's strategy."[30] The Commission will prepare a final evaluation of the ISS in mid-2014 and will consider the future aims of the EU in the field of internal security.

The Commission was also asked in the Stockholm Programme to consider the feasibility of setting up an **Internal Security Fund** to promote the implementation of the ISS so that it becomes an operational reality. In 2011 the Commission proposed[31] that this Fund would be set up and that it would contain two different instruments: one for financial support for police cooperation, preventing and combating crime, and crisis management and another one for financial support for external borders and visa related matters. From the start of the new EU multiannual financial framework for 2014 and 2020 the home affairs budget will finally contain two large funds, placed under the heading 'Security and Citizenship': the Internal Security Fund (including new large-scale IT systems) and the Asylum and Migration Fund (replacing several different funds covering these issues previously.)[32] The Internal Security Fund has a total amount of € 3 764,23 million and aims to support the implementation of the Internal Security Strategy and the EU approach to law enforcement

[28] Communication from the Commission to the European Parliament and the Council COM(2013) 179
[29] The European Commission's specific programme "Prevention of and Fight against Crime" - http://ec.europa.eu/dgs/home-affairs/financing/fundings/security-and-safeguarding-liberties/prevention-of-and-fight-against-crime/index_en.htm
[30] European Commission press release. Internal security: What progress has been made?, Brussels, 10 April 2013 http://europa.eu/rapid/press-release_IP-13-317_en.htm
[31] COM/2011/0753 final - 2011/0368 (COD) and COM/2011/0750 final - 2011/0365 (COD)
[32] See the SOLID Programme for the period 2007–13, the General Programme "Solidarity and Management of Migration Flows", which consists of four different sub-programmes.

cooperation, including the management of the union's external borders[33]. The Asylum and Migration Fund has a total budget of € 3 137,42 million to focus on people flows and the integrated management of migration. The fund will support actions addressing all aspects of migration, including asylum, legal migration, integration and the return of irregularly staying non-EU nationals.[34] While the security fund is clearly connected to a defined strategy on internal security, there is no such background behind the asylum and migration fund. Nevertheless, the reason to integrate different previous funds to one in the area of migration shows the need for a more coordinated activity in this matter. The change in the language used is also noticeable (e.g. no reference to illegal immigrants, but to irregularly staying non-EU nationals). There is also a strong reference to integration as a key element of this policy area. The Commission's communication on this proposal also suggests a distinction between security issues and migration stating: "(t)wo comprehensive financing frameworks are needed to support the very different but complementary key policies of migration and security."[35] These developments might be considered as first steps towards the de-securitisation of migration policies of the EU.

III.4 Justice – criminal justice, crime prevention

Although the area of justice covers EU policies both in civil and criminal justice, in this section we reflect only on criminal justice as it is the area most strongly related to our topic. As the project aims to offer restorative justice approaches, development made in this particular topic will be discussed more in detail under a separate section. As Joutsen (2006, 7) notes: "European Union cooperation in criminal justice has evolved so rapidly, and extended so far, that we should not be surprised at how difficult it is to give an objective assessment of what has been done, what is being done, and what will be done next." Today, this rapid evolution and extension has reached even further. Strandbakken

[33] http://ec.europa.eu/budget/mff/programmes/index_en.cfm#internal(Accessed on 12 December 2013)
[34] http://ec.europa.eu/budget/mff/programmes/index_en.cfm#asylum (Accessed on 12 December 2013) It is important to note that in time of the writing of this report these programmes are still not adopted. The Home affairs budget also contains budget lines for existing large scale IT-systems and for financing agencies, such as Europol, Frontex, EASO, Cepol and EMCDDA.
[35] Building an open and secure Europe: the home affairs budget for 2014-2020 COM/2011/0749 final

(2005, 2) has stated already eight years ago that the "European union is undoubtedly the most progressive force in the development of criminal law and procedure in Europe at the moment."

According to Kaczorowska (2013, 937), the

> 'justice' dimension of the AFSJ is based on judicial co-operation between Member States. In order to remove obstacles resulting from differences in national justice systems, the EU must ensure that either on the basis of the principle of mutual recognition, or by means of harmonizing legislation, judgments and other similar decisions in civil and criminal matters given in one Member State are recognized in another Member state, and that EU citizens have access to justice in respect of matters with a cross-border dimension.

The treaties define the scope of EU policies related to criminal justice. Article 67 of the TFEU declares: "The Union shall endeavour to ensure a high level of security through measures to prevent and combat crime, racism and xenophobia, and through measures for coordination and cooperation between police and judicial authorities and other competent authorities, as well as through the mutual recognition of judgments in criminal matters and, if necessary, through the approximation of criminal laws."

Article 82 of the TFEU states that the main policy measures intended in the area of criminal justice are **mutual recognition** and **approximation**:

> 1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.
>
> The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:
>
> (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;

(b) prevent and settle conflicts of jurisdiction between Member States;

(c) support the training of the judiciary and judicial staff;

(d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

However paragraph 2 of article 82 TFEU, for the aim to facilitate mutual recognition, allows the EU to establish minimum rules (harmonisation) concerning certain aspects of the criminal procedure (Article 82.2 TFEU):

To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States.

They shall concern:

(a) mutual admissibility of evidence between Member States;

(b) the rights of individuals in criminal procedure;

(c) the rights of victims of crime;

(d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament.

Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

Although mutual recognition still remains the main principle for the EU policy in this area, article 83 of the TFEU also opens the door for further harmonisation in the field of

criminal justice in the most serious cross-border crimes (1.) and concerning aspects of criminal justice related to other policy areas, which are subject to harmonisation measures (2.):

> 1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.
>
> These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.
>
> On the basis of developments in crime, the Council may adopt a decision identifying other areas of crime that meet the criteria specified in this paragraph. It shall act unanimously after obtaining the consent of the European Parliament.
>
> 2. If the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to harmonisation measures, directives may establish minimum rules with regard to the definition of criminal offences and sanctions in the area concerned. Such directives shall be adopted by the same ordinary or special legislative procedure as was followed for the adoption of the harmonization measures in question, without prejudice to Article 76.

Although not quoted here, both Article 82 and 83 contain the possibility for an 'emergency break' procedure. It means, that "if a Member State considers that a draft measure would affect fundamental aspects of its criminal justice system it may request that the draft measure be referred to the European Council", which suspends the legislative procedure until further reflection by the Commission (Kaczorowska 2013, 943).

Article 84 of the TFEU gives the legal basis for **supportive action** of the EU in the field of crime prevention, stating that "The European Parliament and the Council, acting in

accordance with the ordinary legislative procedure, may establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States." Although the EU supported professional exchange on crime prevention issues already from 2001 with setting up the **European Crime Prevention Network (EUCPN)**, it was only the Lisbon treaty which included a clear reference at the treaty level for the role of the EU in crime prevention. As it is stated on the website of DG Home Affairs on crime prevention (while it is interesting to note that this section is placed under the topic of organised crime and human trafficking), crime prevention needs a multi-disciplinary approach including areas such as criminal law, social policy, education, urban planning, etc. The actions that take place closest to the grassroots level can be expected to be the most effective. The EUCPN offers an EU-wide platform for exchanging best practices, research and information on different aspects of local crime prevention. Although covering all types of criminality, the Network pays particular attention to the fields of juvenile, urban and drug-related crimes. Although it is not in its core focus, the EUCPN has dealt with restorative justice, highlighting best practices and projects on restorative justice on its website. In cooperation with the Hungarian Ministry of Interior it also led a project on good practices in community conflict management, in which restorative practices were also investigated.[36] Although the EUCPN does not have legislative or consultative power in the EU, its findings and activity support member states as well as the Commission and the Council to take into account evident and good practices in the field of crime prevention. It is clear that restorative justice has a potential in crime prevention and its application beyond criminal justice, as we offer it in this project, may be even more efficient to prevent escalation of conflicts to a level in which violence (crime) occurs.

Judicial cooperation in criminal matters is facilitated through the European Judicial Network and Eurojust. The **European Judicial Network** is a network of national contact points for the facilitation of judicial co-operation in criminal matters. The network was created in 1998 and has its secretariat in The Hague. National contact points are designated by each Member State among central authorities in charge of international

[36] For the final report on this project and materials of its thematic seminar in 2011 see: http://www.eucpn.org/library/results.asp?category=22&pubdate=

judicial co-operation, judicial authorities and other competent authorities with specific responsibilities in the field of international judicial co-operation, both in general and for certain forms of serious crime, such as organised crime, corruption, drug trafficking or terrorism.[37] **Eurojust** was set up in 2002 to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States. The competence of Eurojust covers the same types of crime and offences for which Europol has competence, such as terrorism, drug trafficking, trafficking in human beings, counterfeiting, money laundering, computer crime, crime against property or public goods including fraud and corruption, criminal offences affecting the European Community's financial interests, environmental crime and participation in a criminal organisation. For other types of offences, Eurojust may assist in investigations and prosecutions at the request of a Member State. The TFEU (Article 86) foresees the establishment of a European Public Prosecutor's Office (EPPO) in order to combat crimes affecting the financial interests of the Union. Although the Commission already proposed this, the EPPO has not been set up yet, mainly due to concerns of some Members States.

The Commission also set up an expert group in 2012 on EU criminal policy. The group, which includes academics, judges, prosecutors and defence lawyers from thirteen different EU Member States meets twice a year and contributes to improve the quality of EU legislation in the field of criminal law, in the light of the new rules of the Lisbon Treaty and the Charter of Fundamental Rights.[38]

According to the Stockholm Programme, main aims of the EU regarding criminal justice are furthering mutual recognition, strengthening mutual trust (by promoting and supporting trainings and networks of the judiciary), developing a core of common minimum rules, providing easier access to justice and increasing the Union's international presence in the legal field. Concerning better access to justice, the Action plan implementing the Stockholm Programme[39] mentions promotion of alternative dispute

[37] http://www.ejn-crimjust.europa.eu/ejn/EJN_StaticPage.aspx?Bread=2
[38] Developing a coherent EU Criminal Policy in line with Fundamental Rights: Commission gathers high-level experts.European Commission press release Brussels, 19 June 2012 (IP/12/621)
[39] COM(2010) 171 final

resolution and the follow up of the mediation directive[40], although both are related to civil law.

Jolien Willemsens (2008, 155) excellently summarised the challenges of criminal justice systems in Europe and the EU's respective policies in the light of feelings of (un)security:

> The challenges facing the European area of freedom, security and justice are considerable. Organised crime and terrorism have been high on the agenda since the setting up of the third pillar by the Treaty of Amsterdam. However, the biggest challenges to our criminal justice systems do not come from outside, but from within. It is clear that the European criminal justice systems face formidable challenges and that some of their elements are in a state of crisis; but this has more to do with the way in which they operate than with these 'outside' threats. Backlogs in the courts and prison-overcrowding are mundane examples of this state of affairs. A major consequence is a general distrust held by citizens in the EU about the capacity of the criminal justice system to deal with crime in an adequate and effective way. Even though EU crime rates have been steadily declining since 2000, the feelings of insecurity and the demands on and expectations of the criminal justice systems held by the public opinion are high.
>
> Democratic societies are obliged to respond to these widespread concerns which focus predominantly on everyday violence and insecurity. Restorative justice, it is our contention, can contribute to the development of a criminal justice system that is more responsive to the needs of citizens, while respecting fundamental legal principles. Its focus on active participation by all the parties (victims, offenders and communities) makes that restorative justice fits in a democratic oriented and emancipatory concept of justice. In contributing actively to achieve justice, victims, offenders and communities are working with (and not against) the criminal justice system, which should concentrate on facilitating these processes, on protecting legal safeguards and on dealing with those cases that cannot be dealt with in a satisfactory way (only) through restorative justice processes. Moreover, the role of the criminal justice system in denouncing crime remains untouched.

[40] Directive 2008/52/EC

Let us turn our focus on the specific field of restorative justice and on its presence at the EU policy level.

III.5 Restorative justice and mediation developments at the level of EU

Restorative Justice

As Aertsen (2007, 96) states, the development of restorative justice in Europe has a strong bottom-up character: "restorative justice has been a grassroots movement in European countries from the 1980s. By the turn of the century global official politics complemented to this bottom-up movement, however these politics on the supranational level so far rather reinforced (and not took over) the community-oriented restorative justice movement".

Firstly, the Council of Europe (CoE) strongly supported this movement in Europe already in the 90s. They set up a group of experts, including academics, judges, prosecutors and civil servants, whose work led to the adoption of the **Recommendation No R (99) 19 on 'Mediation in Penal Matters'** by the Committee of Ministers of the Council of Europe in September 1999 (Pelikan 2003)[41]. At a European level this remains still the most elaborated set of guidelines on the basic principles of the implementation and practice of mediation in criminal cases, although legally not binding. It sets out recommendations concerning the voluntariness of the process and its outcome, the principle of confidentiality, the role of the criminal justice actors such as prosecutors and judges in the process (clearly limiting it to the referral of cases), the need for legal basis for the practice and procedural safeguards, the need for taking into account the outcome of the process in the criminal justice procedure, the need for minimum standards and code of conduct for mediators, the role and training requirements of mediators and the general rules

[41] Paralelly the UN also worked on this topic leading to the UN Basic principles on the use of Restorative justice Programmes in Criminal Matters (ECOSOC Res 2000/14 and Res 2002/12).

concerning the operation of mediation services. We agree with Lauwaert's (2013, 416) statement on this recommendation: "The content of this almost 15-year-old, non-binding instrument still stands the test of time." In 2002 the CoE called for a follow-up study on the impact of this recommendation. As Christa Pelikan (2003), the former chair of the expert group and leader of the follow-up study explains, they found that the recommendation had a strong influence in Europe, had been used by NGOs and practitioners and influenced national legislations, the setting up of restorative justice practices and pilot projects. In 2002 the CoE established the European Commission for the Efficiency of Justice (CEPEJ) with the aim to improve the efficiency and functioning of justice in the CoE member states, and to develop the implementation of the instruments adopted by the CoE to this end. CEPEJ set up a working group on mediation (not only for mediation in criminal matters but also including family mediation and civil dispute mediation), which made an assessment of the impact of CoE recommendations concerning mediation. Its analysis published in 2007[42] reaffirms the above finding on the strong influence that the recommendation had on practice and implementation of mediation in criminal matters in Europe, but also reveals large differences between countries, as well as formulates further recommendations for research and practice. Based on this study the CEPEJ formally adopted a Guideline for a better implementation of the existing recommendation concerning mediation in penal matters[43] in 2007, in which, among others, cooperation in certain topics with the European Union for a better implementation of mediation in criminal cases was suggested. After this work, the CoE became unfortunately less active in the area of mediation/restorative justice in criminal cases.

Concerning the EU, the support for restorative justice clearly developed in line with victim support initiatives. Already in 1999 in its Communication on Crime Victims in the European Union: Reflections on Standards and Action[44], the Commission proposed the use of mediation especially in property crime cases and called for more research and pilot projects on mediation and their possible effects on the interest of the crime victims. The first EU legislative act on restorative justice was adopted in 2001, namely the **2001/220/JHA Council Framework Decision (FD) of 15 March 2001 on the**

[42] CEPEJ (2007)12
[43]CEPEJ (2007)13
[44]COM(1999)349 final, Brussels, 14 July 1999

standing of victims in criminal proceedings. Its Article 10 stipulated that member states shall seek to promote mediation in criminal cases for offences which they consider appropriate for this sort of measure, and they shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account. This was the first EU legal instrument, which obliged the member states to – to some extent – implement mediation in their criminal processes. The deadline given by the FD for the implementation of mediation was March 2006. In a recent article Katrien Lauwaert (2013, 415) highlights the limitations of this provision naming the narrow focus of the FD only on mediation while other restorative justice practices are not mentioned, the narrow focus on applying mediation during the criminal justice process, therefore not including mediation during the execution of the sentence, the narrow definition of mediation in criminal cases as a process for searching negotiated solutions between the victim and the author of the offence, as this does not acknowledge that mediation does not necessarily aim to search for solutions but rather to help communication between the victim and the offender and it can be successful in its aim without the parties reaching a formal agreement. As a last limitation she draws attention to the phrasing of the obligation of the Member States as '*promoting*' implementation of mediation in '*appropriate*' criminal cases, which allows the member states "to do the strict minimum" (Lauwaert 2013, 415) and limits the application of mediation to minor crimes. The EU assessed the implementation of the FD first in 2004[45] and then in 2009.[46] Both evaluations concluded that the transposition of the FD is unsatisfactory. In her study on the role of the EU in the further development of restorative justice Jolien Willemsens also confirms that it is unclear what impact this FD had in the member states, however she mentions that from informal communication with various stakeholders in Europe, it is obvious that "a number of countries have taken initiatives in the field of restorative justice due to the pressure exerted by the framework decision" (Willemsens 2008, 87).

Soon after the FD an initiative of Belgium aimed for the adoption of a Council Decision setting up a European network of national contact points for restorative justice.[47] The European Parliament approved this initiative – and even suggested that the secretariat of

[45] COM(2004)54 final/2
[46] COM(2009) 166 final
[47] 2002/C 242/09 Official Journal of the European Communities 8.10.2002

this network is located within the secretariat of the EUCPN, – however, after it was sent to the Council it was not further discussed (Willemsens 2008, 92).

In the above mentioned study Willemsens (2008, 158-168) presents the findings of a survey conducted across Europe on the needs of the European restorative justice scene. First, she argues that binding regulation at the EU level should not be necessarily the primary aim, as before aiming for this, recognition of common values and principles of restorative justice by policy makers in EU member states should be achieved. However, responses gained from 94 returned questionnaires mostly from restorative justice practitioners and researchers within the EU in 2007 show that there was a high need for formulating restorative justice as a right for victims and offenders, to expand the scope of its applicability, for more support from the EU in the form of regulation concerning the implementation of restorative justice, the procedural treatment of the cases, the recognition of agreements reached in RJ processes in other countries and in safeguarding the values and principles of restorative justice. In a broader perspective respondents saw the EU's role as also important in developing common basic principles of restorative justice and in providing funding and technical assistance for its development, as well as in adopting formal ethical rules for restorative justice practice. A more active role of the EU in providing policy guidance on training standards and in supporting cooperation and networking at a European level was also clearly indicated as needed by the European restorative justice scene that time.

While new legislative steps have been taken at the EU level in the field of criminal justice, for more than a decade no new legislation was adopted at the EU level concerning restorative justice. However, the EU's supportive role towards RJ can be traced in other measures during this period. For example, looking at the content of the call for proposals for action grants during the implementation of the Criminal Justice Support Programme between 2007 and 2013, restorative justice was a priority each year. While networking and exchange of best practices in the field of restorative justice was always an area of possible financial support according to the calls, in some years a more extensive set of activities concerning RJ was included, such as development of protocols and guidelines, training of

practitioners or improvement of multi-agency cooperation in RJ.[48] It is important to mention that the European Forum for Restorative Justice has also received annual operating grants from the same programme.

Probably the weak implementation of the FD and the new legislative tools provided by the Lisbon Treaty were among the reasons why the EU pursued a new legislative act concerning the rights of crime victims, which resulted in the recent **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** (Directive), replacing the FD 2001/220/JHA. As Lauwaert and Aertsen had already noted in 2002: "It is becoming increasingly clear that 'restorative justice' does *not* stand for a specific method, a technique or a programme. There is a growing consensus that restorative justice is *a certain approach and a global vision*. (…) Nevertheless, within Europe, victim-offender mediation is by far the most important expression of restorative justice" (Lauwaert and Aertsen 2002, 27). First of all it is important to highlight the change of the terminology, as in the Directive restorative justice is mentioned instead of mediation. This is in line with the above understanding of the concept of restorative justice and an acknowledgement of the development of the practice of restorative justice in Europe including different methods and techniques, such as conferencing and circles, beyond mediation. Katrien Lauwaert (2013) analyses the Directive's provisions concerning restorative justice. While emphasising in general the Directive's ambitious aims to strengthen victims' rights and to ensure a high level of protection for them, its new, 'personalised' approach towards victims, as well as the stronger legal force the Directive has in comparison with the FD, according to Lauwaert (2013) it falls short in promoting restorative justice and in establishing a right to access restorative justice services. Indeed, the title of the main provision of the Directive on restorative justice, Article 12 is formulated as "Right to safeguards in the context of restorative justice services". As Lauwaert (2013, 419) summarises:

> Overall, RJ receives more elaborate attention in the Directive than it did in the FD, with clear recognition of the benefits for victims, an adequate definition of RJ

[48] http://ec.europa.eu/justice/grants/programmes/criminal/index_en.htm Accessed on 19 January 2014

> services and a welcome obligation to inform victims as to the availability of RJ services. It is unfortunate, however, that the main provision, Article 12, focuses solely on safeguards for victims participating in RJ. Although these are certainly important, this hides the even more pressing need for better accessibility.

Looking at the concrete provisions concerning restorative justice, the Directive ensures the right of victims to receive information on restorative justice services from the first contact with a competent authority. Concerning the safeguards in the context of restorative justice, the Directive highlights two basic principles of restorative justice, voluntariness and confidentiality. Concerning voluntariness, the Directive distinguishes its three main dimensions: the free consent of the victim to participate, the right to withdraw this consent at any time and that any agreement is arrived at voluntarily. The requirement of confidentiality is stated in respect of the discussions during a restorative process, however parties themselves and also member states can make exceptions to this rule, based on overriding public interest. A new, but important regulation of the Directive is that restorative justice will only be possible if the offender acknowledged the basic facts of the case [Article 12.1 (c)]. As Lauwaert (2013, 422) evaluates: "The strict minimum seems to be that the defendant does not totally deny the facts. An admission of being involved in what happened or a partial confession can suffice to commence the communication process." The connection between restorative justice processes and the criminal procedure, a link, which was already made in the FD, is ensured by a relatively weak regulation in the Directive formulated as agreements reached in restorative processes "may be taken into account in any further criminal proceedings". Besides these important aspects of restorative justice being regulated in a binding EU legislation, the Directive somehow implies that safeguards and protection of victims are the most important aspects to be regulated in restorative justice. As Lauwaert (2013, 423) states: "one could interpret this exclusive focus on safeguards as RJ consisting of practices that one should be wary of". Victims who have chosen to participate in restorative justice processes have the right to "access to safe and competent restorative justice services" (Article 12.1), without any further regulation concerning the detailed operation, competence of required standards of those practices. In this respect the above mentioned CoE Recommendation – although not binding – remains an important point of reference. Moreover, the formulation of Article

12.1 of the Directive does not constitute the right of the victims in any case or in any stage of the criminal procedure or of the execution of a criminal sanction to gain access to those services, and still allows each member state decide on the situations in which they find access to restorative justice services appropriate. In this sense the Directive does not achieve more than the previous FD.

To summarise, firstly, it can be noted, that restorative justice is clearly linked to and approached from the perspective of victim policies in the EU. While in the Directive the EU clearly states that restorative justice can be beneficial for victims of crime [Recital (46)], the possible benefits of restorative justice on the offenders and on communities are not reflected in the EU legislation. Restorative justice is an approach, which aims to find balance between the victim and the offender of a crime (Lauwaert 2013, 423). In spite of this, the EU legal acts concerning the rights of the accused do not focus on restorative justice at all. Even the most recent Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings establish minimum rules concerning the information suspects or accused persons have right to receive, without mentioning information concerning available restorative justice processes.

A second observation is that restorative justice in the EU policies is clearly limited to the field of criminal justice, while – as we argue in the ALTERNATIVE project (see Foss et al. 2012 and Campbell, Chapman and Wilson 2013) – the use of restorative approaches might prove beneficial in conflicts which are outside the criminal justice sphere, especially in involving affected persons who do not have a clearly defined role as an offender or victim (or supporter) according to criminal law.

We can also notice that even if the EU aims to broaden the field of mutual recognition and harmonisation of the criminal law, the way restorative justice processes are accessible and how their outcomes are taken into consideration in the criminal procedure have not yet been subject of these harmonising regulations. Therefore, cross-border restorative justice cases still might be difficult to deal with at the level of the Member States.

Finally, more support might be expected from the EU looking at the discussion paper presented for the 'Assises de la justice', a forum on the future of EU justice policies held on 21 and 22 November 2013 in Brussels. The short discussion paper presented a clearly

supportive stance concerning the future of restorative justice: "It is necessary to explore how to promote the use of tools and mechanisms, such as mediation and restorative justice which treat victims of crime with more respect and dignity whilst reducing the risk of recidivism."[49] As can be noted, one positive aspect or restorative justice concerning offenders, namely the possible prevention of recidivism, is highlighted here.

Mediation in civil matters

Besides restorative justice, it is worth mentioning that the EU seems to be more supportive towards mediation outside the criminal justice field. The **Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters** declares that mediation is an important tool to develop the AFSJ and the access to justice. As it is stated in recital (5): "(t)he objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods." The Directive states in this respect that mediation is a cost-effective and quick solution offering a process, which is tailored to the needs of the parties. Further, the agreements reached through mediation help to sustain amicable relationships and more likely to be complied with voluntarily. The Directive itself provides a framework for cross-border mediation and requires the member states to offer this possibility in cross-border civil and commercial disputes, while encouraging them to additionally implement mediation in these matters also at the national level. It deals with the quality of mediation referring to the **European Code of Conduct for Mediators**[50], an informal EU document from 2004, with the relationship between mediation processes and court processes, with the enforcement of mediation agreements, with the principle of confidentiality and with the need for informing the wider public about mediation. Moreover, in 2013a new Directive introduced

[49] Assises de la justice: Discussion paper 2: EU criminal law, 2013 p3, available at: http://ec.europa.eu/justice/events/assises-justice-2013/files/criminal_law_en.pdf
[50] http://ec.europa.eu/civiljustice/adr/adr_ec_code_conduct_en.pdf

amendments concerning alternative dispute-resolution (ADR) in consumer disputes[51] with a clear aim to promote the application of such procedures. The 2013 EU Citizenship Report[52] describes that the Commission focused on promoting mediation, since it can result in significant time and money savings for citizens. "The Commission launched in July 2012 a study to evaluate comprehensively the transposition of the Directive by the Member States, also focusing on the importance of promoting the extensive use of mediation for a more citizens-friendly justice. This analysis should also enable the Commission to determine whether there is a need for further action." (EU Citizenship report, 2013, 48). This more concrete supportive stance of the EU towards mediation in civil matters may be the result of the fact that, firstly, with the development of the common European internal market civil and commercial disputes may have more and more often a cross-border element and, secondly, the civil law field is less bound to the concept of national sovereignty and mediation or ADR service providers are not necessarily funded by states, therefore actions at the EU level are more easily supported by Member States. Yet, the full implementation of the Directive and a real balance in the number of mediated cases compared to civil litigation still requires further steps, as a recent European Parliament study[53] confirms.

III.6 Migration and integration

Among the main policy fields of AFSJ, while focusing on the concepts of security, justice and intercultural settings, one large area remained to be discussed, migration policy. Within this area, EU policies deal with, mainly, three large topics: (1) regulation concerning legal migration for purposes such as studies, work or family reunification; (2) control of illegal migration and (3) integration of migrants living in EU countries. Although most of the measures are related to the EU's internal policy sphere, the first two fields are also closely related to the EU's external policy dimension (e.g. collaborating with countries of origin, preventing brain-drain from third countries, discussing mutual visa

[51] Directive 2013/11/EU of the European Parliament and of the Council of 21 May 2013 on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC
[52] http://ec.europa.eu/justice/citizen/files/2013eucitizenshipreport_en.pdf
[53] De Palo et al. (2014)

requirements or supporting states to eliminate reasons, which encourage their nationals to leave the country, etc.). After drawing a rough picture on policy developments in this field, the report will focus on the third topic, as integration policies are the most relevant for our research.

After the signing of the **Schengen Agreement** in 1985 to eliminate border controls between participating countries, the need for coordinated external border control has raised. This not only included a common management of the EU's external borders, but EU level regulation of entry, residence, asylum and immigration policies. The Schengen process started as an intergovernmental cooperation and became part of the EU *aquis* with the Amsterdam Treaty in 1999. Since then strong cooperation and setting up of common thematic units of national border control services have begun. In 2004 the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (**Frontex**) was established. Frontex promotes, coordinates and develops European border management in line with the EU fundamental rights charter applying the concept of Integrated Border Management.[54] In 2010 the European Asylum Support Office (EASO) was set up[55] to increase coordination of operational cooperation between Member States so that the common rules concerning asylum are implemented effectively. The operation of border management and processes concerning asylum are still conducted at the national level.

The Stockholm Programme devotes two separate chapters to this policy field. One, entitled 'Access to Europe in a globalised world' deals with integrated border management and visa policies. The second, called 'A Europe of responsibility, solidarity and partnership in migration and asylum matters' covers a wide range of topics including implementing a Global Approach to migration, the rights and integration of migrants, illegal immigration and asylum as a common area of protection. Looking at policy development in this field, a **move from a strong security-based approach to a more balanced approach** can be traced.

[54] http://frontex.europa.eu/about-frontex/mission-and-tasks
[55] Regulation (EU) No 439/2010

The Maastricht Treaty created the 'Justice and Home Affairs' pillar in which it put together migration with other law enforcement issues, such as terrorism and organised crime (Babayan 2010, 20). The Vienna Action Plan in 1998 explicitly linked migration policies to security, especially to the security for European citizens, with a hidden assumption that non-Europeans pose a security threat: "The objective is to introduce the area of freedom within the next five years. As a result, to ensure increased security for all European citizens, achieving this objective requires accompanying measures to be drawn up, particularly in the areas of external border controls and the combating of illegal immigration."[56] Babayan (2010, 7) notes that since the Seville European Council in 2002 – probably under the influence of the 2011 terror attacks – the 'securitisation' of migration intensified. The phrase 'migration flow' became of common use in the EU discourse on migration, associating migration with a flux, which needs management and control. On the Seville Council the idea of urgency entered the discourse, and "together with terrorism illegal immigration became represented as an issue that needs to be 'combated'" (Babayan 2010, 21). Melossi (2013, 125), referring to the fact that migrants are overrepresented in the EU countries' criminal justice systems, argues that immigration policies oriented towards exclusion, as well as the irregular legal status of immigrants are the most important reasons for their criminalisation. A couple of years later, however, we can trace changes in the EU policy development, opening up a more balanced approach. The Communication from the Commission on Policy priorities in the fight against illegal immigration of third-country nationals (*sic!*) raises the attention to the fact that linking of immigration with societal problems might have undesirable consequences:

> 12. It is important not to create false or disproportionate expectations in the public opinion: The reasons that push third-countries nationals to seek to immigrate illegally are so wide and complex that it would be unrealistic to believe that illegal immigration flows can be completely stopped. Public perception which tends to establish a link between some societal problems and illegal immigration should also be taken into account. The EU and its Member States must promote a rational

[56]Article 32 of the Vienna Action Plan 1999/C 19/01

> debate based on objective information in order to eradicate racism and xenophobia including by adopting and implementing effective EU legislation in this area.

Soon after, a new policy aim, the Global Approach to migration was launched, which can be defined as the new external dimension of the European Union's migration policy. The Communication of the Commission[57] in 2008 explains its essence, while explicitly mentioning the security-oriented approach of its previous policies:

> The Global Approach reflects a major change in the external dimension of the European migration policy over recent years, namely the shift from a primarily security-centred approach focused on reducing migratory pressures, to a more transparent and balanced approach guided by a better understanding of all aspects relevant to migration, improving the accompanying measures to manage migratory flows, making migration and mobility positive forces for development, and giving greater consideration to decent work aspects in policies to better manage economic migration.

In 2010 the new lines of communication about migration could be explicitly seen. According to the Action plan implementing the Stockholm Programme from 2010[58] "Immigration has a valuable role to play in addressing the Union's demographic challenge and in securing the EU's strong economic performance over the longer term. It has great potential to contribute to the Europe 2020 strategy, by providing an additional source of dynamic growth."

In the recent years both the policy measures and the terms used in this area have changed. Whilst in 2006 'fight against illegal immigration' was the terminology used, the term 'irregular(ly staying) immigrant' came to the fore later, and the strategies of 'fight' were replaced by those with more sophisticated terminology. This previous wording could also led to the misinterpretation that the EU is at war with immigrants, where the policy is

[57] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Strengthening the global approach to migration: increasing coordination, coherence and synergies. COM/2008/0611 final
[58] COM(2010) 171 final

clearly aimed at the phenomenon of irregular immigration and not against the immigrant persons themselves. However, this previous rhetoric might have fuelled the growing negative attitudes towards immigrants in general across Europe. The fact that the concept of migrant linked to criminality is proved by the Qualitative Eurobarometer on Migrant integration published in 2011[59], which found that "for many general public participants there is a strong association with migrants and criminal activities (such as acquiring visas illegally, evading tax, involvement in corrupt business activities and so on)". Now, it seems that the EU aims to tackle these consequences with measures adopted against racism, as well as with communicating more intensively the added economic and cultural value immigrants bring to Europe[60]. What could further improve the situation is, what Melossi (2013, 133) suggests. He recommends that instead of *suppressing* 'unlawful' immigration, the *regulation* of migration should be the focus of policy making in Europe. However, in the external dimension of this policy area, the double rhetoric of the opposing logics of **inclusion and exclusion** remains. Concerning the EU Mobility Partnerships with certain selected partner countries Babayan (2010, 26) states: "Having been recognised as 'outsiders' or 'others' representing a peculiar source of threat, the neighbours were simultaneously perceived as 'partners' or 'equals' sharing 'common problems' and policy objectives". Babayan's study (2010) shows that these new, more development oriented policy measures, looking at the EU Mobility Partnerships as a case, which aims to bring together various policy areas, such as migration, social, economic, foreign and development policies, still suffer from a strong securitisation bias, when implemented.

To summarise, although these new developments seem to be more supportive towards immigration, migration policies are still intertwined with concepts of security, protection, threat, risk and control. The new EU agencies presented above put a strong emphasis on technological development of efficient control. Referring to Bigo and Carrera (2004) Babyan (2010, 22) notes that "(t)echnology became to be presented at the EU official level as the 'solution to every security threat, as an ultra-solution to the permanent state of fear'". The setting up of the Eurosur, a pan-European border surveillance system in

[59] http://ec.europa.eu/public_opinion/archives/quali/ql_5969_migrant_en.pdf
[60] According to the SEC(2011) 957 Commission document on EU initiatives supporting the integration of third-country nationals (12), while the proportion of migrants living in EU countries reach only 4%, in the period of 2000-2005 they accounted for 21% of the average GDP growth in the EU-15.

December 2013, with the aim of preventing illegal migration and cross-border crime might well demonstrate this emphasis. Although the EU stresses the importance of fundamental rights of migrants and asylum-seekers, the national implementation of these measures are often insufficient (Melossi 2013, 135). As Melossi (2013, 140) phrases his view on creating a 'Fortress Europe': "if we consider the reality of today's *European* policies of migration and border control, we seem to be quite far away from the ideal of Europe, and the EU, as a 'land of immigration'".

Integration of immigrants

Although the multi-annual programmes of AFSJ had set out aims concerning the integration of migrants or, with another often used term, third-country nationals, since 1999, it was not until the Lisbon Treaty in 2009, that this matter got a clear legal reference at the treaty level. Article 79.4 of the TFEU states: "The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States." The **Common Basic Principles for Immigrant Integration** Policy in the EU[61] were adopted in November 2004 and form the foundations of EU initiatives in the field of integration. It already stated that "Frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration. Shared forums, intercultural dialogue, education about immigrants and immigrant cultures, and stimulating living conditions in urban environments enhance the interactions between immigrants and Member State citizens" (Principle 7), as well as, that "The practice of diverse cultures and religions is guaranteed under the Charter of Fundamental Rights and must be safeguarded, unless practices conflict with other inviolable European rights or with national law" (Principle 8). The Basic Principles "underline that integration is a dynamic, two-way

[61]Council document 14615/04, 19.11.2004.

process of mutual accommodation by migrants and by the societies that receive them".[62] As Augustín (2012) notes, "(a)lthough it is defined as a two-way process, integration consists mainly of immigrants learning the norms and culture of host societies". In this respect the concept of inclusion instead of integration could be more useful to lead the EU.

Integration or inclusion

The two concepts, even if often used as synonyms, do not have the same meaning. The distinction between them is mostly dealt with in the literature on education policies. While integration means that a person or a group labelled as different can participate and adapt to a 'normal' setting and be helped to achieve this, inclusion accepts diversity as the normal situation and as a rich source for all, while accommodating different cultures, needs and styles and acting for the benefit of all (not targeting explicitly those with a significant difference). To put it more concretely, while integration helps the 'different' to adapt to the mainstream, inclusion requires adaptation on all sides for a successful coexistence. Integration is often seen as the first step to inclusion. (For a more detailed explanation on the two concepts see Vislie 2003.) Although the EU uses the term integration related to Roma and migrants, the term inclusion also appears in its communication (for example: „The European institutions and EU countries have a joint responsibility to improve the social *inclusion* and *integration* of Roma by using all the respective instruments and policies for which they are responsible"[63]; a study, entitled Inclusion of young migrants[64], published by the EU Commission DG Employment, Social Affairs and Inclusion does not mention the word inclusion in its 50 pages text but the term integration appears many times; the press release[65] on the adoption of the recent Council Recommendation of 9 December 2013 on effective Roma integration measures in the Member States welcomes the first EU legislation on Roma *inclusion*). The understanding and aim of inclusion and integration in the EU policies can be a separate research subject in itself. Without going into more details on these concepts here, building on the suggestion of the literature on education policies, aiming at *inclusion* might be a more advanced target for EU policies regards to any disadvantaged groups. However without pursuing *integration* it might be difficult to achieve this. The difference of the two concepts might be an important distinction to make by EU policy makers, especially when designing targets, strategies and policies with Roma or migrants.

To help the implementation of the Basic Principles, the Commission presented a **Common Agenda for Integration**[66] in 2005, which proposed measures to be taken

[62]Commission staff working paper. EU initiatives supporting the integration of third-country nationals. SEC(2011) 957 final, 3.
[63]http://ec.europa.eu/justice/discrimination/roma/index_en.htm(Accessed on 8 December 2013)
[64]Lelkes, Orsolya Eva Sierminska and Eszter Zolyomi (2013) Integration of young migrants. Research note 6/2012, available at: http://ec.europa.eu/social/BlobServlet?docId=9804&langId=en
[65] 'First ever EU legal instrument for Roma inclusion adopted'. EC Press Release on 9 December 2013. IP/13/1226
[66] COM/2005/0389 final

both at national and at the EU level. To achieve the firstly mentioned principle 7 the Agenda (9) proposes 1) the promotion of the use of common spaces and activities in which immigrants interact with the host society and 2) improving the living environment in terms of housing, healthcare, care facilities for children, neighbourhood safety and opportunities for education, voluntary work and job training, the condition of public spaces, the existence of stimulating havens for children and youth. Concrete steps to enhance intercultural dialogue, for example, are not considered here. As for the above secondly mentioned principle 8, the Agenda proposes 1) developing constructive intercultural dialogue and thoughtful public discourse and 2) promoting inter- and intra-faith dialogue platforms between religious communities and /or between communities and policy-making authorities. In comparison with other principles and the five to ten different measures suggested to be taken at the national level for each, these suggested measures above give the impression that although intercultural dialogue is an important element in the texts, its actual realisation and the way it should be promoted and practiced is still unclear. The integration policy has been further framed by the Stockholm Programme and received a significant boost in 2011, when the Commission proposed a new **European Agenda for the integration of Third-Country Nationals**[67] accompanied by a working document entitled EU initiatives supporting the integration of third-country nationals[68]. The European Agenda focuses on three main policy priorities highlighting that integration is a shared responsibility: participation, actions at the local level and involvement of countries of origin. The European Agenda states that the actions set out in 2005 have been completed, however, not all the measures have been successful in meeting their objectives. In this respect they refer to the changed social, economic and political context, without indicating the direction of this change, as a hindering factor, and underline the importance of the will and commitment of migrants to be part of the society that receives them. If we do not see this latter statement as a blaming of migrants for not being cooperative enough, at least we can deduce that measures, which engage migrant persons more actively, should be further developed. While the European Agenda stresses the importance of a genuine 'bottom-up' approach, close to the local level, most of the measures proposed need a 'top-down' approach from the Member States when it comes to

[67] COM(2011) 455 final
[68] COM(2011) 957 final

implementation. When the Commission calls for more action at the local level, they focus on the involvement of local authorities and local public service providers, but do not mention local NGOs or other local non-profit organisations whose role, besides that of the local authorities, might be crucial. In this respect the local action research taking place in four countries in the framework of the ALTERNATIVE project[69] will probably bring useful insights about the key actors at a local level, as well as best practices on how to engage them when dealing with conflicts in intercultural settings. In the meanwhile, the EU offers in the European Agenda more future financial support with a more targeted, local approach. The accompanying document to the European Agenda on different EU initiatives is a rich source of information about all EU level actions taken and planned in various policy fields to enhance integration. It also reflects on economic, demographic and social realities regarding the situation of migrants in the EU, highlighting the most important challenges for the future. This document provides information about the understanding of intercultural dialogue which, according to the document, needs to accompany and support economic and social integration. It states that "frequent interaction between immigrants and Member State citizens is a fundamental mechanism for integration" (23). This is the only source that mentions that "**intercultural conflict**" is often inevitable and conflict management should be at the centre of intercultural strategies. Dealing with them in a proper way can lead to mutual learning and growth for all participants. However, concrete steps taken in this respect are hard to find. Our aim with the ALTERNATIVE project is to contribute to this field and offer efficient practices to deal with conflicts in intercultural settings.

The amount of different initiatives, best practices and supporting channels created and coordinated by the EU in this field – although it should be noted that EU principles point rather at immigrants' obligations (Augustín 2012) – is impressive. A network of national contact points on integration was set up to exchange information and experience of the Member States on integration. The European Integration Forum[70] set up in 2009 serves as a platform for dialogue between different stakeholders, especially civil society organisations involved in integration. A Handbook on Integration for policy-makers and

[69] www.alternativeproject.eu
[70] http://ec.europa.eu/ewsi/en/policy/legal.cfm

practitioners[71] has been compiled in 2004 with a view to structuring the exchanges of information on which EU States can draw when developing policy measures for more successful integration. The Handbook has already been updated twice. The European Website on Integration[72] presents relevant and updated information relevant to integration, and gives access to materials on best practice, projects and policy documents in this field both from the EU and national level. The EU's coordinating activities as well as Member States' programmes and initiatives are supported from the European Integration Fund[73].

As a flexible tool to help policy making the **European Integration Modules**[74] were designed. They serve as flexible reference frameworks that can be adapted to the different contexts of Member States in order to contribute to successful integration policies and practices across Europe. The Modules contain some important references to initiatives, where restorative approaches could contribute. One such component is the improvement of public perception of migrants, for which specific actions targeting individuals as well as communities are proposed. The Modules states: "(a)mong other objectives, actions supporting mutual respect in society and combating stereotypes and myths are important." Here they propose trainings for civil servants, politicians and media professionals, intercultural meetings, which bring together members of the society and mentoring activities. Another component deals with intercultural policies, highlighting the importance of intercultural dialogue. The Modules states: "(s)ome measures aim at ensuring intercultural encounters that are non-committal and which have a leisurely touch; others aim at intercultural problem-solving or negotiations – either problems linked to diversity (i.e. religious diversity) or problems common to all, but which need to take cultural differences into account (e.g. public health)." In the latter case they refer to intercultural mediation, which can be described as a special form of social work. The intercultural mediator's aim is to mediate between members of specific groups in fields such as education or health. An example is a situation between migrants and public service

[71] http://ec.europa.eu/ewsi/UDRW/images/items/docl_12892_168517401.pdf#zoom=100
[72] http://ec.europa.eu/ewsi/en/index.cfm
[73] http://ec.europa.eu/dgs/home-affairs/financing/fundings/migration-asylum-borders/integration-fund/index_en.htm
[74] http://ec.europa.eu/ewsi/UDRW/images/items/docl_25494_793453556.pdf

providers, in which the mediator both facilitates the migrants' increased access to services and facilitates the service providers in accommodating the migrants. Having the trust of both sides is, therefore, crucial. As for the process, the document states: "The mediation process is based on the principle that people with different backgrounds may have different needs, exhibit cultural differences and see things differently. Such a principle provides scope for clearly identifying problematic issues, breaking down communication barriers, exploring possible solutions and, should the parties decide on such a course of action, arriving at a solution satisfactory to both parties." This is in line with the aim and approach of restorative practices. In the ALTERNATIVE project mediation or other restorative processes mainly involve fellow citizens and the dialogue is centred around conflicts, in which all the participants have a stake. In this way restorative approaches may contribute to widen the scope of interventions and offer restorative services for individuals, such as neighbours, or for local communities, who perceive their conflict as having an intercultural element.

One final remark concerning integration policies is that while they focus on the integration of non-EU country nationals, intra-EU mobility of EU citizens might also raise questions of integration. Although perceived cultural differences might seem less large, some challenges are the same: lack of language competences, employment under their real skills level, differences in life-styles and sometimes, inhospitable attitudes from the host country citizens. Therefore, the extension of the availability of integration practices to all non-national persons could have an added value at the European level.

The section on EU policies in the area of freedom, security and justice from the perspective of restorative approaches in conflicts within intercultural settings aimed to give a brief overview on the remarkable developments and recent challenges in these policy areas. It seems that the concept of security has primacy among the three, having a strong influence on the development of all the covered policy areas in this field. Freedom and justice appear to be interrelated through the concepts of rights, rule of law and access to justice. What is noticeable is that policy making does not refer directly to perceptions of safety, security or justice, therefore, the feelings of citizens are not always reflected in the policy instruments. On the contrary, in some cases, such as hostile attitudes towards migrants, the EU

discourse and policy making might have a negative influence on perceptions, therefore steps to prevent or suppress intolerable attitudes, such as racism needed to be initiated at the EU level. Taking into account that one of the greatest challenges is the implementation of the EU regulations at the national level, a strict rights-based approach may turn the expected changes to reality only in a long term. In the field of conflicts within intercultural settings preventing discrimination and providing better access to justice tackle only the top of the iceberg. Restorative justice approaches can have an added value when it comes to changing perceptions and attitudes, and to ameliorating feelings of justice and safety of citizens while ensuring their freedom.

IV. Relevant policy areas outside the scope of AFSJ

IV.1 Roma inclusion

The improvement of the situation of Roma in Europe became a priority at the EU level after the enlargement in 2004, when countries with a considerably large Roma minority population entered the EU and Roma became the largest ethnic minority in the EU. However, Roma are living in all EU member states and their situation shows similar challenges across Europe. The European Commission Directorate-General for Employment and Social Affairs published a report in 2004 on the situation of Roma in an enlarged European Union (referred to as Report). This Report, after analysing the situation of Roma living in Europe, looks at the different policy fields, which have an important role towards their inclusion.

The Report draws a picture about the difficult situation of the approximately ten million strong population of Roma thorough Europe, who face poverty, discrimination, residential segregation and social exclusion. Throughout the centuries Roma have been the target of severe persecution and at present anti-Romani sentiments are still present and sometimes extremely high among European societies. Referring to a poll conducted in 1992 in Germany, unfavourable opinion towards Roma reached 64%, while, as comparison, negative opinions towards Muslims, Indians, guest workers, dark-skinned persons or Jews

did not reach 20%.[75] The Report (2004, 10) concludes the chapter describing the history and situation of Roma in Europe stating: "The treatment of Roma is today among the most pressing political, social and human rights issues facing Europe." As crucial policy areas to change this situation education, housing, health care and employment are identified, but the Report highlights cross-cutting issues as well, such as social protection, the lack of documentation, gender issues and discrimination. The Report concludes with recommendations towards the EU, the Member States and the civil society, calling for a leading role of the EU in coordinating the further steps: "Given the failure of previous and existing policies to remove or significantly reduce discrimination against Roma, Gypsies and Travellers, and to promote their social inclusion, the EU must take the lead in targeting these groups within existing and new policies. It is recommended that the European Commission should establish a coordination structure on Roma issues to ensure the improved coherence and efficacy of its policies" (2004, 3).

In the recent years the EU has, indeed, taken up a leading role in coordinating and improving Roma inclusion. A 2010 Report[76]of the European Commission (referred to as 2010 Report) describes the EU's current overarching strategy for Roma as "Mainstreaming Roma Inclusion in All Policies of the European Union." This approach is defined as "explicit but not exclusive" since "it does not separate Roma-focused interventions from broader policy initiatives." It means that policies aiming at social inclusion of any disadvantaged groups – including migrants for example – may include elements targeting Roma, and Roma inclusion is not independent from these policies. The similar situation of Roma and migrants, acknowledging that there is a considerable overlap between these two groups, is highlighted in a Commission document entitled EU initiatives supporting the integration of third-country nationals[77], which suggests, that "(s)tructures and tools developed to support Member States' integration policies can also serve to remedy the particularly vulnerable situation of Roma third-country nationals".

The first European Roma Summit was held in Brussels in 2008, which led to the creation of a European Platform for Roma Inclusion. The Platform brings together national

[75] The Report (2004, 10) referres to Margalit 1996.
[76] *Improving the tools for the social inclusion and non-discrimination of Roma in the EU – Report*. 2010. Luxembourg: Publications Office of the European Union. doi10.2767/98810
[77]SEC(2011) 957 final, 12

governments, the EU, international organisations, and Roma civil society representatives and aims at stimulating cooperation and exchanges of experience among all stakeholders on successful Roma inclusion and integration policies and practices. In 2009 a list of 10 common basic principles on Roma inclusion was presented at the Platform, and the Council of Ministers in charge of Social affairs in the EU Member States annexed the principles to their conclusions and invited Member States and the Commission to take them into account when they design, implement and evaluate policies. The third basic principle is the "Inter-cultural approach".[78]

In 2011, the European Commission adopted the EU Framework for National Roma Integration Strategies up to 2020.[79] The Framework calls on Member States to prepare or revise National Roma Integration Strategies that would effectively address the challenges of Roma inclusion in four priority areas: education, employment, housing and health.

The European Commission assessed the national strategies and published its conclusions in the communication 'National Roma Integration Strategies: a first step in the implementation of the EU Framework'[80] in May 2012. A year later, the European Commission adopted the communication 'Steps forward in implementing the National Roma Integration Strategies'[81] focusing on structural pre-conditions that are necessary to achieve effective changes for Roma in EU Member States. Among others strong political commitment, adequate funding, effective monitoring and emphasis on non-discrimination are mentioned. The communication concludes that even though in many member states progress has been made, the implementation of the national strategies is still slower than expected. Therefore, the Commission continues its yearly monitoring of the national developments and offers wider financial support through its structural funding schemes.[82]

The Commission works in cooperation and in dialogue with Member States, which have established a National Contact Point to coordinate the development, implementation, and

[78]See report 2010, 14.
[79]COM(2011) 173 final
[80]COM(2012) 226 final
[81] COM(2013) 454 final
[82] See the Elements for a Common Strategic Framework 2014 to 2020 for the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, of 14.3.2012, SWD(2012) 61 final, Part II.

monitoring of the National Roma Integration Strategy. The National Contact Points form a network and regularly meet in Brussels.

As a significant step forward, and in a considerably short 6 month period after its proposal, the Member States unanimously adopted the first ever EU legal instrument for Roma inclusion, the Council Recommendation on effective Roma integration measures in the Member States[83] on 9 December 2013. Although it is not a legally binding document, it shows a strong commitment of the Member States to continue this process. The Recommendation focuses on the four areas where common goals are set up for Roma integration: access to education, employment, healthcare and housing. Moreover, there are additional goals on cross-cutting policies, such as preference towards local strategies, enforcing anti-discrimination rules, following a social investment approach, protecting Roma children and women and addressing poverty.[84] It is an important improvement in light of the approach of the ALTERNATIVE project. As the 2010 Commission report already stated: "(a)n effective equality policy goes beyond the prohibition and punishment of discrimination and involves proactive government interventions to promote equality" (Report 2010, 21). What important here is the fact that any policy development and targeted support in the four above mentioned areas need to be implemented in current European societies, in which, as we have seen above, a high level of anti-Roma attitude is present, and fuelled by populist politics or by the media.[85] Although governments seem to be committed to support Roma inclusion, they might not dare to risk the future support of their voters. Some members of society might view the targeted support of Roma as being in competition with other possible societal improvements. The 2010 Report states: "Widespread negative attitudes towards Roma, anti-Gypsyism and stigmatisation have been identified as important barriers to successful implementation of measures to improve Roma inclusion." In this respect, the Commission's Communication in 2010[86] stated, that "the social and economic integration of Roma is a 2-way process which requires a change

[83] 2013/C 378/01
[84] 'First ever EU legal instrument for Roma inclusion adopted'. EC Press Release on 9 December 2013. IP/13/1226
[85]According to the special Eurobarometer 393 'Discrimination in the EU in 2012' (20-21) three out of four Europeans agree that the Roma are a group at risk of discrimination and 34% agreed that their fellow citizens would feel uncomfortable about their children having Roma schoolmates.
[86]COM(2010)133 final, 5.

of mindsets of the majority as well as of members of the Roma communities and their leaders". The 2010 Report mentions some clear examples of possible challenges, including: the difference that a supportive and a hostile mayor can make in the implementation of the same project (35) and therefore the need for strong local support, the presumption that elimination of school segregation might lead unprepared teachers to difficulty (40) or the concerns that improvement of living conditions and non-segregated housing of Roma will trigger hostility from their future neighbours (46). These are core conflict situations, which describe the daily environment in which Roma inclusion policies have to be implemented. We argue that without changing or at least challenge such hostile attitudes, Roma inclusion policies will hardly succeed.

Although anti-discrimination measures are present in the strategies, this more profoundly hostile aspect of day-to-day realities remained under-reflected until the Recommendation in 2013. The Recommendation clearly brings these issues to the EU level by recommending the member States to:

> 2.4 Implement measures to combat discrimination and prejudice against Roma, sometimes referred to as anti-Gypsyism, in all areas of society. Such measures could include:
>
> (a) raising awareness about the benefits of Roma integration both in Roma communities and among the general public;
>
> (b) raising the general public's awareness of the diverse nature of societies, and sensitising public opinion to the inclusion problems Roma face, including, where relevant, by addressing those aspects in public education curricula and teaching materials;
>
> (c) taking effective measures to combat anti-Roma rhetoric and hate speech, and addressing racist, stereotyping or otherwise stigmatising language or other behaviours that could constitute incitement to discrimination against Roma.

The question remains as to which measures enable the delivery of these results. To mention some positive examples, the 2010 Report refers to dozens of successful projects

and initiatives in the field of Roma inclusion, referring among others to some, which already fulfil the above criteria, such as the system of Roma mediators (39) or anti-discrimination media campaigns (29). Mediators in this context are cultural mediators, who do not deal with conflicts in terms of conflict resolution. Their main role is to help the communication and bridge the gap between groups of different cultural background and help, in this case Roma, to have access to information and public services. As a step forward and a measure to be supported according to the above mentioned goals, we would raise attention to mediation or other restorative practices. These could be useful in creating opportunities for meaningful dialogue between groups, concerned parents, neighbours and citizens and change people's negative attitudes towards each other. Restorative dialogues could contribute to sensitising public opinion as well as to tackling anti-Roma rhetoric and hate speech. Restorative approaches might prevent the need for using strong repression by the often stigmatising criminal justice responses, which, in the long term, might create even greater level of social tensions between Roma and the majority population. To conclude, we suggest that inclusion of Roma should be the aim rather than integration, as inclusion would require measures targeted to both the Roma as well as majority population. In this respect restorative approaches can offer an opportunity for dialogue, which may help to break down prejudices and can empower all engaged in the process.

Although Roma inclusion raises similar challenges as of the inclusion of migrant people in Europe, the discourse on Roma inclusion is not as highly securitised in the EU (although in some Member States it is, see for example Berkovits and Balogh 2013, 31). While migration is clearly part of the EU's security and justice policy, Roma inclusion is viewed more from the social policy and fundamental rights perspective. It is interesting to note that the very informative web pages of the European Commission dedicated to the Roma inclusion appear under the topic and DG 'Justice'. However, this suggests that the anti-discrimination element of Roma inclusion policies has received a strong emphasis at the EU level.

IV.2 EU citizenship

EU citizenship is a rather new concept introduced by the Treaty of Maastricht in 1993. The Maastricht Treaty lists the rights deriving from European citizenship, which is granted automatically to all, who possess the citizenship of any EU member state. The citizenship of the Union is a complementary one to the citizenship of a Member State. The rights deriving from citizenship of the Union are the right to move and reside freely within the Union, the right to vote and stand as candidates in elections for the European Parliament and in municipal elections in their Member State of residence under the same conditions as nationals of that State, the right to petition the European Parliament in any of the Treaty languages, the right to submit citizens' initiatives and the right to lodge complaints with the European Ombudsman against institutional maladministration. The citizenship of the union is strongly connected to the right of free movement and this aspect is reinforced and regulated more in detail in 2004 by the Directive on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.[87] The Commission regularly assesses the situation of the implementation of EU citizen's rights by Member States. The latest evaluation report was published in 2013, an important element of the European Year of Citizens in 2013. The report describes the aim of the Union citizenship as follows: "At a time when the EU is taking major steps towards a deep and genuine Economic and Monetary Union, of which democratic legitimacy is a cornerstone, with a Political Union on the horizon, it is all the more important to focus on the things the EU is doing to make citizens' lives easier, to help them understand their rights and involve them in a debate on the Europe they want to live in and build for future generations" (EU citizenship report 2013, 3). Indeed, the 12 new key actions introduced in this report aim to improve the lives of EU citizens, as well as to strengthen active citizenship at the European level[88]. In this respect, for example on the occasion of the European Year of Citizens the Commission launched the Citizens' Dialogues, which gave EU Citizens the opportunity to meet EU commissioners and express their concerns, needs

[87] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004
[88] One out of the 12 key actions, that aiming for more procedural safeguards of persons suspected or accused in criminal proceedings is strongly related to our research.

and vision for the future of the EU. Although these improvements are clearly to the benefit of EU nationals, they can raise questions about whether or not this concept would create a greater gap between EU citizens and those, who do not possess EU citizenship.

According to Delanty (2007, 66) the citizenship of the European Union expresses a rights-based approach without emphasising civic engagement, which leads to a deficit in the values of solidarity and social justice. The conclusion of Kostakopolou (2009, 13) in a Briefing Note requested by the LIBE Committee of the European Parliament on the Fifth report on citizenship of the union clearly reflects on this aspect:

> There is also an urgent need to rethink the meaning and policies attached to civic integration at the national and EU levels with the view of sustaining the vision of a diverse and inclusive EU, which enhances rights protection and promotes a respectful symbiosis among its citizens and residents. European citizenship has been a unique experiment for stretching social and political bonds beyond national boundaries and for creating a pluralistic political community in which diverse peoples become associates in a collective experience, and this vision needs to be calcified and promoted.

Martiniello (1995, 46) on the same line raises concerns about granting European Citizenship on the basis of belonging to one of the EU nationalities and on the basis of belonging to a European culture. As he argues, it can lead to the exclusion of immigrants already living in Europe, as well as of those arriving in the future, as their cultural background might be different from the Judeo-Christian based European culture. He continues that the idea in progress is that only those sharing the European culture can benefit from the relative economic well-being in Europe and this can explain the exclusionary practices towards the non-members of the European society. The main problem is that this logic does not take into account the actual intercultural reality of present European societies.

Policy recommendations of Kostakopolou (2009, 13-14) include that (1) in the long term, Union citizenship should be based on domicile in the territories of the Union for a certain period of time; and (2) the vision of the EU as a heterogeneous political community, which

values diversity, intercultural dialogue, rights protection and respect for human rights, should be placed at the heart of all policies.

While we argue that this way of policy development would be helpful at least in preventing conflicts in intercultural settings, the speech of European Commission President José Manuel Barroso on 23 April 2013[89] launching the new Narrative for Europe project of the EU might be alarming. Stating, that the 21st century Europe needs a new narrative, a new story replacing the original 'peace through common market' motive, the "new all-encompassing narrative should take into account the evolving reality of the European continent and highlight that the EU is not solely about the economy and growth, but also about *cultural unity* and common values in a globalised world." It remains a question whether this aim for cultural unity would remain the basis of EU citizenship and whether this new narrative will reflect Europe's diversity. As pointed out by Delanty and Rumford (2005, 60) cited by Näss (2010, 7) the EU today is caught in the situation of having to define a European commonness that is universal but nevertheless distinct from the global.

IV.3 Culture and intercultural dialogue

The idea of intercultural dialogue emerged in CoE policies in the mid-1990s (Augustín 2012). Augustín interprets the policy of the CoE related to intercultural dialogue having a focus on conflict prevention and indirectly linked with security:

> The representation of cultural diversity as a problem relates to potential conflicts that might occur due to the co-existence of different cultures, leading some to view cultural diversity as a threat to social cohesion in national societies. The CoE interprets the challenge of dealing with cultural diversity in terms of the opposition between the universal and the particular, and it is seeking a way to reconcile the need for social cohesion with the value of diversity. Assuming that globalization has increased both diversity and insecurity, the CoE aims to manage cultural diversity, which means being able to predict and solve cultural conflicts.

[89] http://ec.europa.eu/debate-future-europe/new-narrative/index_en.htm Accessed on 30 January 2014.

According to Agustín (2012) the EU started to reflect on intercultural dialogue from 2002, but mostly in relation to international relations. When the preparation of the European Year of Intercultural Dialogue (EYICD) in 2008 has begun, the importance of intercultural dialogue in more policy areas came into the fore. The Communication on a European Agenda for Culture in 2007[90] put cultural diversity and intercultural dialogue on the first place among its three core objectives. Within this objective the Agenda emphasised mobility of artists next to the promotion of intercultural competences and dialogue, through, for example, improvement of language competences. In the framework of the EYICD the EU supported seven flagship projects, which all aimed to bring together people, mostly young with different cultural background through art projects. Some other initiatives were supported in sports, for example, but only one one-day event[91] dealt explicitly with the topic of intercultural (interfaith) dialogue at a 'people-to-people' level. Augustín (2012) concludes that "(t)he articulation of a more elaborate version of ICD is limited, and efforts initiated by the EU regarding the EYICD have not been productive enough. The non-definition of ICD, the confusing uses of culture, and the implications of these issues for cultural policies are some of the reasons for this lack of productivity."

As Augustín (2012) notes, the EU documents lack the definition of intercultural dialogue. A study of the European Institute for Comparative Cultural Research on intercultural dialogue[92] pronounces that the **absence of a clear definition** of intercultural dialogue in many European and national programmes is problematic and stands in contrast to its increasing usage in public discourse (ERICarts 2008, 153). According to this study the unclear definition leads to misinterpretation of aims and actual programmes. This is the reason why some programmes aim to assimilate migrants or are limited to showcase specific cultures as part of cultural diplomacy. They provide the following definition of intercultural dialogue, which is in line with our understanding of the concept:

> Intercultural dialogue is a process that comprises an open and respectful exchange or interaction between individuals, groups and organisations with different cultural backgrounds or world views. Among its aims are: to develop a deeper

[90] COM(2007) 242 final
[91] http://ec.europa.eu/culture/our-programmes-and-actions/interreligious-seminar_en.htm
[92] ERICarts 2008
http://www.interculturaldialogue.eu/web/files/14/en/Sharing_Diversity_Final_Report.pdf

> understanding of diverse perspectives and practices; to increase participation and the freedom and ability to make choices; to foster equality; and to enhance creative processes.

In our view, **restorative justice approaches** fit in this framework, as they offer possibility to engage stakeholders voluntarily in a respectful dialogue led by a neutral mediator on conflicts. Restorative encounters can empower participants, can lead to common understanding, enable participants to make their choices, can restore relationships and prevent further conflicts in the future. This is confirmed, for example, in the CoE and EU joint initiative on Intercultural Cities[93]. This initiative promotes intercultural mediation for conflict resolution among its proposed strategies (Wood 2009, 63). The Commission's working document on EU initiatives supporting the integration of third-country nationals[94] refers to the Intercultural Cities initiative concerning the issue of conflicts: "Management of intercultural conflict, which is often inevitable, is also at the centre of such strategies. Handled well, it can lead to mutual learning and growth for all participants, including city authorities." (24). According to the CoE Opatija Declaration on Intercultural Dialogue and Conflict Prevention (2003, point 2.4)[95], to create a public space for dialogue and allowing for the expression of disagreement is not only part of the democratic process but also its guarantee.

Indeed, not only disagreements or conflicts, but not providing space for safe and open dialogue on them can lead to negative consequences. In the CoE White Paper on Intercultural Dialogue "Living Together As Equals in Dignity" (2006, 16) this is explained clearly:

> **The risks of non-dialogue** need to be fully appreciated. Not to engage in dialogue makes it easy to develop a stereotypical perception of the other, build up a climate of mutual suspicion, tension and anxiety, use minorities as scapegoats, and generally foster intolerance and discrimination. The breakdown of dialogue within and between societies can provide, in certain cases, a climate conducive to the emergence,

[93] http://www.coe.int/t/dg4/cultureheritage/culture/Cities/Default_en.asp
[94] SEC(2011) 957 final
[95] http://www.coe.int/t/e/com/files/ministerial-conferences/2003-culture/declaration.asp

and the exploitation by some, of extremism and indeed terrorism. Intercultural dialogue, including on the international plane, is indispensable between neighbours.

Shutting the door on a diverse environment can offer only an illusory security. A retreat into the apparently reassuring comforts of an exclusive community may lead to a stifling conformism. The absence of dialogue deprives everyone of the benefit of new cultural openings, necessary for personal and social development in a globalised world. Segregated and mutually exclusive communities provide a climate that is often hostile to individual autonomy and the unimpeded exercise of human rights and fundamental freedoms.

An absence of dialogue does not take account of the lessons of Europe's cultural and political heritage. European history has been peaceful and productive whenever a real determination prevailed to speak to our neighbour and to co-operate across dividing lines. It has all too often led to human catastrophe whenever there was a lack of openness towards the other. Only dialogue allows people to live in *unity in diversity*.

Näss (2010) concludes "that the EU must revise their understanding of intercultural dialogue if their cultural policy should become something more profound than good intentions".

V. Europe 2020 Strategy – what is the way forward?

The Commission Communication of 3 March 2010 entitled 'Europe 2020: a strategy for smart, sustainable and inclusive growth'[96] (the 'Europe 2020 Strategy') has given new impetus to the fight against poverty and social exclusion by setting common European targets to reduce the number of people at risk of poverty and social exclusion, to reduce the rate of early school leaving, and to increase school attainment and employment levels.
Out of the five targets set for the EU to reach until 2020, three are highly relevant to the intercultural context:

[96] COM(2010) 2020 final

1 – *Employment* - The employment rate of the population aged 20-64 should increase from the current 69% to at least 75%. The Europe 2020 Strategy (10) highlights the better integration of migrants in the workforce among the possible target groups.
2 – *Education* - A target on educational attainment which tackles the problem of early school leavers by reducing the dropout rate to 10% from the current 15%, whilst increasing the share of the population aged 30-34 having completed tertiary education from 31% to at least 40% in 2020.
3 – *Poverty/social inclusion* - The number of Europeans living below the national poverty lines should be reduced by 25%, lifting over 20 million people out of poverty.

The other two targets, namely to invest more in research and development and reduce greenhouse gas emissions are less directly connected to our topic, however, as it is acknowledged, all of the five targets are interrelated.

In 2010 the Justice and Home Affairs Council proposed integration indicators (the so called Zaragoza indicators) in the fields of employment, education, social inclusion, active citizenship and welcoming society, which are in line with the 2020 targets. These indicators were tested through a pilot project, which confirmed their relevance. The final report on the pilot (Huddleston, Niessen and Dag Tjaden 2013, 13) states that improving the outcomes for immigrants will significantly contribute to achieving the Europe 2020 Strategy's overall goals, thus showing how mainstreaming immigrant integration can be made beneficial for immigrants and society as a whole.

The Council recommendation on effective Roma integration measures in the member states adopted in December 2013 states (recital 18) that Roma integration is an essential part of the convergent efforts by the Union and Member States in the EU2020 context.[97]

The Europe 2020 Strategy, besides setting the five strategic targets, proposes seven Flagship Initiatives to reach these goals. The Flagship Initiative "An Agenda for new skills and jobs" mentions the need for a forward-looking and comprehensive labour migration

[97] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/lsa/139979.pdf

policy, which would respond in a flexible way to the priorities and needs of labour markets (Europe 2020 Strategy, 18). Looking at the demographic challenges ahead Europe – an accelerating growth of ageing population[98] – immigration of active working population might be a key element for the solution. The Flagship Initiative "European Platform against Poverty" aims to ensure economic, social and territorial cohesion, fundamental rights and that people experiencing social exclusion can live in dignity and be active members of the society. Among the key elements of this initiative the fight against discrimination and a new agenda for migrants' integration are indicated goals at the level of the Commission, while Member States are called for to define and implement measures addressing the specific circumstances of groups at particular risk, explicitly mentioning the Roma (Europe 2020 Strategy, 19).

The Europe 2020 Strategy is the basis for the next EU **multiannual financial framework** (MFF) for the period between 2014 and 2020. Concerning Roma inclusion, the EU Structural Funds, in particular the European Social Fund offers financial support. For the 2014-2020 financial period, the Commission has proposed that the integration of marginalised communities, such as Roma, should be a specific investment priority and Member States must earmark at least 20% of their European Social Fund allocation to social inclusion.[99]

Among the six headings of the MFF, one, the '**Security and citizenship**' has particular importance related to the topic of this study. This heading includes the budget foreseen for justice and home affairs, border protection, immigration and asylum policy, public health, consumer protection, culture, youth, information and dialogue with citizens.

[98] Europe 2020 Strategy, 7.
[99] First ever EU legal instrument for Roma inclusion adopted. European Commission Press release - IP/13/1226 09/12/2013. http://europa.eu/rapid/press-release_IP-13-1226_en.htm

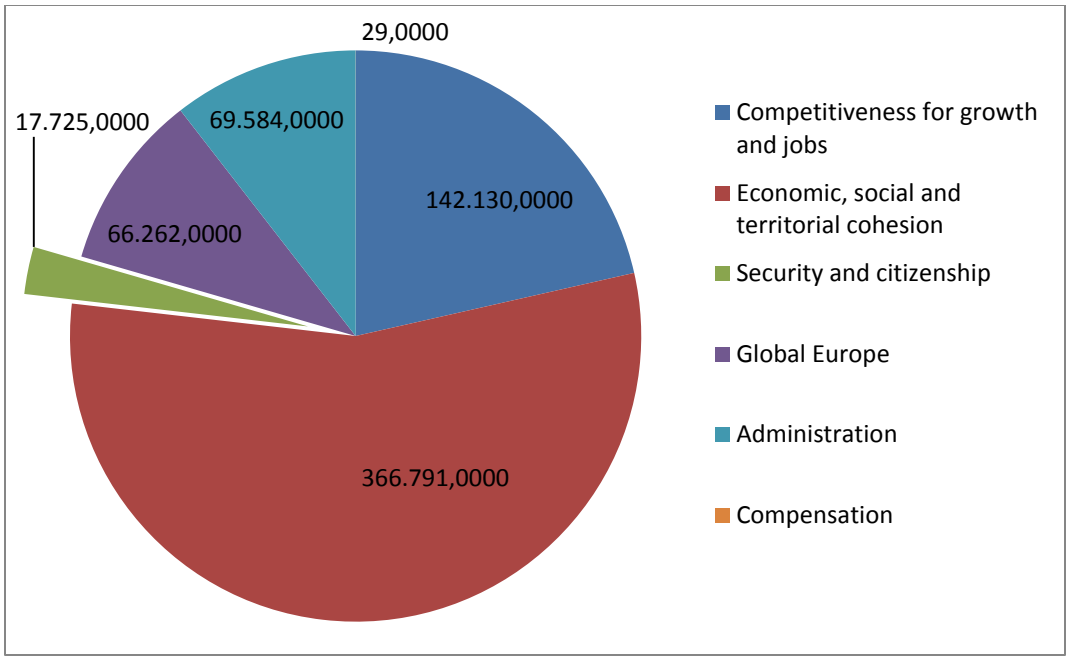


Chart 1. – EU MFF 2014-2020 – Budget allocated to each heading[100]

Under the headings the budget is allocated to different funds, programmes and initiatives related to specific policy areas. The setting up of an Asylum and Migration Fund (budget of € 3 137,42 million) independent from the Internal Security Fund (budget of € 3 764,23 million) has been presented above. The Creative Europe Programme[101] (budget of € 1 462,72 million) in its Culture Sub-programme will fund "special actions designed to make the richness and diversity of European cultures more visible and to stimulate intercultural dialogue and mutual understanding". However, specific policy aims are set out in Article 4 of the Regulation, which focuses mainly on the cultural and creative sector and do not mention intercultural dialogue. As the Regulation assigns indicators to the specific aims listed in Article 4, there is a risk that funding in this framework will not target projects or activities related to intercultural dialogue, or will do it only when these activities are strongly related to the activities of the cultural sector. To take a different perspective, this new framework might also indicate, that the EU took steps to clarify the notion of intercultural dialogue. As the Regulation clearly focuses on the creative industry and arts, the fact that intercultural dialogue is only mentioned on the margins suggests that the

[100] Source of figures: http://ec.europa.eu/budget/mff/figures/index_en.cfm
[101] Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, Article 13.1(e)

concept of intercultural dialogue is not strongly connected to the cultural industry. In this case the question remains, which funding stream will be available to support initiatives and programmes concerning intercultural dialogue in the next EU multiannual financial framework. The Rights, Equality and Citizenship Programme for 2014-2020[102] (budget of € 439,47 million) aims to increase the knowledge on and application of people's rights and to promote the rights of the child, the principles of non-discrimination (racial or ethnic origin, religion or belief, disability, age or sexual orientation) and gender equality. Supported actions (Article 5) cover data collection, trainings, cooperation, exchange of good practices, awareness-raising and dissemination activities. The general aim of the Justice Programme (budget of € 377,60 million) is to contribute to the further development of a European area of justice based on mutual recognition and mutual trust, in particular by promoting judicial cooperation in civil and criminal matters[103]. The financed activities are very similar to those of the Rights, Equality and Citizenship Programme, with a specific focus on judicial cooperation, access to justice and crime prevention aspects of drug policy. As in this moment not all of the specific programmes are adopted yet, it is difficult to see where intercultural dialogue, and more specifically restorative approaches in intercultural conflict settings within European societies might get further support.

In the meanwhile, further research on this topic probably will be supported. **Horizon2020**, the framework programme for research and innovation for 2014-2020, however, reflects on European societal challenges and allocates almost 40% (reaching almost € 30 000 million) of its budget on research on societal challenges. Issues covered include health, food security, clean energy, transport, climate action as well as inclusive and secure societies. As the regulation establishing Horizon2020[104] gives the reasoning for the need of European level research and innovation concerning inclusive societies: "These challenges go beyond national borders and thus call for more complex comparative analyses to develop a base upon which national and European policies can be better

[102] Regulation (EU) No 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020
[103] Regulation (EU) No 1382/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Justice Programme for the period 2014 to 2020
[104] Regulation (EU) No 1291/2013 establishing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020)

understood. Such comparative analyses should address mobility (of people, goods, services and capital but also of competences, knowledge and ideas) and forms of institutional cooperation, intercultural interactions and international cooperation" (Regulation Horizon2020, 6.2).

> "The concept of inclusive societies acknowledges the diversity in culture, regions and socio-economic settings as a European strength. Turning European diversity into a source of innovation and development is needed" (Regulation Horizon2020, 6.2). "The aim is to gain a greater understanding of the societal changes in Europe and their impact on social cohesion, and to analyse and develop social, economic and political inclusion and positive inter-cultural dynamics in Europe" (Regulation Horizon2020, 6.3.1).

The Europe2020 strategy has a strong economic ground and focus. It aims to lead the European economy out of the crisis and to put it on the path of growth and development. In the meanwhile, the targets set out are related to societal issues, such as diversity, equity, exclusion, integration or poverty. This is acknowledged in the different programmes and funding streams allocated to support the achievement of the targets of the EU. However, transversal topics, such as interculturality are difficult to cover within specific programmes, therefore different programmes might support different elements of its aims. The risk of this is that important issues remain of no weight and marginal.

VI. Conclusion

We can conclude that in a more and more diverse and intercultural Europe living together may lead to conflicts between people, the causes of which are often perceived being cultural difference. Goodwin (2011) describes the emergence and growing support towards populist right wing parties as a common phenomenon in Europe. These parties have a strong anti-immigrant or anti-Roma rhetoric. As Goodwin shows, they are supported mostly not because of the fear caused by the economic aspects of diversity, but the cultural. These parties also have strong anti-EU rhetoric. For the future of Europe and for its aim to

preserve its founding principles and fundamental rights, it is crucial to face this development and find the right approach to change people's perceptions about diversity. The report suggests a dialogue-based approach to this: "the most effective approaches may well be those that are focused on the local level, where engaging with voters and supporting interaction between different communities" (Goodwin 2011, 29).

In this respect it seems crucial to address these everyday conflicts within intercultural settings. Approaches of intercultural dialogue appear already in policy areas such as integration of migrants or inclusion of Roma. Besides promoting the value of cultural diversity, these approaches should embrace more concrete steps to address everyday conflicts. Restorative justice approaches to conflicts within intercultural settings may contribute to this aim. Our goal in the ALTERNATIVE project is to develop methods and to gain experiences of applying restorative justice approaches in intercultural contexts. We assume that they could lead to better understanding, mutual tolerance, more amicable relationships and formulation of common European values. Wider application of these approaches could also empower participants, lower societal tensions and promote active citizenship. While these outcomes certainly contribute to the societal stability and better economic performance of the EU, they are also relevant to further the democratic foundations of Europe.

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