

4 Implementing the EU's Internal Security Strategy

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<i>Committee's decision</i>	For debate in European Committee B

Background

4.1 Security is one element of the Area of Freedom, Security and Justice which was introduced by the Amsterdam Treaty and which is now contained in Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU). While the Treaties establishing the European Union refer, variously, to “national security”, “public security” and “internal security”, they do not define these terms. The Lisbon Treaty states expressly that “national security remains the sole responsibility of each Member State”¹⁴ but the division of responsibilities in respect of internal security is less clear-cut.

4.2 Article 72 TFEU suggests that Member States also remain the principal actors as regards internal security. It provides that EU measures implementing the Area of Freedom, Security and Justice “shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security”.¹⁵ When exercising these responsibilities, Member States remain outside the purview of the EU's Court of Justice and the Court also lacks jurisdiction to review the validity or proportionality of operations carried out by police or other national law enforcement bodies to maintain law and order or safeguard internal security.

4.3 It is clear, however, that the EU has an increasingly important role in coordinating action taken by Member States to protect internal security. This is reflected in the Lisbon Treaty which established a new standing committee — called COSI — responsible for operational cooperation on internal security.¹⁶ Unlike COREPER, COSI is not involved in preparing legislative acts. Its purpose is to facilitate, promote and strengthen operational action in the field of internal security involving national law

¹⁴ See Article 4(2) of the Treaty on the European Union (TEU).

¹⁵ Previously Article 64 of the EC Treaty.

¹⁶ See Article 71 TFEU.

enforcement bodies and, where appropriate, EU agencies such as Eurojust, Europol and Frontex.¹⁷

4.4 The importance of internal security is also reflected in the Stockholm Programme, a five-year programme agreed by the European Council in December 2009 which establishes the priorities for EU action in the Area of Freedom, Security and Justice for 2010–14 and which, for the first time, calls on the Council and Commission to develop a comprehensive EU internal security strategy. According to the European Council, the strategy should:

“further improve security in the Union and thus protect (the) lives and safety of European citizens and tackle organised crime, terrorism and other threats. The strategy should be aimed at strengthening cooperation in law enforcement, border management, civil protection, disaster management as well as criminal judicial cooperation in order to make Europe more secure.”¹⁸

4.5 At the same time, the European Council recognised that the principal challenge for the EU and Member States in implementing the Stockholm Programme would be “to ensure respect for fundamental freedoms and integrity while guaranteeing security in Europe”, adding:

“It is of paramount importance that law enforcement measures and measures to safeguard individual rights, the rule of law, and international protection rules go hand in hand in the same direction and are mutually reinforced.”

4.6 In February 2010, the Spanish Presidency proposed an EU Internal Security Strategy which the European Council endorsed in March. The Strategy sets out the following common threats and challenges confronting EU Member States:

- terrorism;
- serious and organised crime;
- cybercrime;
- cross-border crime (including petty or property crime which has a significant impact on the daily lives of people);
- violence (notably, youth violence or hooliganism at sports events);
- natural and man-made disasters; and
- other common phenomena which create safety and security threats, such as road traffic accidents.

4.7 The Strategy identifies the ways in which the EU and Member States can respond to these threats and challenges and then sketches out the basis for a new “European Security Model” which would use “a more integrated approach” to law enforcement and

¹⁷ See Council Decision 16515/09 establishing COSI.

¹⁸ See paragraph 1.1 of the Stockholm Programme, Council document 17024/09.

judicial cooperation, border management and civil protection, based on a common set of principles and ten strategic guidelines for action. The principles are:

- respect for fundamental rights, international protection, the rule of law and privacy;
- protection of all citizens, especially the most vulnerable, with particular focus on victims of crime;
- transparency and accountability in security policies;
- the use of dialogue to resolve differences and ensure respect for the principles of tolerance and freedom of expression;
- integration, social inclusion and action to combat discrimination;
- solidarity between Member States; and
- mutual trust.

4.8 The Internal Security Strategy contemplates that the Commission will adopt a Communication setting out “action oriented proposals” to implement the Strategy and also consider the feasibility of establishing an Internal Security Fund.

The Commission Communication on the EU Internal Security Strategy

4.9 The Commission first sets out the EU’s role in internal security which, it says, “consists of common policies, legislation and practical cooperation in the areas of police and judicial co-operation, border management and crisis management.” Actors involved in implementing the EU’s Internal Security Strategy include “Member States, the European Parliament, the Commission, the Council and agencies and others, including civil society and local authorities.” The Commission adds that the “shared agenda” which it proposes in its Communication should be supported by “a solid EU security industry in which manufacturers and service providers work closely together with end-users.”¹⁹

4.10 The Commission also emphasises the need for “coherence and complementarity between internal and external aspects of EU security”. It says that the EU’s internal security priorities should play an increasing part in political dialogue with third countries and that EU delegations should, where appropriate, include security experts (for example, Europol liaison officers).

4.11 The Commission proposes five Strategic Objectives as the focus for EU action for 2011–14, each one accompanied by a set of specific actions identifying which body is responsible for implementation and indicating when each action should be initiated. The five Strategic Objectives are highlighted below in bold, followed by a brief description of the actions envisaged to implement them.

¹⁹ See page 2 of the Communication.

Objective 1 — disrupting international criminal networks

4.12 The Commission advocates the strengthening of practical law enforcement co-operation “across all sectors and at different levels” to trace and confiscate the profits generated by crime, including “where necessary through legislation on judicial cooperation to strengthen mutual recognition and common definitions of criminal offences and minimum levels of criminal sanctions.”²⁰ Specific actions proposed include:

- new EU legislation on the collection of Passenger Name Records (PNR data) to help prevent and prosecute terrorist and other serious criminal offences;
- a strengthening of EU anti-money laundering legislation;
- greater involvement of Europol, Eurojust and OLAF (the EU’s anti-fraud agency) in joint operations tackling criminal networks and the establishment, where needed, of Joint Investigation Teams;
- EU proposals to assist Member States in combating corruption;
- further development of the “administrative approach” to tackling crime (for example, involving governmental or regulatory bodies responsible for granting licences or procurement contracts);
- initiatives to improve the enforcement of intellectual property rights and to tackle counterfeiting and piracy;
- the establishment of effective Asset Recovery Offices in each Member State; and
- further legislative measures to seize and confiscate criminal profits and assets.

Objective 2 — preventing terrorism and addressing radicalisation and recruitment

4.13 The Commission observes that Member States are the primary actors in tackling terrorism and that “the core of the action on radicalisation and recruitment is — and should remain — at national level.”²¹ Actions proposed by the Commission include:

- the creation of an “EU radicalisation awareness network” bringing together policy makers, law enforcement officials, local authorities, academics and civil society organisations to share knowledge and best practice;
- supporting the work of civil society in exposing and challenging violent extremist propaganda;
- establishing a framework for administrative measures to freeze the assets of those involved in terrorist activity, using the powers set out in Article 75 of the Treaty on the Functioning of the European Union (TFEU);²²

²⁰ See page 4 of the Communication.

²¹ See page 7 of the Communication.

- regulating access by the public to chemical precursors used to make explosives and strengthening the EU's dual use export control system to tighten controls on the supply of substances which could be used to make explosives or weapons of mass destruction;
- developing an EU terrorist finance tracking programme which provides for the extraction and analysis of financial messaging data;
- strengthening aviation and maritime security, harnessing new technology such as Galileo and GME S (Global Monitoring for Environment and Security) and working "to ensure public acceptance by seeking an even better balance between the highest possible level of security and travel comfort, cost control, and the protection of privacy and health";²³ and
- developing a more active EU approach to the security of passenger transport on land.²⁴

Objective 3 — raising levels of cyber security for citizens and business

4.14 The Commission highlights the global scale of cyber crime and the difficulties it presents for criminal justice systems in terms of establishing jurisdiction and securing a successful prosecution. Actions proposed by the Commission include:

- establishing an EU cyber crime centre by 2013 to help develop operational and analytical capacity to investigate cyber crime and to improve international cooperation;
- developing guidance on cyber threats, basic precautions to counter threats, and systems for reporting cyber crime incidents;
- using the European Public-Private Partnership for Resilience (EP3R) to improve the security of critical infrastructure; and
- establishing by 2012 a network of governmental Computer Emergency Response Teams (CERTs) and, by 2013, a European Information Sharing and Alert System (EISAS).

Objective 4 — strengthening security through border management

4.15 The Commission says that the EU's border management strategy should integrate the twin objectives of managing migration and combating crime. The Commission proposes:

- establishing in 2011 a new European Border Surveillance System (EUROSUR) which will use satellite imagery and other new technologies to detect and track

22 Article 75 provides for the Council and European Parliament to "define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities" in order to prevent and combat terrorism and related activities.

23 See page 8 of the Communication.

24 The Commission says that it will issue a further Communication on Transport Security Policy in 2011.

targets at the EU's maritime border and which will enable Member States to share with each other and with Frontex operational information;

- facilitating the sharing of information on criminals and trafficking networks between Frontex and Europol;
- producing an annual report on specific cross-border crimes, such as human trafficking or the smuggling of illicit goods, as the basis for a further assessment of the need for Frontex and police, customs and other specialised law enforcement authorities to undertake joint operations;
- improving EU capabilities for assessing the risk of safety and security threats associated with the free movement of goods across the EU's external border;
- improving the coordination of border checks carried out by different national authorities (police, customs and border guards) and developing, by 2011, common risk analyses to help identify "hot spots", for example the repeated use of certain border crossing points to smuggle drugs or people; and
- developing, by 2014, with Frontex, Europol and the European Asylum Support Office minimum standards and best practices for interagency co-operation at the external border.

Objective 5 — increasing Europe's resilience to crises and disasters

4.16 The Commission emphasises the need for better risk assessment and management at EU level and more effective and coherent crisis response mechanisms. Specific actions proposed include:

- giving effect to the new "solidarity clause" established by the Lisbon Treaty;²⁵
- developing EU risk assessment and mapping guidelines for disaster management and drawing on national threat assessments in order to establish, by 2014, an EU risk management policy which will ensure a better link between threat and risk assessments and decision making;
- building the capacity for multi-source analyses and assessments through better information sharing between Member States, EU agencies (such as Europol, Eurojust, Frontex), the European External Action Service and the EU's Situation Centre;
- developing, in 2011, a general framework to protect "classified information"; and
- establishing a European Emergency Response Capacity which will draw on a pool of pre-committed assets from Member States.

4.17 The Commission says that any funding needed to implement the Internal Security Strategy for the period 2011–13 will be found within the current ceilings of the EU's

²⁵ Article 222 TFEU requires Member States and the Union to "act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster" and provides for the Union to mobilise all instruments at its disposal to provide assistance.

financial framework, but expenditure from 2014 onwards remains to be determined as part of the negotiations for the next multiannual financial framework. Within that context, the Commission will consider the feasibility of establishing a dedicated Internal Security Fund.

4.18 The Commission will produce an annual report to monitor progress in implementing the Internal Security Strategy, including an assessment of the impact of EU actions and a description of the internal security situation within the EU.

The Government's view

4.19 The Parliamentary Under-Secretary of State for Crime Prevention (James Brokenshire) says that the Government “broadly agrees” with the five Strategic Objectives identified in the Communication and supports greater practical cooperation between Member States and EU institutions and agencies. He adds that the UK has advocated “a more holistic approach to internal security matters” in COSI and emphasised the importance of engaging with third countries. However, he also expresses reservations about a number of actions proposed in the Communication which, he says:

“departs from the Council’s Internal Security Strategy by proposing new EU structures, including an EU cyber crime centre, and new competence such as powers for new asset recovery offices. It also proposes legislation, such as a revised legal framework on asset recovery, which was unforeseen in the Stockholm Programme. By contrast, the ISS explicitly acknowledges ‘the framework of the Stockholm Programme’. Such legislative proposals also run counter to the focus of the ISS and COSI on practical measures and cooperation instead of new EU legislation. In addition, we do not feel that the Commission’s proposals on tackling terrorism place enough focus on bilateral and multilateral cooperation between Member States. The Government will present these views at discussions of the Communication at JHA Council.”²⁶

4.20 Elements of the Communication which the Government welcomes include:

- more joint operations and greater use of Joint Investigation Teams to tackle criminal networks;
- further development of the “administrative approach” to tackling crime;
- improving information sharing and coordination on land transport security;
- developing an EU-wide awareness programme to provide practical guidance to citizens on cyber threats;
- enhancing cooperation between national Computer Emergency Response Teams;
- facilitating the exchange of personal data between Frontex and Europol, subject to adequate data protection safeguards; and

²⁶ See paragraph 24 of the Minister’s Explanatory Memorandum.

- streamlining existing early warning and alert systems and improving crisis coordination across the EU.

4.21 While the Government continues to advocate EU legislation on the collection of Passenger Name Records (PNR data) for journeys within the EU, it expresses a general reservation about the need for further legislation, for example:

- on the seizure and confiscation of criminal assets;
- on the online sale of counterfeit goods; and
- on tackling cyber crime.

4.22 The Government opposes the use of Article 75 TFEU to develop a framework for administrative measures to freeze the assets of those involved in terrorist activity and suggests, instead, the use of Article 74 TFEU which contemplates “administrative cooperation” between national authorities and with the Commission.²⁷ While supporting “the principle of a genuinely voluntary asset pool” for crisis response, the Government says that it would “resist moves to prioritise EU operations over national operations, or to introduce a legal presumption that Member States will pre-commit disaster response assets for EU deployment, or any move to limit the right of Member States to decide asset deployments domestically or internationally”.²⁸

4.23 The Government also highlights what it considers to be an omission in the actions proposed on border security, stating that “the only true deterrent to illegal migration into the EU is an enhanced expectation of swift return to the migrant’s country of origin. The Government would therefore have welcomed the inclusion of measures to strengthen capacities in the area of voluntary and forced returns”.²⁹

4.24 The Minister tells us that the Council is likely to discuss possible Conclusions relating to the Communication early in 2011. He anticipates that the General Affairs Council in December will adopt Conclusions on a related Commission Communication *Towards a stronger European disaster response: the role of civil protection and humanitarian assistance* which concerns some of the actions proposed for implementing Strategic Objective 5 on strengthening Europe’s resilience to crises and disasters.³⁰

Conclusion

4.25 The Internal Security Strategy agreed in March is the first attempt by the EU to articulate in one document a comprehensive European approach to internal security and to define a distinctive European security model. The Strategy is extremely broad in scope, ranging from terrorism and serious organised crime to hooliganism, petty crime and road traffic accidents. It also encompasses a large array of actors, from

27 Measures based on Article 74 TFEU are not adopted by a legislative procedure involving the European Parliament, whereas the general framework provided for in Article 75 TFEU requires co-decision with the EP.

28 See paragraph 23 of the Minister’s Explanatory Memorandum.

29 See paragraph 21 of the Minister’s Explanatory Memorandum.

30 See (32124) 15614/10: HC 428–ix (2010–11), chapter 9 (24 November 2010).

traditional law enforcement and civil protection authorities to academics, the private security industry and broader elements of civil society.

4.26 The Internal Security Strategy and the Commission Communication which seeks to implement it raise a number of important issues. For example:

- Do they give sufficient weight to the freedom and justice elements of the Area of Freedom, Security and Justice?

While the Stockholm Programme, Internal Security Strategy and Commission Communication all emphasise the common values and principles that should be the distinguishing feature of any European Security Model — notably, safeguarding individuals' rights and protecting their privacy, ensuring that any intrusion is necessary and proportionate, and complying with international protection rules at the EU's borders — are these values and principles adequately reflected in the specific implementing actions proposed by the Commission?

- How strategic are the five Objectives identified in the Communication?

Do they capture the main security challenges confronting the EU and Member States or are they simply a means of re-packaging existing initiatives?

- How active a role should the UK play in the initiatives proposed to implement the Internal Security Strategy, and how might the UK best influence the shape and future direction of the Strategy?

The UK's Opt-In will apply to many of the areas covered by the Internal Security Strategy. It is clear that the Commission contemplates further legislation to establish common definitions of serious crimes and minimum levels of criminal sanctions as a means of tackling serious crime and disrupting criminal networks, and cites in the Communication recent initiatives on human trafficking, sexual exploitation of children and cyber crime. The Government has expressed a reluctance to support a number of legislative initiatives proposed in the Communication. It has also already decided not to opt into a draft Directive on human trafficking (although it may review its decision once the Directive has been adopted), but has opted into a draft Directive on the sexual exploitation of children. A decision is pending on a draft Directive on attacks against information systems. The Government could therefore be said to be at a critical juncture in defining the nature and extent of its participation in many of the areas covered by the Internal Security Strategy and Communication. How might individual opt-in decisions taken by the Government affect the UK's broader influence over the future shape and direction of the European security model?

4.27 In light of the political importance of the issues we have highlighted, we recommend that the Communication should be debated in European Committee B.