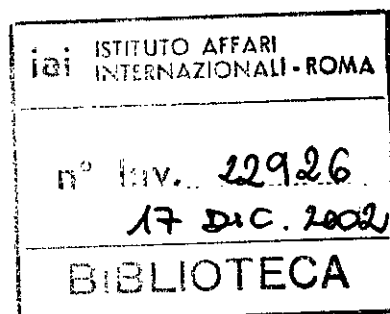


**LIBERTA', SICUREZZA E GIUSTIZIA:
LE SFIDE DELL'ALLARGAMENTO**
Istituto affari internazionali (IAI)
Commissione europea. Rappresentanza in Italia
Catania, 13/XII/2002

- a. Programma
1. "EU enlargement : policing the new borders"/ Eberhard Bort (18 p.)
 2. "The justice and home affairs acquis and the enlargement: a view from Poland"/ Andrzej Glowacki (11 p.)
 3. "The justice and home affairs acquis and the enlargement: a view from inside"/ Jörg Monar (14 p.)





ISTITUTO AFFARI INTERNAZIONALI



COMMISSIONE EUROPEA
RAPPRESENTANZA IN ITALIA



E COMPAGNIA DI SAN PAOLO

conferenza

**“LIBERTÀ, SICUREZZA E GIUSTIZIA:
LE SFIDE DELL'ALLARGAMENTO”**

VENERDÌ 13 DICEMBRE 2002



AULA MAGNA, RETTORATO, UNIVERSITÀ DI CATANIA
CATANIA - PIAZZA DELL'UNIVERSITÀ, 2

9.00 SALUTI DI APERTURA

Gianni Bonvicini, Direttore, Istituto Affari Internazionali,
Roma

Salvatore Cuffaro, Presidente della Regione Sicilia

Ferdinando Latteri, Rettore, Università degli Studi di
Catania

Enzo Sciacca, Preside della Facoltà di Scienze Politiche,
Università degli Studi di Catania

9.30 INTERVENTI INTRODUTTIVI

Antonio D'Aquino, Assessore regionale agli Enti Locali

Nello Musumeci, Presidente della Provincia di Catania

10.00 PRIMA SESSIONE

*"La Cooperazione Giudiziaria e di Polizia nell'Europa del
dopo Allargamento"*

PRESIEDE: Fulvio Actinà, Dipartimento di Studi Politici,
Facoltà di Scienze Politiche, Università degli Studi di Catania

INTERVENTI:

Eberhart Bort, Institute of Governance, University of
Edinburgh

Giovanni Grasso, Facoltà di Giurisprudenza, Università
degli Studi di Catania

DISCUSSANTS:

Francesca Longo, Dipartimento di Studi Politici, Facoltà di
Scienze Politiche, Università degli Studi di Catania

Ferruccio Pastore, Centro Studi di Politica Internazionale, Roma

Lorenzo Salazar, Rappresentanza Italiana presso l'UE,
Bruxelles

11.30 Coffee Break

12.00 SECONDA SESSIONE

*"L'Acquis Communautaire della Politica di Giustizia e
Affari Interni e l'Allargamento"*

PRESIEDE: Fabrizio Grillenzoni, Direttore, Rappresentanza
della CE in Italia

INTERVENTI:

Andrzej Glowacki, Docente Jean Monnet, Università
di Szczecin, Polonia

Jörg Monar, European Institute, Sussex University

DISCUSSANTS:

Dario Pettinato, Dipartimento di Studi Politici, Facoltà di Scienze Politiche, Università degli Studi di Catania

Wyn Rees, School of Politics, Università di Nottingham

Lucia Serena Rossi, Facoltà di Scienze Politiche, Università degli Studi di Bologna

13.30 **Buffet Lunch**

15.30 **TAVOLA ROTONDA**

"Costruire un'Area di Libertà, Sicurezza e Giustizia nell'Europa del dopo Allargamento: Nuove Policies per una Nuova Polity"

PRESEDE: Ettore Greco, Vice Direttore,

Istituto Affari Internazionali, Roma

INTERVENTI:

Filadelfio Basile, Rappresentante supplente del Senato alla Convenzione

Luigi Bobbio, Senatore, Capo gruppo AN, Commissione Antimafia e Commissione Giustizia

Gaetano Pecorella, Presidente della Commissione Giustizia della Camera dei Deputati

Elisabetta Rosi, Magistrato, Ufficio del Massimario, Corte di Cassazione

Ernesto U. Savona, Professore Università Cattolica, Milano; Direttore, Transcrime, Università degli Studi di Trento

17.30 **Conclusione dei lavori**

Nell'ambito dei lavori della Convenzione sul futuro dell'Unione Europea, incaricata di formulare le ipotesi di riforma dei Trattati che saranno sottoposte alla prossima Conferenza Intergovernativa, l'Istituto Affari Internazionali e la Rappresentanza della Commissione Europea in Italia hanno il piacere di invitarLa ad una conferenza sulla costruzione di un'area di libertà, sicurezza e giustizia in relazione al processo di allargamento in corso.

La conferenza è parte del programma di studi "Europa 2004: allargamento e riforme istituzionali dell'Unione Europea" condotto dallo IAI.

CON IL PATROCINIO DI:

Regione Sicilia
Provincia di Catania

CON IL SOSTEGNO DI:

Università di Catania

- Facoltà di Scienze Politiche
- Centro europeo Jean Monnet "Euromed",
Dipartimento di Studi Politici

Croce Rossa, Catania

iai ISTITUTO AFFARI
INTERNAZIONALI - ROMA

n° Inv. 22926
17 DIC. 2002

BIBLIOTECA

Segreteria organizzativa

Valentina Barbagallo

Centro europeo Jean Monnet "Euromed"

Dipartimento Studi Politici, Facoltà di Scienze Politiche

Università di Catania

Via Vittorio Emanuele, 49 - 95131 Catania

Tel./Fax +39 095 7347256

email: barbav@unict.it

Katia Marchesi

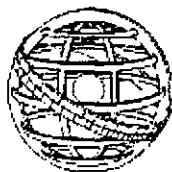
Istituto Affari Internazionali

Via A. Brunetti, 9 - 00186 Roma

Tel. +39 06 3224360 Fax +39 06 3224363

E-mail: k.marchesi@iai.it

R.S.V.P. Per ragioni di sicurezza si prega di dare conferma della partecipazione e di esibire l'invito all'ingresso



Istituto Affari Internazionali

“EU Enlargement - Policing the New Borders”

***By Eberhard Bort
University of Edinburgh***

Prima versione – da non citare

Paper presentato in occasione della conferenza

“Libertà, Sicurezza e Giustizia: le Sfide dell'Allargamento”

Catania, 13 dicembre 2002

I Introduction

By 1 May 2004, ten new member states are expected to join the European Union, pushing the eastern frontier of the EU further eastward – by roughly 500 miles in the case of Poland. While it was clear after 1989, when the Iron Curtain was dismantled, that the present eastern frontier of the EU would be a temporary one, and that it would, within a decade or so (as anticipated then), be transformed into an internal frontier, sections of the prospective eastern frontier exude an air of greater permanence. The new eastern EU frontier will still leave a gap – or a 'grey zone' – between the EU and Russia. Romania and Bulgaria are earmarked for joining the Union by 2007; Turkey is a candidate, but a contentious one.¹ No perspective is presently given for Moldova, the Ukraine and Belarus. One part of the former Yugoslavia – Slovenia – will be in by 2004; Croatia might prove eligible before too long; but what about Bosnia, Serbia and Montenegro, Macedonia, Kosovo and Albania?. Where are the borders of Europe? Where the boundaries for police co-operation?

New 'threats' – organised crime and illegal migration – seemed to replace the Cold War military confrontation, demanding new responses in law enforcement and setting the agenda for police co-operation inside the EU and across its borders. The Balkans on the south-eastern, and Kaliningrad on the north-eastern frontier are regarded as be troublespots of particular concern when it comes to border management and the fight against cross-border crime

The 1990 were a decade of profound change. The implementation of the Schengen Accords (1986 and 1990) as from March 1995 were supposed to abolish internal controls in 'Schengenland' and to compensate for the demise of border controls at the internal frontiers by strengthening and harmonising controls at the external EU frontier. Police co-operation developed from traditional bilateral agreements and informal networks to the current plans of establishing a joint European border police force by the year 2007.

This paper will look at the way the eastern external frontier of the EU and police co-operation along it have been transformed since the early 1990s and to which degree the future eastern frontier has been prepared to become the external Schengen frontier of an enlarged EU.²

I Transfrontier Police Co-operation

Police co-operation across national boundaries has seen decades of "uneven development" (Walker 1998:165) in Western Europe. Progress has been slow and cumbersome, for three reasons.

- The development of police co-operation has been "unsteady" because it touches upon "an area which was one of the most traditional and closely guarded preserves of the state" (Walker 1998:169). Enforcing the law within its legal and territorial boundaries lies at the core of the doctrine of sovereignty. Co-operation between law enforcement agencies across international frontiers is regarded as a highly sensitive matter as it affects definitions of national sovereignty (Wolter 2000:77).
- Many different agencies are involved in policing - particularly policing frontiers: national police forces, customs officers, immigration services, the diplomatic service, the armed forces (Bigo 2002:215) _ on the national level, with different remits from country to country.
- Different legal systems set different frameworks within which law enforcement agencies have to operate.

Long before it was formalised and became an issue of European policy making, informal police contacts were developed across frontiers, mostly based on personal acquaintance and networks (Anderson et al, 1996). Exchange of information through Interpol remained rudimentary (Anderson 1989). Often these contacts and collaborations were based on personal trust – and they were not always fully covered by legal provisions. Practices developed which were not in accordance with formal agreements (Anderson et al. 1995, Santiago 2000). But with the dynamic evolution of European integration in the 1980s and early 1990s, policing across boundaries and co-operation between different national police forces arrived firmly on the agenda. Trevi (1975) was a first milestone: an intergovernmental forum to develop counter-terrorism

and, later, anti-drug and organised crime strategies, but also emphasising police training and technology. From Trevi, the path led via Palma to the negotiations of the Schengen convention.

When the 1985 and 1990 Schengen agreements came into force in 1995, they were intended to cope with the effects of dismantling identity checks on frontiers between member states by consequent strengthening and harmonisation of checks at the external frontier. Since free movement of persons also implied the free movement of criminals, persons wanted for serious criminal offences or persons in need of protection or *personae non grata* were reported through the Schengen Information System (SIS), available on-line in all the member states and at the major ports of entry to the EU. According to Evidence given to the House of Lords (Select Committee on European Communities Sub-Committee F, 9 January 1999), by 1999, about 45,000 on-line access points were established and about 14 million records stored. A rapid response system (the national *Sirène* offices) was put in place in member states to act in case of any transfrontier criminal threat, or in case additional information was required about persons or about the legality of a request. An upgraded system (SIS II) was commissioned at the Tampere summit of 1999, to allow the incorporation of the accession states. It will open the way for incorporating "identification material" (fingerprints, photographs, perhaps even DNA) as well as "intelligence markers" (covert information), and a number of new agencies (Europol and Eurojust) will get access.³

In tandem with the Single Market, the remit of police co-operation was extended beyond the exchange of information and the gathering of intelligence into the operational realm (den Boer 1998; 2000; Walker 1998, 1999). Schengen was formally incorporated and integrated into the *acquis communautaire* in the Amsterdam Treaty of 1997, introducing the so-called "area of freedom, security and justice".

This system inevitably had an effect on the neighbouring states of the European Union. Millions of people who could previously enter states without a visa found this was now a requirement because the Schengen agreements included a visa policy common to all Schengen states. Criminal law enforcement co-operation remained on a bilateral basis between member and non-member states of the EU, but the latter became aware of a new system of closer co-operation between the member states in this domain, reinforced by a new non-operational European police office, Europol, in The Hague (Santiago 2000). Europol's mandate is to support national law enforcement agencies in combating the following crimes: drug trafficking, illegal immigration networks, vehicle trafficking, trafficking in human beings (including the 'vice trade' and child pornography, forgery of money and other means of payment, trafficking in radioactive and nuclear substances, and terrorism – particularly after 11 September 2001.

Since 2000, Europol is authorised to sign co-operation agreements with non-EU states (Europol 2000),⁴ A Spanish-Belgian initiative, however, to widen the remit of Europol and give it operational powers was rejected by the European Parliament in June 2002. It would further reduce, the majority of MEPs argued, the already limited democratic control exercised by national parliaments. The Parliament recommended, instead, the integration of Europol into the Third Pillar (Justice and home Affairs) of the EU (Hausmann 2002).

Formal police co-operation at the external frontiers of the EU falls into two categories:

- Exchanges of liaison officers (Art.7 Schengen Convention), with the purpose of providing assistance and "permanent cooperation" between the member states.
- Bilateral co-operation agreements (Art.47 Schengen Convention) to combat illegal immigration and organised crime. (Commission 2002)

At the Tampere summit, the lack of progress in police co-operation was acknowledged. Among the considerations for improvement were "greater operational powers" for Europol. The Council also set up a Police Chiefs Task Force in which the Police Chiefs of the Member States have since had a forum for discussion and coordination.⁵ And it initiated a European Police College or Academy (Council 2001), which was eventually founded in 2001.⁶ Its remit is the joint training of senior police officers, particularly in cross-border co-operation and combating organised crime. It is also to co-operate with existing police academies and associations like the Middle European Police Academy (MEPA, founded in 1993), the Association of European Police Colleges (AEPC) and the Association for European Law Enforcement Co-operation (ELEC).

As part of the bilateral arrangements for police co-operation, at the German-Polish and the German-Czech border, a continuous exchange of information, common training programmes and daily exchange of notes had become practice by the mid 1990s (Bort 2002). In 1996, the European Commission started to sponsor joint seminars and a placement scheme for EU border police, aiming at a more integrated network of co-operation (Molle 1996). By the late 1990s, joint patrols and common border stations between Germany and Poland and Germany and the Czech Republic were introduced. Liaison officers were sent from Western agencies to the candidate countries (and beyond).

Financial help for the modernisation of police services was substantial. Poland alone received, between 1997 and 2001, nearly 400 mill for surveillance, computer and communication technology (Gnauck 2001).

Yet it was not only the EU, and in particular the EU states, who became active in police co-operation projects. In 1995, more than five years before the EU launched, half-heartedly, its Police Academy, the International Law Enforcement Academy (ILEA) was founded in Budapest, and the US State Department has since heavily invested in police training in Hungary (Bort 2002). Another US initiative is the Southeast European Cooperative Initiative (SECI), with its operative centre in Bucharest, where one police officer and one customs officer of each member state collaborate.⁷ It started its work in November 2001 and supports national police forces. It has also established a Task Force on Human Trafficking (Bundeskriminalamt 2001b). Another US operator in the field is 'Project Harmony' which organises exchange and training programmes between the US and Armenia, Azerbaijan, Georgia, Russia and the Ukraine.

But the 1990s were not just characterised by a harmonisation and strengthening of external EU border controls. Upgrading border checkpoints, building new crossings, implementing new technology – all meant improvements in dealing with the increasing cross-border traffic. Yet still, there lingered the doubt as to the size of the investment into a border which was, if the Western rhetoric was anything to go by, very soon to become an internal Schengen frontier.

Simultaneously, along the entire eastern frontier of the EU, cross-border Euroregions were established, promoting institutionalised co-operation, economically, culturally and in the field of security (Raich 1995, Bort 1998:98-100). The experience collected since the 1950s and 1960s in cross-border co-operation at the internal frontiers of the EEC (particularly along Germany's western borders) seemed to be replicated at the EU's eastern frontier. This, in turn, was not uncontested, as it could be seen as a threat to the only recently regained sovereignty of the CEECs (Bort 1997).

On the threshold of EU enlargement, the situation in police co-operation is complex. Not only are a diversity of national agencies (operating under different national legal frameworks), involved, civil and military law enforcers, alongside with fledgling transnational police structures like EUROPOL and a plethora of bilateral and multilateral networks and, increasingly, private operators, in an environment where internal and external security are mixed up in the same discourse.

"Policing by network, policing by remote control: these are the new forms of control and surveillance in European societies" (Bigo 2002:213). Didier Bigo distinguished four varieties of networks operating currently:

- Networks of administrative bodies in which customs officers, immigration offices, consulates and even private transport companies and private security companies join forces with the national police forces and gendarmes;
- Networks of information technology, with the creation of national or European data files on wanted or missing persons, on those who have been denied residence, expelled, turned back at the frontier or refused asylum (SIS, Interpol and Europol files);
- Networks of liaison officers who have been sent abroad to represent their governments and enable information exchange;
- Networks of semantics in which new doctrines and new concepts on conflict and political violence are developed. (Bigo 1999:69-70)

Some practical examples would include:

- At the first EU meeting of National Police Commissioners in Brussels in May 2001, high-ranking police and justice officials said an EU rapid reaction police force would be up and running within two years. Firm proposals were adopted by the meeting of EU heads of state in Gothenburg in June of that year. The target, accordingly, is to have 5,000 police from the member states available to work in areas of crisis, such as Kosovo and East Timor. The EU's Foreign Policy chief Javier Solana announced a Police Unit at the EU's council secretariat as part of the new police-military structure that includes the military rapid reaction force.
- In mid September 2002, the Irish gardaí hosted a conference, attended by police experts from other European Union members states, Russia, Hungary, the US and Canada. They were joined by representatives from the European Commission and Europol as well as specialist garda units, including the Garda National Drugs Unit, the Criminal Assets Bureau, the Special Detective Unit and the Garda Bureau of Fraud Investigation.
- The theme of the four-day conference was "An intelligence-led approach to targeting and disrupting the use of drug trafficking and money laundering as a means of funding terrorism". It was organised under the EU Budget Line programme and jointly funded by the Irish Department of Justice and the EU. International co-operation is crucial in targeting drug trafficking and money laundering by terrorists, and conferences such as this one are crucial for establishing networks for the sharing of information.
- The UK decided in October 2002 to have an elite 'flying squad' by March 2003, based at Dover, but with a remit to tackle illegal immigration at any EU border (Harris 2002; Dillon 2002). This proposal of a 'Mobile Detection Unit' - which would intercept illegal migrants before they reached British territory and were able to apply for asylum - is part of the EU efforts discussed at the Seville summit in June 2002 to strengthen border controls and increase security co-operation between member states.
- Vice versa, a new UK Crime (International Co-operation) Bill aims at permitting foreign police and customs officers to run surveillance operations in Britain, for up to five hours without the involvement of British police, afterwards working alongside their British colleagues. The new rules, agreed between the EU states (with the exception of Ireland) were designed to allow foreign police to track suspects across frontiers - yet they do not include the right to make arrests (Burrell 2002b).

The Spanish presidency of the EU in the first half of 2002 made the fight against illegal migration a top priority. For the Spanish Prime Minister, José Maria Aznar, international terrorism and "intensifying the struggle against illegal immigration" were the two dominant challenges for the EU (Woodworth 2002).

A joint border police, shared visa standards, the development of a common visa database and increased powers for Europol were part of a Spanish 'action plan' discussed by a meeting of the EU Ministers of the Interior at Santiago in February 2002 (Bolesch 2002a). Those plans are particularly supported by German politicians and police representatives, while Sweden and Finland are sceptical, and Italy expressed its preference for bilateral arrangements (Ridderbusch 2002).

Brandenburg's Justice and European Affairs Minister Kurt Schelter - one of the German architects of Schengen - explicitly supported the idea of a common European border police. He also pointed out that police co-operation between Germany, the EU and the neighbouring applicant countries still needed "completion" - synchronised, spy-proof communication frequencies and the networking of search computers were only two measures he mentioned (Heinen 2002). For the EU Commission, Justice Commissioner Antonio Vitorino introduced a strategy for a joint border police or, as the Commission calls it, a "European Corps of Border Guards" (Council 2002), beginning with a concept he called "integrated border protection" - the border authorities of the EU working together in a common body for risk assessment, coordination of measures in times of crisis and working towards harmonised methods and techniques. The common European border force would start operating at airports, the route most used by

illegal immigrants.⁸ Vitorino expected the commonly financed body to be in place by 2007 (Bolesch 2002b). And from 2008, the European satellite surveillance system 'Galileo' is supposed to keep a close eye on Europe's borders (Ridderbusch 2002).

Tony Blair's and José Maria Aznar's plan of penalising countries of origin and transit countries which did not secure their borders sufficiently – the ugly 'fortress Europe' raising its head again – was rejected at the Seville summit. But neither was there a concrete decision about the joint border police project (Middel 2002a).

According to the *Presidency Conclusions* (Council 2002), the following measures were decided at Seville: implementation before the end of 2002 of "joint operations at external borders", the "immediate initiation of pilot projects open to all interested Member States" and the "creation of a network of Member States' liaison officers." The following measures should be undertaken before June 2003: "preparation of a common risk analysis model...to achieve common integrated risk assessment", "establishment of a common core curriculum for border guard training and consolidation of European provisions concerning borders", and "a study by the Commission concerning burden-sharing between Member States and the Union for the management of external borders."

In this maze of police co-operation within the EU, and "asymmetrical cooperation with CEECs", Didier Bigo defined three types of police co-operation already existing among EU members as "operational, technical, and institutional" (Bigo 2002:219). The first is the most traditional way of co-operation, bilateral and dating back to the very foundation of police forces in the nineteenth century: a plethora of bilateral agreements across Europe has been part of the process of Europeanisation, now extending towards the CEECs. Technical co-operation has been a phenomenon mainly connecting European countries with their ex-colonies and other Third World countries. Bigo points out how different technical and training standards and concepts (Interpol, Europol, English community policing, German information technology or Italian anti-Mafia methods) compete for adoption in CEECs and sometimes sail pretty close to notions of "neo-colonialism" (Bigo 2002:220, 224). Institutional co-operation, finally, is still in its infancy, and it is a contentious issue. In the pre-accession pact on combating organised crime, six criteria for the CEECs were laid down:

- (1) an efficiently structured police organisation with all necessary powers;
- (1) qualified personnel and technical equipment needed to combat crime;
- (2) an appropriate legal system and sufficient legal grounding;
- (3) rigorous gun legislation;
- (4) infallible protection of computer data.

In other words, they are subjected to a series of criteria that would make them models of behaviour even in comparison to established democracies. In so doing, EU members assume that the problems of transition and of adapting the police forces and various security agencies have already been solved. (Bigo 2002:225).

Western police forces and authorities are willing to impose criteria and to give advice, but they lack trust and "are not prepared to work on a reciprocal basis." Institutional co-operation thus takes on the characteristics of an "unequal relationship" (Bigo 2002:226).

III Combating Organised Crime

The threat posed by cross-order crime is by no means clearly defined or universally agreed. How big the threat of organised cross-border crime really is, is "a matter of judgement rather than fact". It is noteworthy, though, that a survey of crime statistics in Central and East European states revealed, despite the *proviso* of their actual accuracy, that "crime rates in the post-communist states have remained still considerably below those of many leading Western states" (Holmes 2001).

Sometimes one cannot but feel that the campaign against organised crime has had to serve as a surrogate for the Cold War enemy which had vanished after the fall of the Wall: "The defeat of communism has created a 'threat vacuum' that has given rise to a search for new enemies" (Esposito 1994:19). The police, Peter Cullen has argued, "have an obvious institutional interest in painting the picture blacker than the reality" (Cullen 1997:5). The discourse on organised and cross-border crime has undoubtedly been instrumentalised by law enforcement authorities (Busch 1992). In Germany it was used "to endorse the 'modernization' and 'professionalization' of the German police force and to legitimize the extension of its arsenal of legal investigative tools to include, for example, electronic surveillance" (von Lampe 1995:2). Didier Bigo has repeatedly argued that

Security agencies do not simply respond to threats; they take part in creating them by objectifying them in their routine work, in the way they put their statistics together, in the hierarchy given to different dangers, in the priorities they set, in the technical solutions available, in the know-how they think they possess. (Bigo 2002:228).

Yet, that is not to say that there is no threat from cross-border crime. Leslie Holmes has argued that, "at their most extreme, substantial rises in the proportion of illegality in international economic activity can destabilise national economies"(Holmes 2001:193). The rise in internal and cross-border crime in Eastern Europe, and particularly in the countries of the former Soviet Union, can be pinned down to the difficult transitional situation in these countries: post-communist states attempting, in Claus Offe's term, a "triple transition": the rapid and simultaneous transformation of their political systems, their economic systems, and their boundaries and identities (Offe 1996).

This "triple transition" has been grafted upon a pre-1989 experience under communism, where corruption and dodging the state were part of the political culture, "creating an environment of institutionalised illegality" (Galeotti 1995:1). Economic decline had long laid the foundations for a shadow economy, before the fraught transformation into market economies provided new opportunities for criminals to exploit deficiencies in inadequately-regulated markets which could not match demand and supply. Speculations go as far as to claim that 70 % of the Russian economy is in the hands of East-European mafias (Kahlweit 2002). Yet this is not just an internal problem of the post-communist countries. Europol's estimate speaks of "at least 80 organised crime groups with about 800 criminals" who act within the European Union (Europol 2001).⁹ There seems to be wide-spread interaction between organised criminals in post-communist states and established criminal structures in the West, as "all sorts of crime can cross borders" (Galeotti 1995:6)

- **street prostitution** increased visibly on the German-Polish and German-Czech borders, as well as on the Austro-Czech and Austro-Slovak borders (Brandenburg 1998);
- **art theft** has become an increasingly transnational phenomenon;
- **money laundering**, one of the chief operations of transnational crime, has been – some sources argue – made even easier by the introduction of the Euro.¹⁰ It is estimated that, annually, over \$20 billion are illegally brought from Russia to Western Europe (Kahlweit 2002)
- **Counterfeit software** is smuggled through Poland and other CEEC countries (Urban 2001)
- **car-smuggling** peaked in the 1990s, with Poland as the centre of illegal activity. Thanks to increased co-operation between law enforcement, insurance agencies and car manufacturers (and due to the facts that car assembly plants were built in Poland and Russia) this particular form of illegal cross-border trafficking has decreased markedly, often replaced by **drug, alcohol and cigarette smuggling**.¹¹
- Bratislava is widely reported as having been another centre for the "car-smuggling mafia", yet the city's "by far largest economic branch" is organised **drug-trafficking** and drug-related crime, based foremost on the heavy price difference between Bratislava and Vienna (just 60 km apart). The situation is worsened by "insider views" that the police on the Slovak side is corrupt, so that little can be done against the "avalanche of drugs" coming through Bratislava (Berger 1997). Partly as a reaction to the Yugoslav wars, the classic "Balkan route" from Turkey through Bulgaria, Yugoslavia and Austria split into two: a southern route via Greece and Italy;¹² and a new northern route via Ukraine and Poland (Loose 1999).

- One of the most frequent features is **passport forgery**. In 1997 alone, German border police confiscated 1,700 false passports at the Polish border, mostly involving Polish citizens. But the real problems are stolen passports, passports issued under false names by the authorities, or passports sold to potential illegal migrants. These are hard to detect at the routine controls, even when fed through the Schengen computers (Schreiber 1998; Scherer 1999).
- Illegal trade in **arms and weaponry**, and smuggling of **nuclear substances**, across the Iron Curtain was deemed impossible; now, customs officers at the German frontiers can hardly contain their amazement at what is being smuggled — quantities of up to 1,000 rounds of ammunition, anti-tank weapons, and hand grenades, often in small cars, adding the danger of explosions in case of an accident (Bort 1996:73).
- organised **human trafficking** syndicates, often operating from places like Moscow, Minsk or Kiev,¹³ but also from Georgia, Armenia and Asian countries, use the infrastructure of Red Army barracks and former Intourist agencies and the latest in navigation technology. It is estimated that human trafficking earns these organised, criminal cartels up to \$5 bn a year. The most “popular” routes for human trafficking, according to the *Bundesgrenzschutz*, are the “eastern channel” (Almaty, Moscow, St Petersburg, Minsk, Vilnius) and the “Balkan channel” (Romania, Hungary, Moldova, Russia, Ukraine, Poland).¹⁴
- **trafficking women for prostitution** – mostly of Eastern European women (6,000 alone are brought illegally to Britain, France, Switzerland and the Netherlands every year), many of them minors, are forced into the sex trade (Specter 1998, Burrell 2002a).

There have been two predominant modes of reaction to the challenges of cross-border crime: increased security protection at borders, (yet not necessarily restricted to the actual borderline), and increased international cross-border co-operation.

The latter has produced a degree of success. The 'Balkan Route' is used by criminal gangs to move thousands of economic migrants and asylum seekers from China, Iraq, Turkey and Romania to Western European countries. In 2001, the EU stepped up the fight against organised gangs using the Balkans to smuggle illegal immigrants, offering money and police advisers (a new dispatch of forty immigration and police officers) to cut off the influx. This built on signs of success, achieved since serious co-operation started in the late 1990s, when liaison officers from Germany and other EU countries were sent to Turkey and ten other states in Central and Eastern Europe. Police co-operation along the 'Balkan route' resulted in the biggest-ever seizure of heroin in 1998, 8,112 kilograms, up 17.3 percent compared with 1997 (Scherer 1999). Along the 'Balkan Route', 1,736 alleged drug-traffickers were registered in 1998, against a figure of 1482 in 1997 (Scherer 1999). Seizure of hard drugs was up 3 percent from 1997 to 1998, Ecstasy pills 35 percent, and the volume of intercepted hashish and marihuana doubled (Loose 1999). A major organised criminal network "involved in trafficking women for sexual exploitation was smashed" in October 2002 in an operation coordinated by Europol and by R.O.S. Carabinieri, involving law enforcement agencies in eight EU and seven non-EU states. 80 arrests were made simultaneously in several countries (Europol 2002).

IV Illegal Migration

In 2001, the EU countries had 380,000 applications for asylum (Reynolds 2002) – altogether about half a million illegal migrants are estimated to cross the boundaries into Europe. The real figures might be substantially higher (Ridderbusch 2002). Whether it is as high as 3 million might well be disputed, but there is no doubt that the rhetoric of 'floods of immigrants' has contributed to the rise of right-wing populists in The Hague, Paris, Vienna and Rome (to name but the most obvious).¹⁵ A number of EU countries have tightened their immigration laws over the last year (Weidemann 2002, Hardie 2002, Osborn 2002). The EU, as stated in the Tampere Declaration of 1999, is working towards a common policy on asylum and migration – from which the UK and Denmark, however, have opted out (Roxburgh 2002).

Readmission treaties between the EU member states and all of the accession states were signed in the 1990s. In November 2002, Germany signed a readmission agreement with Albania. Yet, according to figures issued by the German Migration Council, there are between 700,000 and 900,000 eastern Europeans

"sitting on their packed suitcases" (Connolly 2002) – the eastward enlargement of the EU, it is argued, could bring up to 5 million immigrants from Poland, the Czech Republic, Hungary and Slovakia – aiming mainly for Germany, Sweden, Switzerland, Austria and Italy.¹⁶ Poland, under particular pressure from Germany¹⁷, has already agreed to a transitional arrangement which will not allow its citizens the freedom to work in other EU countries for the first seven years, in return for the guarantee that other EU citizens (mainly Germans) will not be able to buy land in Poland for twelve years.

In the notorious strategy paper concerning the Geneva Convention, which the Austrian government formulated during Austria's presidency of the EU (and which was withdrawn after paramount criticism), the whole refugee problematic was categorised under "illegal migration", and linked migration policies explicitly with policies against organised crime (Prantl 1998). Yet, the Dublin Convention (1990) and the Schengen Agreements had already equated the threat of migration with the fight against drugs, acts of terrorism and international, cross-border and organised crime.

The discourse of migration control has thus become intricately linked with the discourses on crime and security in what Jef Huysmans and Didier Bigo have both called a process of "securisation". (Bigo 1999:69, Huysmans 1995). Security has become a much broader concept, compared with the focus on military concerns which dominated the discourse until the changes of 1989/90, encompassing new risks and threats to society, the economy and the polity itself (Zielonka 1991). This constitution of a security continuum, including the control of frontiers and immigration among police activities in the fight against crime is, Bigo argues, "not a natural response to the changes in criminality", but rather a proactive mixing of crime and immigration issues (Bigo 1999:67-68). Barry Buzan has coined the term "societal security", describing the shift of security concerns from protection of the state to protection against threats, or perceived threats, against society and identity, or the identity and security of groups within a society (Buzan 1991:18-19).

It is undeniable that the security of individuals has become deterritorialised (Bigo 1999:73). The border line itself is still of great symbolic importance, but in anti-crime strategies we have seen a return of the marches - spatial co-operation in border zones and way beyond borders. Internal security now implies collaboration with foreign countries and is thus linked to foreign policy, and the 1980s and 1990s marked the beginning of a public debate on policing, coinciding with the emergence of a discourses on urban insecurity and the city on the one hand, and discourses on stopping immigration of unskilled workers on the other (Anderson et al. 1995, Sheptycki 1995, 1996).

This debate has been accompanied by massive investment in border security. At the eastern borders of Germany there is now a higher concentration of border police than at any other border of Europe. Following German unification, the manpower of the *Bundesgrenzschutz* (BGS) was nearly doubled between 1989 and 2000, from 25,000 to over 40,000 border guards; the budget of the BGS rose in the same period from £0.43 bn to £0.96 bn. Surveillance technique is state of the art, and highly expensive. One thermo-nightvision spyglass costs c.£70,000 (Mai 1998).

All this in order to make the net tighter. Yet even hardliners had to admit that there are limits to control. A democratic country, eschewing walls and barbed wire would not be able to have a hermetically closed frontier (Scherer 1996). Not to speak of the human costs: a particularly sad chapter are the casualties at the border, particularly refugees drowning in the Oder and Neisse rivers, led by their smugglers to remote river banks and dangerous currents because these are the least policed spots of the border.¹⁸ Nearly a hundred corpses have been fished out of the rivers in the past few years, a watery grave putting an end to journeys which often had covered thousands of miles (Kaltenborn 1997, Lesch 1998).

The question is twofold: is it humane to drive more and more people into the arms of reckless criminals who put their lives at risk? And does investment in control, particularly at the eastern frontier of the EU, deliver value for money? In the long-run, intensified police and security co-operation seems far more promising than concentrating on border security, with its drawbacks in cross-border communication and co-operation. Stiffening frontier controls in an attempt to prevent illegal migration does boost the activities of human traffickers. Even genuine refugees and asylum seekers are forced to use the expensive services of people smugglers.

It cannot be stressed enough that "the migrant is not the criminal; he or she is the victim of crime".¹⁹ If there is a connection between illegal migration and organised crime, it is human trafficking. And human trafficking is not a consequence of open borders, but of closed borders. Raising the fence and tightening border control drives would-be refugees are driven into the arms of organised human smugglers.

The EU summit at Tampere (1999) marked a clearer separation of migration and crime issues, acknowledging that security at the present and future borders of the EU can best be guaranteed through co-operation – rather than by repression and exclusion. Refining border controls as a means of exclusion may often be seen as a response to the threat to societal security. Yet reinforced borders – the fortress mentality which is part of much Schengen criticism – are no longer really conceivable as practical solutions for internal security needs.

V Schengen's Long Shadow

One of the overarching strategies by EU agencies in the preparation of the candidate countries for accession was assisting them in becoming capable of managing the future Eastern frontier of the EU as a Schengen border. Without having much of an input into the evolving Schengen regime, the long shadow of Schengen reached to the Bug and Carpathian regions and changed the candidate countries' border regimes. Efficiently policing their external non EU-frontiers became a condition for entry into the European Union. The equation looks simple: the candidate' countries' EU borders would be opened to the degree that they closed their frontiers to their eastern neighbours.

Poland agreed to invest massively in combating cross-border crime and illegal migration at its 800 miles of the future EU eastern frontier with Belarus and Ukraine. The EU has already spent €100 million in aid of the fortification of Poland's eastern borders (Fletcher 2002). According to a deal with the EU in July 2002, Poland will employ an additional 3,200 border guards, bringing the force up to 18,000 by 2006. Poland is also to buy seven new helicopters at a cost of €25m and two light aircraft (€6.5m) over the next six years. At Poland's eastern frontier, already undergoing an €16m upgrade, the distance between watchtowers will be narrowed to 20 km. By 2004, Poland will have 94 border posts along its 'green frontier', 30 of them 'official border crossing points'.²⁰

Thus, the poorest countries of the EU will have to carry the burden to guard the security of the wealthy western EU states. Admittedly, the EU has provided €340m for the candidate countries' efforts at upgrading their frontiers, but the economic consequences of a tighter frontier regime will have to be met by economically weak and peripheral regions. Ukraine recently received €1 million for infrared detectors and vehicles to patrol its borders (Franchetti 2002).

Poland's accession will mean new restrictions to travellers from Belarus and Ukraine.²¹ From July 2003, they will need entry visas (€14), which could harm local trans-border economies. All this has led Joanna Apap, a senior research fellow at the Centre for European Policy Studies, to argue: "If we start creating a new Berlin Wall and, with it, the marginalisation of countries on the other side, we risk that these nations will be demotivated from trying to progress. They may also not co-operate on security with police." (Castle 2002a) When the President of Belarus was refused a visa for the NATO summit in Prague he threatened to "open the frontier and let thousands of refugees and drug dealers escape to Western Europe." The Europeans would "come crawling and begging us to cooperate in the fight against drug trafficking and illegal migration."²²

At the European Union-Ukraine summit in Copenhagen in July 2002, the two partners agreed "that fundamental elements of our co-operation are efforts to combat organised crime, including trafficking in human beings, stolen goods, money laundering and corruption, as well as illegal migration." The *Joint Statement* went on to welcome Ukrainian efforts at developing "a system of efficient and comprehensive border management on all Ukrainian borders" and looked forward to a "successful conclusion of the negotiations on a readmission agreement." (EU 2002)

Kaliningrad, a Russian enclave, will be cut off from Russia by the EU's external Schengen frontier once Poland and Lithuania will have joined the EU. The EU has rejected demands for a sealed corridor through which Russians in transit could travel, arguing instead in favour of multi-entry visas. But any visa demands met with fierce Russian resistance. The wealth gradient between Kaliningrad and its neighbours is already very steep; and it is supposed to increase when Lithuania and Poland join the EU. Some fear that Kaliningrad could become an 'open door' for illegal immigration and cross-border crime (Middel 2002b). In October 2002, after months of acrimonious debate, the EU and Russia agreed to a compromise. Lithuania was to regulate using a simple 'transit document'. By November this had become a multiple re-entry transit pass which, until the end of 2004, can be used in conjunction with internal Russian identification documents rather than international passports (EU 2002). The EU also agreed to a feasibility study for a 'rail corridor' – an upgraded non-stop high-speed railway connection between Kaliningrad and Russia, which would offer the long-term possibility of transit without identity checks (Wernicke 2002, Castle 2002b). In the short-term, there still are worries, in Lithuania, that this agreement could compromise the country's unhindered entry into Schengen (Urban 2002). For Kaliningrad, there are long-term concerns. Only a comprehensive development plan – with substantial contributions from both the EU and Russia – will prevent the enclave from becoming a permanent problem zone (Timmermann 2002: 308).

Poland's appeals regarding an active EU policy of economic co-operation must not go unheard. Otherwise we enter into a vicious circle at the future eastern frontier of the EU: sealing the frontier will enhance the misery beyond the border and thus reinforce the pressure on the border, which in turn will spurn attempts at closing the border even more hermetically. The example of the US-Mexican border has shown that this concept does not work. While the US government poured more money than ever into the fortification of the 'tortilla curtain', a record number of illegal immigrants entered the country.

Marek Borowski, a member of the Polish Parliament, emphasised Poland's position:

In joining the European Union, Poland would not like to be a bulwark for an affluent, isolationist Europe. We believe that the gradual involvement of Ukraine in the common economic space is in the unquestionable interest of the EU. It is at the least as important as good co-operation with the Kaliningrad district of the Russian Federation (Borowski 2002).

Lurking behind discussions about the frontier regime at the future EU borders is the debate about the *finalité d'Europe*. Will there be a perspective for Ukraine, or is it too big to be incorporated, too close to Russia to be part of the EU? And what about Belarus, the ailing partner of Russia? And what about Russia itself? "Where does Europe stop?" Romano Prodi, The Commission President, asked in a recent interview in a Dutch newspaper. And his answer was: "The Balkan nations will probably join, they are part of this. Turkey is an official candidate, that is clear.²³ But Morocco, Ukraine or Moldova. I see no reason for that." (*De Volkskrant*, 27 November 2002).

The future external frontier of the EU cannot be a rigid barrier; it will have to be what Raimund Krämer has termed a 'co-operative border' (Krämer 1997:95), balancing security, protection, communication and exchange, enhancing trust across the frontier. The boundaries of police co-operation have always transcended the boundaries of the EU, and they will keep on doing so after enlargement.

The debate about a joint border police is ambiguous, too. Is it, as Prodi emphasised, a matter of shared burden (it being unfair to leave the accession states shouldering the entire weight of securing the EU's external frontiers) or a matter of not trusting the new member states with the task of keeping criminals out of EU territory?

What is without doubt, is that the dichotomy of open/closed borders does not work. If you want trust building through international and cross-border co-operation at borders of the EU, it is necessary to achieve a balance between economic, administrative and security co-operation. The alternative looks more like European integration versus European neo-colonialism. Danuta Hübner, as Secretary of State for European Integration, Poland's representative in the Convention on the Future of Europe, put it in a nutshell: "The best recipe to counteract importing instability is to export stability." (Hübner 2002)

Bibliography

- Malcolm Anderson (1989), *Policing the World: Interpol and the Politics of International Police Co-operation*, Oxford: Clarendon.
- Malcolm Anderson and Monica den Boer, eds (1994), *Policing across National Boundaries*, London: Pinter.
- Malcolm Anderson, Monica den Bier, Peter Cullen, William C Gilmore, Charles D Raab, Neil Walker (1996), *Policing the European Union*, Oxford: Clarendon.
- Malcolm Anderson and Eberhard Bort, eds (1997), *Schengen and EU Enlargement: Security and Co-operation at the Eastern Frontier of the European Union*, Edinburgh: International Social Sciences Institute.
- Malcolm Anderson and Eberhard Bort, eds (1998a), *The Frontiers of Europe*, London: Pinter.
- Malcolm Anderson and Eberhard Bort, eds (1998b), *Schengen and the Southern Frontier of the European Union*, Edinburgh: International Social Sciences Institute.
- Malcolm Anderson with Eberhard Bort (2001), *The Frontiers of the European Union*, Basingstoke: Palgrave.
- Malcolm Anderson, Eberhard Bort and Didier Bigo (2000), 'Frontiers, identity and Security in Europe: An Agenda for Research', in Martin Pratt and Janet Allison Brown, eds, 251-274.
- Malcolm Anderson and Joanna Apap, eds (2002), *Police and Justice Co-operation and the New European Borders*, London: Kluwer Law International.
- Michael Berger (1997), "Die Bratislava Connection", *Kurier*, 20 April.
- Didier Bigo (1998), 'Frontiers and Security in the European Union: The Illusion of Migration Control', in Malcolm Anderson and Eberhard Bort (eds), 148-164.
- Didier Bigo (1999), 'The Landscape of Police Co-operation', in Eberhard Bort and Russell Keat, eds, 59-74.
- Didier Bigo (2002), 'Border regimes, police cooperation and security in an enlarged European Union', in Jan Zielonka (ed.), 213-239.
- Cornelia Bolesch (2002a), 'Europas Innenminister beraten über gemeinsame Grenzpolizei', *Süddeutsche Zeitung*, 15 February.
- Cornelia Bolesch (2002b), 'Neuer Vorstoß für EU-weiten Grenzschutz', *Süddeutsche Zeitung*, 8 May.
- Marek Borowski (2002), 'Poles must play a part in Europe', *The Independent*, 8 July.
- Eberhard Bort (1996), '200 km Eastern Frontier of the EU', in Malcolm Anderson and Eberhard Bort, eds, *Boundaries and Identities: The Eastern Frontier of the European Union*, Edinburgh: ISSI, pp. 71-80.
- Eberhard Bort (1997), 'Crossing the EU Frontier: eastern Enlargement of the EU, Cross-Border Regionalism and State Sovereignty', *Interregiones*, 6, 20-31.
- Eberhard Bort (1998), 'Mitteleuropa: The Difficult Frontier', in Malcolm Anderson and Eberhard Bort (eds), 91-108.

- Eberhard Bort and Russell Keat, eds (1999), *The Boundaries of Understanding: Essays in Honour of Malcolm Anderson*, Edinburgh: International Social Sciences Institute.
- Eberhard Bort (2002), 'Illegal migration and cross-border crime: Challenges at the eastern frontier of the European Union', in Jan Zielonka (ed.) 191-212.
- Maik Brandenburg (1998), "Ein Koffer voller Sicherheit", *Die Welt*, 30 June.
- Christian Bratz (2000), 'The Contribution of EUROPOL to Combating Illegal Migration Networks', in Monica den Boer (ed.), 71-75.
- Klaus Brill (1999), 'Die Mafia sitzt mit am Tisch', *Süddeutsche Zeitung*, 17 March.
- Bundeskriminalamt (2001a), *Jahresbericht*, Wiesbaden.
- Bundeskriminalamt (2001b), *Lagebild Menschenhandel*, Wiesbaden.
- Ian Burrell (2002a), 'Police chief condemns trafficking in women as a crime against humanity', *The Independent*, 17 August.
- Ian Burrell (2002b), 'EU police to operate in Britain', *The Independent*, 21 November.
- Heiner Busch (1992), "Organisierte Kriminalität: Vom Nutzen eines unklaren Begriffs", *Demokratie und Recht*, No.20, pp. 374-95.
- Barry Buzan (1991), *People, States and Fear: An Agenda for International Security Studies in the Post-Cold War Era*, London: Harvester Wheatsheaf.
- Stephen Castle (2002a), 'Poland bows to EU and creates new "iron curtain"', *The Independent*, 31 July.
- Stephen Castle (2002b), 'Russia finally bows to EU pressure for Kaliningrad "visas"', *The Independent*, 12 November.
- Bernadette Colonego (1999), 'Die Russenmafia schwärmt für die Schweiz', *Süddeutsche Zeitung*, 20 March 1999.
- Kate Connolly (2002), '5m eye the west as EU borders expand', *The Guardian*, 27 June.
- Commission of the European Communities (2002a), *Towards Integrated Management of the External Borders of the Member States of the European Union* (Communication from the Commission to the Council and the European Parliament), Brussels, 7 May Com (2002) 233 final.
- Commission of the European Communities (2002b), *European Union-Ukraine Summit: Joint Statement* Brussels, 4 July (10607/02 Presse 195).
- Commission of the European Communities (2002c), *Joint Statement of the European Union and the Russian Federation on Transit between the Kaliningrad Region and the Rest of the Russian Federation*, Brussels, 11 November (13970/02 Presse 347).
- Council of the European Union (2001), *Evaluation of the Conclusions of the Tampere European Council*, Brussels, 6 December (14926/01 JAI 166).
- Council of the European Communities (2002), *Seville European Council: Presidency Conclusions*, Brussels, 22 June (SN 200/1/02 REV 1).

- Monica den Boer, ed. (1998), *Schengen's Final Days? The Incorporation of Schengen into the New TEU, External Borders and Information Systems*, Maastricht: European Institute of Public Administration.
- Monica den Boer, ed., (2000), *Schengen Still Going Strong: Evaluation and Update*, Maastricht: European Institute of Public Administration..
- Jo Dillon (2002), 'UK police on asylum patrol in EU', *The Independent on Sunday*, 2 June.
- John Esposito (1994), 'Political Islam: Beyond the Green Menace', *Current History* 93.
- European Convention (2002), *Summary of the Meeting on 25 September 2002*, Brussels, 2 October.
- Europol (2001), 'High Level Meeting on EEOC' (Press Release), The Hague, 30 November.
- Europol (2002), 'Human Beings Smuggling Network Smashed in a Police Raid' (Press Release), The Hague, 2 October.
- Peter Fahrenholz (2000), 'Kanzler: Arbeitsmarkt für Osteuropäer erst nach Frist öffnen', *Süddeutsche Zeitung*.
- Martina Fietz (1998), 'Kantner will europäische Sicherheitszone', *Die Welt*, 2 July.
- Martin Fletcher (2002), 'New curtain rises in Eastern Europe', *The Times*, 28 February.
- Mark Franchetti (2002), 'Migrants held in hell of EU's eastern frontier', *The Sunday Times*, 20 October.
- Mark Galeotti (1995), *Cross-Border Crime and the Former Soviet Union (Boundary & Territory Briefing)*, 1:5 (Durham: International Boundaries Research Unit).
- Marko Gasperlin (1997), 'Schengen needs Modification: A Slovenian Perspective', in Malcolm Anderson and Eberhard Bort (eds), 102-103.
- Gerhard Gnauck (2001), 'Autos interessieren Polens Ganoven kaum noch', *Die Welt*, 9 February.
- Alison Hardie (2002), 'Refugees' gateway to Britain to close', *The Scotsman*, 13 July.
- Paul Harris (2002), '"Flying Squad" to intercept refugees', *The Observer*, 20 October.
- Hartmut Hausmann (2002), 'EU-Institut für Polizeistudien findet keine Zustimmung', 21 June.
- Guido Heinen (2002), 'Eine europäische Grenzpolizei wäre nötig', *Die Welt*, 4 April 2002.
- Leslie Holmes (2001), 'Crime, Corruption and Politics: International and Transnational Factors', in Jan Zielonka and Alex Pravda (eds), *Democratic Consolidation in Eastern Europe: International and Transnational Factors*, Oxford: Oxford University Press.
- Danuta Hübner (2002), 'The European Union - open to citizens, open to the world', (Contribution to the Convention on the Future of Europe, 3 April.
- Jef Huysmans (1995), 'Migrants as a Security Problem: Dangers of "Securitizing" Societal Issues', in Robert Miles and Dietrich Thränhardt, eds, *Migration and European Integration: The Dynamics of Inclusion and Exclusion*, London: Pinter.
- Cathrin Kahlweit (2002), 'Die geheimen Wege der Krake', *Süddeutsche Zeitung*, 5 November.
- Olaf Kaltenborn (1997), 'Die neue Todesgrenze an der Neisse', *Süddeutsche Zeitung*, 12 June.

Raimund Krämer (1997), *Grenzen der Europäischen Union*, Potsdam: Brandenburgische Landeszentrale für politische Bildung.

Markus Lesch (1998), Die Eltern liessen ihr totes Kind zurück, *Die Welt*, 14 January.

Donald Macintyre (2002), 'Britain to support Turkey on date for EU application talks', *The Independent*, 4 December 2002.

Marina Mai (1998), 'Die Hilfsheriffs', *Die Woche*, 3 April.

Andreas Middel (2002a), 'EU beschliesst gemeinsame Grenzkontrollen', *Die Welt*, 24 June.

Andreas Middel (2002b), 'Kaliningrad: Putin nimmt das Angebot der EU an', *Die Welt*, 12 November.

Patrice Molle (1996), *External Borders Pilot Project: Placement Report*, Strasbourg: Centre des Études Européennes.

Claus Offe (1996), 'Capitalism by design? Democratic Theory Facing the Triple Transition in Eastern Europe', *Social Research* 58:2, pp.3-13.

Andrew Osborn (2002), 'Dutch minister unveils tough measures against illegal immigrants', *The Guardian*, 17 August.

Heribert Prantl (1998), 'Europa verschließt sich Flüchtlingen', *Süddeutsche Zeitung*, 3 September.

Martin Pratt and Janet Allison Brown, eds (2000), *Borderlands Under Stress*, London: Kluwer Law International.

Paul Reynolds (2002), "'Fortress Europe' raises the drawbridge', BBC News Online, 18 June.

Katja Ridderbusch (2002), 'EU will mit neuen Konzepten illegale Einwanderung stoppen', *Die Welt*, 21 June.

Angus Roxburgh (2002), 'Who's afraid of the big, bad refugee?', *Sunday Herald*, 19 May.

Michael Santiago (2000), *Europol and Police Cooperation in Europe*, Lewiston, N.Y.: Edwin Mellen Press..

Peter Scherer (1996), 'Kanter verstärkt Sicherung der Ostgrenzen', *Die Welt*, 8 May.

Peter Scherer (1999), 'Türken kontrollieren Drogenrollbahn durch Europa', *Die Welt*, 1 March.

Jim Sheptycki (1995), 'Transnational Policing and the Makings of a Postmodern State', *British Journal of Criminology* 35:4, 613-35.

Jim Sheptycki (1996), 'Law Enforcement, Justice and Democracy in the Transnational Arena: Reflections on the War on Drugs', *International Journal of the Sociology of Law* 24, 61-75.

James Sheptycki, ed. (2000), *Issues in Transnational Policing*, London: Routledge.

Martin A Smith and Graham Timmins (2000), *Building a Bigger Europe: EU and NATO enlargement in comparative perspective*, Aldershot: Ashgate.

Michael Specter (1998), 'Traffickers' New Cargo: Naïve Slavic Women', *The New York Times*, 11 January.

Statewatch (2002), 'SIS II takes ominous shape', 4 April.

Heinz Timmermann (2002), 'Strategische Partnerschaft: Wie kann die EU Russland stärker einbinden?' *integration* 4/02 (October), 297-310.

Alan Travis (2002), Deal that sealed asylum route to Britain', *The Guardian*, 3 December.

Thomas Urban (2001), 'Ein Grenzgänger als Grenzwächter', *Süddeutsche Zeitung*, 21 July.

Thomas Urban (2002), 'Zweifel am Nachbarn', *Süddeutsche Zeitung*, 12 November.

Günter Verheugen (2001), 'Was da auf uns zukommt, ist absolut beherrschbar', Interview with *Süddeutsche Zeitung*, 21 March.

Klaus von Lampe (1995), 'Understanding Organized Crime: A German View', paper presented at the Annual Meeting of the Academy of Criminal Justice Sciences, Boston, MA (7-11 March 1995), extended version.

Neil Walker (1998), 'The New Frontiers of European Policing', in Malcolm Anderson and Eberhard Bort (eds), 165-186.

Neil Walker (1999), 'Decoupling Police and State', in Eberhard Bort and Russell Keat (eds), 75-85.

Siggi Weidemann (2002), 'Neues Ausländer-Gesetz in Holland geplant', *Süddeutsche Zeitung*, 1 June.

Christian Wernicke (2002), 'EU verzichtet auf Visa zwischen Kaliningrad und Russland', *Süddeutsche Zeitung*, 23 October.

Jürgen Wolters (2000), 'Die Anwendung der Befugnisse zur grenzüberschreitenden Polizeiarbeit – Erfahrungen aus der Praxis', in Monica den Boer (ed.), 77-83.

Paddy Woodworth (2002), 'Aznar says EU must combat terrorism and illegal immigration', *The Irish Times*, 7 June.

Sonja Zekri (2002), 'Der Himmel über Halbasien', *Süddeutsche Zeitung*, 11 July.

Jan Zielonka (1991), 'Europe's Security: A Great Confusion', *International Affairs* 67:1; 127-37.

Jan Zielonka, ed. (2002), *Europe Unbound: Enlarging and reshaping the boundaries of the European Union*, London: Routledge.

Notes

¹ EU Membership of Turkey is supported by the UK and, externally, by the US. It impinges on the EU's rapid reaction force (NATO member Turkey threatens to block the use of NATO command and control assets by the EU force), and on the 'finalité d'Europe - it would be a country mainly located in Asia Minor and predominantly Muslim. Because of the interdependent themes of Cyprus, NATO and EU membership, Turkey's candidate status is expected to be a dominant issue at the December EU summit in Copenhagen, (Macintyre 2002)

² This paper restricts itself to the Eastern frontier of the EU. For aspects of the Mediterranean frontier see Anderson and Bort (1998b) and in particular the contributions by Anderson, Leo and Skok in that volume.

³ These changes have led groups like Statewatch to talk of SIS II as the EU's 'Big Brother' (Statewatch 2002)

⁴ Such agreements have been signed since with Estonia (October 2001), and subsequently, among others, with Iceland, Norway, Hungary, Poland and Slovenia.

⁵ The Working Group on 'Freedom, Security and Justice' of the European Convention took evidence which indicated that the Task Force of Police Chiefs "does not currently perform the role envisaged by the Tampere Council" (European Convention 2002.2).

⁶ Albeit only as a 'virtual' Academy, organising seminars in various Member States – the location of secretariat of a 'genuine' Police Academy is yet to be decided.

⁷ Member states are Albania, Bosnia and Hercegowina, Bulgaria, Croatia, Macedonia, Moldova, Romania, Slovenia, Turkey and Hungary.

⁸ In preparation for their plans for a common border police force, twenty European countries carried out a joint crackdown on 25 airports between 25 April and 21 May 2002. More than 4500 illegal immigrants were identified and almost 1000 false identity documents seized. 500 sanctions against airlines were taken.

⁹ But note: Didier Bigo has this to say about Russian mafias in France: "In France, inquiries carried out by criminal investigation police have shown that French territory serves as a holiday resort for Russian *nouveaux riches* but that mafia activity is virtually non-existent and is a product of journalistic imagination in search of an exciting subject." (Bigo 2002:229)

¹⁰ Prague developed the dubious attribute of being the money-laundering capital for, among others, the Chechnya mafia, operating from there in conjunction with shady Liechtenstein firms (Brandenburg 1998). The financial service centres of Geneva, Zurich, Zug and Lugano in Switzerland are, according to a report by the Federal Police Office in Berne, affected by organised money laundering. More than 150 persons and 90 firms resident in Switzerland are suspected to have dealings with the Russian Mafia (Colonego 1999). A report of Confcommercio, an umbrella organisation of Italian tourism, catering and trade organisations, claimed that up to one-fifth of the banks, restaurants and bars, estate agencies, gold and antiques businesses, travel agencies and shops in Italy were in the hand of organised criminals: 15 percent of all hotels, 24 percent of all building sites, 25 percent of financial services and 70 percent of the cement market and of the manufacturing of imitation brand clothing (Brill 1999).

¹¹ The German BKA praised the co-operation with Warsaw: "When trust is established, we receive more information from our partners in Poland than from Paris or Madrid" (Gnauck 2001). Cigarettes are mostly smuggled by organised gangs from Lithuania and Poland to Germany, or through Germany to Belgium, Holland and the UK (Bundeskriminalamt 2001a).

¹² Italy's long coastline makes the country one of the main points of entry into Europe for illegal migrants and human traffickers.

¹³ In the Ukraine, a false passport costs \$1000, a visa \$500, the illegal transport across the mostly 'green frontier' of 1143 km between \$1000 and \$5,000 (Zekri 2002). 3,500 illegal migrants are caught every year crossing Ukrain's Carpathian mountain border in an attempt to reach the West via Poland, Slovakia, Romania or Hungary (Franchetti 2002).

¹⁴ The *Süddeutsche Zeitung* noted the connection between the drastic tightening of the German asylum laws in 1993 and the increase of illegal migration. As the door was closed in the face of asylum, refugees have been driven into the arms of unscrupulous human smuggling organisations, paying up to £5,000 per head for their services (Schwenicke 1997, Schneider 1998). According to the BKA, the late 1990s and early 2000s have seen a shift in balance away from east-west trafficking (perhaps due to a more stable situations in ex-Yugoslavia) towards the mediterranean member states (Bundeskriminalamt 2001a).

¹⁵ Throughout 2002, Britain was obsessed by Sangatte, the French Red Cross Centre close to Calais (and the Eurotunnel) - a "magnet and jumping off point" for illegal entry into Britain. It was finally closed at the beginning of December 2002 (Travis 2002).

¹⁶ Bearing in mind that forecasts in the case of the southern enlargement of the 1980s were wide of the mark, one should be careful about such predictions. EU Commissioner Günter Verheugen, in an interview, indicated that 'a majority of research studies' are estimating "between 70,000 to 150,000 would come annually from the eight CEEC applicant countries, with 80 % of those workers aiming for Germany and Austria. Studies including family members and students arrive at higher figures." (Verheugen 2001) Verheugen also makes the important point that accession to the EU will (hopefully) improve the perspectives within the new member states and thus reduce the need or inclination to emigrate.

¹⁷ The German Chancellor Gerhard Schröder started in December 2000 to demand transitional arrangements for labour markets, i.e. a seven-year moratorium on free movement of workers from CEEC states after joining the EU (Fahrenholz 2000).

¹⁸ On a much grander scale of human suffering are the number of people drowned in the Mediterranean, crossing from Albania and North Africa into Portugal, Spain and Italy.

¹⁹ Achim Hildebrandt of the German Project Group on Visa Harmonisation (Ministry of the Interior) at the Colloquium "Schengen Still Going Strong: Evaluation and Update" (5 February 1999).

²⁰ Like state-of-the-art Bobrowniki, with its 250 customs officers, border guards and administrative staff, controlling the flow of over a thousand lorries, cars and buses across a bridge over the Swislocz River (Fletcher 2002).

²¹ This will affect national minorities, in particular tens of thousands of Polish-speakers in the Ukrainian and Belarus borderlands.

²² In Belarus, every year about 3000 people are caught attempting to illegally cross the frontier into Poland, Lithuania or Latvia. (*Süddeutsche Zeitung*, 15 November 2002)

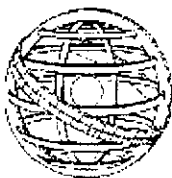
²³ Only a few weeks before Prodi's interview, The European Conventions convener, Valerie Giscard d'Estaing publicly denied Turkish membership aspirations.

iai ISTITUTO AFFARI
INTERNAZIONALI - ROMA

n° inv. 22926

17 DIC. 2002

BIBLIOTECA



Istituto Affari Internazionali

***“The Justice and Home Affairs Acquis and the Enlargement:
A View from Poland ”***

**By
Prof. dr hab. Andrzej Glowacki
University of Szczecin
Jean Monnet Chair
Poland**

Prima versione – da non citare

Paper presentato in occasione della conferenza

“Libertà, Sicurezza e Giustizia: le Sfide dell’Allargamento”

Catania, 13 dicembre 2002

Although questions comprised by the third pillar of the European Union – Justice and Home Affairs /JHA/ maybe found already since 1975^{1/} they are occurred their legal justification as the III pillar of the European Union in the VI Chapter of the Treaty on the European Union concluded in Maastricht on 7 February 1992, similarly as the II pillar /Common Foreign and Security Policy/. JHA is based mainly upon intergovernmental co-operation, but the Treaty of Amsterdam has widened competence of the European Parliament and the European Court of Justice in JHA matters. The Treaty changed also a manner of decision – making of the Council of the EU in many issues. It introduced instead of unanimity rule the Qualified Majority Voting ^{2/}.

Co-operation in JHA is defined in articles 29-32 of the Treaty on the European Union ^{3/}. It consists of:

- a. Prevention of organised or other crime and fight against it, especially against terrorism, white – slave traffic and crimes against children, against drug and weapons trafficking, peculation and corruption in the ways:
 - by closer co-operation among police forces, customs and other institutions directly or through the mediation of the EUROPOL;
 - closer co-operation among courts;
 - harmonisation of the penal law among the EU member states.
- b. Police co-operation through:
 - operational co-operation of police forces, customs and other institutions that are checking up to abide law concerning prevention, detection and persecution of crimes;
 - gleaning, collecting, converting, analysis and exchange of essential information which are acquired about doubtful financial deals;
 - cooperation and common initiatives in training, exchange of liason and delegated officers, use of equipment and criminologic research;
 - common estimation of particular investigative techniques concerning detection of major organized crime;
 - establishment of a research, documentary and statistical network connected with border criminality.
- c. Judicial co-operation in penal cases:
 - facilitation and acceleration of cooperation in proceedings and execution of verdicts;

- facilitation of extradition;
- harmonisation of provisions concerning this co-operation in EU member states;
- prevention of conflicts of competence among the member states;
- carrying of minimal norms concerning feature of a crime and penalties applied to organized crime, terrorism and drug trafficking.

Furthermore JHA comprises also questions connected with *acquis communautaire* of Schengen agreement^{4/} establishment and activities of European Judicial Network^{5/}, harmonisation of civil law, mutual recognition of verdicts, better access to justice and establishment of European Space of Justice^{6/}.

Some questions according to the Amsterdam Treaty has been transferred into the I pillar. There are:

- internal and external border controls with visa rules concerning stays not longer than 3 months;
- asylum policy;
- migration;
- rules concerning legal residents in one of the EU member states to admit for permanent stay in other EU member states;
- burden-sharing in reception and care about refugees and expelled persons among EU member states;
- judicial co-operation in civil cases with the outcome for the development of the internal market;
- administrative co-operation in above mentioned fields.

The Polish council of Ministers passed position for negotiations with the EU in JHA on October 5th, 1999.

The Polish government stated a date of Poland's readiness to EU membership on the 31st December 2002. It is now known, that the membership of Poland and other 9 candidate countries will occur on the 1st May 2004.

The government accepted and declared to implement the *acquis communautaire* in JHA and the *acquis* of Schengen. Poland won't claim there either any transitional periods nor derogations.

There was emphasised that Poland won't be able to implement *acquis instruments* that are open only for EU member states before the entry into the EU. However Poland declared its full readiness in stating their implementation after Poland's accession into the EU.

Poland refused to join to following legal measures comprised in the JHA acquis:

- European convention on international validity of penal verdicts concluded in Den Haag on 28th May 1970;
- European convention on transmission persecution in penal cases concluded in Strasbourg on 15th May 1972;
- Agreement on illegal contraband by sea which is implementation of art. 17 of UN convention on illegal drugs and psychotropic substances trafficking concluded in Strasbourg on 31st January 1995.

The first both conventions were outworked in the framework of the Council of Europe. Poland doesn't consider proper to participate there but if these conventions will be generally accepted by EU member states as a standard, Poland is ready to reconsider its position.

In the framework of European Political Community the EC member states outworked a convention on transformation of criminal persecution in 1990 and a convention on execution of foreign penal verdicts in 1991.

Poland declares to implement the both conventions after its entry into the EU.

Whereas Poland's joining into the Agreement doesn't find any justification, because the EU member states haven't put it into practice. Germany and Norway have only been parties of this Agreement. If the Agreement will be compulsory in the EU, Poland will reconsider its position.

Poland committed itself to act in order to implement and to put into practice the JHA acquis before 31st December 2002. These issues were formulated as priorities in short and medium period in the governmental act on "Partnership for Membership". In the framework of those priorities there are conducted cycles of training for officials who are dealing with these questions and for policemen and border guards.

Concerning particular IHA questions the positions of Poland are following:

Asylum

Poland accepts and will implement a whole of the acquis communautaire in this field. Already now the Polish law is considerably compatible with the Community law and the acquis. Only entry to the Dublin convention will be possible after accession into the EU.

Implementation of all legal measures concerning asylum was finished by 2002, a.o. through amendment of a bill on foreigners on 25th June 1997.

External border

The Polish law is generally compatible with the acquis in this field.

It is necessary to change the above mentioned bill on foreigners through introduction of airport transitional visas and concerning the period of a stay on the grounds of the transitional visa /from 6 to 3 months/; parameters of transitional visas /introduction besides the single and multitudes transitional visas also the doubletimes ones and change of a transit periode from 2 to 5 days/.

Migration, admission and readmission

Poland accepted and declared implementation of the entirety of the Community law. Now being in force the Polish law is in principle compatible with the EU law^{7/}.

To make compatible the Polish visa policy with EU standards there were necessary for introduction of obligation to possess visas for 15 states which had agreements with Poland about visa free border movement. It concerns following states: Azerbeidjan, Byelorussia, Bulgaria, Georgia, Kazach Republic, Cuba, Kyrgystan, Moldova, Mongolia, Russia, Romania, Tadjikistan, Turkmenistan, Ukraine and former Yugoslav Republic of Macedonia. It needs organisational and technical preparation of border staff and of the Polish consulates in these countries in order to increase a number of delivered visas and to decrease time of expectation for the visas. Therefore it is necessary to increase a number of staff in Polish embassies and consulates dealing with delivering of visa in these countries; to establish new consulates and to provide to the new and the already existing ones with modern technical equipment in order to enable efficiently and promptly drawing up an increased number of the visas.

By 1999 Poland spent for such proposes 62,7 mln PLN. A total amount were 824 mln PLN in 2000-2002 years, i.e. 222 mln EUR^{8/}.

Organised crime, frauds and corruption

Polish law is in principle compatible with the EU law in this field. Poland undertook actions in order to strengthen responsible institutions and services for the fight against the organised crime. Police units on the fight against the organised crime and against drugs trafficking have been centralized und submitted under the Chief-Commandant of Police. It has enabled to undertake more efficient operational and investigate work.

EU provisions concerning to EUROPOL will be implement after Poland's entry into the EU, because then Poland will be eligible to access there.

Fight against drugs trafficking

The Polish law is generally compatible with the EU one in this field. In the case of Common Action on information exchange, risk estimation and checking of new synthetic

drugs and concerning of included there a list of precursors, Poland declared its will to state more precisely the list of the precursors.

Poland is a party of all conventions comprised the *acquis* except above mentioned Agreement on illegal contrabanda by sea in implementation of art. 17 of UN Convention on illegal drug trafficking and psychotronic substances.

Terrorism

The Polish law is in principle compatible with the EU one except Common Action about making and conducting of dates including attributes, skills and knowledge in the field of fight against terrorism in order to facilitate cooperation in struggle against terrorism among the EU states on 15th October 1996. This act is open only to the EU member states.

Police co-operation

Poland accepted the EU law and declared implementation of regulations of the Schengen Agreement in this field. The Polish law is in principle compatible with the EU law, including provisions on cross-border observation and cross-border pursuits, however conditions and scale of the cross-border pursuit will be settled during negotiations according to the art.41 of the Schengen Agreement.

There is training of policemen about proceedings used by police forces according to the EU law and teaching of foreign languages.

Co-operation of customs staff

The Polish law is compatible with the *acquis* of the European Communities. Some particular questions concern the Custom Union that is not comprised in the III pillar.

Judicial co-operation in penal cases

Poland accepted and declared implementation of the EU law, though it doesn't join to above mentioned Convention of the Council of Europe about international validity of penal verdicts and about transmission of penal proceedings. The causes for this are explained above.

In the first order there are introduced changes in implementation of the open for Poland legal measures concerning corruption and money laundering, i.e. the OECD convention of fight against corruption of foreign officials in international commercial transactions and convention about laundering, coming to light, seizure and confiscation of incomes that coming from a crime. These changes consist particularly of introduction of regulations enabling penalisation of corruption of the officials from foreign countries; execution of foreign verdicts about confiscation and temporary seizure of property; introduction of administrative responsibility for corruption to corporate bodies. There will be fulfilled changes enabling penalisation of corruption in private sector. Changes enabling

implementation of Convention on protection of financial interests of the European Communities together with addenda and on fight against corruption of officials of the European Communities or officials of the EU member states will be introduced after Poland's entry into the EU.

The Polish law enables direct implementation of ratified international agreements, what facilitates the implementation proceedings of the *acquis*. It reduces a number of necessary changes of the domestic law.

Co-operation in civil cases

Poland accepts the whole of *acquis* concerning cooperation in civil cases. Poland has already been a part of all included to the *acquis* conventions that are outworked in the framework of the Hague Convention of the International Private Law and is realising this cooperation on their grounds.

Other conventions, i.e. Convention of 1987 that abolishes a duty concerning legalisation of documents among the EU member states; Convention of 1997 concerning servings and notifications of judicial and non-judicial documents in the civil and commercial cases in the EU member states, Poland will be able to ratify Convention of 1990 concerning simplification in collection of alimonies and Convention of 1998 about jurisdiction and execution of verdicts issued in matrimonial cases after its entry into the EU. Possibility of direct implementation of these conventions excludes necessity for making of any implementational changes.

Lugano Convention of 1988 about jurisdiction and execution of judicial verdicts in civil and commercial cases, Brusseler Convention of 1968 about jurisdiction and execution of judicial verdicts in civil and commercial cases and Rome Convention of 1980 about the proper law for contractual recognizances have been comprised by screening in framework of the I pillar^{9/}.

The European Union assumed its attitude towards the Poland's position in the Common Position published on 24.May 2000. It comprises 10 main points:

1. **Data protection** – in order to comply *acquis*, especially to participate in the SIS, police and customs cooperation, Poland shall ratify Convention of the Council of Europe about protection of persons in connection with automatic conversion of personal datas that has been passed in Strasbourg in 1981.
2. **Visa policy**. The regulation of EC nr 1683/95 defining general visa matters, categories and kinds of the visas, introduction of their uniform form, shall be ratified. Consular instructions, namely provisions about representation of a responsible state for delivering

of visas and a question of airport transit visas together with a list of countries that are included by obligation to possess the visas, should be implemented.

3. External borders. There was made an attention to the art.6 of the Convention realizing the Schengen Agreement stating that the control on the external borders shall be made in an equal level and according to uniform rules. It is necessary to adopt provisions about the SIS. It was recommended to introduce an efficient border control towards Russia, Byelorussia and Ukraine likewise in airports and in harbours. Poland was asked to explain existing simplified procedure to cross its border.
4. Migration. The European Union asked Poland to improve the readmission and expulsion of foreigners, to improve co-operation among organs and institutions responsible for implementation of the law about foreigners.
5. Asylum. Ratification by Poland the Dublin Convention of 15.September 1990 is especially important. Poland shall explain the used procedure towards people who are applying for the asylum, if they don't deliver application in a necessary dead-line. In opinion of the EU introduction of new legal provisions shorten time necessary for asylum proceedings.
6. Police co-operation. EUROPOL is able to conclude contracts, therefore Poland shall enter into full cooperation with it. It shall be also applied towards the Common Action of 14.October 1996 defining a common system of initiatives of the EU member states concerning liason officials and demands of the Schengen Agreement about the direct pursuit and cross-border supervision. Poland shall also pay attention to questions of co-ordination between police forces and to introduct an integrated computer investigation system available for proper police forces and to implement programmes of special training in proceedings – and police techniques and in questions of professional ethics of staff who is dealing with the fight against the organized crime.
7. Fight against frauds and corruption. Poland shall adopt and ratify OECD convention of 1997 about fight against corruption in international economic transactions and the Second Protocol on 19 June 1997 to the Convention about protection of the EC financial interests taking especially into account art. 7 concerning cooperation among police, judicial and European Commission organs in the framework of the OLAF.
8. It is recommended that Poland will be prepared to participate in European Information System about Drugs and Drug Habits /REITOX/ and the European Monitoring Centre for Drugs and Drug Habits /EMCDDA/ what is directly connected with adoption of the regulation of the Council of EC nr 302/93 and the Common Action of 16 June 1997.

Above all Poland shall create its domestic actions strategy in drugs matters compatible with the EU strategies.

9. Customs co-operation. Poland shall adopt the EU Convention about customs co-operation and the Common Action of 29.November 1996 about fields of the co-operation between the customs services and economic organisations in fight against drug trafficking. Poland ought to deliver information about prerogatives of its customs offices.
10. Judicial co-operation in penal and civil cases. The Convention about the Protection of Human Rights and Basic Freedoms – addenda nr 6 and 7, the Convention of the Council of Europe of 1990 about laundering, finding, seizure, confiscation of incomes coming from criminal activities and the Common Action of 3.December 1998 concerning laundering of money, identification, finding, freezing, seizure and confiscation of instruments and incomes coming from criminal activities, should be ratified. Poland ought also to precise the meaning of “criminal organization” and to introduce responsibility on basis of the Common Action of 21.December 1998 about penalization for participation in a criminal organizations and of the Common Action of 24.February 1997 about fighting against white-slave traffic and against the children sexual exploitation ^{10/}.

In response to the Common Position the Polish Council of Ministers passed “Supplement to the Poland’s response to the EU Common Position in JHA matters” on 12.February 2002. It concerns the visa policy.

Poland introduced the visa duties for citizens of 9 states /Azerbaijan, Georgia, Tadjikistan, Kyrgyzstan, Turkmenistan, Kazach Republic, Moldova, Mongolia and Cuba/ from 14.August 2000 to 3.February 2002. Since 1.October 2002 the visas duties have been introduced for citizens of Macedonia, and will be introduced for citizens of Byelorussia, Russia and Ukraine since 1.July 2003 ^{11/}.

There are considerable concentration of Poles in territories of Byelorussia and Ukraine at the borderland with Poland. Also in Poland a considerable number of Byelorussians and Ukrainians have been living. They are the Polish citizens. Therefore the Polish authorities have tried to facilitate cross-border contacts at borderlands.

They will continue these efforts to maintain at least some facilities already in the framework of the EU, ex. so called small border movement ^{12/}, anyway in some periods of a year ^{13/}.

Obligations adopted by Poland in order to implement acquis of the III pillar mean a considerable exertion and sensible costs.

Modernisation, staff strengthening and increasing, development of border posts and ways, purchase of modern equipment, inclusion into the SIS and SIRENE, determines large expenses that will be borne by Polish taxpayers in spite of participation in the EU funds.

Ex. to realize a demand of the European Commission about distances between border posts not more than 20 km at the Polish part of the EU future eastern border it is necessary to spend at least 300 mln PLN /75 mln EUR/^{14/}.

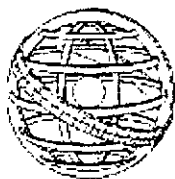
Border guards shall be increased in the number. Poland won't be included automatically to the "Space of Freedom, Security and Justice"^{15/} nor to the "Area without internal borders" in the framework of the Schengen acquis^{16/} directly after its entrance to the EU. There will be maintained controls at the border with the Federal Republic of Germany at least by 2006.

However in 3-4 years after Poland's entry into the EU maybe expected that Poland will completely integrate with the EU together with its new member states too.

NOTES

1. Monica den Boer: Justice and Home Affairs: Cooperation without Integration. In: Helen Wallace and William Wallace /Eds./: Policy – Making in the European Union. Oxford – New York /Oxford University Press/ 1996, p. 394; Simon Hix: The Political System of the European Union. London /Macmillan Press/ 1999, p. 316-317.
2. Making Sense of the Amsterdam Treaty. Brussels /The European Policy Centre/ 1997, p. 114-117.
3. Traktat o Unii Europejskiej w wersji skonsolidowanej po Amsterdamie. W: Traktaty Europejskie. Opracowanie: Ewa Wojtaszek – Mik i Cezary Mik. Kraków /Zakamycze/ 2000, p. 56-58.
4. Protocol Integrating the Schengen Acquis into the Framework of the European Community. In: ibidem, p. 1983-186; Karolina Rokicka: Włączenie acquis Schengen w ramy prawne Unii Europejskiej. In: Studia Europejskie /Warszawa/, 2000 nr 2/14/, p. 75-90.
5. The Treaty of Nice that just as this paper was written wasn't in force. The Treaty provides establishment of the European Set of the Judicial Co-operation /EUROJUST/. /Artur Gruszczak: Unia Europejska wobec przestępczości. Kraków /Wydawnictwo Uniwersytetu Jagiellońskiego/ 2002, p. 111-120.

6. Ben Hall with Ashish Bhatt: *Politicizing Europe: EU Justice and Home Affairs Cooperation*. London /Centre for European Reform/ 1999.
7. Michał Płachta: *Recent Developments in the Extradition Law Within the European Union and the New Polish Domestic Legislation*. In: *Yearbook of Polish European Studies*. Warsaw /Warsaw University Centre for Europe/, 1998, nr 2 p. 93-116
8. Rada Ministrów: *Raport w sprawie korzyści i kosztów integracji Rzeczypospolitej Polskiej z Unią Europejską*. In: *Monitor Integracji Europejskiej*, 2000, nr 37. Warszawa, dnia 26 lipca 2000 r., p. 90-92.
9. Pełnomocnik Rządu do Spraw Negocjacji o Członkostwo R.P. w Unii Europejskiej. Kancelaria Prezesa Rady Ministrów: *Stanowiska Polski w ramach negocjacji o członkostwo Rzeczypospolitej Polskiej w Unii Europejskiej*. Warszawa, luty 2000, p. 355-361; Pełnomocnik Rządu do Spraw Negocjacji o Członkostwo R.P. w Unii Europejskiej. Kancelaria Prezesa Rady Ministrów: *Przebieg negocjacji o Członkostwo Rzeczypospolitej w Unii Europejskiej*. Informacja Rządu R.P. dla Sejmu R.P. Stan na 1 września 2000 roku. Warszawa, październik 2000, p. 81-83; *Omówienie stanowiska negocjacyjnego – Wymiar Sprawiedliwości i sprawy wewnętrzne*. In: *Unia Europejska /Warszawa/, 2000, nr 1 /01/, p.173-175*.
10. Centrum Informacji Europejskiej. *Fiszka informacyjna z dnia 24.I.2003 r.: Wymiar sprawiedliwości i sprawy wewnętrzne. Wspólne stanowisko UE w zakresie III filaru*.
11. *Dokumenty: Stanowisko negocjacyjne Polski – Wymiar sprawiedliwości i sprawy wewnętrzne: Uzupełnienie do odpowiedzi Polski na wspólne stanowisko Unii Europejskiej w obszarze wymiar sprawiedliwości i sprawy wewnętrzne*.
12. *So called small border movement consists of opportunities to cross borderlands /situated not far usually than 50 km from a border/ for people living in the borderland near to a neighbour state on basis of identity cards*.
13. *Such a period is for instance Day of Deads /1-2.November/ when it is allowed to cross a border on basis of identity cards in order to visit tombs of the next-skins..*
14. M. Grudzień: *Wiza do zaufania*. In: *Unia-Polska nr 4 /80/ z dnia 18.III.2002 r., p. 19*.
15. *Briefly in: Vivre dans en espace de liberté, de securité et de justice. Justice et affaires intérieures dans l'Union Européenne*. Luxembourg 2001.
16. *More about the Polish position in: Polska droga do Schengen. Opinie ekspertów*. Warszawa /Instytut Spraw Publicznych/ 2001.



Istituto Affari Internazionali

***“The Justice and Home Affairs Acquis and the Enlargement:
A View from Inside ”***

**By
Jörg Monar
Sussex European Institute
University of Sussex**

Prima versione – da non citare

Paper presentato in occasione della conferenza

“Libertà, Sicurezza e Giustizia: le Sfide dell’Allargamento”

Catania, 13 dicembre 2002

Introduction

Looking at the EU acquis in the justice and home affairs domain - from the inside no less than from the outside - means above all looking at an area in fast development. Over the last three years the Council has adopted between 80 and 100 texts – most of which are legally binding – per year, but still only a small part of the ambitious treaty objectives of Titles IV TEC and Title VI TEU and of the Tampere “milestones” agenda has been implemented so far. Although some major legislative proposals – especially in the areas of asylum and immigration policy – have been delayed because of disagreements in the Council the overall pace of progress is still impressive, especially if compared to the 1990s. This makes it quite likely that by the time of enlargement new substantial measures adding to the acquis will either have to be implemented or will be high on the decision-making agenda. One also has to take into account that there have been some important initial breakthroughs in certain areas of the acquis which are likely to fully develop their knock-on effects only 2004 and beyond. A major example is introduction of the European Arrest Warrant – formally adopted in June 2002¹ but due to be fully implemented only in 2004 - which has been a breakthrough for the principle of mutual recognition in the JHA domain and could well be the starting point of more legislative measures on mutual recognition in criminal matters over the next few years.²

From an EU perspective the challenge regarding the acquis after enlargement is therefore not only to “maintain” the acquis, i.e. to preserve what has been achieved already and ensure that it is effectively implemented, but also to realise its further development potential by making sure that after enlargement the momentum of progress is not lost. In the following we will first look at the key post-enlargement challenges in the JHA domain, then look at the potential and limits of major post-enlargement diversity management instruments and various possibilities to maintain or enhance decision-making and implementation capabilities to finish with a consideration of the importance of trust and confidence for maintaining and developing the JHA acquis after enlargement.

1. The key post-enlargement challenges

1.1. *Increased diversity in political, structural and implementation capability terms*

Each enlargement imports new diversity into the EU, not all of this diversity is negative, as there are also different experiences, know-how and priorities which come into the Union which can add to the variety and effectiveness of its action. Yet increased diversity is clearly also a challenge, a challenge whose risks the EU’s insistence on full adoption of the acquis and the various efforts made during the pre-accession process try to minimise.

¹ OJ L 190 of 17.06.2002.

² See on this point Emmanuel Barbe, *Le mandat d’arrêt européen: en tirera-t-on toutes les conséquences?*, in Gilles de Kerchove/Anne Weyembergh (eds.), *L’espace pénal européen: enjeux et perspectives*, Brussels (Editions de l’Université de Bruxelles), 2002, pp. 113-117.

In the JHA domain the challenge of diversity is a fairly specific one - different in nature from those in other EU policy-making areas and more sensitive - because the AFSJ is in essence a developing common zone of internal security. Internal security is an essential public good, and a highly sensitive one of immediate concern to citizens - and voters. Yet what is true for any security system - be it a bank, a protected data-base or a car - is also true for the AFSJ - the system is only as strong as its weakest link, with one weakness in one part of it having potentially serious implications for all other parts. It is worthwhile to stress this very simple - even banal - logic because it is one which is understood not only by practitioners but also by the public and the media. If the diversity which is coming into the EU with the next enlargement brings weaknesses into the system then this is not simply a question of further adjustment to the economic and administrative functioning of the single market - which might at the worst lead to some temporary economic distortions - but a question of the efficiency and the credibility of the system as a whole as regards the delivery of internal security to the citizens of the EU.

All the candidate countries have made substantial progress towards adopting the legal *acquis* in the JHA area, and there is every reason to assume that the process of formal adaptation of national legislation to the EU JHA *acquis* will be largely completed by the time of accession. Yet the same cannot be said with confidence about other forms of diversity:

(a) Political diversity

Fundamental differences between national political approaches to certain JHA issues - such as over internal border controls and responses to drug addiction - continue to hamper progress towards common policy-making among the current 15 Member States. The future new Member States will inevitably add their own specific political interests and approaches to the existing diversity. Two areas may be taken as an example:

The first example is that of external border management. During the 1990s the EU has moved more and more towards a tightening of external border controls. For some Member States (especially current frontline Schengen countries like Austria, Germany and Italy) ensuring a high degree of border security through sophisticated and extensive checks is clearly a central objective in the JHA area. The Union's new Eastern European Member States are likely to not fully share this approach. For those of them who will be *nolens volens* in charge of part of the EU's new Eastern borders implementing the EU/Schengen external border regime entails major costs in form of a disruption of relations with ethnic minorities on the other side of the border, political relations with neighbouring countries and well established cross-border trade. These countries may at the moment still give a high political priority to the upgrading of their eastern border controls because this is part of the conditions they have to fulfill for EU membership. Yet after enlargement the full implementation or even further development of the EU/Schengen external border *acquis* could well become much less of a priority for some of the new Member States, perhaps even an area where they would seek a revision of the current *acquis*.

The second example is that of the fight against money-laundering. Measures against money-laundering have become a core area of EU policy in the fight against organised crime and ranks high on the current Member States' agenda as this was again confirmed by the Conclusions of the Tampere European Council and action taken after the 11th September 2001. Yet the political perspective of the future new

Member States may not fully coincide with this priority. A very strict application (or even tightening) of the rules against money-laundering could have (or be perceived to have) a dampening effect on the inflow of capital, and new Member States could well take the view that they can less afford this sort of restrictions than the more developed economies of the current Member States. Another reason is that the full implementation of the EU's *acquis* and objectives in this area requires quite considerable financial and administrative efforts (for the setting up of a special agency to monitor financial operations, for instance) which the applicant countries with their huge needs in other areas might prefer to reduce or postpone as far as possible. Both of these reasons provide ample grounds for a different political approach, and it is certainly not by chance, for instance, that the Commission's 2002 progress report on Poland noted that there has been little progress in aligning Polish legislation with the EU money-laundering *acquis*.³

These and other instances of potential additional political diversity could clearly have an impact on both decision-making and policy implementation.

(b) Structural diversity

Efficient EU JHA cooperation requires a certain degree of compatibility of law enforcement and administrative structures. This continues to be a major challenge among the current Member States with their diversity, for instance, in the areas of police and court structures. The new Member States will inevitably add to this diversity, with some more specific problems regarding to an uncompleted "catch-up" of the new Member States with organisational standards required by the EU *acquis*. One example is migration management. While most of candidate countries have gone through extensive structural changes in the management of migration, including the introduction of computerised data-bases on aliens, unclear competence demarcation lines and inadequate cooperation between administrative and security authorities at the central and local level could not only reduce the effectiveness of legislation adapted to the EU *acquis* but also make cooperation with counterparts in the old Member States more difficult. It is also not yet clear, to take another example, whether all of the candidates which – like Slovakia – currently have not yet fully demilitarised their border guards and still use conscripts will have completed the process of creating independent specialised civilian border police forces on the day of accession.

(c) Implementation capability diversity

This is likely to be the area with the highest degree of post-enlargement diversity. Most of the candidate countries have substantial staffing, training and equipment deficits which will still need several years to be overcome. It does not help that, because of financial constraints and bureaucratic obstacles, the build-up of some crucial implementation capabilities is postponed until the "last minute" before accession. One example among many is the problem of understaffing because of recruitment problems and/or financial difficulties. In both Hungary and Poland, for instance, actual staff numbers of the border guards in 2001 fell around 30% short of the official target numbers, and the Commission's recent progress report on Slovenia,

³ European Commission: 2002 Regular report on Poland's progress towards accession, SEC(2002)1408, p. 117.

one of the frontrunners in adaptation to the JHA acquis, noted with concern that in August 2002 the Slovenian government had only approved the appointment of 392 border police staff in 2002 and 200 in 2003 instead of the 700 in 2002 and 540 in 2003 originally foreseen in its Schengen Action Plan.⁴ Another problem is that in a number of cases the likely future new Member States tend to postpone necessary adaptation to almost the “last minute” before accession. The later these changes are introduced, however, the more likely they are to lead to a significant degree of implementation capability diversity in the enlarged EU. Examples are the late full alignment of national rules to EU visa requirements, such as in the case of Poland and Slovakia, for instance, and the slow progress with the organisation of data-protection authorities which are of central importance for the participation in EUROPOL and other computerised EU cooperation networks.

A rather specific implementation capability problem is corruption. It can have serious implications for implementation of JHA measures as police officers and prosecutors in old Member States could be very reluctant to cooperate and share information with counterparts in new Member States which are perceived to be highly vulnerable to corruption. Not all of the candidate countries have so far been equally successful in tackling the problem, leaving considerable differences in the risks of corruption. The Commission’s recent progress report on the Czech Republic, for instance, noted that the number of corruption-related criminal offences was increasing, that latent corruption is widespread, including in administrative police departments.⁵ Much higher levels of corruption in some Member States could obviously have negative implications on the willingness of all to further develop intense cooperation on particularly sensitive internal security issues.

1.2. *The impact of post-enlargement diversity on decision-making, implementation capability and trust*

All three of the above dimensions of diversity indicated above will remain after enlargement, and they will in the first place make common decision-making in the JHA area more difficult. The obvious response to this challenge would be a more strongly developed EU decision-making capacity is needed. Yet this is – at least under the current treaty provisions and institutional arrangements clearly not on offer. The main reason for that is the persistence of the unanimity rule which even in the Tampere progress evaluation report drawn up by the Belgian Presidency in December 2001 was explicitly identified, especially in the areas of asylum and immigration, as clearly a serious hindrance to progress.⁶ Yet there is also the problem of the continuing lack of mutual confidence of Member States in their respective standards and procedures – unlikely to be increased with the coming in of up to 10 largely “untested” new Member States adding to the variety of standards and procedures – and the persisting reluctance to change existing national laws which in the Council are in many cases still defended by national delegations as if each of them had obviously

⁴ European Commission: 2002 Regular report on Slovenia’s progress towards accession, SEC(2002)1411, p. 100.

⁵ European Commission: 2002 Regular report on Czech Republic’s progress towards accession, SEC(2002)1402, p. 114.

⁶ Evaluation of the conclusions of the Tampere European Council submitted to the General Affairs Council and the European Council on 6 December and formally adopted by the Laeken European Council on 14/15 December (Council document no. 14926/01).

the best legislation on the respective JHA issues in place. As a result the problems of the blockage of initiatives, delays and of the watering down of texts under deliberation could well significantly increase in a Union of up to 25 Member States.

The post-enlargement EU will face increased implementation problems in the JHA domain. One major factor will be the above mentioned deficits in capabilities which, at least in the case of some of the new Member States, will last well beyond the day of accession. Stating this does not mean to blame the current candidates for everything. In most cases their implementation capability problems are not due to a lack of political will but to lack of resources and sufficient time to adapt their national systems to an EU *acquis* which has grown enormously since the 1990s and still continues to grow at a pace which makes the "catching-up" an ever evolving abating challenge.

Yet the particular difficulties of the new Member States will not be the only strain on the EU implementation capability. There are also likely to be new security challenges linked to enlargement such as longer and more exposed borders and a potentially increased attractiveness of the enlarged internal market for organised crime and traffickers and facilitators involved in the huge business illegal immigration has become. All this means that rather than aiming only at "maintaining" implementation capabilities the Union will actually need more effective instruments and procedures for implementing its JHA measures than those it currently has.

A functioning "area of freedom, security and justice" depends to a very large extent on trust: Trust between law enforcement and judicial authorities across the boundaries of the different legal systems, law enforcement structures and traditions, but also trust of politicians and their voters in that EU action in the JHA domain provides "value added" in terms of enhanced internal security and does not, on the contrary, create new risks, for instance, through porous external borders or the leaking of confidential data to crime.⁷ This trust is still not yet fully developed among the current Member States. This is shown, for instance, by the fact that some national police forces continue to be very reluctant to systematically provide Europol with relevant data – which is a constant problem for the work of Europol. It will even more difficult, at least initially, to build sufficient trust *vis-à-vis* partners in the new Member States, in part simply because they are "new", yet partly also because of negative perceptions about insufficient training, potential lower standards and corruption. Trust in the capacity of the EU to deliver "value added" in the domain of internal security has gradually increased over the last few years. Yet it still remains limited and fragile. Any evidence, however "thin" it actually may be, that some internal security problems might actually be increasing after enlargement could easily destroy much of that trust and make Member States less inclined to maintain the momentum of the construction of the "area of freedom, security and justice". Because of this reason, but also in view of an effective integration of the "newcomers" in the existing EU structures and networks, building up trust in the Member States should be regarded as one of the most essential tasks in the JHA domain in the first few years after enlargement.

⁷ On the interrelationship between trust and security in the context of the enlargement in the JHA domain see Neil Walker, *The Problem of Trust in an Enlarged Area of Freedom, Security and Justice: A Conceptual Analysis*, in M. Anderson/J. Apap (eds.), *Police and Justice Co-operation and the New European Borders*, The Hague (Kluwer), 2002, pp. 19-33.

2. Potential and limits of major diversity management instruments

2.1. *The Community method*

The Community method with its emphasis on binding legal instruments, majority voting, the Commission's exclusive right of initiative and comprehensive control by the Court of Justice has the great advantage of producing common approaches codified in Community law on the basis of a well defined decision-making process within a single legal and institutional ("constitutional") framework. Yet it also has its clear disadvantages because in some areas – such as legal immigration, police legislation and penal laws - Member States are extremely reluctant to go down the road of common legal norms and resist any attempt to surrender national powers to the Community system. As a result many tend to prefer the absence of common action - or at least very long delays before such action is taken – to a full use of the Community method. It is quite characteristic that when the areas now under Title IV TEC were "communitarised" by the Treaty of Amsterdam the Member States actually agreed to this step only on the basis of maintaining unanimity and making the Commission's right of initiative non-exclusive. There can be little doubt that some current Member States have and some future Member States may have in principle objections against the use of the Community in some areas such as police cooperation.

A further problem with the Community method is that it operates on the basis of rather cumbersome decision-making procedures which – if combined with unanimity – can lead to long delays and least common denominator agreements. Also in other respects it cannot always be taken for granted that the classic Community would be the most effective way forward. The last few years have shown, for instance, that it can sometimes be quite useful, or even more effective, to have a shared right of initiative of the Member States rather than an exclusive one of the Commission because initiatives from the Member States may have the advantage of more expertise on certain issues and may – especially if Member States bring in joint initiatives – build up a critical mass for decision-making in the Council than a Commission initiative. An example for that was the so-called "Four Presidencies" initiative on the establishment of Eurojust in July 2000.⁸

In the enlarged EU the Community method should therefore be maintained or even extended wherever possible, but it seems most unlikely that it will or can be used across all JHA areas, and it may not even be the always the best option for ensuring effective decision-making capacity. Some flexibility should therefore be applied: There should still be a *préjugé favorable* in favour of the Community method because of the high degree of integration and legal certainty it produces, but not necessarily for all issues and not necessarily with all of its traditional components.

2.2. *Enhanced co-operation*⁹

The advantages and disadvantages of "enhanced cooperation" as instrument of flexibility in EU integration has attracted much debate (and literature) since the Treaty of Amsterdam and do not need to be discussed in this contribution. The basis issue

⁸ See Jörg Monar, Justice and Home Affairs, in G. Edwards/G. Wiessala (eds.), *The European Union. Annual Review of the EU 2000/2001*, Journal of Common Market Studies, 2001, pp. 131-132.

⁹ We use the term of the Nice Treaty instead of "closer cooperation".

with the usage of enhanced cooperation as a diversity management instrument in the JHA area (as in other areas) is the trade-off it involves between the desirability of common policy-making – with all Member States participating and moving forward at the same time – because of the legal and political coherence this ensures and the need to avoid a complete standstill in certain areas if some Member States keep blocking further progress which others want.

If unanimity is to a large extent maintained in the JHA domain it seems more and more likely that enhanced cooperation could actually be used as a diversity management instrument after enlargement. The fact that the Belgian Presidency – with the backing of most of the other Member States – “threatened” the Italian Berlusconi government with a potential use of that instrument when Italy was preventing unanimity on the European Arrest Warrant in December 2001 can be taken as an indication that it is no longer considered as a purely abstract possibility. With unanimity in an EU of 25 being obviously much more difficult to achieve, groups of eight or more Member States – according to the new rules introduced by the Treaty of Nice – might prefer this instrument to months or years of delays and blockage.

Saying that enhanced cooperation could well be used does not necessarily mean saying that it will only be used to exclude unwilling or unable new Member States. It seems perfectly well feasible, for instance, that some new Member States might be willing to go ahead with some of the old Member States in areas where other old Member States are not willing to follow. In the run-up to the Seville European Council in June 2002 it seemed, for instance, that some of the current Member States, especially the United Kingdom, did not favour the idea, backed *inter alia* by Italy and Germany to gradually move towards a common European Corps of Border Guards, whereas some of the current candidate countries gave some support to the idea.

It should be emphasised, however, that a proliferation of enhanced cooperation frameworks would come at a price in terms of political and legal fragmentation within the “area of freedom, security and justice”, drastically increase the complexity and difficulty of common policy-making and reduce transparency. It should therefore be regarded as what it actually has been defined in Article 43(1)(c): a measure of “last resort”.

2.3. *The open method of co-ordination*

The open method of coordination – much invoked and discussed as a “new” EU governance instrument – has already found its way on to the EU agenda in the JHA domain: Before the background of the difficulties of implementing the Tampere agenda through common legislative measures the Commission suggested in two Communications of July and November 2001 to use the open method of coordination for both immigration and asylum policy, proposing the adoption of multi-annual guidelines to be implemented through national action plans and monitored by the Commission which would also make new legislative proposals wherever needed.¹⁰ The Commission made it clear that the use of the open method would come on top of some common legislation – part of which it has already proposed – and not replace it, but it was fairly clear that the Commission saw this as a temporary alternative to avoid protracted deadlocks in certain areas of the development of a common approach to migration, especially in areas of primary Member State responsibility such as admission of economic migrants and integration policy.

¹⁰ See COM (2001) 387 and 710.

Could the open method of coordination, then, also be used as a post-enlargement diversity management instrument? Essentially, the open method could allow for some progress to be made in areas where

(a) the Community method is likely to produce deadlocks because of the Member States unwillingness to accept tightly binding policy outcomes

(b) closer/enhanced cooperation is undesirable because of its break-up effects on a common approach.

Having regard to the new Member States' implementation capability problems the open method could have the advantage of making it easier for them to accept certain common targets and guidelines as those would be combined with a longer time horizon and a certain margin of national flexibility for the implementation of these targets and guidelines.

Yet the open method of coordination also carries some risks precisely because of its nature as an essentially intergovernmental coordination instrument. The guidelines would likely to be open to different interpretations, their non-adherence not subject to any legal sanction and the "peer pressure" might not be sufficient to ensure respect of deadlines set. There are already plenty of examples in the JHA domain of legally non-binding deadlines – such as those in the 1998 Vienna Action Plan – being missed and rather silently put aside.

In all cases where significant degrees of approximation or even harmonisation of laws and practices are needed to ensure the effectiveness EU policies in a relatively short period of time the open method is clearly not an appropriate instrument. There would have been little point, for instance, in applying the open method to most of the measures taken by the EU in response to the terrorist attacks of 11 September 2001. There will always be some areas - such as harmonisation of penalties for serious forms of cross-border crime - where the open method cannot be applied effectively.

2.4. *EU aid programmes*

Financial transfers through specific EU programmes are also a substantial diversity reducing instrument in that "weaker partners" can be helped with bringing their implementation capabilities up to the required standards. From 1997 to 2001 a total of Euro 541 million under the PHARE programme were allocated to various programmes in the JHA domain.¹¹ As quite substantial implementation capability deficits – especially in the areas of training and equipment - are likely to persist after enlargement it seems crucial that specific aid instruments are designed in time which can replace the existing pre-accession instruments which are currently scheduled to end at the latest with the day of accession.

It should not be too difficult to politically justify the introduction of specific post-enlargement EU JHA aid programmes those: If the idea of a common "area of security" with its corollary of the "weakest link" is taken seriously then it should be possible to make parliaments, the media and citizen understand that every Euro spent, for instance, on the control of the EU's external borders is also a Euro spent on their own security. Apart from specific programmes for training and equipment upgrading

¹¹ See W. de Lobkowicz, *L'Europe et la sécurité intérieure*, La documentation Française, Paris, 2002, pp. 91-93.

new instruments of financial solidarity for the costs of the intended “high level of safety” within the AFSR¹² should be developed. Community funding for the gradual build-up of common border guard structures for the Union’s external land borders could be one of them.

3. Maintaining/improving the decision-making capacity

3.1. The crucial issue of majority voting

The importance of majority voting for maintenance and development of the *acquis* after enlargement does not need further lengthy explanations. The EU cannot afford risking years of delays or complete deadlock in the JHA domain because of the unanimity requirement. EU experience has shown that in areas of majority voting Member States often behave right from the beginning much more flexibly and are more willing to engage in compromise building than in areas of unanimity. The mere possibility of a qualified majority vote makes its actual use often superfluous as consensus is in most cases reached well before Member States take the risk of being formally outvoted.

By virtue of Article 67 TEC the Council can decide in 2004 to introduce the co-decision procedure for part or all of the communitarised areas falling under Title IV TEC. To take this step – which requires unanimity - is the very least which the Union has to do to preserve its decision-making capacity in an enlarged EU. The “Third Pillar” should also not be regarded as immune to the introduction of majority voting, although certain areas of police cooperation – such as potential operational powers for Europol – and approximation or harmonisation of penal laws may still be for quite a few years too sensitive to subject Member States to the common discipline of majority votes.

3.2. Streamlining the structures and procedures of decision-making system

The current working structure in the Council – very much based on the approach of having “a box”, i.e. a committee or working party, for any problem area or issue - may satisfy the desire of senior officials in the ministries to be fully involved in Brussels but has become increasingly complex and overextended. A reduction of the number of working parties and the transformation of some of them into multidisciplinary groups with a broader remit could not only reduce the necessary coordination effort and speed up certain procedures, but also facilitate the insertion of the new Member States into the decision-making system.

The “Haga process”, initiated under the Swedish Presidency in 2001, has also highlighted certain problems in decision-making procedures such as Member States submitting overlapping or badly timed national initiatives. In an EU of 25 such problems could proliferate if the Council’s rules of procedure are not adapted accordingly.

¹² According to Article 29 TEU.

3.3. *Increased use of deadlines*

Only a part of the current JHA objectives in the treaties are linked to legally binding deadlines. Where this has been done, however, the pressure on Council and Commission to act has been greater than in the non-deadline linked areas. The Commission's half-yearly "scoreboard" derives also a considerable part of its usefulness as a peer pressure instrument from the deadlines set in the treaties, the Vienna Action Plan and Tampere. There can be no doubt that deadlines introduce an additional dimension of urgency into the decision-making process. For the EU after enlargement, therefore, any JHA objective defined in the Treaties should also be linked to a deadline for adopting the respective measures.

3.4. *Increased use of "stand-still" and "sunset" clauses*

The EU's decision-making capacity in the JHA domain has repeatedly been impaired by Member States continuing to prepare and adopt diverging legislation in relevant JHA areas which complicates or even obstructs the adoption of common measures. A recent example is the new German immigration law (*Zuwanderungsgesetz*) which last year made the German delegation in the Council repeatedly argue that it could not commit itself to EU legislation in this area before the new legislation at the national level would be completed. Some parts of this legislation, such as those on family reunification, do clearly not make the adoption of common EU measures easier. Within a larger EU this sort of problem could increase. A useful remedy could be the increased use of "stand-still" clauses obliging Member States not to adopt any new legislation which might provide an obstacle to common legal instruments in the respective area. They should be applied whenever and as soon as a legislative text has been formally proposed to the Council.

It is all too often a fairly painless option for Member States to endlessly struggle for a better deal in the Council on new EU legislation or to accept long delays with the introduction of national implementing legislation as long as the existing arrangements still provide an acceptable fall-back position. The use of "sunset clauses" – for instance in the context of legislative acts requiring implementing legislation – can increase the pressure to act as they provide that existing bi- or multilateral arrangements will become invalid on a certain date if they have not been changed or replaced by a common legal instrument or followed by appropriate national implementing legislation.

4. Maintaining/improving the implementation capacity

4.1. *Strengthening monitoring procedures (including benchmarking)*

The EU has already acquired a quite substantial experience with collective evaluation mechanisms, the "Standing Committee on the Evaluation and Implementation of Schengen" being the most notable example. Such monitoring mechanisms will be even more important in an enlarged Union in which some of the new Member States might have special difficulties with meeting standards set by the old and where it will be important to increase transparency between all Member States to avoid false suspicion and distrust. These evaluation mechanisms should obviously apply to all Member States (not only the newcomers). The Schengen Standing

Committee could serve as a model. Yet there should be separate evaluation mechanisms for all parts of the acquis, not only for the Schengen acquis which remains heavily focused on border controls and compensatory measures.

Such monitoring mechanisms should be combined with a system of benchmarking, with Member States then being given some sort of “marks” for their respective performance which should increase pressure on those with “low scores”. The monitoring could also be linked to a system of “incentives”, with penalties imposed on authorities failing the standards and financial rewards to those performing above average. Developing a sensible penalty system could be difficult, however, as imposing a fine or withdrawing EU support could be both highly controversial and counterproductive if funding shortages are part of the problem in the first place.

4.2. *Improved “best practice” identification and transfer*

The Member States are a huge reservoir of different experiences and practices. By analysing and evaluating those and identifying practices which are producing the best results Member States can be given an incentive to learn from each other and common EU measures can be based on best practices rather than on a compromise between good and less good ones. Best practice identification and transfer plays already a substantial role in the work of some of the special EU agencies in the JHA area – such as the European Police College (CEPOL), the European Monitoring Centre for Racism and Xenophobia in Vienna and the GROTIUS training programme. In the enlarged EU best practice identification should be elevated to a major objective of the AFSJ, generalised across all areas and made a central element of all training programmes. The major advantage of best practice identification and transfer as a diversity management instrument is that it is both a relatively painless process – as there are no formal sanctions - and a cost-effective way of improving implementation capabilities.

4.3. *Increased use of common institutional structures and “joint teams”*

Both the creation of common institutional structures – such as currently Europol and Eurojust and in the future perhaps a common European Corps of Border Guards – and the formation of “joint teams” have the triple advantage of increasing the operational expertise available to officers on law enforcement or control missions, generating learning effects and increasing trust. In the enlarged EU such common institutional structures should be appreciated and used also as agents for the continuous exchange of expertise and experience. The formation of joint operational teams, such as the “investigation teams” provided for by the Framework Decision of 13 June 2002,¹³ bringing together officials from “old” and “new” Member States could be particularly valuable in the first years after enlargement.

4.4. *Introduction of rapidly adaptable support programmes for “weak spots”*

Both external events - such as the sudden increase of migration of refugee pressure on certain parts of the EU’s external borders - and weaknesses identified in monitoring exercises could justify the use of EU aid instruments for strengthening “weak spots” of the AFSJ in the interest of the whole. Some instruments – such as the

¹³ OJ L 162 of 20.6.2002.

European Refugee Fund – have already been put into place, but overall there are very few of these “emergency aid” instruments and they tend to be under-funded and cumbersome to use. In an enlarged EU – where more “weak spots” are likely to appear – a more extended and flexible system of rapidly adaptable support instruments should be put into place. Financial reserves which could be called up at short notice should be provided for by the EU budget in the context of broadly defined JHA programmes. A further possibility would be the EU supported “lending” of personnel by Member States to other Member States experiencing temporary problems at external borders or over particular law enforcement issues such as the fight against organised crime, traffickers in human beings or terrorism. The possibility envisaged in the June 2002 external border management plan of Member States being able to request the intervention of a “rapid response unit” consisting of officers from other Member States for problems at border crossing points¹⁴ goes in that direction.

5. Trust and confidence building

5.1. The importance of common structures and training for trust generation

The proliferation of special common structures in the JHA domain – ranging from institutions such as Europol over monitoring centres to networks such as the European Judicial Network - has recently attracted some criticism, and there is, of course, a problem with creating structures – such as the Police Chiefs Task Force – whose role and position have been ill defined. Yet such common structures can play a very useful role after enlargement because they constitute points of regular encounter and cooperation between practitioners of old and new Member States. These can help spreading knowledge about their respective law enforcement and judiciary systems, increase transparency and create trust through the routine of cooperation. An early and full integration of officials from the new Member States into the work of common JHA structures – which in the case of Europol is now already well under way - should therefore be regarded as a priority for both the remaining time before accession and the first months after accession.

5.2. The potential crucial role of a common management of external borders

In this context the action plan for the integrated management of the external borders adopted by the Seville European Council in June 2002¹⁵ with – as its final objective - the potential creation of a European Corps of Border Guards could play a crucial role in building trust. External border security is clearly one of the primary enlargement related concerns among the current Member States. Elements such as common operational co-ordination, exchange of personnel, formation of joint operational teams and the introduction of burden-sharing mechanisms as part of a gradual move towards a European Corps would give the “old” Member States a feeling of having an insight into and influence on the way the new external borders are managed, provide ample opportunities for sharing experiences between officials from old and new Member States and facilitate the transfer of expertise. All this would make a substantial contribution to trust building

¹⁴ Council document no. 10019/02.

¹⁵ Council documents no. SN 200/1/02 REV 1 and 10019/02.

5.3. *More extensive use of liaison agents and exchange of experts*

Liaison agents placed in ministries and police headquarters or border control posts have played a very useful role in increasing trust and operational efficiency in cooperation between current Member States. The same applies to the exchange and temporary posting of experts. This system should be expanded in the enlarged EU, especially as the current programmes of pre-accession advisers will have come to an end by then. Staff shortages in ministries and law enforcement agencies certainly impose serious constraints in this area, but the benefits on the trust building side would be very considerable.

5.4. *Generating support and confidence among citizens through transparency and a better balance between aims of "freedom", "security" and "justice"*

The AFSJ needs as a basis not only trust between the practitioners involved in implementing it but also the support of the citizens it is intended to provide with "added value" in terms of increased internal security, freedom and justice. This support of citizens should not be taken for granted. There is some degree of suspicion amongst civil liberties groups in the current Member States as regards the structures and policies currently developed by the EU. These have been accused of being essentially repressive in nature and following the logic of a sort of EU fortress watched over by a central "big brother" with huge data-bases at his disposal and decisions being taken behind closed doors and outside effective parliamentary control. Citizens in the new Member States – having still vivid memories of their own "big brothers" with their omnipresent instruments of control and repression – could well be even more sceptical about the build-up of central EU structures and policies in the internal security area. In several of the new Member States the negative impact of the Schengen acquis on the traditionally rather open borders to Eastern neighbours is unlikely to fuel enthusiasm about the AFSJ.

It will therefore be of considerable importance to increase the transparency of the AFSJ through a better communication of its objectives and progress to parliaments, the media and citizens and more effective parliamentary control. It is no less important to ensure that beside the internal security dimension the "freedom" and "justice" objectives of the AFSJ are not neglected which means that the institutions should aim at a better balance between the three essential public goods the title of the AFSJ promises to citizens. Making the Charter of Fundamental Rights a legally binding part of AFSJ and further increasing European citizens' access to justice across borders would be important elements in such a re-balancing effort. It would give to the citizens of the new Member States a signal that EU justice and home affairs are not only about law enforcement but also about guaranteeing their freedoms and – as the Vienna Action Plan said – generating a "common sense of justice" across the EU.

isi ISTITUTO AFFARI
INTERNAZIONALI - ROMA

n° Inv. 22926
17 DIC. 2002

BIBLIOTECA

TEACHING

The Centre organises:

- ✓ The Jean Monnet Chair of European Union Politics at the School of Political Sciences
- ✓ Information Modules and Crash Courses
- ✓ Tutoring service
- ✓ Seminars on themes of political and scientific interest

DOCUMENTATION

The Centre provides:

- ✓ An **On-line Bibliography** on the Euro-Mediterranean Partnership
- ✓ An archive of the main documents of the European Union and scientific publications on the political system of the European Union
- ✓ CD-ROMs and other information materials on the European Union

PUBLICATIONS

The Centre publishes the *Jean Monnet Working Papers on Comparative and International Politics*

- 45.02 Fulvio Attinà, *Security cooperation at the regional level: from opposed military alliances to security partnerships. Is the Mediterranean region on the right track?*
- 44.02 Chiara Liguori, *La difficile construction de l'integration maghrébine et le partenariat euro-méditerranéen*
- 43.02 Valeri Mikhailenko, *Il posto della Russia nel nuovo sistema mondiale*
- 42.02 Martin Schain, *European-American Security in the Post-September 11 World.*
- 41.02 Fulvio Attinà, *I Processi di Integrazione Regionale nella Politica Internazionale Contemporanea.*
- 40.02 Stelios Stavridis, *The First two Parliamentary Fora of the Euro-Mediterranean Partnership: an assesment.*
- 39.01 Federica Bicchi, *European Security Perceptions vis à vis the Mediterranean: theoretical and empirical considerations from the 1990s.*
- 38.01 Dimitris K. Xenakis and Dimitris N. Chryssochoou, *Between Good Governance and Democratisation: Assessing the Euro-Mediterranean Condition.*
- 37.01 Men Jing, *Changes of Security Thinking and Its Application to Military Construction in China.*
- 36.01 Elena Tedesco *Il Partenariato Euro-Mediterraneo Il caso della Sicilia.*
- 35.01 Janxiong Zhang, *The "Shanghai Five" and its implications for the Construction of Security Partnership in Asia-Pacific.*
- 34.01 Emanuel Adler, *A Mediterranean Canon and an Israeli Prelude to Long Term Peace.*

33.01 Florian Güssgen, *Of Swiss Army Knives and Diplomacy. A review of the Union's Diplomatic Capabilities.*

32.01 Zhu Guichang, *China and the Asia Pacific Security System.*

31.01 Stelios Stavridis, *European Security and Defence after Nice.*

30.01 Maria Weber, *China's 21st Century Challenge: a Balance of Power between Japan and US.*

**EUROPEAN CENTRE OF EXCELLENCE JEAN MONNET
"EUROMED"**

Department of Political Studies

Via Vittorio Emanuele 49 – 95131 - CATANIA - ITALY

The "EuroMed" Centre was created by the Department of Political Studies in 1997. An agreement between the University of Catania and the European Commission in the framework of the Action Jean Monnet, acknowledges the Centre as **European Centre of Excellence** with the mission to develop multidisciplinary activities relating to the construction of the European Union both within the university and at regional level, with special reference to the process of cooperation in the Euro-Mediterranean area. The Centre is financed by the Department of Political Studies; projects and events are financed also by the collaborating institutions.

Direction: Prof. Fulvio Attinà

Fax/Tel: +39.095. 7347 209

attinaf@unict.it

Organisation: Dr. Valentina Barbagallo

Fax/Tel: +39. 095. 7347 256

euromed@unict.it

To get more information on the Centre and news on ongoing activities check the web page: http://www.fscpo.unict.it/EuroMed/cjm_home.htm

EVENTS

- Workshop on *The evolution of security in the world system* (May 2-3, 2002). Participants: Fulvio Attinà, Luciano Bardi, Luigi Bonanate, Serena Giusti, Umberto Gori, Raphael Grasa, - Francesca Longo, Marco Mascia, Valeri Mikailenko, Carla Monteleone, Caterina Paolucci, Antonio Papisca, Rodolfo Ragonieri, Martin Schain
- International Workshop on *Constructing security partnership in Europe, Asia-Pacific and the Mediterranean: the role of the European Union and China* (January 30, 2001). Participants: Fulvio Attinà, Valentina Barbagallo, Federica Bicchi, Roger Greatrex, Florian Guessgen, Tanya Kamchamng, Carla Monteleone, Men Jing, Stefania Panebianco, Stelios Stavridis, Zhang Huiming, Zhang Jianxiong, Zhirui Chen, Zhu Guichang, Zhu Liqun, Maria Weber, Wu Zhicheng, Xiao Lixin.
- Workshop on *The EU and the fight against organised crime: towards a common police and judicial approach* (November 24-25, 2000). Participants: Salvatore Aleo, Malcom Anderson, Didier Bigò, Monica der Boer, Giovanni Grasso, Francesca Longo, Manuele Marotta, Ernesto U. Savona.
- *Masters in Euro-Mediterranean Partnership* (January-December 2000) in cooperation with the Scuola Superiore di Catania
- Workshop on *Democracy and Elections in the European Union 1999* (May 6-7, 1999). Participants: Fulvio Attinà, Luciano Bardi, Stefan Bielanski, Federiga Bindi, Jean Blondel, Luigi Bonanate, Maurizio Cotta, Fabio Franchino, Giorgio Giraudi, Amie Kreppel, Andrea Mignone, Gianfranco Pasquino, Murielle Rouyer.
- Summer School on *The Euro-Mediterranean Partnership and the New International Order* (June 1999)
- Summer School on *The Mediterranean and the New International Order*, (June 1998)

RESEARCH

The research areas of the Jean Monnet Centre are:

- ✓ The Euro-Mediterranean Partnership
- ✓ The Foreign and Defence Policy of the European Union and Transatlantic Relations
- ✓ The European Union and Democracy
- ✓ Europol and the Third Pillar

International visiting scholars

- Francisco Aldecoa, *Universidad Complutense de Madrid*; Esther Barbe, *Universidad Autonoma de Barcelona*; James Caporaso, *Washington University*; John A. Groom, *University of Kent*; Chris Hill, *London School of Economics*; Zhu Guichang, *Shandong University*; Valeri Mikhailenko, *Ural State University*; Bruce Russett, *Yale University*; Stelios Stavridis, *The University of Reading*.



UNIVERSITY OF CATANIA
Department of Political Studies



European Centre Jean Monnet
“EuroMed”

Jean Monnet Action
European Commission