



Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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MODULE 1

What is the Area of Freedom, Security and Justice?

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Reading Lecture 3

Area of Security

1. In this lecture you will learn about...

- components of the Area of Security,
- Security Union,
- European instruments of combatting criminality within the EU,
- network of agencies and
- overview of the criminality landscape within the EU.

Learning time - approximately 6 hours




2. Internal security of a nation state v internal security of the EU

Read the
introductory
analysis!

Turnbull-Henson: "The internal security of nation states, always a central concern of national policy making, has taken on a new political vitality in the post-Cold War years. The gradual disappearance of direct military threats to the states of Western Europe has refocused elite and public attention on the more pervasive issues of internal security and societal stability. This trend has been greatly reinforced by the internationalisation of many of the threats to real - or perceived - levels of internal security with West European



nations. Although the contemporary challenges to the internal security of national states are in an almost perpetual state of intensification and diversification, the capacity of national governments to respond has failed to develop with the same momentum, leading to a situation in which the boundaries of the state no longer correspond to the boundaries of the problem'. The growth of international organised crime, the consolidation of international terrorism and the ever-increasing phenomenon of illegal immigration have challenged the nation state's traditional conceptions of, and policy responses to, internal security."¹



Concept of national state is challenged: as a consequence of changing crime structures, globalization, terrorism, massive movement of people

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Sperling: "Geographic propinquity, porous borders, technological innovations, the convergence around the norms of political and economic openness and a rising dynamic density among the EU member states have progressively stripped away de facto sovereign prerogatives and eliminated the autonomy once afforded powerful states by exclusive territorial jurisdiction. The ease with which domestic disturbances are transmitted across national boundaries and the difficulty of deflecting those disturbances in the contemporary European state system underscore both the strength and vulnerability of the post-Westphalian state: the ever expanding spectrum of interaction provides greater levels of collective welfare than would otherwise be possible, yet the very transmission belts of exchange that facilitate those welfare gains serve as diffusion mechanisms handicapping the state's ability to inoculate itself against exogenous shocks or malevolent actors (Hanrieder 1978, Sperling 2003).

The perforated sovereignty of the post-Westphalian state has progressively erased the boundary between 'internal' and 'external' transactions and between 'internal' European Security and 'external' securities (Lutterbeck 2005). The escalating vulnerability of societies to criminal activity originating outside national territory was an unintended consequence or spill-over effect of the unimpeded flow of persons and goods within Europe occasioned with the Single European Act and the Schengen Agreement (Monar 2001). EU member states eventually recognised that if they were to defend against threats on a pan-European basis, the cost would be the partial abnegation of national sovereignty

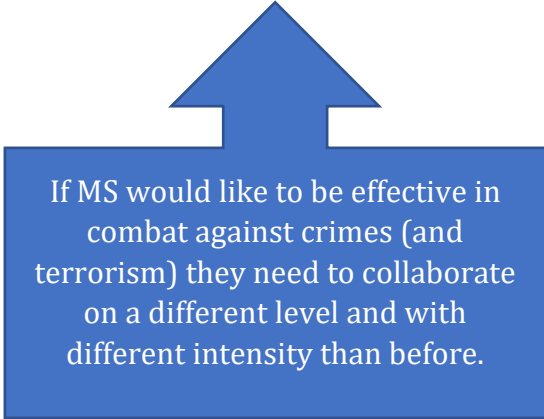
¹ Penny Turnbull-Henson: Negotiating the Third Pillar: The Maastricht Treaty and the Failure of Justice and Home Affairs Cooperation among Member States. Paper presented at the 5th Biennial European Community Studies Association Conference, May 29-June 1 1997, Seattle, Washington. http://aei.pitt.edu/2745/1/002723_1.PDF



with respect to policing, penal law, and judicial process. But only with the Treaty of Amsterdam (1997) did the member states commit to construct a European area of 'freedom, security and justice' and to accept an expanded EU role in realising it.

In short, the post-Westphalian evolution of the EU member states is both cause and symptom of the difficulty that the Europeans faced in coping effectively with transboundary crime (Sperling 2009). The policy and operational goals of closer cooperation in JHA do not constitute an unambiguously pure public good. Where the threats to law and order are purely domestic in origin and have no external ramification (e.g. domestic violence), it is purely private for that society and should provide sufficient incentives for government action. But as the threat increasingly acquires an external component with respect to the origin or consequence of criminal activity (e.g. money laundering), those threats take on an increasingly public component and present a potential collective action problem for the affected states. So long as the task of crime control and criminal prosecution retains an overwhelmingly national aspect, states will remain unwilling to countenance the surrender of significant national policing or judicial prerogatives. As these tasks took on a significant and manifestly public component, the member states haltingly confronted the problem of collective action and remained hesitant to lend the EU greater latitude in shaping common policies facilitating greater cooperation and effective collective action."²

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If MS would like to be effective in combat against crimes (and terrorism) they need to collaborate on a different level and with different intensity than before.

De Wyn Rees: "Security is the absence of threats to core values. During the Cold War, security in Europe was conceived in largely military terms: it was about the threatened use of military power in international relations. Security was usually assessed in negative terms as the absence of conflict between the continent's two military blocs. This traditional understanding of security focused on the threat of military force to sovereign states (national security). (...) The 1990s has witnessed the problem of organised crime being elevated to the status of a security threat amidst an environment in which crime has thrived. Freedom of movement among the Fifteen European Union countries has encouraged the spread of drug trafficking, trading in black market goods and money

² James Sperling (2013) EU police and judicial cooperation before the Treaty of Lisbon: strengthening of the weakest link? *European Security*, 22:2, 202-229, DOI: 10.1080/09662839.2012.727182



laundering. In the eastern half of Europe, the collapse of the pro-Moscow regimes created instability and vacuums that organised crime groups were able to exploit. (...) A European security discourse has been applied to the issue of organised crime, which has convinced publics of a threat both to national and continental political structures. The discourse has been constructed by a variety of actors. Particularly influential in the process have been law enforcement and intelligence agencies, Member States. These agencies have sought to re-direct their energies since the end of the Cold War. Such agencies have helped to shape the perceptions of national governments, which have in turn, fed into the generation of perceptions at the level of European decision-makers. The fact that this process of securitisation has taken place with the ending of the Cold War has excited the allegation that a new 'threat' has been identified and shaped in order to replace the position occupied by the former Soviet Union and the Warsaw Pact. Securitising the issue of organised crime through an elite-driven process could be seen as a way of ensuring that the material resources and the political will mobilised against the eastern bloc was not dissipated in the 1990s. Such a process has arguably provided a new rationale for the development of structures of cooperation and integration on the European continent once the unifying threat of communism had disappeared.”³

Security is the absence of threats to core values.
(De Wyn Rees)

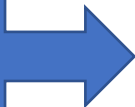


3. EU Security Union Strategy – Europe that protects (2020-2025) I.

Read the selected parts of the Communication!

On 24 July 2020, the Commission presented its new EU Security Union Strategy for the period 2020-2025. It lays out the tools and measures to be developed over the next five years to ensure security in both the physical and the digital environment. The Strategy was presented in form of a Communication⁴ to the European Parliament, the European Council, the Council, the European Social and Economic Committee, and the Committee of the Regions. It substantiates the political guidelines of Commission President Ursula von der Leyen, who stressed improvements in **cross-border cooperation**

After many years of development, still, we need improvement



³ De Wyn Rees: Organised Crime, Security and the European Union. Draft Paper for ESRC Workshop, Grenoble. 2002, ecpr.eu; <https://ecpr.eu/Filestore/PaperProposal/3d3d5ad1-a40c-46aa-b55b-379638e700a5.pdf>

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1596452256370&uri=CELEX:52020DC0605>



to tackle gaps in the fight against serious crime and terrorism in Europe as one of the main goals during her term of office.

The new Strategy follows up the EU Agenda on Security as set out by the previous Commission under President Jean-Claude Juncker.^{5 6}

“The safety, prosperity and well-being of citizens depend on being secure. The threats to that security depend on the extent to which their lives and livelihoods are vulnerable. The greater the vulnerability, the greater the risk that it can be exploited. Both vulnerabilities and threats are in a state of constant evolution, and the EU needs to adapt.

Our daily lives depend on a wide variety of services – such as energy, transport, and finance, as well as health. These rely on both physical and digital infrastructure, adding to the vulnerability and the potential for disruption. During the COVID-19 pandemic, new technologies have kept many businesses and public services running, whether keeping us connected through remote working or maintaining the logistics of supply chains. But this has also opened the door to an extraordinary increase in malicious attacks, attempting to capitalise on the disruption of the pandemic and the shift to digital home working for criminal purposes. Shortages of goods have created new openings for organised crime. The consequences could have been fatal, disrupting essential health services at a time of the most intense pressure.

The ever-increasing ways in which digital technologies benefit our lives has also made the cybersecurity of technologies an issue of strategic importance. Homes, banks, financial services and enterprises (notably small and medium enterprises) are heavily affected by cyber-attacks. The potential damage is multiplied still further by the interdependence of physical and digital systems: any physical impact is bound to affect digital systems, while cyber-attacks on information systems and digital infrastructures can bring essential services to a halt. The rise of the Internet of things and the increased use of artificial intelligence will bring new benefits as well as a new set of risks.

What are the very reasons of the need for this new Agenda? (based on the text)

HINT: three main reasons

Our world relies on digital infrastructures, technologies and online systems, which allow us to create business, consume products and enjoy services. All rely on communicating and interaction. Online dependency has opened the door to a wave of cybercrime. ‘Cybercrime-as-a-service’ and the underground cybercriminal economy give easy access to cybercrime products and services online. Criminals quickly adapt to use new technologies to their own ends. For example, counterfeit and falsified medicines have

⁵ <https://eucrim.eu/news/commission-new-eu-security-union-strategy/>

⁶ https://ec.europa.eu/commission/presscorner/detail/en/FS_19_6194



infiltrated the legitimate supply chain of pharmaceuticals. The exponential growth of child sexual abuse material online has shown the social consequences of changing patterns of crime. A recent survey showed that most people in the EU (55 %) are concerned about their data being accessed by criminals and fraudsters.



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October 2019

It is the most basic and universal of rights to feel safe and secure in your own home. Europeans rightly expect their Union to provide that for them. The Juncker Commission made security a top priority from day one. We have taken decisive action to deny terrorists the means to carry out attacks, share intelligence between Member States, protect Europeans online, and better manage our borders.



"Combating cross-border crime and terrorism is a common European responsibility. We need to crack down on organised crime, such as human trafficking, smuggling and cybercrime. We must tackle corruption; and we must fight terrorism and counter radicalisation – all the while guaranteeing fundamental rights and values, including procedural rights and the protection of personal data."

Then-Candidate for European Commission President, Jean-Claude Juncker, Political Guidelines for the next European Commission, 15 July 2014

The global environment also accentuates these threats. Assertive industrial policies by third countries, combined with the continued cyber-enabled theft of intellectual property, are changing the strategic paradigm for protecting and advancing European interests. This is accentuated by the rise of dual-use applications – making a strong civilian technology sector a strong asset for defence and security capability. Industrial espionage has a significant impact on the EU's economy, jobs and growth: cyber theft of trade secrets is estimated to cost the EU €60 billion. This calls for a thorough reflection of how dependencies and the increased exposure to cyber threats affect the EU's capacity to protect individuals and businesses alike.

The COVID-19 crisis has also underlined how social divisions and uncertainties create a security vulnerability. This increases the potential for more sophisticated and hybrid attacks by state and non-state actors, with vulnerabilities exploited through a mix of



cyberattacks, damage to critical infrastructure¹⁵, disinformation campaigns, and radicalisation of the political narrative.

At the same time, more long-established threats continue to evolve. There was a downward trend in terrorist attacks in the EU in 2019. However, the threat to EU citizens of jihadist attacks from or inspired by Da'esh and al-Qaeda and their affiliates remains high. In parallel, the threat of violent right-wing extremism is also growing. Attacks inspired by racism must be a cause for serious concern: the deadly anti-Semitic terror attacks in Halle were a reminder of the need to step up the response in line with the 2018 Council Declaration. One in five people in the EU are very worried about a terrorist attack in the next 12 months. The vast majority of recent terrorist attacks were “low tech” attacks, lone actors targeting individuals in public spaces, while terrorist propaganda online took on a new significance with the live streaming of the Christchurch attacks. The threat posed by radicalised individuals remains high – potentially bolstered by returning foreign terrorist fighters and by extremists released from prison.

The crisis has also shown how existing threats can evolve in new circumstances. Organised crime groups have exploited shortages of goods providing an opening to create new illicit markets. The trade in illicit drugs remains the largest criminal market in the EU, estimated at a minimum retail value of €30 billion per year in the EU. Trafficking in human beings persists estimates show an annual global profit for all forms of exploitation of almost €30 billion. International trade in counterfeit pharmaceuticals reached €38.9 billion. At the same time, low rates of confiscation allow criminals to continue expanding their criminal activities and infiltrating the legal economy. Criminals and terrorists find it easier to access firearms, from the online market and through new technologies such as 3-D printing. Use of Artificial Intelligence, new technologies and robotics will further increase the risk that criminals exploit the benefits of innovation for malicious ends.” (Communication Part II.)

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The European Union is deeply involved in peace keeping, diplomacy, trade and development aid throughout the world. And through its European neighbourhood policy, it promotes cooperation with countries close to its borders. The European Security and Defence Policy aims to strengthen the EU's external ability to act through the development of civilian and military capabilities in Conflict Prevention and Crisis Management. To influence policies violating international law or human rights, or policies disrespectful of the rule of law or democratic principles, the EU has designed sanctions of a diplomatic or economic nature.

The establishment and maintenance of the Area of Security within the EU is **the very essential aim of achieving a high level of security**. The Area of Security within the AFSJ includes the **internal** element of security, while the **external** security issues are part of the common foreign affairs and security policy of the EU. In case of EU measures that should address both the internal and the external aspects of security (e.g. combat against terrorism or digital criminality), synchronization of exercising the different competences would be necessary – as you could see in the introductory remarks of the Communication.

According to the TFEU, the leading concept is the combat against crimes within the Area of Security (AFSJ). The EU has its competences to issue legal norms in order to achieve more effective and coordinated actions of the MS against crimes, and the EU itself has the entitlement to launch its own measures in this regard. Article 67 Subsection 3 describes the tools of how to achieve the high level of security: the EU

- is entitled to launch measures to crime prevention (1) and
- to combat crimes (2),
- it can orchestrate the coordination between the MS competent authorities (law enforcement, judicial authorities) (3),
- it has the entitlement to issue legal norms which enhance and enforce mutual recognition between the MS with regard to their national legal decisions (4) and
- it has the competence to issue legally binding norms in order to approximate the different (criminal) legal systems of the MS (5).



Learn it: the types of measures (or tools) for the EU to act in the Area of Security.



4. SOCTA 2017⁷

Check the study!

The SOCTA 2017 is the most comprehensive study of serious and organised crime in the EU ever undertaken. It is the outcome of a detailed analysis of the threat of serious and organised crime facing the EU providing information for practitioners, decision-makers and the wider public. As a threat assessment, the SOCTA is a forward-looking document that assesses shifts in the serious and organised crime landscape.

<https://www.europol.europa.eu/activities-services/main-reports/european-union-serious-and-organised-crime-threat-assessment-2017>

Answer the questions!

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1. What is organised crime? (who, how, what)
2. What does poly-criminality mean?
3. What does “crime as service” mean?
4. What is the difference between engines of organized crime and drivers of organized crime?
5. Match all the following!

ENGINES of ORGANIZED CRIME	DRIVERS of ORGANIZED CRIMES

- a. money laundering
 - b. geopolitical context
 - c. technology
 - d. document fraud
 - e. online trade in illicit goods and services
 - f. legal business structures
6. How has technological development changed the criminal landscape for drug crimes?
 7. What is “social engineering” in the context of organised criminality?
 8. What is the difference between payment order fraud and mass marketing fraud?
 9. How can a terrorist group be linked to organized crime?

⁷ <http://eta.bibl.u-szeged.hu/2292/>



5. IOCTA 2020

Watch the video!

Watch the video on launching the Internet Organised Crime Threat Assessment (IOCTA) Report in 2020!

<https://www.europol.europa.eu/activities-services/main-reports/internet-organised-crime-threat-assessment-iocta-2020>

Discussion: What are the main findings of IOCTA 2020?

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6. EU Security Union Strategy – Europe that protects (2020-2025) II.

Compare & analyse!



Explain this visual summary – based on your fresh gained knowledge on the criminal landscape and threats – the structure and the justification (subsidiarity, proportionality) of this strategy?



7. Questions for review

1. What is the main difference between the internal and external concept of security?
2. What was the first subject of securitization within the EU (EC)?
3. List the legal tools of the EU for achieving the high level of security within AFSJ!
4. What is the European security ecosystem?
5. What do mean “crimes as service” and “social engineering”?

References:

Penny Turnbull-Henson (1997) *Negotiating the Third Pillar: The Maastricht Treaty and the Failure of Justice and Home Affairs Cooperation among Member States*. Paper presented at the 5th Biennial European Community Studies Association Conference, May 29-June 1 1997, Seattle, Washington. http://aei.pitt.edu/2745/1/002723_1.PDF

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https://eeas.europa.eu/topics/common-foreign-security-policy-cfsp/420/common-foreign-and-security-policy-cfsp_en; The 2009 Lisbon Treaty established the EU's diplomatic arm, the European External Action Service (EEAS) under the authority of the High Representative of the Union for Foreign Affairs & Security Policy.

https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1379

<https://www.pubaffairsbruxelles.eu/eu-security-union-strategy-connecting-the-dots-in-a-new-security-ecosystem-eu-commission-press/>

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