



# CRITICAL ASPECTS OF RADICALISATION POLICIES AND PRACTICES IN EUROPE

22/12/2017

## **POSITION PAPER**

There is a clear need to properly evaluate results and impact of the numerous initiative in CVE at local, national, and European level. We call for a completion of the EU institutional architecture, to jurisdictionalize CVE practices and divide roles and responsibilities in prevention, to avoid abuses and preserve the social capital entrenched into the civil society

*This short Position Paper addresses the needs for a closer harmonisation of judicial and police cooperation as part of a comprehensive strategy to effectively prevent and counter the escalation of radicalism in Europe, while respecting fundamental rights and the differentiated competences of all stakeholders involved.*

# **CRITICAL ASPECTS OF RADICALISATION POLICIES AND PRACTICES IN EUROPE**

**WHY WE NEED TO RESHAPE OUR  
CVE STRATEGIES AND  
PRACTICES TO BETTER  
HARMONIZE POLICE AND  
JUDICIAL COOPERATION WITH  
FUNDAMENTEL RIGHTS**



# 1- RELEVANT RISKS STEMMING FROM THE ONGOING CVE PRACTICES

The mainstreaming practices in CVE showed a tendency to de-jurisdictionalize counter-radicalisation policies and practices at MS level, in favour of administrative measures taken by police, intelligence or political bodies at Ministerial level.

This is a very relevant aspect of the ongoing CVE approaches, because these measures, and practices:

1. **risk** to undermine the efficacy of the actions, which may backlash (both in terms of efficacy, impact and unwanted polarisation effects, but also considered from the perspective of admissibility of evidences in court trials regarding radical individuals and groups);

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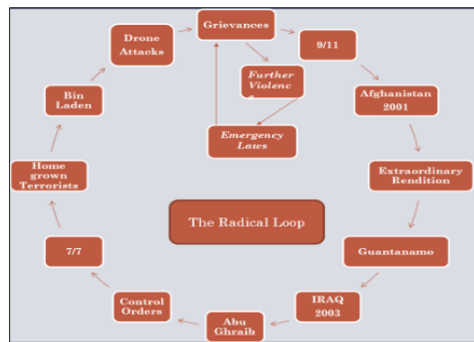


### The Risk of Radical Loop as a consequence of these challenges

#### THEORETICAL BACKGROUND: PRACTICES

*“Radicalisation processes can be accentuated and reinforced when disproportionate measures are deployed by the prison administration. Therefore punitive measures, use of force and means of restraint shall proportionate to direct and serious threats of disruption of good order, safety and security in a given prison in order to preserve to the extent possible relations of trust and support in helping the reintegration of the offender”*

Council of Europe, *Guidelines for Prison and Probation Services regarding Radicalization and Violent Extremism*, Principle 10, 2016



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### THE STOCKHOLM'S ROADMAP

Between concerns raised by citizens, suspects gathered by intelligence or inputs stemming from national police or European and International agencies and their database, there is a set of procedural rights that must be respected when cases are investigated

<p><b>Interpretation and translation</b></p> <p>Directive 2010/64/EU 20 October 2010 Transposition deadline: 27 October 2013</p>	<p><b>Right to information on rights and charges</b></p> <p>Directive 2012/13/EU 22 May 2012 Transposition deadline: 2 June 2014</p>	<p><b>Lawyer and right to have third party informed</b></p> <p>Directive 2013/48/EU 22 October 2013 Transposition deadline: 27 November 2016</p>	<p><b>Special safeguards for children</b></p> <p>Directive 2016/800/EU 11 May 2016 Transposition deadline: 11 June 2019</p>	<p><b>Green paper on detention</b></p> <p>COM(2011) 327 final 14 June 2011</p>
<p><b>Provisional legal aid when deprived of liberty and in EAW proceedings</b></p> <p>Directive 2016/1919/EU 26 October 2016 Transposition deadline: 25 May 2019</p>	<p><b>Presumption of innocence presence at trial</b></p> <p>Directive 2016/343/EU 9 March 2016 Transposition deadline: 1 April 2018</p>	<p><b>Recommendation on procedural safeguards for vulnerable persons</b></p> <p>COM(2013) 8178 27 November 2013</p>	<p><b>Recommendation on legal aid</b></p> <p>COM(2013) 8179 27 November 2013</p>	

■ Past transposition deadline  
■ Adopted  
■ Recommendations  
■ Green paper

■ DK not taking part    ■ UK not taking part    ■ IE not taking part

2. **risk** to unbalance the intrinsic coherence of the judiciary cooperation in relation to police cooperation, thus jeopardising key EU Framework Decisions and Directives, firstly, but, secondly, also the fundamental principles of rule of the law and fundamental rights, as set in the Treaties and interpreted by the CJEU and ECtHR;

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### Radicalisation, Terrorism and the ECHR

- Article 9 (Freedom of thought, conscience and religion) of the Convention and Nelson Mandela Rules, 65-66

[Güler and Uğur v. Turkey](#)

«There should be clear policies for dealing with faith issues in prison and for respecting all religious beliefs represented in prison, including those holding violent extremist prisoners. Demonstrating such respect can contribute to undermining violent extremist thinking, for example, a lack of tolerance for difference» (UNODC, 2016, pg.15)

While defining programs aimed at countering radicalization in prison please consider also the view of the HRC ([Yong-Joo Kang v Republic of Korea](#)) stating that "the 'ideology conversion system' violates his rights under articles 18, 19 and 26, the Committee notes the coercive nature of such a system, preserved in this respect in the succeeding 'oath of law-abidance system', which is applied in discriminatory fashion with a view to alter the political opinion of an inmate by offering inducements of preferential treatment within prison and improved possibilities of parole. (15) The Committee considers that such a system, which the State party has failed to justify as being necessary for any of the permissible limiting purposes enumerated in articles 18 and 19, restricts freedom of expression and of manifestation of belief on the discriminatory basis of political opinion and thereby violates articles 18, paragraph 1, and 19, paragraph 1, both in conjunction with article 26."

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### Radicalisation, Terrorism and the ECHR

- Article 6 (Right to a fair trial) of the Convention

[Heaney and McGuinness v. Ireland](#): The Court held that there had been a violation of Article 6 § 1 (right to a fair trial) and 6 § 2 (presumption of innocence) of the Convention. It found that the security and public order concerns invoked by the Irish Government could not justify a provision which extinguishes the very essence of the applicants' rights to silence and against self-incrimination guaranteed by Article 6 § 1 of the Convention. Moreover, given the close link with the presumption of innocence guaranteed by Article 6 § 2, there had also been a violation of that provision.

[El Haski v. Belgium](#): This case concerned the arrest and conviction of a Moroccan national for participating in the activities of a terrorist group. The applicant complained in particular that his right to a fair trial had been violated because some of the statements used in evidence against him had allegedly been obtained in Morocco by means of treatment contrary to Article 3 (prohibition of torture or inhuman or degrading treatment) of the Convention. The Court held that there had been a violation of Article 6 (right to a fair trial) of the Convention. Unlike the Belgian courts, the Court found that because of the context in which the statements had been taken, in order to make the criminal court exclude them as evidence it sufficed for the applicant to demonstrate the existence of a "real risk" that the statements concerned had been obtained using treatment contrary to Article 3. Article 6 of the Convention therefore required the domestic courts not to admit them as evidence without first making sure they had not been obtained by such methods. However, in rejecting the applicant's request to exclude the statements the Court of Appeal simply noted that he had provided no "concrete proof" capable of shedding "reasonable doubt" on the evidence.

3. An excessive securitisation of socio-psychological phenomena connected to different forms of radicalisation, which are confused with terrorism, **risks**
  - a) to expose LEAs and Intelligence in operative fields where their competences and powers are limited;
  - b) to compress the participation of other social agencies, which have stronger and deeper experiences and competences in the treatment of vulnerable individuals;
4. The involvement of LEAs and Intelligence in social activities **risks** to undermining the necessary trust between probation officers, volunteers, educators, trainers, psychologists and individual suspected of radical behaviours, ideas or attitudes;
5. The supremacy of LEAs in critical events connected to a 'securitized model of radicalisation', **risks** to render ineffective the social powers and competences deeply rooted and entrenched into the civil society, communities, schools and educative institutions, local welfare, unions and syndicates, parties and cultural bodies, who don't want to be emptied or exploited by LEAs and Intelligence for purposes outside their natural and institutional scope.

These risks are very relevant in counter-radicalisation practices, because a clear definition of the phenomenon is lacking and therefore abuses, excesses and violations of fundamental rights are a matter of serious concern for numerous actors in the scene, as emerged from the debate around 'Prevent' in the UK, and the American experience with the NYPD, UCLA and as outlined by emerging case-law.

Module I: What is Radicalization

### GENERAL THEORIES ABOUT WHAT IS RADICALIZATION

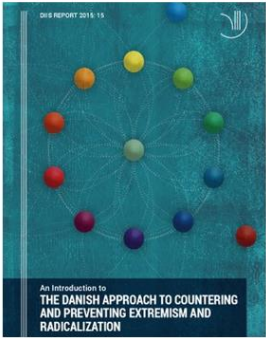
Radicalisation represents a dynamic process whereby an individual increasingly accepts and support violent extremism. The reasons behind this process can be ideological, political, religious, social, economic or personal"

Violent extremism consists in promoting, supporting or committing acts which may lead to terrorism and which are aimed at defending an ideology advocating racial, national, ethnic or religious supremacy or opposing core democratic principles and values.

(CoE-Committee of Ministers, 2-3-2016, Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism)

«The challenge arise not least from the lack of a clear common definition of radicalization and extremism and of a consensus over what the problem actually is (violence or ideology), what the roots are (politics, religion, failed integration, identity, wars, etc.), what the cure is (more religion, less religion, social changes, crime prevention, individual treatment, harsher punishments, etc.), and who can best reach the target group (soft social workers, tough police or someone not connected to the authorities at all).»

(DIIS Report 2015)





Furthermore, public-private cooperation and exchange of data among different agencies and public-private practitioners require a clear legal framework, which is available in some countries (UK, DK, NL, etc.) only, but not in others.

<p>Module V: Judicial Response and Police Cooperation: 4 Challenges</p> <p><b>CHALLENGE 1 : DATA GATHERING AND INTELLIGENCE</b></p> <p>«Where there is exchange of information related to radicalisation and violent extremism between prison and probation services and national law enforcements and intelligence agencies, strict and clear procedures shall be agreed and respected in terms of privacy and data protection» CoE-Committee of Ministers, 2-3-2016, Guidelines for Prison and Probation Services regarding Radicalisation and Violent Extremism, III.b.4</p> <p><b>Rotaru v. Romania</b></p> <p>Considering that radicalisation is not a crime, a juridical qualification of information gathered by prison intelligence is necessary, in line with the national laws and Intl. regulations</p> <p>“Within the context of the fight against terrorism, the collection and the processing of personal data by any competent authority in the field of State security may interfere with the respect for private life only if such collection and processing, in particular: (i) are governed by appropriate provisions of domestic law; (ii) are proportionate to the aim for which the collection and the processing were foreseen; (iii) may be subject to supervision by an external independent authority.” Guidelines of the Committee of Ministers of the CoE on HR and the fight against terrorism, Committee of Ministers, meeting (11 July 2002</p> <p>“No provision of domestic law, however, lays down any limits on the exercise of those powers. Thus, for instance, domestic law does not define the kind of information that may be recorded, the categories of people against whom surveillance measures such as gathering and keeping information may be taken, the circumstances in which such measures may be taken or the procedure to be followed. Similarly, the Law does not lay down limits on the age of information held or the length of time for which it may be kept. (...)The Court notes that this section contains no explicit, detailed provision concerning the persons authorized to consult the files, the nature of the files, the procedure to be followed or the use that may be made of the information thus obtained. (...) It also notes that although section 2 of the Law empowers the relevant authorities to permit interferences necessary to prevent and counteract threats to national security, the ground allowing such interferences is not laid down with sufficient precision”</p> <p>iSpring 2 / 14 00:00 / 00:00</p>	<p>V: Judicial Response and Police Cooperation</p> <p><b>PRISON INTELLIGENCE AND EVIDENCES</b></p> <p>Information and data gathered for the purpose of criminal investigations aimed at preventing crimes are subject to the jurisdiction of European and national laws and must respect procedural rights of suspect and/or accused persons</p> <p>DIRECTIVE (EU) 2013/48 and (EU) 2016/343 states, that the rights to defense arise “from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, and, therefore, even before that person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he or she is a suspect or accused person. This Directive should apply at all stages of the criminal proceedings until the decision on the final determination of whether the suspect or accused person has committed the criminal offence has become definitive. According to the ECtHR, the assistance of a lawyer has to be provided “as from the first interrogation of the suspect by the police.” (ECtHR, 27 November 2008, Salduz v. Turkey, Appl. no. 36391/02).</p> <p>DIRECTIVE (EU) 2014/41 regarding the European Investigation Order, states that transnational investigations need to be required by investigating authorities in criminal proceedings with competence to order the gathering of evidence in accordance with national law, after the check of conformity criteria, and the validation by a judge, court, investigating judge or a public prosecutor in the issuing State. Where the EIO has been validated by a judicial authority, that authority may also be regarded as an issuing authority for the purposes of transmission of the EIO</p>
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### 3- FUTURE CHALLENGES

Preliminary conclusions resulting from independent researches around these complex topics are relevant for policy makers, EU technostuctures and EU Agencies and therefore we summarise four elements below:

#### Module VII: Exit Strategies

### 4 LIMITS OF THE ONGOING EXIT STRATEGIES

#### LIMITS OF ALL EXIT PROGRAMS:

- a) Labeling and stigmatize prisoners, thus generating ‘false positives’, which may backlash;
- b) Producing ‘anomic’ effects stemming from the discrepancies between the targets set by the rehabilitation programs/operators and the real opportunities available, which may produce further frustration and disenfranchisement;
- c) Infringing fundamental rights when **c.1)** disproportionate measures are taken or **c.2)** prisoners are treated inequally based upon suspects, faith or ideology and beyond their procedural rights, or **c.3)** overlapping of intelligence and social work produce distrust and discredit the rehabilitation programs.

**LIMITS OF DERADICALISATION:** ‘ideology conversion systems’ risk to collide with Art. 9 ECHR Freedom of thought, Conscience and religion and Nelson Mandela Rules (65-66), when by offering inducements of preferential treatment, improved possibility of alternative measures is applied in a discriminatory fashion as to induce prisoners to change their ideas, political beliefs or faiths. [Yong-Joo Kang v. Republic of Korea](#).

**LIMIT OF DISENGAGEMENT:** when addressing specific targets, ‘Disengagement’ Programs risk to undermine the social and cultural re-integration, because the persistence of extremist ideas (eventhough non violent) may result incompatible with the mainstreaming society and unintentionally reinforce ghetto and gang effects.

**LACK OF EVALUATIONS:** The EU does not have a cohesive strategy or process for assessing the overall CVE effort. Non one single EU institutions was able to determine if Europe or its MSs are better off today than they were in 2005 as a result of the EU counterterrorism strategies and the huge investments done. This is because the strategies have been adopted without testing the effective scientific backgrounds or the viability and impact of the multi-agency approach. Moreover no measurable outcomes has been established to guide the CVE effort. The EU also has not established a process by which to evaluate the effectiveness of the collective CVE effort.

More in details:

1. Radicalisation in itself is not a crime in many MSs (contrary to recruitment or other terror-related crimes that may lead to judicial investigations). Nevertheless, the majority of MSs have in place differentiated mechanisms to gather information (in prison and outside) concerning radical behaviours. We would like to clearly highlight that these are extrajudicial data, which may be very useful for rehabilitation programs of safeguard initiatives, if properly managed; however, when extrajudicial sensitive data are gathered, stored and transferred by police forces and within 'pre-crime' activities, clear procedural boundaries need to be defined in order to grant fundamental rights to the individual concerned and comply with several laws and procedures.

2. Unfortunately, the science behind behavioural models, defined as 'radicalisation', is contested at academic and political level and the tools and indicators used to profile individuals resulted as highly ineffective, with a very high rate of false positive and false negative, in some cases even Islamophobic. European activists harshly criticized covert connections between the UK Prevent (then adopted by the EU Counter-Terrorism Strategy in 2005) and psychological warfare campaign and counter-insurgency strategies used in war theatres. A substantial inability to properly address differentiated threats and socio-political conflicts remain at the core of the problem.



3. Moreover the evaluation scales and tools in use at MS level are not equivalent and interoperable. This aspect, combined with very different legislations at MS-level, generates serious contradictions concerning the treatment of prisoners under radical radars at transnational level. As an example, there are relevant legal constraints for the transfer of the related information at EU level, considering that in the majority of the cases we are dealing with sensitive and extra-judiciary data which may impact on fundamental rights. This lack of homogeneity in profiling and risk assessment may lead to differentiated prison and probation treatments, when inmates are transferred from one country to another.

In this context, alleged radical behaviours or attitudes are often recorded, analysed, transferred and retrieved through non-verified and non-harmonized indicator-based risk assessment tools, which may lead to administrative decisions that have an impact on the fundamental rights of the inmates, their life and their future, including the application of specific administrative measures which impact on the rehabilitation programs, hinder the access to legal benefits and rights within and outside prisons, and endanger equality, far beyond the penalties prescribed by the sentences and their penal execution. In a few very extreme cases, alleged radicals are forced to follow mandatory 're-education' or 'rehabilitation' programs based upon suspects and in other cases can be classified in specific security regimes, deported or stripped of their identity documents in the absence of judiciary measures.

4. This type of extrajudicial information concerning radical ideas and/or behaviours is usually considered security data, therefore not accessible to the prisoners or their lawyers and can be transferred into different security databases, with lesser redress chances for the individual concerned. Unfortunately, this approach may have serious consequences for the

defendants, accused persons and/or convicted offenders.

### DERAD Findings

Contrary to EU legal provisions, inmates suspected of radical attitudes, ideas, beliefs, or behaviours, in practice don't have access to the benefits of the Framework Decisions 909/829/947, which are important tools for the implementation of successful exit strategies. Furthermore, procedures to communicate to receiving MS information concerning non-forensic radical observations within the prisons of the issuing State, as part of the transfer certificates, are usually not in place. For these reasons no one single prisoner suspected of radical behaviours resulted as transferred, contrary to provisions and the ration of the 3 FDs. These procedures are in clear contrast with the European provisions and risk to undergo the scrutiny of the EU Court of Justice or the ECtHR.

This example, among others, help to explain why judicial and police cooperation need to be re-balanced for effective counter-radicalisation measures.

How to manage these data at transnational level remains an open issue, with serious juridical implications in relation to the wider EU juridical reform system after Lisbon (Stockholm's Roadmap, Data Protection Package, EIO, sentences of the EU Court of Justice and ECtHR), the constitutional architecture of several MSs, the institutional roles assigned by law to different preventive bodies (intelligence, LEAs, Judiciary and private sector) and the technological evolutions of the profiling and surveillance tools in relation to the rule of the law (New Europol security tools).

## 4- PREVENTION AND RISK PRIORITISATION

- 1- As a result of different researches, the urgency to better define PREVENTION at EU level emerged. Indeed, it is not clear how the concept of socio-psychological prevention is related to the 'PREVENT PILLAR' of the counterterrorism strategies adopted by the EC since 2005, which has a clear legal dimension, in the chain of investigations and responses. On the other hand, it is not clear how, and to which extent, 'private agencies' should be involved in typical LEAs or Intelligence activities (Ex.: personal and patrimonial 'preventive security measures', information gathering and exchange, etc.).


This flaw generated a serious conflict in the US which should be avoided in Europe, if possible.

Module 1: What is Radicalization

### GENERAL THEORIES ABOUT WHAT IS TERRORISM

Today 'radical escalations models' are very different in relation to the existing more complex and nuanced understanding of radical dynamics and states than the simple phase-models with their identifiable stages through which an individual was believed to pass in the process of transforming from 'ordinary' to 'terrorist' models which were popular in the early years.

The NYPD was recently forced to remove from its website its "Radicalization in the West" report, which is the basis of many theoretical programs in Europe, because it sets out a discredited, junk-science-based theory purporting to identify how individuals transform into terrorists. That report provided the analytic underpinnings of discriminatory surveillance against Muslims. It is still used as reference by several EU police Forces, Intelligence and UN Agencies



Radicalization in the West:  
The Homegrown Threat

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### THE US CVE MODEL

Case Law: Handschu v. Special Services Division, 60S




Figure: Countering Violent Extremism is Different from Counterterrorism

The Handschu agreement, or decree, was the result of a class-action lawsuit filed against the City of New York, its Police Commissioner and the Intelligence Division of the New York City Police Department (NYPD) on behalf of Barbara Handschu and fifteen other plaintiffs affiliated with various political or ideological associations and organizations, known as Handschu v. Special Services Division

#### Case Law Description

The plaintiffs claimed that "informers and infiltrators provoked, solicited and induced members of lawful political and social groups to engage in unlawful activities"; that files were maintained with respect to "persons, places, and activities entirely unrelated to legitimate law enforcement purposes, such as those attending meetings of lawful organizations"; and that information from these files was made available to academic institutions, prospective employers, licensing agencies and others. 7 types of police misconduct were contested: (1) the use of informers; (2) infiltration; (3) interrogation; (4) overt surveillance; (5) summary punishment; (6) intelligence gathering; and (7) electronic surveillance, alleging that this infringed the exercise of freedom of speech, assembly and association, violated constitutional prohibitions against unreasonable searches and seizures, and that they abridged rights of privacy and due process. In 1985, the court found that police surveillance of political activity violated constitutional protections of free speech. The following consent decree required that any "such investigations shall be conducted" only in accordance with the Guidelines incorporated into the Decree, which prohibited from "commencing an investigation" into the political, ideological or religious activities of an individual or group unless "specific information has been received by the Police Department that a person or group engaged in political activity is engaged in, about to engage in or has threatened to engage in conduct which constitutes a crime". On February 11, 2003, a new ruling stated that the NYPD should be permitted to start preliminary inquiry when there is "information ... which indicates the possibility of criminal activity."





## GENERAL THEORIES ABOUT WHAT IS RADICALIZATION

### Jurisprudence of interest **Raza v. City of New York (I)**

In June 2013, The ACLU, the NYCLU, and the CLEAR project at CUNY Law School filed a lawsuit challenging the New York City Police Department's surveillance of New York Muslims. The NYPD mapped Muslim communities and their religious, educational, and social institutions and businesses in New York City (and beyond). It deployed NYPD officers and informants to infiltrate mosques and other institutions to monitor the conversations of Muslim New Yorkers, including religious leaders, based on their religion without any suspicion of wrongdoing. It conducted other forms of warrantless surveillance of Muslims, including the monitoring of websites, blogs, and other online forums. The results of these unlawful spying activities were entered into NYPD intelligence databases, which amassed information about thousands of law-abiding Americans. A police representative has admitted that the mapping activities did not generate a single lead or resulted in even one terrorism investigation.

The lawsuit charged that the NYPD, through its discriminatory surveillance program, violated constitutional rights to equal protection, as well as right to freely exercise their religious beliefs, because profoundly harmed their religious goals, missions, and practices. It forced religious leaders to censor what they said to their congregants, limit their religious counseling, and record their sermons, for fear that their statements could be taken out of context by police officers or informants. It also diminished attendance at mosques, prompted distrust of newcomers out of concern they are NYPD informants, and prevented the mosques from fulfilling their mission of serving as religious sanctuaries.



## GENERAL THEORIES ABOUT WHAT IS RADICALIZATION

### Jurisprudence of interest **Raza v. City of New York (I)**

In March 2017 a settlement was approved by the court, establishing a number of reforms to protect Muslims and others from discriminatory and unjustified surveillance. It entailed modification of the Handschu Guidelines, which govern NYPD surveillance of political and religious activity. The reforms included:

- Prohibiting investigations in which race, religion, or ethnicity is a substantial or motivating factor;
- Requiring articulable and factual information before the NYPD can launch a preliminary investigation into political or religious activity;
- Requiring the NYPD to account for the potential effect of investigative techniques on constitutionally protected activities such as religious worship and political meetings;
- Limiting the NYPD's use of undercover and confidential informants to situations in which the information sought cannot reasonably be obtained in a timely and effective way by less intrusive means;
- Putting an end to open-ended investigations by imposing presumptive time limits and requiring reviews of ongoing investigations every six months;
- Installing a Civilian Representative within the NYPD, with the power and obligation to ensure all safeguards are followed and to serve as a check on investigations directed at political and religious activities;
- Empower the representative to report to the court at any time concerning violations of the [Handschu Guidelines](#);
- Require the mayor to seek court approval before abolishing the position of civilian representative;

In this sense a clear intervention of the Council, the EC and the EP is considered necessary because there is a risk of numerous legal disputes in the near future, as anticipated by the 'Cage Report', which may expose police forces and intelligence, as already happened in the United States with the NYPD and the evolutions of the 'Handschu case', Hassan v. City of New York, Raza v. City of New York and Handschu v. Special Servs. Div.

- 2- Considering the vagueness of definitions and area of intervention, different partners highlighted the importance to defining clear structured policy models to **PRIORITIZE RISKS** beyond the 'Policy Cycle', considering also the differences perceived by security agencies and policy-makers at macro-regional level.



The prioritization of risks is a typical political duty, which cannot be delegated to executive agencies, in our opinion.

This aspect has an important juridical implication on the concept of proportionality of measures, which is a key pillar enshrined into the Treaties.

Module V: Judicial Response and Police Cooperation



#### CHALLENGE 4: RISKS OF AN INCOMPLETE INSTITUTIONAL ARCHITECTURE

Art 86 on the on the functioning of the EU (Lisbon Treaty) considers the creation of an European prosecutor office with two areas of competence : first, for the prevention of infractions to EU' financial interests; after, for struggling against criminal activities with transnational dimension.

**While the provisions of Art. 86, par.2, are now part of the EPPO, unfortunately Art. 86, par. 4, remained without application. This flaw creates a substantial inconsistency in the EU security policies and practices, jeopardising the EU judicial system based upon checks and balances**

Judicial and security practices are complicated by several difficulties all generated by disparities between systems: for instance, the statutes of prosecutors vary to a great extent from country to country ; prosecution services have very different degrees of independence. Even the concept of judicial authority may be understood differently from a country to another. And it is difficult for highly diversified systems to work together, particularly in the area of procedures and evidence; Finally, police and intelligence powers risk to go out of control if judiciary supervision is absent

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Indeed, at the end we are again at the key question: the harmonisation of judicial and police cooperation requires a complete European institutional architecture, based upon clear division of powers between the legislative, judicial and executive levels.

Therefore, the establishment of a proper European Prosecutor Office, in its full capacity to jurisdictionalize the operation of the EU Agencies, remains at the heart of the European reform, as well as the urgency to implement and complete the 'Stockholm's Roadmap' and to adopt the 'Equal Treatment Directive' proposed by FRA.