

**Prevention and anticipation –  
pre-crime approach to EU internal security policy**

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*Precrime system, the prophylactic pre-detection of criminals through the ingenious use of mutant precogs, capable of previewing future events and transferring orally that data to analytical machinery.*

Ph.K. Dick, *The Minority Report*<sup>1</sup>

*The European Council invites the Commission to assess whether the networking of criminal records makes it possible to prevent criminal offences from being committed [...].*

The Stockholm Programme<sup>2</sup>

*... stronger focus on the prevention of criminal acts and terrorist attacks before they take place can help reduce the consequent human or psychological damage which is often irreparable.*

Internal Security Strategy of the European Union<sup>3</sup>

## Introduction

EU internal security policy has been in recent years progressively focused on prevention of threats and risks. An Internal Security Strategy for the UE, adopted by the EU Council at the beginning of 2010, keeps highlighting the need for ‘prevention and anticipation’ conceived of as a proactive intelligence-led approach to securitization of the area of freedom, security and justice. This paper aims to analyze probability and feasibility of such approach in terms of EU legal,

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<sup>1</sup> Ph. K. Dick, *The Complete Stories of Philip K. Dick*. Vol. 4: *The Minority Report and Other Classic Stories*, New York: Kensington, 2002, p. 183.

<sup>2</sup> The Stockholm Programme — An Open and Secure Europe Serving and Protecting Citizens, Official Journal of the European Union, C 115, 4 May 2010, p. 19.

<sup>3</sup> Council of the European Union, Draft Internal Security Strategy for the European Union: "Towards a European Security Model", doc. 5842/2/10 REV 2, Brussels, 23 February 2010, p. 11.

institutional and political arrangements. The Dickeyan dystopian outlook, presented in the well-known story *Minority Report*, is used both as a metaphor and as a logic underpinning the EU's conceptual and operational solutions. Pre-crime approach to internal security of the Union is derived from the growing belief in technologies of surveillance and control and the feeling of helplessness of traditional human-based methods of maintaining public order in the face of such threats as terrorism, organized crime and cybercriminality.

The persistence of organised violence in different forms - financial, political, cultural - produces constant threat to security and prosperity of EU citizens. Global networks and communication systems facilitate proliferation of risks which are no longer confined geographically. In these circumstances security policies formulated, arranged and performed by the governments and supranational institutions are increasingly concentrated on detection, identification and deactivation of potential and immediate threats in order to securitise the public arena through the mechanisms of early warning, prevention and anticipation. Tomorrow's technologies of surveillance and control are fuelling the belief in possibility of being more perfect and effective in prevention, pre-emption and anticipation of threats and risks to citizens, societies and public institutions.

The European Union, as a 'security provider' for its Member States, as well as EU citizens, within the area of freedom, security and justice, has been facing the challenge of formulating a viable and response to security challenges facing the Member States at the end of the 20<sup>th</sup> century. In the wake of the tragic events of 11 September 2001 counterterrorist policy began to occupy almost the entire agenda of EU Justice and Home Affairs cooperation. Nonetheless, the activities of EU institutions and the Member States were following the beaten track of intergovernmental arrangements focusing on reactive approach to threat management and underlining limited preventive capabilities.

Following terrorist attacks in Madrid in March 2004 (3/11) and in July 2005 (7/7) in London, determination to combine fight against terrorism with early warning and prevention of terrorist danger appeared to be much stronger. EU Member States came to the conclusion that a comprehensive strategic approach was indispensable

in order to make prevention feasible and effective. The package of counter-terrorist strategies adopted in late 2005 defined prevention as one of the pillars of EU internal security policy. Yet only a few years later the concept of anticipation and enhanced prevention was reactivated in the public discourse on security and introduced into debate on the future of EU internal security policy.

This paper offers a review of preventative aspects in EU internal security policy, with a due attention on counter-terrorism, and an analysis of EU Internal Security Strategy in the context of prevention and anticipation. The Lisbon Treaty and the Stockholm Programme of developing EU area of freedom, security and justice allowed for elaborating and adopting on the political level a strategic approach to internal security set to enhance the effectiveness of cooperation at EU level. Pre-crime approach built on enhanced prevention and effective anticipation achieved through horizontal coordination at EU level, public-private partnership in the industrial-security sector and stimulation of research and development in the field of security should legitimise the Union as the principal 'security provider'.

### **EU internal security policy: from reactive to proactive/anticipatory approach**

As the European Union for the whole decade since its establishment was not eager to work out, proclaim and enforce a security strategy, the cooperation between EU Member States with a limited support from EC institutions and EU bodies was concentrated on an active response to challenges and threats originating from indigenous and external sources. The coordinating role of the EU's third pillar cooperation (justice and home affairs) was in statu nascendi, EU agencies (mostly Europol) were still in its infancy and 'normative power' of the EU in the field of justice and home affairs cooperation was hardly noticeable.

Redefinition of justice and home cooperation done in Amsterdam in 1997, following the Intergovernmental Conference on treaty reform, facilitated the working out of a more active, although less comprehensive in organizational and legal terms, approach to internal security. As a result of the Amsterdam reform,

threats to a newly-proclaimed area of freedom, security and justice were defined in the treaty law, particularly in Title VI of the Treaty on the European Union containing provisions on police and judicial cooperation in criminal matters. Article 29 thereof enumerated such challenging phenomena as organised crime, in particular terrorism, trafficking in human beings, illicit drug trafficking, arms smuggling, corruption and fraud, racism and xenophobia. The Amsterdam European Council in June 1997, beside of adopting the modified text of the Treaties, approved the Action Plan to combat organized crime adopted by the Council of the EU, composed of ministers for justice and home affairs, in April 1997. In this document the ministers for the first time put a strong emphasis on criminal prevention as well as early detection and identification of threats to security of EU Member States. It was stressed in the Action Plan that ‘prevention is no less important than repression in any integrated approach to organized crime, to the extent that it aims at reducing the circumstances in which organized crime can operate’ (Council of the EU, 1997). Furthermore, a prospect for adopting an anticipatory approach to crime prevention and combating was signaled in that document. Even if the European Council in Dublin already had declared its constant commitment ‘to pay close attention to the threat posed by terrorism both internally and externally’(European Council, 1996), the Action Plan proclaimed decidedly that ‘in combating organized crime, there is a clear need to “know your enemy” and to agree on the characteristics which make it both dangerous and, it is hoped, vulnerable’ (Council of the EU, 1997). A need was even mentioned to build up and pool analytical expertise from the Member States including support from, where appropriate, the EC institutions and Europol as well as representatives of research sector and academia.

Recommendations enshrined in the 1997 Action Plan did not find a proper follow-up. The first-ever multi-annual programme of developing the European Union as an area of freedom, security and justice rather seldom referred to the preventive aspects of internal security policy of the EU. Adopted at the first ever European summit dedicated solely to the issues of justice and home affairs, the Tampere agenda drawn by the European Council in October 1999 sought to make a blueprint for the emergence of an area of freedom, security and justice in legal

and institutional dimensions. Emphasizing the human and societal aspects of European Union politics, the agenda put responsibility for protecting freedom and legal rights of the people on the EU as an international institution. Especially the threat posed by serious crime demands a decisive response and joint efforts. The Tampere agenda underlined that ‘to counter these threats a common effort is needed to prevent and fight crime and criminal organisations throughout the Union. The joint mobilisation of police and judicial resources is needed to guarantee that there is no hiding place for criminals or the proceeds of crime within the Union’ (European Council, 1999, point 6). The agenda upheld the earlier call for developing expertise, knowledge and practical skills in the field of crime prevention through cooperation between competent national authorities, police networking and exchange of best practices, possibly counting on financial support from the Community resources. Although the Tampere summit did not raise it directly, the question of launching an EU criminal intelligence and intelligence-led policing schemes was touched upon in the debate and could be found in the conclusions adopted in Tampere, at least in calls for the establishment of a European Police Chiefs operational Task Force and for strengthening Europol as a key actor in supporting union-wide crime prevention, analyses and investigation (European Council, 1999, points 44-45). This idea reappeared explicitly next year when the Council adopted the Millennium Strategy for prevention and control of organised crime. Europol was endowed with the task of developing ‘an intelligence model that [could] be used, inter alia, to identify trends in organised crime’ (Council of the EU, 2000).

In the aftermath of the tragic events of 11 September 2001, the European Union embarked on the whole range of activities within the framework of the global war on terror proclaimed by the Bush administration (Den Boer and Monar, 2002; Den Boer, 2003; Uçarer, 2002) The preventive aspect of antiterrorist undertakings and actions was not exposed overmuch although many of EU initiatives obviously displayed their preventive bias. Measures to combat the funding of terrorism, strengthen air transport security, identify presumed terrorists and their supporters and draw up a common list of terrorist organizations required the application of preventive techniques, procedures and tools. In general terms,

however, they focused on legal provisions, criminal analysis as well as prosecution of perpetrators of terrorist crimes.

Emphasis was put on criminal intelligence and police cooperation in information exchange and there even was an initiative of establishing within Europol a counter-terrorism analysis unit (so-called Counter-terrorism Task Force) composed of counter-terrorism specialists from national police and intelligence services, seconded by the Member States (Council of the EU, 2001, point 10). The counter-terrorism expert team was formed indeed, endowed with the task of undertaking operational and strategic analysis and prepare a threat assessment (Lavranos, 2003; Deflem, 2006, p. 344). However, after having worked for a couple of months it was deactivated - because of scarcity or low relevance and utility of data and information provided by the Member States - and incorporated into Europol's Serious Crime Department (Bures, 2006, p. 62; 2008, p. 502).

Developments in the 'global war on terror' proved the changing meaning of security, extensive use of counter-terrorist tools, measures and techniques and the securitisation of the public arena. The revaluation of major concepts and approaches to security policies along ideological lines, driven by the US administration, had a considerable impact on EU attitude towards The US National Security Strategy adopted in September 2002 gave doctrinal sanction to the concept of pre-emptive use of force. The famous excerpt from the strategy read: 'We will disrupt and destroy terrorist organizations by[...] defending the United States, the American people, and our interests at home and abroad by identifying and destroying the threat before it reaches our borders. While the United States will constantly strive to enlist the support of the international community, we will not hesitate to act alone, if necessary, to exercise our right of selfdefense by acting preemptively against such terrorists, to prevent them from doing harm against our people and our country' (The White House, 2002, p. 6). Although European reactions to the US strategy were tepid, and in the aftermath of the 2003 military intervention in Iraq by the US-led 'coalition of the willing' even reluctant, that was not an obstacle for the growing strategic, doctrinal, technological, legal and operational impact of the US on EU internal security policy and counter-terrorism actions.

The European Security Strategy (ESS), adopted by the European Council in December 2003, expressed well the logic and interoperability of instruments, measures and agencies in the framework of the so-called 'transatlantic homeland security'. ESS sanctioned the preemptive approach to security threats although the rhetoric used in the document was far more balanced and subtle than in its American equivalent. According to the European Security Strategy, in the post-9/11 era the concepts of security, defence and stability should be redefined according to the wicked nature of new threats and risks. 'Our traditional concept of self-defence - up to and including the Cold War - was based on the threat of invasion. With the new threats, the first line of defence will often be abroad. The new threats are dynamic. The risks of proliferation grow over time; left alone, terrorist networks will become ever more dangerous. State failure and organised crime spread if they are neglected - as we have seen in West Africa. This implies that we should be **ready to act before a crisis occurs** [emph. Added]' (European Council, 2003, p. 7). As a kind of justification in advance to criticism of emulating US stance, the European Security Strategy contained the following reservation: 'Conflict prevention and threat prevention cannot start too early (European Council, 2003, p. 7). Notwithstanding the rhetoric of that document, the European strategy called for proactive approach to threats and challenges underlining their global reach and complex nature. The European Union should be '**more active** in pursuing [...] strategic objectives. This applies to the full spectrum of instruments for crisis management and conflict prevention at our disposal, including political, diplomatic, military and civilian, trade and development activities. Active policies are needed to counter the new dynamic threats. We need to develop a strategic culture that fosters early, rapid, and when necessary, robust intervention. [...] We need to be able to act before countries around us deteriorate, when signs of proliferation are detected, and before humanitarian emergencies arise. Preventive engagement can avoid more serious problems in the future (European Council, 2003, p. 11).

Alas, the striking and painful contrast between strategic blueprint and political action was revealed in March 2004. The terrorist bombing at the Atocha railway station in Madrid exposed the weakness and shortcomings of the hitherto EU anti-terrorist policy. What failed most it was anticipation and prevention on the

grounds of intelligence and available information. If Therese Delpech was right claiming that HUMINT (traditional secret services) and SIGINT (high-tech electronic surveillance) methods enabled national antiterrorist services to foil numerous plans of terrorist attacks drawn up by international networks (Delpech, 2002, chap. 1), the Madrid attack gave a damaging evidence of prevention failures. Various sources stressed that suspected terrorists had traveled freely across the EU and signals of a potential threat were neglected due to certain rivalry or even conflict within the counterterrorist international community.<sup>4</sup> Another repeatedly emerging problem was poor intelligence sharing and data exchange among EU Member States due to the painful lack of mutual trust. The European Commission's spokesperson Reijo Kemppinen said that there was a 'certain culture of secrecy ... that has proven counterproductive' and added that 'member states have to learn to trust each other and trust European institutions (EU Observer, 2004).

The preventive aspect of counter-terrorism approach in the EU reappeared in the post-Madrid securitisation context although it was taken as one of many ingredients in the making of a more efficient and viable strategy. Therefore one of the high level 'Strategic Objectives' to be implemented by the EU and Member States was maximisation of capacities to detect, investigate and prosecute terrorists and prevent terrorist attacks (European Council, 2004, p. 9). Another painful lesson of failing counterterrorist prevention, the 2005 London bombings, prompted the Union to redesign its blueprint towards more comprehensive systemic strategy-oriented action.

The prevention of terrorism became one of the four pillars of the strategy for the fight against terrorism adopted by the Council of the EU in December 2005. However, the methods and means defined in the document did not make a breakthrough in the general approach to terrorism and other risks to EU internal security. EU counter-terrorism prevention was a to be built on comprehensive strategy for combating radicalisation and recruitment into terrorism. Adopted as a separate document, it aimed to prevent people from turning to terrorism and to

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<sup>4</sup> It is widely known that the al Qaeda commando that targeted Madrid had been watched by Marocco's secret police but due to the conflict between Spain and Marocco over the Perejil island any exchange of expertise was not possible.

stop the next generation of terrorists from emerging. It proposed disrupting the activities of individual and groups recruiting into terrorism, engage in dialogue with Muslim communities in order to promote moderate voices prevailing over those of extremism, promote security, justice and opportunity for all (Council of the EU, 2005b, p 1). Regarding practical moves of preventative character, the strategy for combating radicalisation and recruitment to terrorism pointed at community policing and effective monitoring of the Internet and people travelling to conflict zones. At EU level, the strategy traditionally called for better coordination of national policies, information sharing as well as working out and exchanging good practices.

The counter-terrorism strategy did not change the overall approach to organization and responsibility for a proper and effective enforcement of the agreed principles and mechanisms. The Council underlined in the EU CT strategy that the challenge of preventing and combating terrorism 'lies primarily with the Member States, at a national, regional and local level. Work at EU level, in particular the contribution of the European Commission, can provide an important framework to help coordinate national policies; share information and determine good practice.' (Council of the EU, 2005a, p. 7). It also conserved the principally reactive bias of EU policy: 'We cannot reduce the risk from terrorist attacks in the EU to zero. We have to be able to deal with attacks when they occur recognising that attacks can have effects across EU borders.' (Council of the EU, 2005a, p. 12).

What was novel in the post-Madrid/post-London agenda it was early-warning and intelligence-led undertakings at EU contributing to better evaluation of terrorist menace and production of intelligence analyses known as 'situation reports' and 'threat assessments'. The Situation Centre (SitCen), established in the aftermath of the Madrid bombing under the CFSP High Representative and expanded in 2005, laid ground for EU intelligence capabilities. Though limited in its competences, merging internal and external aspects of EU counterterrorism policy and still in its infancy, SitCen produced intelligence that 'no national agency is willing to produce, or where a single country's report would not be acceptable for political reasons.' (Van Buuren, 2009, p. 11). Europol also was given a new role, by decisions of JHA ministers. In 2005 the Council of the EU agreed on a 'European criminal intelligence model' (ECIM), a plan based on the intelligence-led policing

method for coordinating investigations against organized crime throughout the EU (Brady, 2008, p. 106). In 2006 Europol's first organized crime threat assessment was published, replacing thereby the Organized Crime Report prepared annually since 1993. The then Director of Europol, Max-Peter Ratzel, described it as 'a core product of the intelligence-led policing concept' (Europol, 2006, p. 3). Likewise, the Terrorism Situation and Trend Report (TE-SAT), issued by Europol since 2001, underwent changes being based on the intelligence-led model, multiplicity of information and intelligence sources and internal Europol analytical capabilities. The first 'new' TE-SAT, produced in 2007, and the following annual TE-SATs, offered a synthetic overview of the situation in the EU regarding terrorist threats as an analytical material and operational background for competent security agencies from the Member States. Through Europol and SitCen the EU sought to earn its own capacities to work out and deliver to EU and national stakeholders independent evaluations of threats from terrorism and organised criminality (Argomaniz, 2009, p. 160).

### **EU Internal Security Strategy - A nascent pre-crime approach**

The developments in EU internal security policy in the aftermath of the 2004 Madrid terrorist attack fell short of expectations of the leading EU Member States. The implementation of the principal EU legal instruments, especially the 2002 framework decisions on the European Arrest Warrant and Joint Investigation Teams, as well as protocols to the Europol convention, was sluggish and in some cases met with reluctant attitude in certain Member States, regardless of the consequences of 3/11. Further instruments, like European Evidence Warrant or framework decision on simplifying the exchange of information and intelligence between law enforcement authorities either awaited complete implementation in all Member States or were subject to numerous limitations. Further initiatives were caught in legal and political bottlenecks in the EU institutions. Availability of police data and intelligence, notwithstanding such a principle proclaimed in the 2004 Hague Programme, was subject to numerous regulations, rules and working arrangements set on national legal and political grounds. Given limited confidence among law enforcement agencies and constant deficit of trust for Europol and

Eurojust, overall, flexible and efficient prevention was hardly viable at EU level. Instead, it followed intergovernmental channels and arrangements, both formal and informal (Gruszczak, 2009, p. 93-94).

Paradoxically enough, they went in line with the nation-centric preventive approach defined in the 2004 Declaration on Combating Terrorism, the 2004 Hague Programme and the 2005 EU CT strategy. The responsibility for securing the public arena and safeguarding the citizens ultimately rested on the governments and their specialized agencies and services. Given that the majority of the Member States upheld their interest in strengthening cooperation and improve modes and methods of countering threats and risks, the center of gravity of internal security policy shifted out of the EU legal and institutional framework. The G5 group established in 2003 by the five biggest (and most influential) EU Member States: Germany, France, the UK, Italy and Spain aspired to take the role of decision-making forum for the entire internal security field in the EU. Counter-terrorist informal, often top secret bodies, composed of EU Member States and their closest allies, took responsibility for effective and discreet antiterrorist prevention and combating. Finally, in May 2005 seven of the EU Member States concluded in the small German city Prüm the Treaty on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration. The signing of the agreement could be interpreted as a kind of a functional exit from petrified EU decision-making of the countries tired with endless discussion in the EU Council, European Parliament, the Council working groups. Protracted and inconclusive work on new legislative proposals intended to strengthen cooperation in EU security policy and improve EU internal security governance led to a partial fragmentation of cooperation in the field of justice and home affairs. The Treaty of Prüm aimed to help overcome the weaknesses and gaps in the EU internal security policy.

The specter of polycentric and diluted internal security system in the EU was averted thanks to activities of Germany interested in strengthening EU justice and home affairs policy in the context of treaty reform of the Union. One of the initiatives launched by the German Presidency in the first semester of 2007 was the setting up of the high-level advisory group on the future of European home affairs policy (so-called Future Group). The group was composed of Vice-President of the

Commission, six interior ministers of the then and upcoming trio presidencies (Germany, Portugal and Slovenia as well as France, the Czech Republic and Sweden), one representative from the subsequent trio presidency (Spain, Belgium or Hungary), and experts from individual Member States when needed. The Future Group, as well as its individual members, produced several reports outlining a future model of EU internal security, designing institutional, legal and technical arrangements and forecasting future developments in the field of European security.

What was essential in the Future Group's contribution it was a decisive shift towards proactive approach to internal security and much more courageous attitudes to modern means and tools of prevention and early warning. From a political standpoint, the Group recommended focusing on mid- and long-term prevention, especially regarding radicalisation and recruitment to terrorism, by reinforcing the cooperation at European Union level (Future Group, 2008b, p. 5). Closer cooperation between police and intelligence services in the Member States should be ensured and **increased synergies** between law enforcement agencies on a national level should be guaranteed, possible through networking and transnational workflow. The key for preventive action is the **exchange of information**. EU agencies, particularly Europol and Eurojust as well as SitCen should be strengthened and positioned much closer to the Member States with regard to exchange of intelligence data (Future Group, 2008a, p. 5).

The Future Group, referring to its name, put a special emphasis on technologies and future solutions with possible application in the field of internal security. The Group pointed out the increasingly important role of technologies in preventing terrorist attacks. Technology should supplement police and intelligence work particularly in such areas as effective surveillance of the external borders of EU Member States, migration, the fight against organised crime and terrorism as well as - for example - detection of explosives and control of precursors and dual-use materials, as well as (Future Group, 2008a, p. 6). The end report on the future European home affairs policy included the following statement: 'Even if technology can never completely replace the human factor, technological progress can provide the necessary means to optimise mobility, security and privacy simultaneously. In

particular, enhanced use of technological developments can provide satisfactory solutions to the important issue of how to ensure more security for citizens and at the same time greater protection of their right to privacy. Developing innovative technologies and improving their effectiveness should therefore be a key aspect in balancing mobility, security and privacy. (Future Group, 2008b, p. 18).

The Future Group was established to formulate a general approach with a view at the incoming works on the next multi-annual programme of developing the EU area of freedom, security and justice. That programme, drawn under the Swedish EU Presidency, was adopted by the European Council in mid-December 2009, just following the entry into force of the Lisbon Treaty. *The Stockholm Program: An open and secure Europe serving the citizen* (European Council, 2010) put a proper emphasis on prevention and control. Moreover, one can notice an evidently anticipatory approach: ‘The best way to reduce the level of crime is to take effective measures to **prevent them from ever occurring** [emph. added], including promoting social inclusion, by using a multidisciplinary approach which also includes taking administrative measures and promoting cooperation between administrative authorities, citizens of the Union that have similar experiences and are affected in similar ways by crime and related insecurity in their everyday lives.’ (European Council, 2010, p. 20). With reference to the EU CT strategy, the Member States were called to develop prevention mechanisms, in particular to allow the early detection of signs of radicalisation or threats, including threats from violent, militant extremism (European Council, 2010, p. 24). As important as prevention and deterrence of terrorist threat was disaster prevention through reducing vulnerability to disasters by developing a strategic approach and improving preparedness and response. Anticipatory element reveals itself in the fragment dedicated to the criminal prevention. The Commission was tasked with assessing whether the networking of criminal records makes it possible to prevent criminal offences from being committed, for example through checks on access to certain jobs, and whether it is possible to extend the exchange of information on supervision measures (European Council, 2010, p. 19).

The Stockholm Programme granted the necessary political authorization for a comprehensive strategic approach to internal security allowing for the

enhancement of actions at European level combined with better coordination at national level. Ambitions and intentions of EU institutions were to be reconciled with national sovereign interests. The European Council called upon the Council and the Commission to define an internal security strategy of the Union based in particular on the principle of clarity on the division of tasks between the EU and the Member States, stringent cooperation between the Union agencies, including further improvement of information exchange and the use of regional initiatives and cooperation schemes, and a horizontal and cross-cutting approach in order to face complex crises and disasters.

It should be stressed that proactive approach was explicitly mentioned in the Stockholm Programme as one of the basic elements of future strategy. Reflection of a proactive and intelligence-led approach and a focus on implementation and streamlining as well as on improvement of preventive action deserved particular attention as a background to the political declaration signaling a sea-change in the hitherto reactive EU internal security policy.

Provisions of the Stockholm Programme regarding the adoption of an internal security strategy met with immediate reaction on the part of the Spanish government preparing to take Presidency of the Union. A draft of an EU Internal Security Strategy was presented by the Spaniards already at the end of December 2009 and after having passed an accelerated scrutiny it was adopted by the Council of the EU in February 2010.

The most relevant excerpt from the EU ISS reads as follows: ‘Among the main objectives of the Internal Security Strategy for the EU are the prevention and anticipation of crime as well as of natural and man-made disasters, and the mitigation of their potential impact. Whilst effective prosecution of the perpetrators of a crime remains essential, a stronger focus on the prevention of criminal acts and terrorist attacks before they take place can help reduce the consequent human or psychological damage which is often irreparable. Our strategy must therefore emphasise prevention and anticipation, which is based on a proactive and intelligence-led approach as well as procuring the evidence required for prosecution.’ (Council of the EU, 2010a, p. 11). The catalogue of preventive, anticipatory and intelligence-based measures is quite impressive: analytical tools, early-warning systems, data pooling, systems of recording and transfer of sensitive

data, risk analysis and capacity planning. According to EU Internal Security Strategy ‘This allows us to deepen our understanding of the different types of threats and their probability and to anticipate what might happen, so that we are not only prepared for the outcomes of future threats but also able to establish mechanisms to detect them and prevent their happening in the first place. For this reason, a comprehensive approach must be taken that is geared to constant detection and prevention of the threats and risks facing the EU in the various areas of internal security, and the main issues of concern to the public.’ (Council of the EU, 2010a, p. 11).

An organisational framework for the enforcement of the principles and objectives of the strategy also looks to be innovative, to a certain extent. EU institutions and agencies, with competences reformed by the Lisbon Treaty and strengthened on the new legal grounds (the case of Europol), obtained an additional support on the part of the newly established, though planned well in advance (already at the post-9/11 juncture), Standing Committee on Internal Security (COSI). The Committee was launched in February 2010 and was based on the guidelines established by the Lisbon Treaty. Under *Article 71 of the Treaty on the functioning of the European Union*, ‘A standing committee shall be set up within the Council in order to ensure that operational cooperation on internal security is promoted and strengthened within the Union. [...] it shall facilitate coordination of the action of Member States’ competent authorities. Representatives of the Union bodies, offices and agencies concerned may be involved in the proceedings of this committee’ Under the Stockholm Programme the COSI was charged with developing, monitoring and implementing the Internal Security Strategy. It was foreseen that the COSI would be a body overseeing and directing operational actions on internal security across the EU as well as facilitating and ensuring effective cooperation and coordination against criminal activity (Council of the EU, 2010b, p. 3).

Apart from EU horizontal institutional framework, subject to further restructuring in accordance with the Council’s proposals (Council of the EU, 2010c), it is worth mentioning the direct reference to other potential stakeholder coming from the public environment. According to the strategy, security policies, especially those of prevention, must involve not only law enforcement agencies,

but also institutions and professionals. Therefore cooperation should be sought at both national and local levels with organisations of civil society, especially with schools, universities and other educational institutions, in order to prevent young people from turning to crime. The private sector should contribute to reinforcement of security measures, facilitating thus the realisation of the strategy, through delivering modern technical instruments and applications that would bring about greater effectiveness of actions undertaken by national law enforcement bodies and EU agencies.

### **The shape of things to come - anticipating security**

Proactive attitude in dealing with security issues in political, societal, technical, legal and organizational aspects assumes the look forward to meeting the challenges and risks and puts strong emphasis on reliable identification of threats, intelligence, analysis of security context and impact assessment. The scope of analysis is increasingly wider, reaching hardly identifiable areas and - in cognitive sense - speculative issues. Adopting Wellsian futuristic vision<sup>5</sup>, revived by Tony Bunyan of Statewatch (Bunyan, 2009), one can speculate about incoming solutions and projects. Excitement and enthusiasm that accompany technological boost and explosion of plenty of inventions and innovative applications with possible use in the security area stem from a naive faith in human creativity for the good of mankind. From the securitisation perspective technology, machinery and software are elements indispensable for managing uncertainty and produce 'a political technique with a capacity to integrate a society politically by staging a credible existential threat in the form of an enemy' (Huysmans, 1998, p. 577).

Technological revolution which brought about the progressive advancement and improvement of means, tools and techniques of prediction, forecast and prognosis contributed to the widening of opportunities to deter or prevent

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<sup>5</sup> *The Shape of Things to Come: The Ultimate Revolution* was written by great English novelist and visionary Herbert George Wells in 1933 and inspired the film *Things to Come* (1936) to which Wells wrote the screenplay. Wells predicted a technological revolution driven by military technologies and devoted many reflections to social consequences of the new kind of warfare made possible by the new generation of weapons.

potentially negative and give a proper response to would-be perpetrators or present enemies.

An influential consultation group, the European Security Research and Innovation Forum (ESRIF) established in September 2007, in a recent report on research and innovation for the enhancement of EU security highlighted the prospects of securitisation in terms of technologies of control, surveillance and threat management. Chaired initially by former EU Counter-terrorism co-ordinator Gijs de Vries, and later by the former Slovenian Interior Minister Dragutin Mate, the ESRIF expressed standpoints of both politicians involved in creating and enforcing new elements to EU internal security governance and corporate stakeholders showing great interest in producing and delivering solutions and devices meeting security needs of EU institutions and national authorities. One of the principal theses proposed by the ESRIF in its report is that ‘security today and in the future will not be effective without proper technology and cyber information management’. (ESRIF, 2009, p. 161). ESRIF experts highlighted the growing importance of surveillance and screening as a central element of security management involving a number of means, from closed circuit television to biometric tools, and advanced technologies like synthetic biology, artificial intelligence, nanotechnology (ESRIF, 2009, pp. 21-25). Criminal prevention should be concentrated on the observation and monitoring of movements, activities and behaviours from a distance or by evaluation of electronic information, data and traffic records. Advanced tracking and automatic warning on persons and goods carrying risk to public security should be supported by adequate information management systems with access protocols to sensitive data (ESRIF, 2009, pp. 158, 163).

ESRIF report ran out into the future but right now we can witness emergence and practical application of such technologies and inventions. One of the examples is a multimodal application to the management of identity and remote sensor surveillance of people flows developed within the HUMABIO research and development project funded by the European Commission in the 6<sup>th</sup> Framework Programme. The project was aimed to develop ‘a robust biometric security authentication system which derives from the multimodal fusion of a “new”

biodynamic physiological profile, unique for each individual, with already existing and tested biometrics' (Humabio, 2006, p. 1). The system was designed to take advantage of such biodynamic indicators as EEG baseline, heart dynamics (ECG), blood related parameters (Damousis, Tzovaras and Bekiaris, 2008, pp. 2-4). As an example of practical application of multimodal biometric methods to enhance security one can mention the 'Smart Corridor'. It is a new-generation screening system developed by the French company Thales. The project integrates intelligent video surveillance, biometrics and sensor technology into an automated screening system without requiring people to stop at checkpoints. The intelligent non-intrusive surveillance system performs functions such as counting people, detecting abandoned objects and suspicious behaviours. A biometrics control system permits the identification of a person with the face and iris recognition devices. Sophisticated sensors detect both traces of explosives as well as metallic and dielectric objects hidden underneath clothing (Thales 2008).

The above-mentioned projects show an exemplary symbiosis of 'public and private stakeholders of the security community' (European Commission, 2008). European security model, as outlined in the EU Internal Security Strategy, evidently serves development purposes of the security-industrial complex in Europe. Ben Hayes's investigative scholarship (Hayes, 2006, 2009, Hayes and Tassé, 2007) has provided strong evidences and factual arguments for the consistent expansion of security industry in such fields within the Area of Freedom, Security and Justice as monitoring and surveillance, management of identity, pattern recognition, information transmission and processing, border management, law enforcement, forensics, crisis management, protection of critical infrastructure, risk analysis.

Tony Bunyan, head of the London-based Statewatch centre, warned that the 'concept of "anticipation" implies built-in scenarios or profiles of people or activities which would require state intervention well prior to the assumed "threat" moving anywhere near to reality. For example, a group of people might discuss far-reaching ideas but this is a long way from actual planning and preparing to do anything about them.' (Bunyan, 2010). Bunyan, susceptible to protection of individual liberties and human rights, may be exaggerating in his disquieting vision of the 'European state'. However, we can subscribe to De Goede's point of view

that 'the assumption that, for example, crime and health risks can be measured and (partly) predicted reconfigures politics by emphasizing preventive policy and individual responsibility.' (De Goede, 2008, pp. 163-164; comp. Weber, 2005, p. 105).

The 'romantic' period of police cooperation in the EU when police officers or counter-terrorist experts met in secrecy to exchange information, share sensitive data and arrange secret operations has definitely gone. Nowadays, in the post-Lisbon/post-Stockholm EU internal security setting, the Union is endowed with multiplicity of different tasks within the area of freedom, security and justice. Its institutions, agencies and bodies are responsible for ensuring high level of security, free movement of persons, effective management of borders and migratory flows and criminal prevention. Even though national security is exclusively national field of competence, the Union takes advantage of a specific spillover drawing its Member States into closer cooperation and advanced forms of division of competences.

EU institutions contribute to the working out of synergies between respective authorities from the Member States (police, customs, border guards, immigration offices, prosecutors) and EU agencies. Regardless of numerous shortcomings, weak points and deadlocks in the EU's internal security policy, the Union has recently turned to be the primary plane of dialogue and cooperation between the Member States duly supported by EU agencies. Recent political decisions and legal developments have proved that the tendency of developing advanced forms of cooperation in the field of internal security outside the EU legal and institutional framework, so pronounced in the middle of the present decade (G5/G6 cooperation, the 2005 Prüm treaty, Atlas anti-terrorist network), was effectively stopped. What is more, one can observe a rapid development of renewed mechanisms of coordination and cooperation, this time concentrated on EU level, which not only continue certain arrangements of extra-EU provenience but also introduce new elements whose feasibility and efficiency increasingly depend on EU institutions and agencies. The danger of two-track (and doomed to perplexity) cooperation in home affairs between the EU Member States was averted thanks to Germany's push to reinvigorate EU justice and home affairs through a

discussion forum organized ad hoc as **the** Future Group, Berlin's insistence on incorporating the provisions of the Prüm treaty into EU law, consent on 'agencification' of Europol and Eurojust and the lowering of the profile of the G6 cooperation by the EU 'big three' (Germany, France and the UK). The Stockholm Programme granted the necessary political authorization for a comprehensive approach to internal security as seen through the lens of national interests and taking into account ambitions and expectations of EU institutions. EU Internal Security Strategy outlined by the Spaniards on the eve of taking the Presidency of the European Union was the culmination of efforts made to enhance the effectiveness of cooperation in the field of internal security at EU level and at the same time to persuade sceptical governments that EU security policy can subsidize effectively actions taken at the intergovernmental level and even in certain circumstances to produce an added value.

The European Union has chosen the pre-crime approach as a strategic-oriented securitisation model because of the feebleness of alternative solutions available at the EU level of cooperation in the field of internal security. This strategic choice makes EU internal security policy vulnerable to impacts from both non-state dysfunctional actors and EU Member States disposed to reactivate inter-governmental solutions adopted and developed outside the EU framework.

## References:

Argomaniz, J. 2009. Post-9/11 institutionalisation of European Union counter-terrorism: emergence, acceleration and inertia, *European Security*, 18: 151-172.

Brady, H. 2008. Europol and the European Criminal Intelligence Model: A Non-state Response to Organized Crime, *Policing*, 2: 103-109.

Bunyan, T. 2009. *The Shape of Things to Come - EU Future Group*, London: Statewatch, <http://www.statewatch.org/analyses/the-shape-of-things-to-come.pdf>

Bunyan, T. 2010. The EU state gears up for action: Internal Security Strategy & the Standing Committee on Internal Security (COSI), 12 February, <http://www.statewatch.org/news/2010/feb/02iss-cosi.htm>

Bures, O. 2006. EU Counterterrorism Policy: A Paper Tiger?, *Terrorism and Political Violence*, 18: 57-78.

Bures, O. 2008. Europol's Fledgling Counterterrorism Role, *Terrorism and Political Violence*, 20: 498-517.

Council of the EU. 1997. Action plan to combat organized crime (Adopted by the Council on 28 April 1997), *Official Journal of the European Communities*, C 251 , 15 August.

Council of the EU. 2000. The Prevention and Control of Organised Crime: A European Union Strategy for the Beginning of the New Millennium. *Official Journal of the European Communities*, C 124, 3 May.

Council of the EU. 2001. Conclusions adopted by the Council (Justice and Home Affairs) Brussels, 20 September 2001, doc. SN 3926/6/01 REV 6, Brussels, 20 September.

Council of the EU. 2005a. The European Union Counter-Terrorism Strategy, doc. 14469/05 LIMITE, Brussels, 15 November.

Council of the EU. 2005b. The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism, doc. 14781/1/05 REV 1 LIMITE, Brussels, 24 November

Council of the EU. 2010a. Draft Internal Security Strategy for the European Union: "Towards a European Security Model", doc. 5842/2/10 REV 2, Brussels, 23 February

Council of the EU. 2010b. Consequences of the entry into force of the Lisbon treaty: the COSI, doc. 5815/10 LIMITE, Brussels, 29 January.

Council of the EU. 2010c. Interim report on cooperation between JHA Agencies, doc. 5816/10 LIMITE, Brussels, 29 January.

Damousis, I., Tzovaras, D., Bekiaris, E. 2008. Unobtrusive Multimodal Biometric Authentication: The HUMABIO Project Concept, *EURASIP Journal on Advances in Signal Processing*, <http://downloads.hindawi.com/journals/asp/2008/265767.pdf>

Deflem, M. 2006. Europol and the Policing of International Terrorism: Counter-Terrorism in a Global Perspective, *Justice Quarterly*, 23: 336-359.

De Goede, M. 2008. The Politics of Preemption and the War on Terror in Europe, *European Journal of International Relations*, 14: 161-85.

Delpesch, T. International terrorism and Europe, Chaillot Papers No. 56, Paris, December 2002.

Den Boer, M. 2003. 9/11 and the Europeanisation of Anti-Terrorism Policy: A Critical Assessment, Groupement d'Études et de Recherches "Notre Europe", Policy Papers N° 6, September.

Den Boer, M., Monar, J. 2002. Keynote Article: 11 September and the Challenge of Global Terrorism to the EU as a Security Actor, *Journal of Common Market Studies*, 2002, 40: 11-28.

ESRIF.2009. ESRIF Final Report, December 2009,  
[http://www.esrif.eu/documents/esrif\\_final\\_report.pdf](http://www.esrif.eu/documents/esrif_final_report.pdf)

EU Observer. 2004. Member states to be urged to share more intelligence", 16 March.

European Commission. 2008. Security research for a safer world, Press Release IP/08/1426, Brussels, 29 September,  
<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1426&format=HTML&aged=0&language=EN>

European Council. 1999. European Council Tampere. Conclusions of the Presidency, 15 and 16 October 1999,  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/00200-r1.en9.htm](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/00200-r1.en9.htm)

European Council. 2003. A Secure Europe in a Better World. European Security Strategy, Brussels, 12 December.

European Council. 2004. Declaration on Combating Terrorism, Brussels, 25 March,  
<http://www.eco.de/dokumente/20040325-EU-79637-Terrorismus.pdf>

European Council. 2006. Dublin European Council 13 and 14 December 1996. Presidency Conclusions,  
[http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/032a0003.htm](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/032a0003.htm)

**European Council. 2010.** The Stockholm Programme - An open and secure Europe serving and protecting the citizens, *Official Journal of the European Union*, C115, 4 May.

Europol. 2006. EU Organised Crime Threat Assessment 2006, The Hague: Europol.

Future Group. 2008a. Informal JHA Council on 25/26 January 2008. Report of the High Level Advisory Group on the Future of EU Home Affairs Policies,  
<http://www.statewatch.org/news/2008/jan/eu-future-group-report.pdf>

Future Group. 2008b. Freedom, Security, Privacy - European Home Affairs in an open World. Report of the Informal High Level Advisory Group on the Future of European Home Affairs Policy („The Future Group“), June 2008,  
<http://www.statewatch.org/news/2008/jul/eu-futures-jha-report.pdf>

Gill T.D. 2006. The Temporal Dimension of Self-Defence: Anticipation, Pre-emption, Prevention and Immediacy, *Journal of Conflict & Security Law* 11: 361-369

Gill, T.D. 2007. The Temporal Dimension of Self-Defense: Anticipation, Pre-emption, Prevention and Immediacy, in: *International Law and Armed Conflict: Exploring the Faultlines. Essays in Honour of Yoram Dinstein*, ed. by M.N. Schmitt and J. Pejic, Leiden - Boston: Martinus Nijhoff, 113-155.

Gruszczak, A. 2009., Governing Internal Security in the European Union, *Central European Journal of International & Security Studies*, 3: 86-103.

Hayes, B. and Tassé R. 2007. Control Freaks: “Homeland Security” and “Interoperability”, *differenTakes*, no. 45 (Spring): 1-4.

HUMABIO. 2006, HUMABIO 1<sup>st</sup> Newsletter. Issue 1, 10 July.

Huysmans, J. 1998. The Question of the Limit: Desecuritization and the Aesthetics of Horror in Political Realism, *Millenium*, 27: 569-89.

Lavranos, N. 2003. Europol and the Fight Against Terrorism, *European Foreign Affairs Review*, 8: 259-75.

Thales. 2008. Border point Smart Corridor screening system,

[http://www.prosecurityzone.com/Customisation/News/Biometrics/Face\\_Recognition/Border\\_point\\_Smart\\_Corridor\\_screening\\_system.asp](http://www.prosecurityzone.com/Customisation/News/Biometrics/Face_Recognition/Border_point_Smart_Corridor_screening_system.asp)

Uçarer, E.M. 2002. Justice and Home Affairs in the Aftermath of September 11: Opportunities and Challenges, *EUSA Review*, 15: 1-3.

Van Buuren, J. 2009. *Secret Truth. The EU Joint Situation Centre*, Amsterdam: Eurowatch.

Weber, S. 2005. *Targets of Opportunity. On the Militarization of Thinking*, New York: Fordham University Press.

The White House. 2002. The National Security Strategy of the United States of America, Washington, DC, September 2002