Chapter 16
The external dimension of the EU’s internal security

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Sarah Wolff

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Summary

Since the end of the Cold War, the internal-external security nexus, namely the links between formerly distinct concepts under the Westphalian approach to international relations, has become increasingly relevant. This chapter reviews the development of an external dimension of Justice and Home Affairs (JHA) that has evolved from a side-product of European economic integration to a complex and dynamic policy area. Although since the Lisbon Treaty the EU has considerably expanded its internal and external security tools and competences, the EU’s global influence in this area is constrained by normative, national, institutional, policy and legal challenges. The rapid evolution of global security challenges – such as counter-terrorism, migrant and refugee flows, and cybercriminality – means there is a need for continuous policy and institutional reforms if the EU is to be an influential global actor. The success of the external dimension of JHA is thus highly dependent on both the EU’s internal development in JHA and international security challenges, and on the way in which the EU responds to these.

Introduction
Initially thought of as a necessary step in developing the EU Single Market and building a free area of movement for people, goods, services and capital, the EU’s internal security policy, also known as Justice and Home Affairs (JHA), has expanded thematically across policies and geographically beyond EU borders. Between 2006 and 2011, EU spending on JHA has increased by 163% (Sgueo, 2016). Since the EU is not a state with legitimate use of police force, how can one account for the expansion of EU competences and regulation of EU internal security? Moreover, how can one account for the external projection of EU internal security beyond its borders? Does the external dimension of JHA undermine or strengthen the EU as a global security actor?

In the past 20 years, the EU has gradually gained competences to regulate JHA in the area of police cooperation, migration and asylum policies, border management and judicial cooperation in civil and criminal matters. In order to provide security for its citizens as well as its internal borderless Schengen area, the EU has integrated further its internal and external security dimensions. Since the Arab uprisings, this narrative has dominated EU discourse, which conceives the internal-external nexus as a solution to the rising instability generated by migration, refugees and terrorism in the EU’s neighbourhood, as underlined for instance in the European Agenda for Security, outlining the EU strategy for 2015-2020 (European Commission, 2015). Similarly, the 2016 Global Strategy for the EU’s Foreign and Security Policy takes as a starting point that ‘our security at home entails a parallel interest in peace in our neighbouring and surrounding regions’ (European External Action Service, 2016). Several initiatives have aimed to bridge the gap between internal and external policies, at times hampered by bureaucratic turf wars and institutional obstacles. For example, the rise of the so-called Islamic State in the Iraq and the Levant (ISIS, or ISIL) relies partly on 5,000 European ‘foreign fighters’, often radicalized online in Europe (Sgueo, 2016). In response, Europol’s internal referral unit (IRU) is working to reduce the level and impact of terrorist and violent extremist propaganda on the internet and supports EU member states in that sense. Another example is the fight against people smugglers in the Mediterranean. Since 2015, the EU military operation in the Southern Central Mediterranean (EU Navfor Med operation) involves a
comprehensive approach that reaches out to African regional organizations and the African Union, global institutions such as the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR); EU Navfor Med also involved coordination with Frontex, the European Border Management Agency, and with countries of origin and transit (Council of the European Union, 2015).

The EU’s discursive consensus for more integration of internal and external security is, however, constrained in practice by a lack of coherence and consistency in its internal and external policies. Also, the EU’s internal-external nexus is at odds with EU foreign policy normative objectives of promoting democracy, human rights and the rule of law. Thus, before the Arab uprisings, the cooptation of authoritarian governments in securing EU borders has raised numerous legal and ethical challenges, in particular when it comes to the fundamental rights of migrants (Wolff, 2008). EU border management has forced migrants and refugees to take increasingly riskier routes. For instance, intense patrolling of the Strait of Gibraltar in the mid-2000s, has led sub-Saharan migrants to undertake perilous journeys – initially via the Canary Islands and later via the central Mediterranean. The EU is thus not only a global security provider but also participates in creating insecurities at its borders. The deaths of almost 4,000 migrants at sea does indeed question the efficiency of EU policies. Many also fear that the increased blurring of internal and external security might politicise and securitise unnecessarily EU development policy and humanitarian aid (Zwolski, 2012a). The framing of an external dimension of JHA by police and law enforcement actors, taking the view of fighting organised crime and protecting EU internal security through external action has thus taken precedence over the humanitarian and development objectives of the diplomat community (Mounier, 2009).

Bearing in mind that the framing of the internal-external nexus is not neutral, and often reflects the politics of EU security, this chapter reviews the internal process of constructing both the EU’s Area of Freedom, Security and Justice (the main objective behind the EU’s JHA policy) and its external dimension. With the aim of assessing whether the EU is a meaningful global player in this area, this chapter reviews the normative, national, institutional, policy and legal challenges that have
arisen from this process. It then provides an overview of the policy dynamism and institutional developments that have taken place since the Lisbon Treaty. The third part of the chapter reviews the way in which the EU copes with the global security challenges of counter-terrorism, migration, refugees and cybercriminality. It ponders whether the EU is a global norm-shaper or a norm-taker when it comes to internal and external security policies, as well as whether it is possible to identify the emergence of a common European interest. This helps us to understand how the EU pursues its security policy within the international arena and the effect it has at global level.

**EU’s Area of Freedom, Security and Justice and its external dimension: normative origins and challenges**

In 1999, the Amsterdam Treaty stated the objective of creating an Area of Freedom, Security and Justice. Article 3(2) of the Treaty on the European Union stipulates that ‘The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.’ This objective needs however to be put in perspective with the normative, national, institutional, policy and legal challenges that the EU, as a global actor, is facing.

Historically, the normative origins of the Area of Freedom, Security and Justice can be found in neo-liberalism and the completion of the EU Single Market. The objective of integration in the field of JHA was tied to the economic necessity of lifting internal border controls and facilitating the free movement of people, goods, services and capital. In a post-Cold War environment, the globalization of threats and the need to serve EU citizens’ security inside and outside the EU (including the security of their fundamental rights) are primary drivers of the European Agenda on Security (European Commission, 2015), which highlights the links between EU internal security and global security. This internal-external security nexus is embedded in a global trend towards building ‘homeland security’, which originated in the US. Replacing the term ‘national security’, which prevailed prior to the fall of the Berlin Wall, with ‘homeland security’ implies a ‘concerted effort’ in providing security not only by the nation-state but by all segments of society, such as private
actors, non-governmental organizations (NGOs), citizens, international organizations (Kaunert et al., 2012: 4).

EU member states’ resilience is nonetheless a strong obstacle to the development of a ‘European homeland security’ as European governments have the monopoly on violence or the legitimate use of force in a traditional Weberian understanding. Strategic documents, such as the European Agenda on Security 2015-2020, refer to EU’s security as a ‘common European responsibility’, which needs to ‘respect national responsibilities’ based on a ‘shared agenda between the Union and Member States’. This is also reflected in European public opinion: in spite of the realization that European collective agency helps to address global threats, European citizens still think that their national police, judicial system and army are the top three institutions that ensure their security. European institutions and agencies only come fifth in the ranking (Eurobarometer, 2015).

Institutional and policy obstacles are also numerous. First, although there is some policy convergence between EU internal and external security, institutional resistance embedded in the administrative and corporatist culture of national administrations at times inhibits policy change. Foreign affairs and home affairs ministries are indeed not known for their efficient information-sharing and good cooperation (Eriksson and Rhinard, 2009). Second, at institutional level, the multiplication of institutional actors has increased the potential for conflict. Thus the image of civil liberties being championed by the European Parliament (EP) (see Box 16.2), clashes at times with the European Council, where EU member states defend their individual interests. Within the European Commission, there are frequent turf wars between the Directorate-General (DG) Home, in charge of internal and external JHA, and other DGs, like DG Justice or DG Devco in charge of Development Cooperation with third countries, or even with the European External Action Service (EEAS) (Wolff and Mounier, 2012). Since 2016, Federica Mogherini coordinates the work of Commissioners with an external relations portfolio that includes the Commissioner for Home Affairs (Carrera and Guild, 2015: 16). The rapid expansion of the scale and range of policies connected to the external dimension has also had some negative impact. The external dimension of JHA deals with issues as diverse as asylum, migration, border management, counter-terrorism, and police and judicial cooperation in criminal and civil matters. This diversity challenges the EU’s ability to establish a coherent and consistent ‘single policy’ and to speak with one voice
externally (Monar, 2012: 8). Third, the external dimension of JHA is dependent upon JHA internal policy development and the constraints that accompany it. Since the Maastricht Treaty, JHA is characterized by policy stability and a strengthening of the Council role overall. Policy change has come about in the area of EU criminal law, while most JHA policy core areas, such as Schengen or the Dublin Convention, have been seriously challenged since the 2015 refugee ‘crisis’ (Trauner and Ripoll-Servent, 2015).

[Box 16.1 starts here] Box 16.1 New intergovernmentalism as a theoretical tool box

This chapter argues that new intergovernmentalism best explains developments of the external dimension of JHA (Wolff, 2015a). This view contends that while member states remain key to the development of JHA, decision-making bodies such as the Council and the European Council increasingly make decisions through deliberation and consensus. A major development in the field of JHA and its external relations is the phenomena of 'trialogues', which sideline the European Commission from the decision-making process. The extension of co-decision has shifted the institutional balance as the European Parliament (EP) now deals directly with the Council in 'secluded trialogues' (Heritier and Reh, 2012) or ‘early compromise agreements’ that enable an agreement between Council and the EP before the text gets any chance to be debated through the traditional 'readings' stages of the ordinary legislative procedure.

Supranational institutions, such as the Commission, are still relevant players, but are less hard-wired towards further integration (Bickerton et al., 2015). This evolution is also due to the delegation of new tasks by EU member states to de novo bodies such as JHA agencies or the EEAS instead of the European Commission. In addition, the Lisbon Treaty has introduced a shared right of initiative between the Commission and at least one-quarter of EU member states when it comes to administrative cooperation in judicial matters over criminal matters and police cooperation (Article 76 TFEU). New intergovernmentalism stresses the impact that the Irish, British and Danish ‘opt-outs’ provide for differential JHA integration. This has consequences for the negotiation of JHA international agreements since, for instance, the EU-Turkey readmission agreement does not apply to Danish citizens or to the Danish territory (European Union, 2014). This variation across EU member states, which means that different 'degrees' of freedom, security and justice exist in the EU, can easily undermine the EU’s credibility as an international actor (Carrera and Guild, 2015; Monar, 2012). However, at the same time, policy convergence has occurred even for countries that opted-out of JHA. This has been the case with the UK, which has been able to place its top civil servants in key JHA positions. Rob Wainwright has been the director of Europol, the EU’s law enforcement
agency, since 2009 and Jonathan Faull was director of the DG JHA between 2003 and 2010. The adoption of Europol’s policy cycle, a methodology to fight organized crime also known as the European intelligence-led policing model (Council of the EU, 2010) originated under the 2005 UK presidency. [Box 16.1 ends here]

Brexit will be another challenge. Even if the UK negotiates an agreement similar to the EU-Swiss bilateral freedom of movement agreement, the absence of the UK from Foreign Affairs Council and JHA meetings might weaken the EU’s international role as a security provider. At the same time, however, this could vary depending on the policy area, as the EU was previously able to build a common migration and border policy without the UK. But in the field of counter-terrorism and policing the UK’s absence might lower EU leverage on third countries to negotiate future EU-led international agreements, and instead favour a security rapprochement with the ‘Five Eyes’, the intelligence alliance between Australia, Canada, New Zealand, the UK and the US.

An additional challenge is that the external dimension of JHA remains an instrument of the EU’s internal security and is not fully integrated into JHA. Thus, many JHA instruments still have an internal objective and ignore third countries’ domestic politics and regional contexts. Further research in this area is particularly relevant in relation to the EU’s neighbours and global partners with no prospect of accession and with weaker EU conditionality than candidate countries. Research has shown that, in the case of EU readmission agreement negotiations with Morocco and Turkey, which organise the return of irregular migrants back to their home country or to the country they transited through, the EU had little negotiating leverage as it overlooked the domestic and regional politics of these third countries (Wolff, 2014). In addition, EU member states’ special bilateral relationships with third countries can sometimes lessen the effectiveness of EU policy instruments such as Mobility Partnerships (Renslow and Vink, 2015).

Finally, legal challenges to the development of an external dimension of JHA are numerous. The EU’s ability to act externally is constrained by its internal competences. Because JHA is a shared competence, EU member states retain an important role. The Lisbon Treaty does not provide for an explicit EU competence on the external dimension of JHA. The only reference to the external dimension of JHA is to be found in Article 78(2g) of the Treaty on the Functioning of the EU (TFEU),
which stipulates that in order to develop a European Common Asylum Policy the EU should enter into ‘partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection’. Article 79 (3) TFEU also provides the EU with a legal basis to conclude EU readmission agreements with third countries. The fundamental rights of EU citizens and third country nationals impacted by the external dimension of JHA are also key issues. Although the Charter of Fundamental Rights is now an integral part of the Treaty of Lisbon, the shared JHA competence with EU member states involves differentiated practices, for instance in border management. Thus, in 2012, the case Hirsi vs. Jamaa (case 27765/09) was brought by Eritrean and Somali migrants in front of the Strasbourg European Court of Human Rights. Italy was condemned for having intercepted the migrants’ boat at sea and sending them back to Libya, an infringement of the principle of *non-refoulement* (1951 Geneva Convention on refugees) that forbids states to expel refugees back to a country where their life is at risk and they might face persecution.

The abovementioned constraints explain why, at times, the EU acts as a JHA norm-taker. A significant example is Passenger Name Record (PNR) agreements, which involve transmitting to a third country the personal data collected by air carriers when passengers book their tickets. So far, the EU has been a norm-taker, as these PNR agreements were concluded at the request of the US, Australia and Canada. The US had put a lot of pressure on the EU to send PNR to their law enforcement authorities for counter-terrorism purposes. This has been seen as an internalization of US border security norms by the EU (Argomaniz, 2009), the EU becoming a norm-taker of US homeland security norms. These agreements were concluded before the creation of an EU-wide PNR agreed by the Parliament and the Council on 2 December 2015 in the wake of the 13 November 2015 Paris attacks. Difficulties in reaching a deal among the various political parties in the EP, and the need to overcome challenges posed by various pieces of personal data protection legislation, explain why the EU legislative process was slowed down.

To conclude, these various normative, institutional and legal challenges have importantly affected the strategic vision of the external dimension of JHA. Since the 1999 Tampere programme, which was the first programming document for JHA policies, the strategic vision for the external dimension of JHA gained some
momentum in 2005 with ‘A strategy for the external dimension of JHA: Global Freedom’ (Council of the European Union, 2005). Thematic or geographic Action Oriented Papers (AOPs) were subsequently adopted, for instance on the fight against organized crime and drug trafficking in West Africa. Today, the 2005 Strategy is mostly implemented within the Trio presidency programme and the JAIEX Council committee, the French acronym for external dimension of JHA ‘Justice Affaires Intérieures-Extérieures’, where migration and counter-terrorism are prominent under the heading ‘the Union as a Strong Global Actor’.

Post-Lisbon developments: policy dynamism and institutional developments

This section shows that in spite of the aforementioned challenges, the external dimension of JHA remains a very dynamic policy area. Between the entry into force of the Treaty of Lisbon on 1 December 2009 and the end of 2015, there were as many JHA-related international treaties as in the 12 years prior to that period. They were concluded in diverse areas, ranging from visa liberalization/facilitation and EU readmission agreements with third countries to return irregular migrants caught on EU territory, to counter-terrorism clauses in association agreements and judicial cooperation.

Post-Lisbon developments of the external dimension of JHA can be summarized around three main trends: further institutionalization, more politicization and increased operationalization.

First, over the years, improved institutional coordination between home affairs and foreign policy has strengthened the external dimension of JHA. Institutionalization is a process by which ‘routinization’ and ‘structuration’ enable the ‘standardization, homogenization and authorization of codes or meaning, ways of reasoning and accounts’ (March and Olsen, 1995). The institutionalization of JHA’s external dimension has been pursued within EU institutions, and also through the European Neighbourhood Policy (ENP) or Common Security and Defence Policy (CSDP) (see Box 16.3). Institutionally, the Lisbon Treaty has codified the existence of the JAIEX Council working group, the French acronym for External JHA, created on an ad-hoc basis in 2008. Its aim is to ‘facilitate the exchange of information and
contribute towards more strategic and horizontal reflections in that area, with a view to supporting the work of the relevant External Relations (‘RELEX’) and JHA committees and working parties by helping to ensure their consistency, but without prejudice to their mandates. It could act as a matter of priority in areas in which coordination currently appears to be lacking’ (European Council, 2008). However, the JAIEX group has mostly acted as a coordination working party, its main strategy guidance resting in JHA structures such as the Standing Committee on Operational Cooperation on Internal Security (COSI),¹ the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), or the High Level Working Group on Asylum and Migration, and the relevant geographical working parties. Within the European Commission, DG JHA was split into two entities: DG Justice and DG Home Affairs. The A3 unit within DG Home is in charge of International Coordination, under the Directorate in charge of Strategy and General Affairs. Bureaucratic turf wars are nonetheless commonplace across the different Commission entities and the EEAS. Not only does this weaken the coordination and consistency of the external dimension of JHA, but third countries tend to exploit these gaps and link some issues with other areas of EU external relations (Wolff, 2014). Yet the EU rarely uses other incentives, such as trade agreements, to exert strategic leverage over third countries. This is partly due to weak coordination between DG Trade and DG Home on a strategic approach to migration and trade (Jurje and Lavenex, 2014).

Second, with the extension of the co-decision to the EP and qualified majority voting in the Council, there is some politicization of the external dimension of JHA. Politicization, within the EU context, refers to the moment when ‘regional integration becomes contested amongst a widening circle of political actors’ (Schmitter, 2006 in Hooghe and Marks). Far from being the exclusive policy venue of ministries of interior, diplomats and law enforcement authorities, JHA is increasingly debated among European political actors, structuring party politics and impacting the construction of an EU polity. This politicization has been most prominent within the European Parliament, which has become a key player of JHA politics and its external dimension (see Box 16.2). Under the Lisbon Treaty, the EP now co-decides with the Council on the mandates of Europol (art. 88 TFEU), Eurojust (art. 85 TFEU), visas and residence permits (art. 77 TFEU), legal immigration (art. 79 TFEU), and judicial cooperation in criminal matters (art. 82, 83 and 84 TFEU). Although the Council still decides by unanimity on short-stay and visas, passports, identity cards, residence
permits (art. 77 TFEU), family law (art. 81) and, most importantly, operational police cooperation (art. 87 TFEU) where the EP is only consulted, the number of areas that fall under EP competence is quite substantial. These internal competences have some external implications, for instance when it comes to deciding upon the external competences of agencies such as Europol and its ability to conclude agreements with third countries. The involvement of the EP in co-deciding on Frontex’s mandate, its 2011 revision and the European Border and Coast Guard entity that became operational in October 2016 necessarily implies a scrutiny of agencies’ mandates over their external relations with third countries.

[Box 16.2 starts here] Box 16.2: The European Parliament: a major player in the external dimension of JHA
The EP has gained an image as civil liberties defender on several international JHA dossiers. Prior to the Lisbon Treaty, the European Court of Justice (ECJ) annulled the 2004 Passenger Name Record (PNR) agreement concluded between the European Commission and the US, following a complaint from the EP. The EP attacked the agreement, arguing that data protection levels in the US were not adequate to protect the fundamental rights of EU citizens. Even though the ECJ annulled the PNR agreement on an erroneous legal basis, this episode severely damaged the credibility of the EU as an international counter-terrorist actor (Monar, 2012: 24).

Under the Lisbon Treaty, the consent procedure provides the EP with a sort of veto right on all international agreements falling under the ordinary legislative procedure (art. 217 TFEU). Negotiations with third countries on EU readmission agreements, counter-terrorism clauses, PNR or any other international agreement with JHA implications therefore needs to be ultimately approved by the EP. For the first time since the entry into force of the Lisbon Treaty, the EP rejected the Anti-Counterfeiting Trade Agreement (ACTA) in July 2012 that had been negotiated between the EU, the US, Australia, Canada, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea and Switzerland. Although it was a trade agreement interested in intellectual property rights, it had also important JHA elements, as it included enhanced cooperation between law enforcement authorities in counterfeiting. Earlier on, the EP had also rejected the 2010 EU-US SWIFT agreement, negotiated with a view to using bank data transfers in the fight against terrorism. The EP rejected the agreement, arguing that EU citizens’ fundamental rights and personal data were not safeguarded. Four months later, a revised version was voted in by members of the EP in exchange for the introduction of an EU data extraction system equivalent to the US Terrorism Finance Tracking Program, which has
not yet been agreed. The EP has also become a central actor in the external dimension of JHA and in particular in transatlantic relations, since the opening of an office in Washington DC in 2010 [Box 16.2 ends here].

Third, the external dimension of JHA is becoming more operational, with a proliferation of projects and programmes with third countries and international organizations. JHA agencies such as Europol and Frontex, due to their operational nature, have been particularly at the forefront of this trend, but EU member states are also conducting various law enforcement operations outside EU borders. For instance, bilateral Spanish-Moroccan border management cooperation might weaken EU-wide solutions. EU member states favour this type of operational bilateral cooperation with third countries, as it enables them to bypass supranational actors. Operational law enforcement cooperation remains outside the remit of EU institutions and therefore enables them to escape sensitive areas by de-politicizing JHA cooperation. This, however, raises the issue of coordination as the multiplication of EU agencies and member states’ bilateral initiatives can hinder the EU’s international actorness.

Over the years, new JHA agencies have been created and their external relations considerably expanded. While the Amsterdam Treaty, which entered into force in 1997, had allowed for the creation of Eurojust, the EU agency dealing with judicial co-operation in criminal matters, Europol was created in 1995 by an intergovernmental convention and established in 1999. Since then, Europol has become an EU agency, with its mandate included within EU law through a Council decision in 2009. Its new mandate, to enter into force on 1 April 2017, through co-decision between the Council and the EP, will significantly extend Europol’s external relations.

In 2004, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the EU, better known as Frontex, was created with its headquarters in Warsaw. Although it started with a very low budget of six million euros and a limited mandate to coordinate the work of EU border guards at Schengen’s external borders, its mandate was revised in 2011, allowing it to buy its own border management equipment such as helicopters and vessels as well as to cooperate more closely with third countries and provide them with technical assistance. In 2016, Frontex's budget reached 143 million euros. The inflow of Syrian refugees in 2015 led to its transformation into a European Border
and Coast Guard to manage the EU’s external borders. The 2020 projected budget is 322 million euros. Drawing from an old dream of creating a European Border Guard Unit, which pre-dates the creation of Frontex (Wolff and Schout, 2013), this entity aims at deploying 1,500 experts as a rapid reserve pool of border guards and technical equipment within three days. It should double the human resources of Frontex to reach 1,000 permanent staff by 2020, and work more closely with the European Fisheries Control Agency and the European Maritime Safety Agency in order to perform coast guard surveillance. It has also a stronger mandate to work in third countries, such as by organizing joint operations on a third country’s territory and strengthening cooperation on return with third countries (Official Journal of the European Union, 2016). Member states, however, remain the principal gatekeepers as they retain executive enforcement powers for operational border management at the EU’s external borders, thus limiting the innovative potential of the new unit.

In addition to Europol, Eurojust and Frontex, a European Asylum Support Office (EASO) was created in 2010 to support EU member states in the processing of asylum applications. The European Agency for the operational management of large-scale IT systems, EU-LISA, deals with JHA databases such as the Schengen Information System SIS II (that gathers information on missing persons or objects within the Schengen area), the Visa Information System (VIS) (that allows the exchange of visa data among Schengen member states), and the Eurodac system (a fingerprint database used to identify asylum seekers and irregular migrants). Finally, the College of European Police (CEPOL), the Fundamental Rights Agency and the future European Public Prosecutor Office complete this dense landscape of JHA agencies.

[Box 16.3 starts here] Box 16.3 CSDP-JHA cooperation

One of the most effective practical translation of the internal-external security nexus has been the institutionalization of cooperation between JHA and CSDP structures. The 2009-2015 Stockholm programme recognized for the first time the complementary relationship between CSDP missions and EU internal security in fighting transnational crime and promoting the rule of law. Yet, for many years, cooperation between the two policy fields had proved difficult. For example, during discussions on ‘transfer agreements’ that would allow the CSDP Mission Atlanta fighting piracy in the Gulf of Aden to transfer prisoners to neighbouring countries (Uganda, Tanzania, etc) to be prosecuted, member states’ diplomats
did not allow the JAIEX working group to discuss the matter, even though it fell under its mandate (Wolff and Mounier, 2012).

After ‘Stockholm’, a Freedom Security and Justice (FSJ)-CSDP roadmap was adopted and is being reviewed every year. The Foreign Affairs Council of 18 May 2015 stressed the need to develop synergies between CSDP and JHA. This has been possible through holding joint meetings between the Political and Security Committee (PSC) in charge of the Common Foreign and Security Policy (CFSP) and the Internal Security Committee (COSI, French acronym) in charge of JHA. A support group was established between the COSI and the CIVCOM (Committee for Civilian Aspects of Crisis Management), and agreements were concluded between the EEAS, the EU Intelligence and Situation Centre and EU JHA agencies. The EEAS has been also regularly associated with the design of JHA strategic policy documents such as the European Agenda on Security, the EU internal security strategy 2015-2020, and the EU Policy Cycle for Organized and Serious International Crime (Council of the European Union, 2015). In 2015, the setting up of the Operation EU Navfor Med brought together experts from internal and external security. A memorandum of understanding was signed between Europol and EU Navfor Med in December 2015 to strengthen direct bilateral cooperation to identify and dismantle criminal groups involved in migrant smuggling in the southern central Mediterranean. [Box 16.3 ends here]

The EU’s answer to global security challenges

This section evaluates three areas of EU involvement in global security challenges: counter-terrorism, migration and cybercriminality. It assesses the EU’s international actorness and whether it is norm-shaper or norm-taker.

The EU as a global counter-terrorist actor: still a paper tiger?

The development of the EU as a global counter-terrorism actor is constrained by several factors: national preferences and cultures of EU member states, terrorist attacks either on European soil or abroad, and processes of international socialization that can take place in venues such as the United Nations (UN) or through cooperation with the US. Historically, EU member states have had different experiences of terrorism, impacting durably on their threat perception, as well as their preferences in strengthening EU internal and external counter-terrorism capacities.
If prior to 9/11 the EU was compared to a ‘paper tiger’ (Bures, 2006), since then EU counter-terrorism cooperation has further intensified internally and externally. Both the realization that 9/11 was transnationally engineered and the role of the US in the ‘global war on terror’ acted as catalysts in the adoption in 2001 of the first-ever EU action plan for the fight against terrorism. The European Arrest Warrant directive, a long-standing request of the Spanish government, eager to fight Basque separatist terrorism, was finally adopted and replaced intra-European extraditions. Later, the 2004 Atocha attacks in Madrid and the 7/7 London bombings in 2005 provided further opportunities to mainstream counter-terrorism in the EU’s external relations. Counter-terrorism clauses were included in association agreements with third countries and the EU endorsed an active role in various working groups dealing with terrorism at UN level. In 2004, the European Council adopted a document on ‘Integrating the fight against terrorism into EU external relations policy’ and in 2005 an EU counter-terrorism strategy was adopted. Institutionally, the position of Counter-terrorism Coordinator (CTC), held first by Gijs de Vries (2004-2007) and then by Gilles de Kerchove (since 2007), was created.

The transatlantic homeland security agenda remains central to EU counter-terrorism activities, the EU undergoing a process of socialization to US counter-terrorist norms, including border security norms, as explained earlier in relation to the PNR agreement with the US. Under the Swedish presidency, an EU-US statement on ‘Enhancing transatlantic cooperation in the area of Justice, Freedom and Security’ was adopted in Washington in October 2009. Agreements were signed with Europol, Eurojust and Frontex. Treaties on mutual legal assistance and extradition also entered into force, as well as the EU-US PNR and Terrorist Financing Tracking Programme (TFTP) agreements.

If after 9/11 the US capitalized on EU institutional weakness and the absence of a true European interest in counter-terrorism, the EU has developed its own approach to counter-terrorism, albeit slowly. Investment in reforming the security sector of third countries is one of the priorities of the EU externally. For instance, the EU CSDP mission EUCAP Sahel Mali supports the Malian government in reforming the security sector but also the criminal justice chain from the collection of evidence to the prosecution (De Kerchove and Höhn, 2015: 92). In Tunisia, in the aftermath of the Bardo Museum and Sousse attacks, a counter-terrorism dialogue took place with the Tunisian authorities, which were promised a €23 million security sector reform
programme with a particular view to ‘enhancing the capacity of the Tunisian judiciary to handle counter-terrorism related cases’ (High Representative, 2015). However, the challenge is huge, particularly in the context of a fragile country neighbouring Libya, where the young generation has little trust in a police and judicial system whose professional culture is still linked to the old authoritarian regime. The EU has thus not yet proved to be a true norm-exporter in that area and has mostly focused on strengthening the counter-terrorism capacities through CSDP missions focusing on ‘easy’ security issues such as border management in Libya (EUBAM Libya), and the fight against terrorism and organized crime in the Sahel (EUCAP Sahel Niger).

In the aftermath of the Arab uprisings and the failure of the Libyan state, EU policy makers have come to realise that the Sahel region, which spans from Mauritania, Mali and the Western Sahara to the Horn of Africa, is the new ‘arc of instability’ for the EU and its Mediterranean neighbours, in particular the Maghreb states. Borders are porous, and trafficking in human beings and illicit products helps to finance terrorist activities, in addition to hostage-taking such as that which took place in 2013 at the Algerian Amenas gas facility. The rise of the Islamic State in Iraq and Syria (ISIS) expands this ‘arc of instability’ to the Middle East. The EU has also been attacked on its own soil, highlighting the relevance of the internal-external security nexus. Since 2014, an unprecedented wave of terrorist attacks occurred in Europe, including the 2014 Jewish museum attack in Brussels, the 2015 attacks in Paris and the 2016 Brussels bombings. Some of the perpetrators of these attacks, often Europeans, had been trained in the Middle East region and had fought with ISIS (Bąkowski and Puccio, 2016). In 2015, there were around 5,000 EU citizens fighting in Iraq and in Syria: the number of foreign fighters from Western Europe had doubled since June 2014 (ibid).

Like the 1972 hostage-taking at the Munich Olympics, which had led to the launch of EU police and judicial cooperation, 2015 saw many new initiatives to counter ISIS both at home and abroad, mostly under the leadership of the High Representative Federica Mogherini. That year, security and intelligence experts were sent to the EEAS delegations in Iraq, Jordan, Morocco, Algeria, Nigeria, Saudi Arabia, Tunisia, Turkey and Egypt. These ‘counter-terrorism attachés’ gather knowledge and intelligence on counter-terrorism and other security threats such as organized crime, radicalization, etc and liaise with host countries to build their
counter-terrorism capacities. They are in charge of designing counter-terrorism political dialogues and action plans with partner countries (High Representative, 2015). In addition, the EU has established a memorandum of understanding with the Organization of Islamic Cooperation, which covers ‘enhanced security cooperation, including counter-terrorism issues’, and is working with the League of Arab States towards a bi-annual working group on counter-terrorism. Similar counter-terrorism political dialogues have been established with Israel, the UN, the US and Pakistan, and the EU has been active via the anti-ISIS coalition, the G7 and the Global Counter Terrorism Forum (GCTF). The EEAS claims that in 2015, €142 million was allocated to stepping up counter-terrorism capacities in third countries, compared to €10 million in 2006. This included support to the Office of the National Security Adviser of Iraq, radicalization prevention in the Maghreb and the Sahel, and the Counter-Terrorism Training Partnership conducted by the European Union Agency for Law Enforcement Training, also known as CEPOL (High Representative, 2015).

Federica Mogherini and the EEAS staff have been working on ‘how to better use JHA tools and agencies’ to support the external dimension in the fight against terrorism, as well as evaluating how CFSP instruments can best support the priorities of the JHA Council (High Representative, 2015). In the words of the High Representative, the ambition is not necessarily to re-invent the wheel but rather to focus on implementation and current EU strategies such as the European Agenda for Security (High Representative, 2015). Counter-terrorism geographical priorities are the Middle East and North Africa (MENA) region, Turkey, the Western Balkans, the Horn of Africa and the Sahel. So far, the EU has relied on EU JHA funding to finance its counter-terrorism activities in third countries. Thus, to mainstream counter-terrorism into EU programming activities and to counter violent extremism, the EU intends to rely on the EU’s Emergency Trust Fund for stability. This is a development aid instrument launched in 2015 to foster stability in African countries and ‘better manage migration’, as well as to address the root causes of irregular migration and displaced persons in Africa, as discussed at the EU-Africa summit in Valetta in November 2015. However, the strengthening of the ‘rule of law and human rights based, judicial and law enforcement approach to CT’ is not further detailed.

Counter-terrorism cooperation with third countries has become central to the ENP. Drawing from the 2015 European Agenda on Security, the ENP review announced that efforts to counter violent extremism, support criminal justice
responses to counter-terrorism, fight the financing of terrorism and prevent radicalization will be key (European Commission, 2015).

**EU external migration policy**

Cooperation with third countries in the field of migration and asylum is likely to intensify. Between 2004 and 2014, the EU spent more than 1 billion euros on more than 400 projects worldwide through various financial instruments related to migration and external relations (Garcia Andrade and Martin, 2015). Yet, EU external migration policy is torn between two conflicting logics: remote control via the externalization of JHA policies to third countries, and the tackling of root causes of migration through development aid and promotion of EU norms such as international protection. Home affairs experts traditionally promote the first logic while the second is more inclusive and favoured by diplomats.

‘Remote-control’ policies are favoured by European interior ministries willing to co-opt third countries in the management of the EU’s internal security. Since the 1970s and the emergence of restrictive European labour migration policies, migration has been defined in terms of ‘crisis’ and ‘emergency’, justifying ‘exceptional’ policies, often embedded in a securitized narrative (Zaiotti, 2016). The externalization of border control, EU readmission agreements and restrictive legal migration channels all aim to stop migrants coming to Europe through various agreements with sending and transit countries. The image of ‘fortress Europe’ illustrates the EU’s restrictive policy towards irregular migration and economic migration, along with its requests that third countries take back irregular migrants through EU readmission agreements. Over the years, the EU has also relied on sophisticated biometrics, surveillance and smart border technologies to implement remote-control policies (Zaiotti, 2016: 6), presenting important internal, external and legal challenges (Wolff, 2008).

On the other hand, the ‘root causes of migration’ logic follows a normative approach, promoting cooperation with third countries to tackle the ‘push and pull factors’ that incentivize migrants to leave their countries. Development aid is used to provide capacity building but also to foster international norms on migration. It relies on trade and foreign direct investment to create jobs and development in third countries, for instance via the role of diasporas. In what is sometimes also known as
the ‘migration-development nexus’ (Nyberg-Sorensen and al., 2002), the EU plays an important role in global fora such as the UN High-level Dialogue on International Migration, as well as in regional consultative processes such as the Khartoum Process and the Rabat Process (also known as the Euro-African Dialogue on Migration and Development). These regional consultative processes on migration bring various stakeholders such as states, IOM, UNHCR and NGOs to discuss informally issues such as migration and development, labour migration, migrants' rights and integration, etc. Although non-binding, these processes are well regarded by states, who can learn from one another and exchange examples of best practice. In the case of the EU’s neighbours, these processes have nonetheless been criticized for responding to an EU security-driven agenda (Wolff, 2015b).

Since 2005, these two conflicting logics have been at the heart of the EU Global Approach on Migration and Mobility (GAMM). This framework provides the basis for the EU external migration and asylum policy, and for setting up partnerships on migration and mobility with third countries, aiming at bringing a more coherent and strategic approach to EU external migration policy through Migration and Mobility Dialogues with its partners. The GAMM relies on four pillars aimed at addressing the challenges of remote control and the root causes approaches: legal migration and mobility; irregular migration and trafficking in human beings; international protection and asylum policy; and maximizing the development impact of migration and mobility. Over the years, the policy has been criticized for its weakness in terms of fundamental rights, for its late integration of asylum international protection (only integrated in the revised document of 2011), and for often promoting the EU’s internal security objectives over third countries’ needs.\vi

The GAMM is made up of a web of bilateral and regional agreements and policy instruments towards third countries. Policy instruments range from agreement- and incentive-based instruments, operational and practical support, to international law and norms development. These instruments have either internal or external origins, coming from national, regional or global levels of governance. EU member states remain central actors, since they still negotiate their own bilateral readmission agreements, for instance between Libya and Italy, or between France and Mali or Senegal. This sometimes competes with the negotiation of EU readmission agreements, as national forms of readmission agreement are much more flexible and require less scrutiny than EU readmission agreements where the EP has a right of
assent (European Commission, 2011). The EU is at times a norm-taker since it relays and implements international law and norms such as the Geneva Convention and the principle of non-refoulement. This means that EU external migration policy reflects national, transnational and global norms in the field of migration ‘management’.

The GAMM’s ambition to speak with one voice has, to date, been weakened by a ‘three-level game’ dynamic (Reslow and Vink, 2015). First, internally, EU member states remain the main gatekeepers of EU migration policy. They have diverging agendas and interests depending on their labour needs and domestic politics, and whether they already have privileged relationships with third countries, such as between Spain and Morocco or Libya and Italy. National interests and historical legacies have thus shaped the EU migration agenda vis-à-vis the EU’s southern Mediterranean neighbours (Wolff, 2012). Second, internal bureaucratic struggles between various entities within the European Commission (such as DG Home, DG DevCo and the EEAS) and intra-institutional struggles between the EP, the Council and the Commission might also contribute to internal differences as to which common objective to pursue externally. For instance, there are multiple channels of funding for external migration projects and initiatives; this has weakened complementarity with the 2007-2013 internal funds for migration and asylum (Garcia Andrade and Martin, 2015: 10). Third, EU external migration policy is constrained by the politics, policies and polity of third countries that can contest or reinterpret a policy instrument, thus ‘alter[ing] both the instruments’ ideational (meaning and rationale) and the functional dimension’ (Trauner and Wolff, 2014). Third countries’ behaviour can be driven by a logic of consequentiality, relying on rational calculations, or a logic of appropriateness by which rules of appropriate behaviour matter (Olsen and March, 2004). Thus the Tunisian government has adopted the EU migration toolbox in a way that fits its own strategic interests domestically (Cassarino, 2014), while other countries, such as Morocco or Turkey, have behaved as hard bargainers in their negotiations over EU readmission agreements (Wolff, 2014). Morocco followed a logic of appropriateness as it was wary of being seen as the ‘Gendarme of the EU’ vis-à-vis its African partners. Mobility partnerships have led to asymmetric negotiations, whereby the EU uses the partnership to exert its soft power in negotiating border management, but does not necessarily improve legal mobility opportunities (Lavenex and Nellen-Stucky, 2011). Box 16.4 illustrates these ‘three-level games’ constraints in
the light of changing migratory patterns in the EU southern Mediterranean neighbourhood.

[Box 16.4 starts here] Box 16.4: Managing migration after the Arab uprisings

The EU’s answer to the Arab uprisings has been driven by EU internal security concerns to ‘manage’ and ‘order’ migratory flows. With the influx of Syrian refugees and increasing deaths at sea (from 1,500 in 2011 to 3,770 in 2016) the JHA Council set up a Task Force Mediterranean in October 2013. Bringing together EU member states, the EEAS and several EU agencies, it rapidly encountered obstacles, with internal splits between western and central and eastern Europe member states, as well as between northern and southern Europe member states. In 2015, EU member states agreed with great difficulty on the relocation of 160,000 refugees. Opening safe channels to access Europe (e.g., with humanitarian visas or the establishment of a European rescue-at-sea mission to reduce the number of people dying at sea) has not been prominent on the EU’s agenda. Instead, the EU tried to reach various deals with its neighbours designed to strengthen its external borders, such as the 2015 and 2016 EU-Turkish deals. With the opening of the ‘western Balkan route’ starting in Greece and transiting the territory of candidate, potential candidate and member countries, such as the former Yugoslav Republic of Macedonia (FYROM), Albania, Serbia and Croatia, new cooperation is taking place to help Balkan countries improve the registration and identification of asylum seekers and provide humanitarian aid.

Although 2015 inaugurated a period of a ‘new normal’ for Europe with 1 million migrants and refugees arriving in Europe in one year, the EU has not developed a geostrategic approach to migration. Migratory flow is, however, not likely to diminish in the future: the European Commission estimates the need to absorb the arrival of three million more people between 2015 and 2017. The structural weaknesses of the internal-external nexus came to light as EU internal security proved fallible and its external policy had not managed to address the root causes of migration efficiently. The emergence of new conflicts and weak states in the EU’s neighbourhood (Libya, Syria, Iraq) has profoundly challenged the complex web of agreements and networked governance established with autocratic regimes before the Arab uprisings. Today, most of the Syrian refugees arriving in Europe are leaving Jordan, Lebanon and Turkey, where the situation of refugees is increasingly precarious and where access to basic resources such as health, education or water is limited. And yet, European governments continue to privilege short-term responses rather than comprehensive policy answers based on future EU demographic needs. Europe is an ageing society, with projections of one active person for every two retirees by 2065. Discussions over the positive effects of
migration, the entrepreneurial role of migrants and their potential boosting role for European economies are often glossed over. [Box 16.4 ends here]

Overall, EU migration governance in the Mediterranean has been risk-averse and Euro-centric, taking little account of the geopolitical realities of the wider region and domestic politics. The expansion of EU migration cooperation with third countries nonetheless remains important. This is likely to increase in the coming decade due to rapidly changing migratory flows and the fact that the EU is an ageing society, and so will need migrants to keep up with the demographic challenge this poses.

The EU and global cyber-criminality

The external dimension of JHA has also moved forcefully into the digital era. Like Schengen in 1985, cyberspace has become the new borderless area for criminals. This threat, of a new nature, has reached a global scale – with more than 3.3 billion internet users in 2015 (Internet World Stats, 2015). Given that it is easy to hide crime behind hacked computers and stolen identities, new digital forensic capacities are required (Europol, 2014). Highlighted as one of the priorities of the 2010 EU Internal Security Strategy, the creation in 2013 of the European Cybercrime Centre (EC3) within Europol aimed to strengthen European law enforcement capacities against cybercrime security threats. The regulation of cybercrime risks in the EU also derives from close cooperation with the US (Fahey, 2014). This means that US and EU actors are normatively sharing the same ambition of keeping an open internet while being able to prosecute cybercrime. This is at odds with the positions taken by actors such as Russia and China, who would rather regionalise the internet so as to censure and control internet activism.

Cybercrime is a new threat to EU internal security and is even more complex to tackle because cyberspace has no territorial limits. It also involves a new kind of diplomacy, which involves states, end-users, law enforcement authorities, and private companies and regulators. A comprehensive EU Cyber Security Strategy (2013) was designed by the EEAS, covering a comprehensive approach to cyber-security in the field of JHA, the internal market and foreign policy. The challenge from a foreign policy perspective is to combine a secure cyberspace with ‘freedom and openness’,
allowing human rights and democratic reform through an open internet. The challenge is huge, given that cyberspace tools such as botnets (networks of computers infected by malware controlled by cybercriminals), and privacy networks on the darknet such as Tor, are being used both by human rights activists wanting to avoid censorship and surveillance by authoritarian regimes and by criminals for child pornography, payment card fraud or stealing personal data. The strategy also deals with the militarization of the cyber-threat and in particular the need for the EU, within its CSDP and with the European Defence Agency (EDA), to upgrade its cyber defence capabilities and technologies. Partnerships with both global institutions and the private sector are increasingly sought to cope with this threat. The EEAS has launched cyber dialogues with key strategic partners such as the US, Japan, South Korea, India and China. With the rise of so-called Islamic State (ISIS) and terrorist attacks in Europe in 2015 and 2016, European counter-terrorism has also moved into the digital era, as terrorists use the internet and social networks to recruit for, plan and organize actions, as well as to disseminate propaganda. An EU Internet Referral Unit (IRU) was established in July 2015 at Europol, aimed precisely at combating violent extremist online content, in coordination with EU member states and industries.

The level playing field of cybercrime is again complex at EU level. EU member states have their own national cybercrime strategies and tend to see this as a prerogative of national sovereignty. It is also part of the Digital Europe agenda and thus within the mandate of DG Connect in the European Commission. Given its criminal law implications, cybercrime also falls within the remit of DG Home, and obviously has implications for the EU single market. Externally though, the EEAS is in charge of coordinating EU cyber-security policy (Christou, 2016).

The EU has, overall, proved to be a meaningful global power in the field of cybercrime. Several documents define the European collective set of preferences and understanding in that area: the EU Cyber Security Strategy (2013); the Directive 2013/40/EU on attacks against information systems which criminalises the use of botnets (2013); and the 2011/92/EU directive on combating the sexual abuse and sexual exploitation of children and child pornography (2011), which includes online abuse and exploitation. The EU is also part of the Council of Europe Cybercrime Budapest Convention (2001), one of the most advanced regional treaties on the topic, and therefore is a forerunner example to its external partners. Cooperation with external partners is a strong motive to continue to regulate cybercrime internally. This
is particularly the case in the transatlantic relationship. As Fahey (2014: 5) puts it, the implementation of the EU Internal Security Strategy explicitly references the success and effectiveness of the EU-US cybercrime and Cyber Security Working Group (WGCC) as a reason to pursue EU internal cybercrime ‘rule-making’. Yet Fahey also argues that promoting external norms such as the Budapest Convention or transatlantic regulatory framework may sometimes go against coherent internal EU rule-making in the field (Fahey, 2014).

External partners and their activities have also had a strong impact on internal developments and have provided the EU with a new kind of diplomacy, which is the protection of personal data and privacy. The Snowden affair and the 2013 revelations over the US National Security Agency surveillance of the electronic communications of US and foreign citizens through their PRISM programme brought to the fore the issue of protecting European citizens’ privacy abroad. The EP has been particularly active on this issue. The EU Court of Justice annulled the 2014 Directive on data retention, aiming at harmonising member states’ provisions for the retention of data generated by electronic communication services and public communications networks, which could be useful for the prevention, investigation, detection and prosecution of serious crime, in particular organized crime and terrorism. The Court considered that the directive was infringing ‘the fundamental rights to respect for private life and to the protection of personal data’.

Conclusions

EU narrative and strategic orientation on further integration between internal and external security has never been so prominent. Counter-terrorism, migration and refugee flows, and cybercrime have prompted initiatives to provide a comprehensive and consistent approach in order to ensure the EU’s credibility internationally and vis-à-vis its domestic constituencies. This chapter has shown that over the years, the external dimension of JHA has considerably expanded through further institutionalization, politicization and routinization. Yet various normative, national, institutional, policy and legal challenges continue to constrain EU external action. The European Council remains central to the strategic orientation of external dimension of
JHA, while different cultures among administrative actors (foreign and home affairs) compete over its objectives and means. The external dimension of JHA suffers from having been conceived as an internal issue which, in turn, weakens the EU’s ability to be a global norm-shaper. The EU’s role as a global security provider varies greatly from policy to policy. EU migration policy favours a remote-control logic, which has diminished the EU’s credibility and the legitimacy of its policies overall among third country partners. EU counter-terrorism policy is strongly dependent upon the national preferences and cultures of EU member states. With regard to cybercrime, even though the EU is taking a leading role regionally and globally, there are tensions between EU law enforcement needs and national and European data protection requirements, which make internal harmonization difficult. One key challenge for the future of the external dimension of JHA and the furthering of the internal-external security nexus is to ‘de-centre’ a very Euro-centric policy agenda. The external projection of EU internal security solutions has centred a lot on European states, paying little attention to the role of third countries, migrants, refugees and other transnational stakeholders. So far, the external dimension of JHA has not been mainstreamed in a more global geostrategic vision that would include the socio-economic and political realities of other regions. Borders are indeed irrelevant in many other parts of the world – such as in the ECOWAS region or in the Trans-Saharan region where borders have no significance for Tuaregs (Keukeleire and LeCoq, 2016:11; Wolff, 2015b). Migrants are also not passive actors: their practices ‘participate to (re)shape EU and third countries policies’ (Collyer, 2012), and they are strategic actors in the 'geopolitics of migration' (Sassen, 1999). The evolution of the internal-external security nexus is thus likely to be based on two constraints: the EU’s internal JHA policies and politics, and the changing demands of international systems and global security challenges.

Further reading
For general studies of the external dimension of JHA, its policy and theoretical implications, see Balzacq (2008), Wolff, Wichmann and Mounier (2009) and Monar (2012). For the internal-external nexus, see Eriksson and Rhinard (2009). For developments in the field of Justice and Home Affairs, in particular after the Lisbon Treaty, please see Wolff, Goudappel and de Zwaan (2012) and for a theoretical discussion on policy change in JHA see Trauner and Ripoll-Servent (2015).


**Web links**


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1 Mobility partnerships are bilateral agreement between the EU and a third country to organise the mobility of their citizens towards Europe, in particular through labour opportunities, and in exchange for a series of commitments from third countries that include internal security measures such as readmission and return of irregular migrants, the strengthening of border management. Opportunities of mobility are following the principle of ‘circular migration’ that encourages third country nationals to come temporarily to work in the EU with the view to return to their home country after some years. See (European Commission, 2007).

2 The ‘Trio Presidency’ was introduced by the Lisbon Treaty in order to force the countries leading the six months rotating Council Presidency to work on an 18-month common programme.

3 Own calculations based on EUR-LEX search into international agreements concluded between 01/05/1997 and 30/11/2009 (111) and 01/12/2009 and 21/12/2015 (105).
As of December 2015, the EU has concluded EURAs with Hong Kong, Macao, Sri Lanka, Albania, Russia, Ukraine, FYROM, Bosnia & Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Turkey and Cape Verde. Negotiations are ongoing with Morocco, Belarus, China and Tunisia. Even though it has had a mandate to negotiate with Algeria since 2002, no negotiations have taken place.

7 The COSI is a high-level group in charge of the coordination of EU member states’ operational action in the field of EU internal security. It gathers officials from Ministries of Interior and/or Justice, as well as Commission and EEAS representatives, as well as JHA agencies depending on the meetings.

8 Interviews with civil society official, Brussels, 2 March 2015.

vii Article 33 of the 1951 Geneva Convention relating to the Status of Refugees states that ‘No Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.’

viii European Court of Justice. The Court of Justice declares the Data Retention Directive to be invalid. Press Release No 54/14, Luxembourg, 8 April 2014, Judgement in Joined Cases C-293/12 and C-594/12. Digital Rights Ireland and Seitlinger and Others.