

**Public consultation on the future of Home Affairs policies:  
An open and safe Europe – what next?**

***Contributions of the Government of Catalonia, Generalitat de  
Catalunya, on Security and Immigration***

**Barcelona, January 2014**

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## ***Preface***

The way that the European Union has walked in the field of Home Affairs has been so far remarkable. In this regard, the agreements of the European Council in Tampere in 1999 represented a qualitative step forward, as a result of the reforms introduced by the Treaty of Amsterdam with regard to the comprehensive approach of the challenge of ensuring the free movement in conditions of security and justice accessible to all. In the same direction, the Hague programme -adopted in 2004- develops an itinerary that aims to consolidate freedom, security and justice in the European Union, and reinforces the European instruments and bodies for cooperation and coordination on internal security. Finally, the Stockholm programme in 2010, under the Treaty of Lisbon, has sought to achieve an open and secure Europe serving and protecting the citizens. This programme is the culmination of the itinerary that made possible the development of the Tampere agreements, by developing objectives in terms of the effective enforcement of the citizens' rights, developing a strategy for internal security, strengthening the effectiveness of European police cooperation and strengthening the European effectiveness of crime prevention.

The focus has been properly placed on protecting citizens' rights rather than on states security. It is evident that, in order to follow the way towards a Europe of citizens, the future of Home Affairs should follow the current aim of protecting citizens' rights. Consequently, those policies should have continuity.

Complementarily to the necessary focus on citizens' rights, the internal security management might be reinforced by strengthening a true European police culture, introducing and reinforcing the existing tools in order to give sense to the prevention measures and the police cooperation at European level.

### ***1- Strategic security objectives for the European Union***

#### ***Area of freedom, justice and security***

Take the necessary steps to achieve a genuine **area of freedom, justice and security** in order that European citizens exercise their rights in a territory where security, peace and prosperity are guaranteed. Within this framework, the police forces gain importance as guarantors of this exercise throughout the territory and they undertake their functions in an integrated manner, with no national or border limits.

Another objective is to advance in the development of a **system of cooperation** based on an increased interdependence to speed up the procedures in issues that go beyond the boundaries. Progress needs to be made to lay the foundations of this common

system. It is necessary to define and set up bodies and instruments that will enable this mutual cooperation from a more systemic perspective. States must come to an agreement to set these foundations. Security issues cannot be left to principles such as mutual trust initially collected in the previous Stockholm programme because, in addition of producing legal uncertainty, the results could be less ambitious and affect the inter-state relations.

Establishing **bodies** that enable the development of this system. There is no starting from scratch, since there are several bodies of European cooperation and collaboration in the field of security that would automatically integrate in this system. We are referring to agencies such as EUROJUST, EUROPOL, CEPOL, ... These bodies would facilitate the identification of authorised partners in security issues. With the aim of improving the police effectiveness, it is absolutely imperative to recognise the participation and access of the police forces before these bodies.

Setting **tools** for the proper functioning of the system. In order to achieve the objectives and develop the functions in an integrated manner, certain tools are required. We deem of great significance the creation of a database at European level fed by all EU police forces and accessible to all of them. Implicit in this proposal are the technological improvements and the modernisation of the State working tools in order to homogenise and facilitate accessibility and data entry. In this regard, profitable experiences might be also taken into account, such as the creation of ECRIS, a mechanism of integrating criminal intelligence at European level. It is therefore necessary to simplify the mechanisms of exchanging police information between States and move forward to a model facilitating accessibility to police information of relevance. Removing barriers to access to information would certainly represent an improvement in quality at all levels, both of prevention and resolution. In addition to this, there is the need of establishing and setting appropriate profiles to the management of information. These profiles must be recognised by all stakeholders. These measures must be compatible with the European legislation protecting personal data.

Enhance this system of cooperation with policies reflecting a **European security culture**. Create a common European cultural area in terms of security in order to enhance the effectiveness of the system of cooperation. In other words, the development of measures to create areas for exchanging information, expertise, knowledge of good police practices, new criminal trends sharing, special operations planning, etc. that promote and improve this common awareness. An integrated training programme for all police forces would be also useful.

Other proposed measures are the exchange of officers and facilitating their mobility, and setting a European professional career plan. Finally, create communication channels and means for publicity of relevant news such as a website for European officers.

### ***Cooperation in crime prevention***

Permanent specialised joint police units are necessary to prosecute serious criminal offences. Through the expertise, these units would become matter experts and therefore the criminal investigation would be simplified, regardless the place of the crime and the involved states. The establishment of powerful European units to tackle crimes referred in the Stockholm programme (cybercrime, trafficking of human beings, economic crime, illicit trafficking of firearms, terrorism, etc.), of increasing interest and further developed on the following point, can act as a brake to the actions of criminal organizations.

### ***Specific areas of action in internal security: serious forms of crime***

In front of these serious forms of transnational crimes, the following actions could be implemented: International cooperation, specialised training, development of plans to get cross-cutting actions, establishment of a specialised joint unit, establishment of areas for exchanging good practices and promoting mobility between security operators, deepening relations with justice operators, development of European legislation to facilitate the investigation, regardless the place of the crime and the nationality of perpetrators, protection of vulnerable victims and prevention and dissemination of information.

### ***Trafficking of human beings***

The European Union has walked a long way in the area of fighting against the trafficking of human beings, and has promoted important mechanisms to cope with this issue. However, the current situation is far from being satisfactory and efforts in this area should be intensified. Tackling and preventing this phenomenon is a priority. The global dimension and the complexity of its approach require, first of all, international cooperation, multidisciplinary cross-cutting work and implementation of intelligence generation methodologies for the gathering, treatment and analysis of data. Secondly, this data needs to be disseminated to have a good knowledge of this issue. Only then, a good diagnosis and early detection can be obtained.

### ***Cybercrime***

The new technologies of information and communication have seen exponential growth. Globalization is affecting and modifying the behavioural models of citizens who speed up their patterns of interaction and their daily leisure, purchasing and exchanging activities. The range of crimes that can be committed in this virtual space is large and the lack of a comprehensive regulation facilitates the commission. The security network must be enhanced to avoid the impunity for perpetrators and to provide with capabilities to police forces to properly prosecute the criminal offences.

### ***Economic crime***

The priority to tackle this type of crime –which embraces a wide range of different typologies and, which in many occasions, is the result of other crimes - is its early detection and follow-up. Globalization, new technologies, vulnerable financial systems and the fact that nowadays the money can be easily moved, make the information a crucial tool to detect the economic transactions affecting more than one state. The actions should be aimed at promoting the exchange of fluid and flexible information, promoting cooperation, adopting measures such as the immobilization of assets, boosting and providing resources to police units to investigate economic crimes, improving databases and defining clear focal points for an efficient exchange of information.

### ***Traffic of firearms***

The trade in conventional arms is a global phenomenon, totally comprehensive and interdependent. It is therefore necessary a law promoting the legal arms trade responsibly because the boundary between legal trade and illegal trade is very thin. Legal trade involves reinforcing actions for cooperation to tackle the illegal arms manufacturing and trade. It also means reinforcing control on the entry, movement and exit of illegal arms in the space of the European Union to avoid misuse. The reinforcement of the capacity of the State members would be very helpful in order to prevent, detect and investigate this issue.

### ***Terrorism***

Terrorism is a constantly changing phenomenon in constant evolution, and we must be observant with the new scenarios, adapt the combating mechanisms and deploy all means available. At global level, these new threats (low-intensity organised violence reflected in incendiary devices or explosives) require greater police coordination. Prevention is essential and the issue must be treated at its very roots, promoting intercultural dialogue for knowledge fostering, mutual comprehension and participation deterrence of new members. It is therefore necessary a cross-cutting work by the public and private bodies and the civil society, a cooperation and coordination improvement between member states and third countries, and the exchange of fluid information and knowledge. A cornerstone in the fight against terrorism is the reinforcement of cooperation in prevention and especially in the fight and the dismantling of those structures that provide economic and logistic support to it. We must take special care in matters related to radicalization of certain sectors and issues such as the recruitment of members and the dissemination of information boosting this phenomenon. Finally, we should refer to those activities undertaken by people of extreme right ideology and / or anarchists, because of the exponential risk.

### ***International meetings and large operations***

The European Council underlines the importance of the external dimension of the Union policy on freedom, security and justice. Nowadays, large European events take place in one of the European cities but the security of the event has to do with all the people that attend the event and these people come from different countries of the Union, so is clear that the Union has to work for a global security operation. Therefore, the efforts must be geared towards to the guarantee of public safety and public order, and also considering new actions to achieve this objective. These actions could be the exchange of human and material resources for this type of events, and intensify the existing relations and mechanism for cooperation in order to improve the coordination between security operators (i.e. great events planning) and international meetings.

### ***External borders***

Concerning the protection of the external borders of Europe, the European Union should take responsibility for the critical incidences that from time to time affect the countries with external borders. They should not be left to cope alone with those crises, since they are in trouble due to the fact that they constitute the external borders of the European Union.

## ***2- The role of regional and local actors in crime prevention***

It is true that security is, in the framework of the European Union, a matter directly connected to states sovereignty and, consequently, left to the hands of the member states. Nevertheless, although the main obligation in this field should remain in the states area, it should be noticed that the police services that work in levels that are inferior to state (regions and cities), should not remain outside of policies and actions to improve security and citizens' protection. **There are infra-state administrations that count with police actors that are in the territory and have a lot of information and capacity of action to make great contributions to security policies, such as the case of Catalonia.** The *Generalitat Police – Mossos d'Esquadra* is the ordinary and integral police in Catalonia that has substituted the two state police forces<sup>1</sup> (Guardia Civil and Policia Nacional). There is an idea that points out the international dimension of some modern criminal phenomena such terrorism or organised crime to prevent regional and local police agencies from taking part in the fight against them. That idea rightly focuses on the fact that national and international coordination is needed to tackle phenomena that have a very wide territorial dimension. However, those local and regional agencies are working in their territories and witnessing facts and incidents that have

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<sup>1</sup> The state police forces keep nowadays only residual competences in Catalonia, such as borders, smuggling, passports, immigration and some particular crimes (against the state or the Crown, for instance).

to do with those international phenomena. If they are left out of the strategies and policies to cope with them, we are losing a very valuable contribution of existing actors (sometimes the only ones) that work on daily bases in territories where organised crime or terrorism take place. It could be discussed if regional and local agencies have to take a lead position or they should work under the coordination of national or international actors, but, be that as it may, they should play a role in fighting those two phenomena. **Therefore, regional and local police services should be integrated, taking into account their degree of competences, in security policies and strategies even in highly sensitive areas such as organised crime and terrorism.** Thus infra-state actors should be integrated in organisms such as EUROPOL, CEPOL or groups dealing with Schengen issues.

Crime prevention, as an activity that focus on the roots of crime and involve multiple actors that work in areas that can influence, facilitate or impede the situations that are favourable for crime, should be given a higher priority in the next European Home Affairs strategy. A look at the contents of the Stockholm programme, will confirm that crime prevention is not mentioned as any of the political priorities defined at the introduction of the document. In the new programme it should be included as an explicit priority. Furthermore, Crime Prevention should be formally defined as something wider than police or justice activities. **It should be clarified that policies, strategies, programmes and projects on crime prevention should try to focus on removing the factors, the grounds that facilitate the growth of crime and that it means involving different actors within a common framework** in order to achieve an homogeneous and efficient effort.

It is true that European Union has often had a public speech that focus on prevention. However, so far, there is no efficient instrument to promote and facilitate crime prevention policies and strategies. Despite of the new re-foundation of the European Union Crime Prevention Network (EUCPN) few years ago, so far it has not evidenced to be efficient enough to promote and facilitate particular prevention programmes in the field yet. Up to now EUCPN is governed by the States (by the National Police in the case of Spain) and has no practical effect at all. **The European Union should not leave the management of EUCPN solely in the hands of the police**, because it means renouncing to building up comprehensive crime prevention policies that can have practical effect and resorting uniquely **to police prevention policies which are extremely necessary, but in the framework of wider public policies and strategies and with all actors involved in it.**

Crime prevention means to focus on specific problems that take place in different parts of the territories and that **require to pay attention to the particular circumstances of every case.** Those who know better those situations are the actors that work in the field, who normally are local or regional. Moreover, **Crime Prevention requires the intervention not only of police and justice but very often education, health, urbanism or social services and other actors involved in the promotion of security conditions and crime prevention such as private security.** Most of the time, those areas are under the competence of local or regional actors that are those who have the resources

and the capacities to provide with the necessary services. Consequently, were the European Union to promote full crime prevention policies, **the local and regional actors should be given a role in the design and the execution of them**. Otherwise, crime prevention could not take place in its proper sense. Although state authorities should establish the framework in which prevention policies should take place, the local and regional actors are those who are called to play the main role. **Consequently, excluding them from instruments such the EUCPN means to condemn it to be an ineffective tool to facilitate practical and specific prevention activities and to keep promoting uniquely law enforcement policies**. The same argument would be valid for the Committee on Crime Prevention where at this moment only state representatives are allowed to take part in it. This means that the ones who can be deciding the future policies have no such a direct contact with the reality they should try to change. Since the Observatory for Crime Prevention, foreseen in the Stockholm programme, that could have been an instrument to integrate local and regional actors, has been postponed by advice of the EUCPN, the only chance to reverse the lack of participation of regional and local actors in crime prevention must be integrating them in EUCPN, openly and without obstacles. Finally, the security policies should take into account different forms of participation and cooperation of citizens in security policies.

### ***3- European financial instruments in the field of Security and Immigration***

In general terms, it is important to point out **the necessity that the Member States should distribute the European funds with local and regional authorities, according to the European legislation**.

In the field of **European Fund for Internal Security** we would like to highlight that the funding of programs and activities are addressed to Member States and authorities with coercive capacity, and its for that reason, that it would be necessary that the financial instruments in this field state more clearly, that the funding provided is also directed to all police forces operating in the Member States.

The Statute of Autonomy of Catalonia 2006 state that the scope of action of the *Generalitat Police - Mossos d'Esquadra* is the whole of the Catalan territory, and it exercises all the functions of a police force in the field of: (a) public safety and public order; (b) administrative policing, including that deriving from State regulations; (c) judicial policing and criminal investigation, including the various forms of organised crime and terrorism, in the terms established by law.

In this regard, the normative framework of these financial instruments have to be open enough for not be interpreted in a restricted way in the case of the Generalitat Police – Mossos d'Esquadra.

On the other hand, in the field of the **Asylum and Migration Fund**, it is also important to emphasize the need for Member States to distribute European funding among regional and local authorities in accordance with European regulations. The current [Proposal for a European Parliament and Council Regulation establishing the Asylum and Migration Fund \(2011/0366\)](#) provides that one **single national programme** should be approved for the distribution of said Fund, and that an **association incorporating the authorities and competent bodies** should be created in order to **execute** the national programme. Regional and local administrations must be counted among these “authorities and bodies”. It is also necessary to provide a **single management and control system**, with the option of having **delegated authorities**.

20.9% of all foreigners living in Spain reside in Catalonia. Catalonia stands in first place out of 17 autonomous communities and two autonomous cities. At the same time, the Catalan Government was the first Administration - sometimes before the Spanish State itself – to initiate the implementation of services, plans and programmes related to the integration of foreigners. This shows a clear political will to work to attain the dignity of people as well to attain social cohesion in a proactive, coordinated and continuous way. The Statute of Autonomy of Catalonia (2006) recognises competences related to reception, integration and, increasingly, the control of flows (the latter in coordination with the State).

The internal norms of both the State and the Catalan Government (and of other autonomous communities), require that the State allocates European funds in a consensual way. Despite this, these norms are not respected at present by the Spanish State. The State allocates this European funding without consulting the autonomous communities in any way. Different rulings of the Constitutional Court recognise the lack of consideration given by the State to autonomous and regional competences with regard to expenditure on migration (rulings 227/2012, 26/2013 & 154/2013).

The effective distribution of European funding for asylum and migration across the authorities who are really responsible for immigration and asylum can have nothing but positive consequences for citizens. One of the positive factors is, without doubt, that our autonomous communities would be able to manage their own funding for reception and integration, thus complementing the work carried out by the State and the AMF.

#### **4- Immigration issues in the Home Affairs Programme**

***Systematise references to regional and local authorities in line with European principles of the equitable sharing of responsibilities across different levels of government (art. 80 TFEU) and of subsidiarity (art 5.3 TEU).***

In the section on Immigration, the new Internal Affairs Programme should refer to the regional and local authorities systematically and clearly, in keeping with other official documents of the European Union, and under the European principles of the equitable sharing of responsibilities across different levels of government (art. 80 TFEU) and of *subsidiarity* (art 5.3 TEU).

The Stockholm Programme itself refers to regional and local authorities, but in a way which is insufficient and not systematic. They are also mentioned in different communications from the European Commission, and in opinions issued by the Committee of the Regions. Some directives on immigration provide for integration measures which are usually implemented in Spain by autonomous communities and municipalities. (Directive 2003/86/EC, Directive 2003/109/EC, Directive 2004/114/EC ...).

The Stockholm Programme refers to different policies for which, at least in Catalonia, the responsibilities of the Catalan Government and of town/city councils are highly relevant. For example:

- labour market (6.1.3)
- recognition of professional qualifications (6.1.3)
- the set of policies on social integration (6.1.5)
- education (6.1.5)
- reception services for migrants (6.1.5)
- reception services for refugees (6.1.8)
- participation and intercultural dialogue (6.1.5)
- social cohesion (6.1.5)
- voluntary return (6.1.6)
- regularisations (6.1.6)
- unaccompanied minors (6.1.7)
- professional training (1.2.6).

***Mention other immigration policies, paying attention to the development of such public policies over the fourteen years since the Amsterdam Treaty came into force.***

As we mentioned above, the Stockholm Programme explicitly refers to different immigration policies. Nevertheless, we think it is necessary to mention others which are already recognised in other official EU documents. With regard to the Catalan Government, the National Pact for Immigration (2008), the Act on Reception for Immigrants (2010), and the Citizenship and Migration Plan (2013) also refer to:

- family reunification,
- training/education for reunited families,
- employment of young people,
- integration of persons in irregular situations,
- integration reports that are legally effective in residence permit procedures which fall within the jurisdiction of the State,
- promotion of self-employment,
- management of diversity in companies,
- efficiency in the handling of administrative authorisations,
- recruitment in the country of origin,
- accommodation provisions for temporary workers,
- action against trafficking,
- action against xenophobia and racism. For example, policies against circulation of rumours,
- action against male violence. For example, action against female genital mutilation,
- remittances,
- restructuring of public services to avoid the creation of parallel circuits of healthcare for foreigners,
- translation and interpreting services,
- linguistic reception,
- adult literacy training for foreigners,
- reception in schools and school support action (to avoid school failure and drop-out),
- reception procedures in prisons,
- other specific reception procedures,
- intercultural mediation,
- training of reception and integration professionals,
- urban measures to guarantee the provision of different centres of worship for people of different faiths as well as to avoid the creation of ethnic ghettos.
- promote participation through voluntary schemes and community associations,
- provide incentives for obtaining nationality status,
- awareness campaigns for the local population on the question of migration: seminars, training,
- research, observatories,
- policies related to migration and not only immigration (emigration and returning nationals),
- coordination measures across all government levels.

***Need for training professionals working on reception, integration and asylum policies.***

The Stockholm Programme establishes a series of “instruments” for applying the programme (1.2). One of these instruments is training (1.2.6). The current Programme, however, only refers to the training of professionals working in the legal and law-enforcement professions. Yet immigration policies also include administrative staff and general practitioners working in the areas of integration, reception, adult education, health, asylum, etc.

***Programmes of voluntary return are not only related to sanction measures: working towards a wider understanding of voluntary return.***

The Stockholm Programme discusses measures for voluntary return in the section on the “fight against illegal immigration” (6.1.6). Nevertheless, different types of voluntary return programmes are financed and run on a regular basis that are not necessarily related to illegal immigration: the return of prisoners who are not irregulars, return as a social service, return with the capitalisation of unemployment benefits, productive return... We believe that a conception of return that takes into account other factors apart from sanction measures would be more realistic and open.