

## Questions for the would-be home affairs and justice Commissioners



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The would-be Commissioners for immigration and home affairs and Justice will shortly be questioned by Members of the European Parliament (MEPs) in hearings, to determine whether the EP should vote to confirm them in office. MEPs have already asked some written questions and the would-be Commissioners [have replied](#). Since most of the written questions were not very searching (except for a couple of questions on data protection issues), the Commissioners did not reply in much detail.

However, the hearings are an opportunity for MEPs to ascertain the Commissioners' plans, and to secure important political commitments, in these fields. To that end, we have therefore suggested a number of oral questions which MEPs should ask in the hearings.

### Immigration and asylum

The Commission consider that migration policy should be framed by the (non binding) objectives of the global approach to migration (GAMM) and relations with third countries should be dealt with by "Mobility Partnership" which are more diplomatic declarations than binding acts. Would you propose a binding legal basis for treaties with the countries concerned, grounded on Articles 77, 78 and 79 of the TFEU?

What actions will the Commission take to ensure that EU legislation in this field is fully and correctly implemented by the Member States?

Will the Commission propose an immediate amendment to the EU visa code, to confirm that Member States are obliged to give humanitarian visas to those who need them and who apply at Member States' consulates in third countries?

When will the Commission propose EU legislation to guarantee mutual recognition of Member States' decisions regarding international protection, including the transfer of protection?



When will the Commission make proposals for a framework for sharing responsibility for asylum-seekers and persons who have been granted international protection, starting with those who have applied outside the territory of the Member States?

Will the Commission propose an immigration code, and what will its main contents be?

The Court of Justice has recognised that search and rescue obligations are interlinked with external borders surveillance (Case C-355/10). The EU adopted rules in this field which governing only border control coordinated by Frontex. Do you intend to propose that such rules should apply to all Member States' border controls as a general rule, by formally amending the Schengen Borders Code ?

What immediate and longer-term steps will the Commission take to address the death toll of migrants crossing the Mediterranean?

Will the Commission propose to amend the EU legislation on facilitation of unauthorised entry to confirm that anyone who saves migrants from death or injury during a border crossing, or who otherwise acts from humanitarian motives, is exempt from prosecution?

### **Internal Security and Police cooperation**

Measures against terrorism and transnational crime were until now mainly taken under the vague framework of "operational cooperation". Will the Commission propose a clear legal basis for the Internal Security Strategy and transforming the so called "Policy Cycle" in a transparent and legally binding framework where European and national interventions are clearly framed? Will you propose relevant amendments to the Europol legislative proposal which make reference to the policy cycle without framing it? Which initiatives will you take to implement the principle of subsidiarity and proportionality as foreseen by the Treaty, and to ensure that the Charter must be taken in account also for police cooperation so that the European and national parliaments as well as the Court of Justice could verify that these principles have been complied with ?

According to Protocol 36 (the transitional protocol attached to the Treaty of Lisbon), all measures dealing with police cooperation adopted before the entry into force of that Treaty will fall under the jurisdiction of the Commission and of the Court from 1 December 2014. Some of them are outdated and should be repealed or substantially modified to take in account the post-Lisbon legal and institutional framework (role of the Charter, co-responsibility of the EP, role of the national Parliaments). In several cases where EU measures limit dramatically fundamental rights sunset clauses should be inserted in the basic acts. However nothing about this is written in your statement nor in the previous Commission's REFIT exercise. Could it be a priority or do you believe that Lisbon Treaty did not change the situation in your domain of competence?



Will your legislative programme also be grounded on the Treaty legal basis of judicial cooperation in criminal matters ? If so, how will you frame the relations with the Commissioner in charge of these aspects ?

Schengen cooperation has been until now the most successful case of cooperation between the Member States and has been recently upgraded by launching SIS II and EUROSUR. The notion of integrated border management in Article 77 TFEU is progressively taking shape but no substantial improvement happens in the role of the European and National parliament. Other similar initiatives like PRUM and Swedish initiatives have been developed following the principle of availability. Do you plan further initiatives here?

For instance, in light of the recent UK case where a convicted murderer moved from one Member State to another, do you intend to propose the exchange of criminal records concerning the most serious crimes by a Member State's nationals (murder, rape, grievous bodily harm) if those nationals are no longer imprisoned?

Will the Commission propose a police code that recasts EU legislation in this field?

When does the Commission intend to submit a legislative proposal implementing Article 75 of the TFEU dealing with freezing assets of terrorists ?

### **Justice Commissioner**

According to CJEU (Melloni, Radu judgments) the principle of primacy of EU law covers also sensitive domains such as judicial cooperation in criminal matters. It is then important that the EU legislation is set at the highest possible standards of protection of fundamental rights so that by implementing the EU legislation the current level of protection at national level will not be lowered. Do you agree that all future EU legislative proposals on criminal law should make also reference to the possible impact on national law and always permit the possibility of higher national standards as referred to by art. 53 of the Charter ?

Will the Commission commit to propose to amend the Framework Decision on the European Arrest Warrant and other pre-Lisbon measures on mutual recognition in criminal matters, to ensure that there is the same level of protection of fundamental rights as guaranteed in the recent Directive on the European Investigation Order?

When will the Commission propose a measure to ensure adequate protection for suspects as regards pre-trial detention in criminal proceedings in the Member States?

Will the Commission submit further legislative measures to improve the suspect's procedural guarantees?

Fundamental rights protection is meaningless without effective ways to obtain a judicial redress at national or EU level. Will you submit a legislative proposal upgrading the 2013 Commission Recommendation on collective redress mechanisms so that citizens and companies can enforce the rights granted to them under EU law where these have been infringed?



How will the Commission act to ensure that Member States fully and correctly apply EU legislation on the protection of victims' and suspects' rights in criminal proceedings?

OLAF, EUROJUST and EPPO will deal under different perspectives with the problem of protection of EU financial interests. Has the time come to simplify the institutional machinery, for instance by merging OLAF with EPPO ?

Several EU measures such as the Framework decision on terrorism restrict individual freedoms. In these cases should the EU legislation (as well as delegated and implementing acts) should not embody sunset clauses, as it the case for the US legislation (see the Patriot Act)?

Will the Commission commit to propose to the Council that any EU treaty on sharing personal data with third countries will be suspended if, in the view of the European Parliament following an independent review, in practice there is no adequate level of protection of the relevant personal data in that third country?

According to the current and envisaged legislation it will be a Commission's role to assess the adequacy of data protection in third countries. Do you agree that such evaluation should be done as delegated act as it requires a high level of discretion on the Commission side ?

DIGITAL AGENDA (together with Commissioner Oettinger and VP Ansip)

You will work with Candidate Commissioner Oettinger on the digital agenda who made reference to an ambitious legislative programme soon to be adopted to implement the European Digital Agenda. The EU Treaties offer several legal bases to accomplish such an objective even if the EU is still lacking a comprehensive and consistent legislative strategy which could give specific expression to fundamental rights as defined by the Charter of fundamental rights.

For this reason the Court of Justice has recently annulled the Directive on data retention. However the same fate could occur to other EU legislative measures planned or in negotiation which do not meet the high standards required by the Charter and to avoid challenges from national Courts.

To avoid these risks will you be available to design and implement with your other colleagues in the future Commission (Oettinger Timmermans, and Ansip) a legislative strategy which could become an European "Marco Civil" as the one recently adopted by Brazil ?

The Court of Justice has defined in its data retention ruling very strict criteria to be followed when collecting personal data for security purposes. Even the Council legal service seems to consider that the current EU-US agreements on TFTP and PNR do not fit with these criteria. What do you intend to do at the next Transatlantic summit? Will you notify the US authorities that the agreements should be profoundly revised?

When will the Commission respond to the CJEU ruling on the invalidity of the data retention Directive? Will it propose a new EU Directive which is compliant with the



judgment? Does the Commission believe that the Directive still allows for mass surveillance? Will the Commission pursue infringement action against Member States whose legislation is not in compliance with the criteria set out in the judgment?