Position Paper
On
Home Affairs
“Debate on the future of Home Affairs policies”

Under
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Special thanks:

Thanks for the policy makers in the European Union Commission for allowing the individual to contribute in the ongoing debates about a variety of EU policies.

Such a tradition enhances the ability of ordinary people in sharing their views about different issues with the decision making circles, thus enabling them to be more involved in formulating the policies affecting their daily life.

This position paper sheds the lights on the issues related to the Cooperation among EU member states in the wake of the post Stockholm Programme in the Area of Freedom, Justice and Security (AFJS). It gives a narration of the historical development of the ideas related to the establishment of The AFJS and its contractual framework, and it ends by offering recommendations for the post Stockholm Programme which will come to an end in 2014.
Introduction:

As a result of the ongoing changes in the global order, the EU home affairs issues are becoming more critical as threats to the stability of the EU countries become interconnected and twined with so many cross-border activities. The end of the Cold War has drastically altered the global landscape and the realities of peace and security. Until recently, the European security system was defined by the nuclear balance between the two super powers.

In the past, the issues related to the European security were focused on the study of the threat, use and control of military force. They were mainly concerned with military strategy, and giving policy advice to the military. Since the Cold War ended, the study of the EU home affairs issues has come a long way, as the threats to internal security become more sophisticated and complex.

It worth to be noticed that during the past two decades, the concept of home affairs security was first extended downwards from states to individuals, upwards from the nation to biosphere and horizontally from military to the economic, social, political and environmental. In this transformation period, the uni-polar world order is replaced by a multi-polar security system, being shaped by common interests and serving regional peace first and then global peace.

By virtue of adding unforeseeable dimensions to the concept of security, the new security threats urge EU relevant institutions to search for new ways of defending their ways of life. Thus, along with its military dimension, which basically means defense of national territories, the concept of security has been expanded with the addition of economic, diplomatic, cultural, and technological dimensions.

It became evident that the transnational security threats are among the most pressing and complicated problems facing both governmental and non-governmental actors in today's world. Such threats to the EU security emerge from the different types of organized crimes such as terrorism, human and arms trafficking. Another type of threats is caused by economic crime and corruption, civil unrest in EU’s neighboring countries, mass migration.

Another dimension to the scope of the threats facing the EU is added by the increasing opportunities to reach information and technology caused by the spread of the internet and the new communication technologies which facilitated organized and cross-border crimes.
Transnational organized crime is a threat to the economy and society in Europe. The European Union's response in the fight against organized crimes must be adapted to the complexity of this phenomenon and should be directed at both trafficking in human beings, arms and drugs and economic and financial crime, corruption and money laundering. It shall also covers the new dimensions of organized crime, such as cybercrime and environmental crime.

In the fight against cross-border crime, internal security is necessarily linked to external security. Therefore, account must be taken of the EU external security strategy and cooperation strengthened with non-EU countries. The recent events in the Sahel region has proved the link between the link between the stability of the EU as what happens there will have immense repercussions for Europe.

A recent paper1 sheds the light on the importance of the integrated approach in tackling organized crime in the EU. This approach extends from prevention to law enforcement, as it also requires an effective cooperation between the authorities of the Member States, and especially the law enforcement agencies, including the exchange of information and mutual assistance in seizures and confiscations.

To this end the European Council adopted in 2010 a multi-annual programme known as the “Stockholm Programme” for the period 2010-20142. The programme is followed by an action plan which envisages further measures to get a better grip on organized and cross-border crimes3. The “Stockholm Programme” was preceded by The multiannual Hague Programme, adopted at the European Council of 4 and 5 November 2004, which sets out 10 priorities for the Union with a view to strengthening the area of freedom, security and justice in the period between 2005-20104.


The Contractual Framework:

In 1957, the Treaty of Rome set the free movement of persons as one of its objectives, but this provision originally applied only to cross-border economic activity as it failed to deal with border crossings, immigration or visa policy. Freedom of movement was viewed in purely economic terms and concerned only workers.

Member states were already co-operating at various levels: bilaterally, regionally (within the Council of Europe, for example) and globally (Interpol and the UN). The 1967 Naples convention on co-operation and mutual assistance between customs administrations set out the first framework for dialogue between member states.

By the 1970s, the desire to extend this freedom to everyone and the growing importance of certain problems – such as cross-border organized crimes, drug trafficking, illegal immigration and terrorism – encouraged member states to seek informal co-operation in justice and home affairs.

The beginning of cooperation in matters related to internal affairs within the EC was considered after the terrorist attack during the Olympic Games in Munich in the summer of 1972 and the creation, in December 1975, of the Trevi Group.

Trevi was conceived as an informal intergovernmental network of national officials from ministries of justice and the interior in the EC, with the purpose of a better coordination among the member states in combating terrorism, violence and organized crime. The main contribution of the activity of the Trevi Group is that gradually, has identified the diversity of intra-communitarian challenges and threats that requires a common approach of internal security of the EC. Furthermore, it led to the mutual acceptance that the management of the border control (especially external borders) represents a way to promote internal security. The entire activity of the Trevi group emphasized the mutual acknowledgement that the EC member states share certain threats and vulnerabilities that should be managed within a common coherent policy and opened the perspectives for the abolition of internal borders and strengthening the external borders, as well as the emergence of the Justice and Home Affairs policy.


Cooperation among member states on justice and home affairs took off in the late 1980s with the launch of the single market program, which aimed to establish “an area without internal frontiers, in which the free movement of goods, persons, services and capital is ensured”. Of the “four freedoms”, free movement of people was the most problematic, because it implied the introduction of a host of difficult accompanying measures dealing with political asylum, immigration, and visas for nationals of nonmember states entering the Community and moving freely within it, as well as better police networks and external border measures directed against terrorism, drug smuggling, and other criminal activity.

A landmark development to the free movement of persons among EU countries occurred when France, Germany, Belgium, Luxembourg and the Netherlands decided in 1985 to create a territory without internal borders. This became known as the "Schengen area", after the town in Luxembourg where the first agreements were signed. Following the signing of the Treaty of Amsterdam, this intergovernmental cooperation was incorporated into the EU framework on 1 May 1999.

Two important areas covered by the Schengen agreement are as follows:

- **External borders.** The free movement of people is guaranteed under the agreement, which remove checks at most of the EU’s internal frontiers and strengthens controls at the EU’s external borders. There are no border controls when travelling by land between the Schengen members. But passport and visa requirements continue to apply at the external Schengen borders for non-EU member nationals.

- **Judicial matters.** To prevent criminals of all sorts turning the system to their advantage, the EU responded by creating a system of frontier-free police and criminal justice co-operation. Europol, the European police force, is part of that response. So is the Schengen Information System (SIS), whereby national police exchange information on wanted or suspected wrongdoers. Under the Eurojust project, member states second senior prosecutors, policemen and lawyers to a central team working to fight organized crime. Schengen has also simplified extradition procedures, and makes it possible for people convicted in one country to serve their sentences in another.

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The need for a further cooperation in the sphere of Justice and Home Affairs was one of the driving forces behind the adoption of the Maastricht Treaty. The dismantling of border controls in the internal market created pressure for new and greatly improved mechanisms at Community level to deal with such problems as cross-border crime, drug trafficking, international terrorism, and the movement of peoples (the latter included growing concern about the threat of mass migration from Eastern Europe and North Africa to Western Europe).9

The Treaty established the EU on three pillars. The pillars were: the European Communities; a Common Foreign and Security Policy (CFSP); and Cooperation in the fields of Justice and Home Affairs (JHA). Under the third pillar, the member states were to regard the following areas as matters of common interest: asylum policy; rules governing, and controls on, the crossing by persons of the external borders of the member states; immigration policy and residence rights of third-countries nationals; combating drug addiction; combating international fraud; judicial cooperation in civil matters; judicial cooperation in criminal matters; customs cooperation; and police cooperation to combat terrorism; drug trafficking and other serious crime through an EU-wide intelligence office (Europol). Any measures taken in regard to these matters was to be in compliance with the European Convention on Human Rights10.

Until the Treaty of Amsterdam, which came into effect after ratification by all the contracting parties on May 1st 1999, cooperation in the justice and home affairs field was carried out for the most part in the so-called ‘Third Pillar’ of the European Union. One change brought about here at Amsterdam was the ‘Communitarisation’ of many areas of the Third Pillar - i.e. their removal them from the strongly intergovernmental Third Pillar and insertion into the more supranational First Pillar11.

The Amsterdam Treaty integrated the Schengen acquis (which consisted of rules and supporting measures dealing with the abolition of checks at internal borders) into the EU framework through a protocol. Ireland and the UK were allowed to opt-out from the Schengen protocol.

The concept of an Area of Freedom, Security and Justice, introduced by the Amsterdam Treaty, grouped provisions of the Community pillar (on

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10- Ibid.

border checks, asylum, immigration, and judicial cooperation in civil matters) and provisions that were then in the Third Pillar (Title VI TEU, police and judicial cooperation in criminal matters). The intention expressed at the time was that the European Union should form an area in which people could move freely - as was the case for goods - but without the risk that abolition of internal borders and border controls would threaten the security of EU citizens. This was in line with the initial objective of free movement of workers, following the logic of the internal market and European citizenship. The traditional formula was that "the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty" (Art. 14 EC, now 26(2) TFEU); and according to the provisions on citizenship, "every citizen of the Union shall have the right to move and reside freely within the territory of the Member States" (Art. 18 EC, now Art. 18 TFEU).

The implementation of such an objective raises specific difficulties for two reasons. One is that questions of admission of people to the national territory are always very close to questions of sovereignty. The other is that the freedoms of the single market (goods, people, capital) also increase the threats to security, as they stimulate the development of new sorts of criminality and vulnerability. Within a single market where internal borders have disappeared, each Member State becomes dependent on the admission of third country nationals by the other Member States. Until the Amsterdam Treaty, Member States retained power as to migration policies and the Commission could only promote cooperation between them. Change was slow and took place partly, as is well known, outside the Community framework, with the Schengen Convention as the landmark. The Treaty of Amsterdam gave a new impulse, but the process remained extremely complex due to the double EU and EC regimes and Member States’ reluctance to give up prerogatives in the area of security and public order; the practical effects of the measure adopted were slow to be felt.

Following on from 1999 Tampere Summit which focused on justice and home affairs matters, new forms of cooperation in the fight against organized crime were identified. Following on also from Tampere, the means of operationalizing such cooperation were strengthened by The Treaty of Nice which recognized and supported the European Judicial Cooperation Unit (Eurojust) that the Tampere Council had decided to establish for the


13- Ibid.
purposes of facilitating coordination and action between national prosecuting authorities in respect of serious cross-border crime.\textsuperscript{14}

Judicial cooperation has as a purpose the mutual recognition of judicial decisions, legislative harmonization and the development of specific mechanisms of operational cooperation such as Eurojust and European Judicial Network. The main activities in this domain were aimed to implement the European Arrest Warrant, decisions regarding the financial penalties, execution of imprisonment decisions, judicial background, etc. Within this approach, the member states went toward the adoption of common definition of criminal actions, especially those related to transnational crime and indirectly started to harmonize procedures of implementing judicial decisions. Mutual recognition of judicial decisions means that a particular decision adopted in one of the member state shall be recognized and implemented in all other member states, as a national decision.\textsuperscript{15}

Programmes in the area of Freedom, Justice and Security (AFJS):

Five years after the creation of the justice and home affairs (JHA) pillar of the European Union by the Treaty of Maastricht in 1992, the Treaty of Amsterdam of 1997 committed the Union to establishing a common area of freedom, security and justice (AFSJ), with matters of criminal justice, policing, asylum and immigration at its heart.

EU Member States, with the input of the European Parliament and the Commission, have in the past agreed three five-year JHA programmes: the Tampere Programme covering the period 2000-2004; the Hague Programme covering the period 2005-2009, and the Stockholm Programme covering the period 2010-2014.\textsuperscript{16}

The first multi-annual programme in the AFSJ, known as ‘The Tampere Programme’ provided the political mandate and the overall policy agenda for initial action towards establishing the AFSJ over the period 1999–2004. The


\textsuperscript{16} United Kingdom. House of Lords. Select Committee on The European Union, Sub-Committee F (Home Affairs, Health and Education), \textit{The EU’s five years agenda for EU Justice and Home Affairs Activity, 29 July 2013}, \url{http://www.parliament.uk/documents/lords-committees/eu-sub-com-f/RomeProgramme/cfeJHA290713.pdf}. 
main objective was the approximation of procedural and substantive law to facilitate mutual recognition by creating common minimum standards for the protection of individual rights.\(^{17}\)

Under the Tampere Programme, mutual recognition was to become the cornerstone of judicial cooperation in criminal matters within the Union. This was reflected in the landmark judgment of the Court of Justice in Gözütok and Brugge in 2003, where the Court ruled that “\([t]\)here is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognizes the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied\(^{18}\).”

In November 2004 the European Council approved the Hague programme to succeed the Tampere programme. Covering the years 2005-9, the Hague programme inevitably gave a higher priority to security issues than its predecessor. It was also less innovatory, with most of it being concerned with either completing or extending existing policy developments. Amongst specified policy aims of the programme were the creation of a comprehensive European asylum policy, the provision of crime ‘threat assessment’ by Europol, and the strengthening of the Schengen information system.\(^{19}\)

Five years after the Hague Programme, The European Council adopted a New multi-annual programme for the years 2010-2014, the Stockholm programme.

The programme is based on a communication issued by the European Union Commission, in June 2009, titled "An Area of Freedom, Security and Justice Serving the Citizen". The thrust of the Commission's approach was that citizens should be able to enjoy the benefits of European integration, notably movement without border controls throught the Schengen area, in safety and security, despite the plethora of threats emanating from inside and outside the EU. To that end, the Commission set four general priorities:\(^{20}\):

- ’’Europe of Rights”: Rights based on the Charter of Fundamental Rights, attached to the Lisbon Treaty.


\(^{18}\) Ibid.


\(^{20}\) Desmond Dinan, Ever Closer Union: An introduction to European Integration, 4th ed. (Great Britain: Palgrave macmillan, 2010), 530.
• "Europe of Justice": Justice by facilitating people's access to the courts, so their rights can be enforced throughout the EU.

• "Europe of solidarity": Solidarity among member states on asylum and immigration issues, as well as partnership with non-EU countries.

**Recommendations for the post Stockholm programme:**

As the Stockholm programme coming to an end, here are some recommendations in regards to the upcoming programme on different matters related to the area of Freedom, Security and Justice:

- Strengthening cooperation with the third countries especially in matters related to asylum seekers and illegal immigration. In this regard the EU should enhance the adoption of more readmission agreements with third countries as well as looking into ways and means of solidifying the economic conditions on those countries, thus enabling them to eliminate the number of illegal immigrants and asylum seekers\(^21\).

- Promoting more active participation in the resettlement activities and development of Regional protection programmes\(^22\).

- Member States should use to the (asylum) funds, specially the new Asylum and Migration Fund (AMF) which will become the principal instrument for allocation of EU funding in the field of asylum and migration, to improve the quality of their asylum and reception systems even through transnational initiatives, as well as to improve practical cooperation at EU level and show solidarity with those MS that need it most\(^23\).

- Since post-Lisbon Treaty member states are not obliged to share intelligence with the joint Situation Centre of the European Union External Action Service (SitCen), they must be

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\(^{22}\) Ibid.

encouraged to do so specially to ensure that no obvious warning signals are missed that could have prevented a terrorist attack\textsuperscript{24}.

- The need for a new strategic guidelines defining legislative and operational priorities for data protection in the EU, taking into consideration the role of the European Data Protection Board (EDPB) in applying such regulations in all member states\textsuperscript{25}.

- Preparing the new Internal Security Strategy (ISS) for the 2015-2019 period, taking into account the need for strengthening of the security and confidentiality of EU communication and logistics systems against third-party or foreign surveillance, while noting that the right of citizens to privacy and data protection and the right of access to documents and information are fundamental European values and rights\textsuperscript{26}.

- As National action has proved inadequate to tackle the growth in online banking fraud and identity theft, phishing of social network accounts, computer-crippling viruses and the sale of illicit pornographic content. EU member states shall intensify their collaboration in fighting cybercrimes, specially through the European Network and Information Security Agency (Enisa)\textsuperscript{27}.

- The need of the EU members to pursue a cohesive policy in conjunction with the EU Strategy towards the Eradication of Trafficking in Human Beings (2012-2016)\textsuperscript{28}.


\textsuperscript{27} “Europe regulations: Counting the cost of computer crime”, EIU ViewsWire (May 6, 2010). (accessed January 9, 2014).