



Converging and conflicting ethical values in the
internal/external security continuum in Europe

European Commission, 7th Framework Programme

Milestone report 4.1:
CFSP / ESDP External and Internal Security Activities

**Milestone report submitted September 2009 (M19) in fulfillment of requirements of the
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 PRIO	International Peace	PO Box 9229 Grønland	T: +47 22 54 77 00	www.inexproject.eu
	Research Institute, Oslo	NO-0134 Oslo, Norway	F: +47 22 54 77 01	

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SUMMARY

This milestone report highlights the significant findings in the work produced by WP4 on “*Ethical Issues in the link between external and internal security in CFSP /ESDP2*”. It also gives indications and implications what future work to be expected within WP4. The work by WP4 has so far been guided towards producing its first deliverable D.4.1 titled: *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External*. WP4 addresses the current transformation of the European security apparatus in respect to CFSP and ESDP. It shows that the internal and external aspects of security are becoming increasingly interlinked. Nevertheless, accurate when looking at the incorporation of JHA in first and second pillar activities dealing with external security, but also when looking at the variety of actors involved in the external security activities moving well beyond traditional defined representatives of external policy. WP4 identifies that CFSP / ESDP instruments and capabilities to a great extent are used for internal considerations, such as counterterrorism and fighting organized crime. The current literature gives little consideration for the importance of this transformation. A literature review performed in D.4.1 shows that current scholars in the field of European security mainly focus on formal distinctions between pillars or/and policy domains. They also tend to view EU’s external activities and its internal security policies as an intersection between different policy domains. WP4 acknowledges the current trends go beyond this intersection, and suggests that the current literature needs to be supplemented with nuanced research taking into account analysis of the actual security practices. The security transformations also have ethical implications that need to be further addressed. These are foremost related to the following issues: CFSP / ESDP and Intelligence; ESDP, border management and illegal immigration and; Crisis management operations and accountability. These trends and significant transformations open up venues for further research and scrutiny. The future work will evolve around completion of the deliverable 4.2, and preparations for the Workshop on *the ethical issues of CFSP/ESDP in the European Borderlands* scheduled for the period M.24. Moreover, the work pursued by WP4 will continue its aim of providing guidelines for policy makers and practitioners in order to carry out an ethical and accountable policy in the domain of CFSP/ESDP external aspects of EU internal security policy.

INTRODUCTION

Work package 4 (WP4) of the INEX project, labeled “*Ethical Issues in the link between external and internal security in CFSP /ESDP2*”,¹ is tasked with analyzing the aspects regarding Common Foreign and Security Policy (CFSP) and European Security and Defence Policy (ESDP) of the EU security continuum. Hence, the aim with the workpackage is, from an ethical part of view, to critically assess the security continuum by linking both the internal and external aspects of security and practices inherited in the European Union. This objective falls in line with the overall aim with the INEX Project which is to: contribute to the existing understandings of European security through an analysis of the value-based premises and ethical consequences of the ‘internal/external security continuum’²

This milestone report titled ‘CFSP / ESDP external and internal security activities’ is based on the progress and workflow so far produced under the WP4 until the period M18. This report sets out the key findings and presents the key issues identified by the work documented and brought from the preparation of the first deliverable D.4.1; *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border* of the Workpackage. This deliverable gives an assessment of the current literature on the CFSP / ESDP and its relation to internal / external security, as well as highlighting important trends regarding the European security apparatus. It also sets out further research objectives. This milestone report will also draw on related findings from other Workpackages in particular references will be given to deliverable 2.1 titled *The Law-Security Nexus in Europe: State-of-the art report*³ produced under WP2.

The report is divided into two main sections. The first section will present the key findings of the WP4 on the relationship between European internal and external security with a focus on CFSP / ESDP. It will also highlight the main findings from the literature review. The second and final section will continue to highlight some of the key findings especially in relation to the ethical implication of the transformation of CFSP and ESDP external / internal security, but also describe the forthcoming work to be expected by WP4.

¹ Annex I: Description of Work, INEX Project: Converging and conflicting ethical values in the internal / external security continuum in Europe, prepared 31st January 2008, p. 31.

² Annex I: Description of Work, INEX Project: Converging and conflicting ethical values in the internal / external security continuum in Europe, prepared 31st January 2008.

³ Project Periodic Report, INEX, converging and Conflicting Ethical Values in the Internal / External Security Continuum in Europe, 2009.p.6.

I. KEY FINDINGS

In its first deliverable WP4 sets out a state of the art report with the aim to map the various literature and research in particular with regard to the external dimension of EU internal security relation to the security continuum. The preparations for this deliverable were also intended to focus on the notion of a change or transformation in the relations between European internal / external dimensions, which is also connected to the assessment of the current literature. The WP4 were able to identify several issues that will be important for future research on the EU security continuum. These findings will be illustrated in this report, starting with the transformation of EU external / internal security.

Transformation of EU external / internal security

For the greater part of the 1990`s CFSP / ESDP have constituted the main policy domain for EU engagement in the field of security. The matters of Justice and Home Affairs (JHA) have mainly remained outside immediate attention. However, with the entry into force of the Treaty of Amsterdam in 1998 JHA began to expand its influence. Several important issues of the JHA domain, in particular asylum, immigration and border management, were during this process transferred from the third pillar to the first pillar. The treaty of Amsterdam moved up matters of internal security on the agendas of European governmental arenas. A multi-annual program in JHA matters was launched by the European Council gathering in Tampere in December 1999. During this process JHA issues and matters came to play a greater role in the external security sphere that until this point had been relatively dominated by CFSP and ESDP.⁴ During the European Council Meeting in Santa Maria da Feira in 2000 incorporations of JHA considerations into the external policies of the European Union, namely into the first pillar external action, and the CFSP / ESDP, were widely endorsed.⁵ The support together with the overall trend of incorporating JHA with external security was further reinforced with the events of 11 September 2001. The struggle against terrorism hence became a mechanism

⁴ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May, pp.3-4

⁵ Santa Maria de Feira European Council, Conclusions of the Presidency 19-20 June, 2000.

of justification for the development of “external dimension of the European Area of Freedom, Security and Justice” (AFSJ), and the growing assimilation of JHA matters into EU external relations.^{6 7} In 2003 the European Security Strategy was launched, and it formally declared that the “internal and external aspects of security are intimately linked”.⁸ This was followed by the second multi-annual program in The Hague⁹ in 2004, which insisted on the amplification of consistent strategy for the external dimension of the AFSJ. Since then consideration inherited in the JHA has been *systematically incorporated* in the European frameworks determining external policies. This can be seen in regard to the action plan by the European Neighborhood Policy (ENP), EU development / aid, and in policies considering financial/technical assistance. The civilian crisis management operations including administration, rule of law and security sector reform dimensions deployed by the EU in third countries under the frameworks of CFSP and ESDP are gradually engaging in issues associated with Justice and Home Affairs. Most notable one may see this trend in regard to increasing activity in border management, immigration, terrorism, and organized crime in general. The external activities by the EU nowadays involve a great number of various actors. The increasing use of judges, policemen and border guards, mainly through FRONTEX agency, in missions abroad indicate that actors beyond diplomats and military personnel are frequently sent abroad to take part in EU external activities. At the same time, instruments of CFSP / ESDP are increasingly used and take into account the internal aspects of security. This has mainly been seen in regards to counterterrorism initiatives, with increasing focus “on threats to social cohesion in European societies”, such as violent radicalization, with a growing domestic dimension of intelligence in the Joint Situation Centre (SitCen).¹⁰

The WP4 have found particular areas where this transformation is seen and that may contain ethical implications. They shall further be revealed in the next chapter together with suggestions for future research. However, it is now necessary in the context of what was mentioned above to look at the main findings from the literature review made by WP4.

⁶ Fuster, Gonzales, Gloria, Paul De Hert, and Serge Gutwirth (2008), *State-of-the-art-report on the current scholarship on the Law-Security Nexus in Europe*. INEX Deliverable: D.2.1. Vrije Universiteit Brussel.p.7.

⁷ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP/ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May ,pp.3-4

⁸ Fuster, Gonzales, Gloria, Paul De Hert, and Serge Gutwirth (2008), *State-of-the-art-report on the current scholarship on the Law-Security Nexus in Europe*. INEX Deliverable: D.2.1. Vrije Universiteit Brussel. p.17.

⁹ The Hague Program

¹⁰ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP/ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May ,pp.3-4

Assessment of the current literature

The results in WP4's assessment of the current literature seems to indicate that the major part of existing literature on the EU external security activities seems to underestimate and even neglect the importance of the current transformation, in particular the external implications of EU internal security activities. The literature review conclude that scholar in the European Foreign Policy field, and its emerging research teams that gather around a new "institutionalist approach; the concept of policy space of protection; and security governance", do contribute with important insights, but also have its shortcomings. It seems as this literature is to narrowly focus on the "notion of governance and insitutionalist readings of governmental proceedings". Such a focus have the ultimate risk of prioritizing studies on "institutional mechanisms of decision making and policy coherence" before analysis of the actual security practices.¹¹ This literature therefore tends to study European security in line with the formal rigid structures of the EU institutions.

Albeit a small portion, some scholars have provided analysis on the external effect of EU's internal security policies. However most of these studies are occupied with studying the JHA as a policy domain in itself. They hence fall in the same trap as the scholars mentioned above focusing too much on the formal, institutional aspects of these policies. In a sense they also tend to view transformation of security practices in Europe merely as an intersection between JHA and CFSP / ESDP matter. Thus, the analysis is therefore guided towards looking at different and distinct policy spaces. The WP4 hence seeks to go beyond this intersection, addressing the in-depth transformation of the EU security apparatus taking place both internally and externally. This transformation "challenges the traditional boundaries between various strand of professional activities (border guard, military, police), various policy domains (foreign policy, JHA, military affairs), and European integration process actors (states and supranational institutions)".¹² These conditions hence call for more nuanced analysis and studies of EU's external security activities. Such activities shall not be determined by "the formal distinction between pillars or policy domains"¹³ as pointed out in earlier studies. It shall also seek not to limit itself to analyze crosspolarity and matter of

¹¹ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May ,p.16.

¹² Ibid, p.5.

¹³ Ibid

coherence; instead it shall explore “the actual practices that underpin them”.¹⁴ This would emanate into a more sociological perspective that would need to take stock in the analysis of the actual security practices.¹⁵ Future research in the WP4 will hence be guided towards filling these gaps in the European security literature.

II. THE WAY FORWARD

WP4 have through its first deliverable identified several issues and trends related to the transformation of the EU security apparatus on both the internal and external dimension in relation to CFSP / ESDP that call for further scrutiny. These trends possess serious ethical challenges, but they also provide opportunities for further research. Below these findings will be further highlighted followed by an account of the forthcoming work in Workingpackage 4.

Ethical considerations and future Research

CFSP / ESDP and Intelligence: The second pillar body of SitCen was established with the purpose of gathering information in support of ESDP operations under the framework set out in the Petersberg tasks. However, since 2005 there has been an increase in SitCen`s domestic intelligence capabilities. As SitCen does not have a legal basis nor provides access and quality control of the reports conveyed to various EU actors, they can be seen as unaccountable. This becomes rather interesting when reviewing earlier research that demonstrates that intelligence organizations / agencies that are viewed as accountable are more efficient. In this context it is necessary that future research may focus on to assess SitCen`s impact on EU threat assessment, in order to grasp the unaccountable role of the second pillar actors in the field of intelligence.¹⁶

ESDP, border management and illegal immigration: The research made by the WP4 on the focus of ESDP show a similar pattern as the one mentioned above on pillar two activities of SitCen. ESDP with its original focus on peace building strategies and practices recently show tendencies of narrowing and shifting focus towards addressing border control, and illegal immigration issues. Institutional cooperation between various second pillar actors and

¹⁴ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May ,p.5.

¹⁵ Ibid, p.22.

¹⁶ Ibid, pp.26-27.

FRONTEX has lately been launched, and even a memorandum of understanding for the use of ESDP military capabilities in FRONTEX operations. It also holds true that the European Defense Agency (EDA) is heavily considered in developing the new EUROSUR project of integrated border surveillance among EU member states. The different legal status of the EU bodies involved in cooperation in these endeavors elevates relevant ethical dilemmas. As FRONTEX is an agency under the first pillar, hence accountability for the European Community, but in which legal framework would their use of the capabilities for their disposal from the ESDP fall under? Since second pillar issues are “...by essence characterized by adhocism,” this is an ethical challenge that needs to be tackled urgently.¹⁷

Crisis management operations and accountability: A similar concern may be raised when looking at the EU external crisis management operations- and initiatives. Here, the question of what should the staff in the EU crisis management missions be held accountable for becomes rather important? Significant work made in this field have been initiated by foremost Merlingen and Ostrauskaite¹⁸, but further research and elaboration on these issues need to be addressed and researched more in depth according to WP4.¹⁹ This is a question that has been addressed by other Workingpackages as well, most notably in the deliverable D.2.1 prepared by WP 2.²⁰

The next step

The forthcoming work produced within the WP4 will in the near future include completion of the second deliverable D.4.2. *Report on the value premises and human, ethical consequences of the CFSP /ESDP in the changing environment of border security*. It will also further concentrate on the preparations for the Workshop on *the ethical issues of CFSP/ESDP in the European Borderlands* that is scheduled for the period M.24.²¹ The aim with this workshop is to include relevant institutions and actors for a generating and conducive discussion. In the work ahead WP4 will continue to benefit from synergy effect with other work packages in particular with the work produced and prepared by WP3 on *Value dilemmas of security*

¹⁷ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May ,pp.26-27.

¹⁸ Merlingen, M. and Ostrauskaite, R. (2006), *European Union Peacebuilding and Policing*, New York: Routledge.

¹⁹ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May ,pp.26-27.

²⁰ Fuster, Gonzales, Gloria, Paul De Hert, and Serge Gutwirth (2008), *State-of-the-art-report on the current scholarship on the Law-Security Nexus in Europe*. INEX Deliverable: D.2.1. Vrije Universiteit Brussel. p33.

²¹ March 2010

professionalism and WP1 on *Ethical premises and consequences of security technologies*. Their thematical proximity not only constitutes important conclusions in itself, but also contributes to widening of the empirical features of the analysis of the European security continuum. Collaboration between work packages was also present and performed during the preparation to the deliverable 4.1, most notably with WP4 researchers taking part in the INEX-FRONTEX Workshop I ²²held in March 2009 organized under WP 5 (*The Eastern European Neighborhood*).

As of content the work by working package 4 will continue to pursue its aim of providing guidelines for policy makers and practitioners in order to carry out an ethical and accountable policy in the domain of CFSP/ESDP external aspects of EU internal security policy. This notion will continue to be of serious relevance even if one takes into account the possible entering into force of the Lisbon Treaty. The treaty as such may provide important steps of overcoming the sometimes inflexible pillar structures, however border management and other security activities will continue to remain divided and occupied between many actors operating under different legal frameworks. Thus, it seems to be a need for a form of *transinstitutional policy* domain that address the ethical and accountability aspects of external action taken and pursued by the European Union.²³ The further research shall also aim to grasp the many practices of interest for WP4 that recently has been developed in the field of intelligence gathering and in the combat of illegal immigration. It is essential that these are integrated in the empirical work, hence carefully researched and documented most preferably during meetings with actual practitioners.

²² Project Periodic Report, INEX, converging and Conflicting Ethical Values in the Internal / External Security Continuum in Europe, 2009. (<http://www.inexproject.se/>).p.12.

²³ Davidshofer, Stephan (2009), *State-of-the Art Review of Scholarly Research on the CFSP /ESDP and the Shifting Nature of the External Border*. INEX Deliverable: D.4.1. International Peace Research Institute, Oslo (PRIO), May, pp.26-27.

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