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## The EU's Internal Security Strategy (ARI)

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**Theme:** The EU Justice and Home Affairs Council approved its Internal Security Strategy on 25 February 2010.

**Summary:** The EU Justice and Home Affairs Council approved its Internal Security Strategy on 25 February 2010. The document's approval was one of the priorities for the Spanish Presidency within the Area of Freedom, Security and Justice, and its goal was to present the available instruments to guarantee the security and freedom of European citizens, develop new instruments and policies and strengthen cooperation with regard to police, judicial, border control and civil protection matters.

An analysis of the document reveals two possible interpretations of the strategy: a purpose-based interpretation, whereby effectively the purpose of the strategy goes no further than its own approval, and another instrumental interpretation, whereby the strategy serves to transform European internal security. This ARI reviews the background of the Internal Security Strategy, the approved content and the omissions which, overall, make the document look more like a statement of intent than a set of guidelines for transformation.

### **Analysis:**

For almost four decades, EU member states have been cooperating in Justice and Home Affairs (JHA). Internal security being a national responsibility (article 72, TFEU), each state boosts its individual capacities by tapping bilateral, multilateral, regional and international frameworks according to its own security interests or priorities. European cooperation is one of the available frameworks offering member states greater added value, always remaining subsidiary in nature because it is the governments, and not the EU, that are accountable to their electorates with regard to the security they provide for them.

For a long time, this JHA cooperation has served as a testing ground to identify intergovernmental cooperation instruments and methods within frameworks –outside the EU– like those of Trevi, Schengen and Prüm, whose achievements were applied to the EU after their efficiency had been proved. For its part, the Commission has undertaken to exercise these community competencies linked to border control, asylum, immigration and judicial cooperation and, following Lisbon, it now has two Commissioners, one for Home Affairs and another for Justice, Fundamental Rights and Citizenship and it controls common agencies. A third group of instruments that contribute to internal security has been generated from within the Common Foreign and Security Policy (CFSP), where intergovernmental cooperation handled the external dimension of matters like terrorism, proliferation and international crises included in the European Security Strategy of 2003.

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Intergovernmental cooperation in JHA dates back to the 1970s and is as old as European political cooperation (the predecessor of CFSP), although the existence of the Area of Freedom, Security and Justice was not recognised until the EU Treaty approved in Amsterdam, at the same time as the European Security and Defence Policy (ESDP). Despite being a pioneering cooperation initiative in the EU and the fact that the creation of this area has been the major goal of the integration process following the economic and monetary union, JHA cooperation has not had the same significance and prominence as the rest of intergovernmental cooperation and has been perceived as a minor EU policy compared with those of foreign affairs, security and defence, which are off-handedly referred to as 'European', 'common' and 'policies', when they have made no greater achievements or earned more merits than JHA cooperation.

JHA cooperation has grown in the areas of information pooling and risk analysis, in legislative harmonisation, in cross-border cooperation and in international projection, among others, although it is still being hampered by the prevalence of cooperation vs integration, the limited operating capacity of European institutions and the shortfall in the execution of its programmes and action plans with respect to what was agreed (see Jörg Monar, ARI nr 112/2009). JHA cooperation has slipped out of the limelight and in the Lisbon Treaty currently in place it features in the section on the Functioning of the EU (TFEU) –formerly the European Community Treaty– within internal EU policies and actions and sharing competencies with the Commission. In contrast, cooperation in foreign affairs and security has a section of its own in the Treaty on EU (TEU), visibility in the organic and political superstructure in Brussels, a specific spokesperson –the High Representative of the Union for Foreign Affairs (Mr/Mrs CFSP)– and bodies and personnel to develop increasingly intergovernmental policies.

How can the situation of internal security be brought back to the fore? How can an area of its own be devised for it? How can recognition on a par with the cumulative *acquis* be afforded to it? And how can the available instruments be rationalised? Just as the persons responsible for external security had done in the past, devising a European Security Strategy to lay claim to the EU's position as a global player in security post-9/11, in 2009 those responsible for JHA cooperation decided to take advantage of the launch of the Stockholm Programme to draw up an Internal Security Strategy (ISS).

#### *The Content of the Internal Security Strategy<sup>1</sup>*

Strategies begin by providing an overview of the problem they are designed to tackle and then explaining how they will do so. The ISS presents the efforts made so far to improve security for the EU and for European citizens, as well as outlining the persistent risks to which they are exposed. The ISS is presented as an integrating proposal for current strategies and conceptual approaches so that the Area for Freedom, Security and Justice can continue to progress, offering principles and guidelines for future action. For this purpose, it analyses the current threats and challenges, describes the response to them and lists the principles and strategic lines necessary to create a European security model.

The common threats include terrorism, in any of its forms, organised and serious crime, cyber-crime, cross-border crime, violence and natural or man-made disasters and other phenomena. Among the instruments developed to facilitate JHA cooperation, the following are listed: situation and risk scenario analysis; response mechanisms, the creation of bodies such as Europol, Eurojust, Frontex and the anti-terrorism coordinator; rules such

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<sup>1</sup> Doc. 5842/10, 23/II/2010.

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as the European arrest warrant; and databases such as those of the Schengen Information System and evaluation mechanisms.

The ISS thoroughly details the principles and values on which it is based: respect and protection for fundamental rights, Rule of Law, privacy, transparency and accountability, dialogue as a means of resolving disputes, mutual trust, solidarity, etc. These are principles and values common to all European cooperation models which would not need to be asserted were it not for the fact that JHA cooperation is permanently being called into question by those who think that security and freedom somehow cancel each other out, since progress in one field inevitably comes at the cost of setbacks in another. Finally, the document proposes as strategic action lines a broad and comprehensive approach to internal security, judicial and democratic control of actions, a proactive approach based on information, development of an integral model of information pooling, operating and judicial cooperation in criminal matters, integrated border management, a firm commitment to innovation and information, cooperation with third-party countries (external dimension) and the flexibility to adapt to future challenges.

Together with these major content areas, there are also some approaches to the concept of internal security: 'as a wide and comprehensive concept which straddles multiple sectors in order to address these major threats and others which have a direct impact on the lives, safety, and well-being of citizens, including natural and man-made disasters' and another conceptual approach to the European security model in which elements such as common instruments, will, cooperation and solidarity of member states come into play, as do actions regarding the root causes of insecurity, prevention and interdependency between internal and external security.

The content included in the ISS is not new because it has been devised through different programmes and action plans that have gone hand in hand with cooperation in JHA. Even as regards its future aspects, these are more detailed in the Stockholm Programme that is now being launched. What is really novel about the ISS is the presentation of the risks, instruments and principles of action in a single document with the political purpose of serving as a reference for the visibility, legitimacy and significance of the sector, unlocking the value of JHA's contribution to citizens' welfare.

#### *Content Pending*

Despite being a document aimed at communication, the ISS does not sufficiently define the attribution of the sphere of responsibility within the sector as a whole. The Commission, in its Communication to the Council in June 2009, had requested that the ISS clarify which areas correspond to national authorities and which to the Union.<sup>2</sup> However, the ISS sidesteps this question and even avoids reference to 'police and judicial cooperation in criminal matters', which is the terminology coined by the TFEU to define the sphere of new intergovernmental cooperation once all other matters have been communitised. In contrast, the ISS uses ambiguous terminology which appears to attribute to Justice and Home Affairs Ministers representation of all European internal security, and although the importance of national JHA authorities is pivotal, they are not the only players and there are dimensions of internal security in which they may have influence but not control.

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<sup>2</sup> COM (2009) 262, final communication, of 10 June, from the Commission to the European Parliament and the Council, section 4.

Neither does it clearly define which policy it will be responsible for. Ministers do not hesitate to assert that the ISS 'establishes the common internal security policy of the EU', an overstatement, since there is no such policy defined in any of the EU Treaties. The Lisbon Treaty recognises the existence of sector-specific 'policies' concerning border control, asylum and immigration, and even calls them 'common' with respect to visas, asylum and immigration, but does not mention any 'common internal security policy'; indeed, it does not even refer to 'internal security policy', a term which also appears in the ISS. The need to use the term 'policy' to refer to police and judicial cooperation is present in the sector's collective subconscious, but until now neither the Treaties nor the Councils nor the Stockholm Programme itself underwrite the existence of a 'common policy' (the Stockholm Programme refers to 'policies' of freedom, security and justice as differentiated from the general policies of the EU). It is true that European security is divided into a complex mesh of policies and sub-policies, but sometimes the attempt to remedy this through simplification is actually worse than the initial problem of complexity.

The ISS cannot create a European security model, even assuming that were its aim, because European security is fragmented and compartmentalised into a number of different players and spheres which are continually growing. Faced with expectations of a 'European security model', the ISS in fact presents a model of intergovernmental cooperation in some areas of internal security: a sub-model. This is well covered in the ISS, but it is not clear how it is to be linked with the rest of players and policies, either inside the EU or externally, which comprise the real 'model' for internal security, and this generates doubts as to whether it makes strategic sense. The ISS recognises the interdependence of internal security with other sectors and defines itself as complementary to what is already in place; however, it does not define, even broadly, how its objectives and cooperation instruments should be articulated with the rest of players involved in security in any of its external or internal spheres of action. The European Council, in the Stockholm Programme, considered that the policies of freedom, security and justice should be better integrated into the EU's general policies, and that there should be a single political framework in foreign relations and that the new High Representative and the new European External Action Service better guarantee coherence between traditional foreign policy instruments and those of the external spheres of justice, freedom and security. However, there is no mention whatsoever in the ISS of the High Representative for Foreign Affairs and Security Policy or of the General Secretariat of the Council or of the Commission (except in the final provisions in which it is asked to finance the strategy), or of existing coordination mechanisms such as the ad hoc support group (JAIEX) between the JHA Council and the Commission (RELEX).

Although the omissions and vagueness are the result of pragmatic issues, such as complying with the agenda of the Presidency or simplifying messages, the ISS will at some stage have to define its relations with the external context if it is not to grow only inwardly. On the one hand, agencies like Europol already enter into operating and strategic agreements with third parties and coordinate their involvement in EU civilian missions linked to reforming the security sector (training and technical assistance in JHA to third parties). On the other hand, new missions emerge, such as maritime security (another of the Presidency's priorities, where the aim is to secure the involvement of European navies in the EU's Integrated Maritime Policy) which are being added to the long list of matters linked to immigration, terrorism, organised crime and illegal trafficking, where interdependence makes it necessary to integrate all proposals, cultures and capacities within the EU. Similarly, no less noteworthy is the omission of the External Action Service at a critical time when its competencies, roles and personnel are being

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defined in the wake of implementation of the Lisbon Treaty and where the Commission and member states are still vying for positions.

Furthermore, JHA Ministers delegate the development, supervision and implementation of the ISS to a Standing Committee created in Lisbon (art. 71 TFEU) for the operating coordination of internal security –known as COSI– which could respond to questions that remain pending. However, it is doubtful that this delegation will work because this body does not have the seniority necessary to draw up policies or design strategies<sup>3</sup> either because of the rank and origin of its members (senior police commissioners) or because of its design, which was based on the day-to-day coordination between member states (in fact, Decision 16515/09 of the Council dated 27 November concerning COSI which excludes it from legislative and executive functions merely envisages the attendance of representatives of Eurojust, Europol, Frontex or others as guest observers, so that the relationship between COSI and the Commission's agencies is also pending definition). During the previous Spanish Presidency of the EU Council in 2002, the proposal to provide internal security with a body of a similar level as the Committee for Policy and Security of the CFSP/ESDP failed, the Council rejected it and the ongoing differences of opinion meant COSI was left unchanged: created and pending definition of its very functions, another of the priorities of the Spanish presidency. As a result, definition of the strategic guidelines of the legislative and operating programming in the AFSJ corresponding to the European Council (art. 68 TFEU) will be delegated to a lower level body, making evident the confusion between the strategic and operating levels of planning within the sphere of JHA, a confusion that is further fuelled by the common practice at most European Justice and Interior Ministries, where technical contributions by the major operating bodies end up prevailing over those of the political leaders due to their greater capacity and planning resources. This is not the only case where a body has to define, supervise and execute its functions in the wake of its creation, because there is a long list of JHA institutions created and pending practical results that justify their creation, and if the body precedes the function, then tactics precede strategy.

#### *Planning and Strategies, between Pragmatism and Transformation*

Strategies are viable when their authors know how to articulate purposes and means and can define them independently. The member states do have autonomy to define their individual strategies (home affairs or national, as stipulated in the ISS) and in them they decide what they expect to achieve and what they will contribute to the Union, so that the latter can provide the remaining capacities and goals. The Commission can also do so, since it has agencies, resources and objectives of its own, and a strategy to relate them to third parties.<sup>4</sup> But since the objectives and contributions are set by each member state, the JHA Council cannot guarantee that the ISS will have a high level of ambition or that it will work. More than a strategy in the strictest sense, it can only devise a code of conduct for cooperation between member states that sets out (non-binding) moral and political guidelines regarding the way in which they are willing to work together to solve the security problems envisaged, but it cannot impose objectives that are not shared and nor can it request resources other than voluntary resources.

Strategies, in the strict sense, serve to spearhead and transform policies. JHA cooperation made a good start at the Tampere European Council, initially pinpointing the long-term strategic issues to be tackled; then devising the policies for development and

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<sup>3</sup> Hugo Brady (2009), 'Intelligence, Emergencies and Foreign Policy', Centre for European Reform, p. 27.

<sup>4</sup> Doc. 15446/05 approved by the JHA Council on 1 December concerning the Strategy for the External Dimension of Justice and Home Affairs.



finally negotiating the commitments necessary to make them possible. A top-down, transformational strategy which launched the instruments and mechanisms of which the JHA *acquis* is comprised. However, subsequently, the planning method has been inverted and the strategic objectives have been set from the bottom up, depending on the commitments that are possible, so that planning loses its transformational capacity, as Roderick Parkes points out,<sup>5</sup> or the available instruments and capacities are presented as a result of strategies that are really no such thing: 'strategies by stealth', as Schroeder calls them,<sup>6</sup> to maintain the illusion that cooperation is progressing. Any planning method will inevitably have pros and cons, and the JHA Council may choose one method or another for devising strategies depending on circumstances, but since the ISS is a communication document it should specify whether or not progress is being made towards actual goals or towards what is possible.

The ISS offers an approach to the concept of internal security, but it cannot make up for the lack of a concept of security in the EU that integrates its internal and external dimensions. Despite the reiterated assertion that the separation between the two dimensions is disappearing, neither the EU nor its member states have managed to translate this convergence into significant conceptual, organic or political changes. This is not a problem attributable solely to JHA cooperation, but the ISS talks indistinctly of security and internal security, as though both concepts were the same, and it does not differentiate its content from those previously established by the European Security Strategy and nor does it contrast its responsibilities with those of the external security area.

The ISS is committed to a broad and integral approach to internal security, but it is limited to describing what amounts to horizontal coordination of its multiple dimensions and vertical coordination of the various decision-making levels, which is somewhat less sophisticated and less of a break-off than the comprehensive approach adopted to integrate security and defence policies. In all cases it is easier to assert than to put into practice, because a truly integrated approach is only possible based on a clarification of competencies and these are being 'centrifuged' by the various common external and security policies, defence and security policies and policies of the area of freedom, justice and security.

Lastly, a strategy in the strict sense must clearly define the resources it relies on and the manner in which they will be used to achieve the objectives proposed. The ISS lists its political and technical resources, but, on the one hand, it does not recognise the limitations which these instruments have evidenced so far, and, on the other, it does not specify the material, technological and budgetary resources necessary for a real integration and rationalisation of internal security in the EU, its pro-rata calculation or its purpose. Many of the strategic action lines such as democratic and judicial control, the broad and integral approach, the information pooling model and judicial cooperation in criminal matters, serve to detail the goals rather than specify how they will be attained.

**Conclusions:** The ISS has two interpretations, one limited and another broad. In the first one, devising a strategy is a goal in itself, which is fulfilled once it is approved. It is a strategy aimed at intergovernmental cooperation, devised to strengthen and enhance the

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<sup>5</sup> For a criticism of the planning methodology of the Stockholm Programme, see Roderick Parkes (SWP), 'The Stockholm Programme: More than just a five year itch?'

<sup>6</sup> Ursula Schroeder (2009), 'Strategy by Stealth? The Development of EU Internal and External Security Strategies', *Perspectives on European Politics and Society*, vol. 10, nr 4, 486-5005, December.

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internal cooperation process, to lay claim to its own autonomy and the recognition of other players in security. The mere existence of the ISS, regardless of its content, will provide coverage for any forthcoming initiative that the member states decide to launch, without having to be included in the five-year programme underway and regardless of whether or not an internal security policy exists. As it proposed in its first objective, the ISS meets this purpose of self-affirmation and demands among those responsible for it and of communication with the rest of players and citizens of the EU.

In its second interpretation, that of the ISS as a means to achieve the purpose of acting as a catalyst, rationalising and integrating the internal security sector in the EU, the ISS falls short. Focused on the intergovernmental compartment of police and judicial cooperation in criminal matters, and although it might impact on the rest of players and competencies involved, the ISS cannot provide global solutions and nor can it create a European security model. It can hardly spearhead integration of a model if it cannot properly explain how 'its' part of the model will work and what relation it will have with the rest of players and policies affecting internal security, inside and outside the Union. Neither does it establish priorities in regard to risks or actions, or quantify the resources necessary for its implementation. Interpreted thus, the ISS does not contribute much more than the previous Action Plans and Programmes and its launch failed to tap the opportunity to rationalise the sector using strategy as a lever for transformation.

Internal security already exists, now all that remains is to integrate the Internal Security Strategy with the European Security Strategy and with the numerous sector-specific strategies that have emerged. The aim is to make police and judicial cooperation on criminal matters a policy, but it remains to be seen if this will happen, if it will be just another policy and which of them will be under the control of member states, the Commission or the High Representative for Foreign Affairs and Security Policy. To respond properly to these challenges, the European Council must once and for all lead a restructuring of the European security system, rationalising the redistribution of competencies and responsibilities; a similar restructuring to the one launched by some EU countries which have devised national security strategies to resolve the very same problems individually as the EU is facing collectively.

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