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**Externalization and Europeanization
of Internal Security in the EU:
the Schengen Area
and the European Arrest Warrant**

Radka Druláková

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Vysoká škola ekonomická v Praze

Externalization and Europeanization of Internal Security in the EU: the Schengen Area and the European Arrest Warrant

Radka Druláková (drulakr@vse.cz)

Summary:

According to traditional theories, state security has two dimensions, internal and external, corresponding to the distinction between the internal and external sovereignty of the state. Both dimensions are administered by different bureaucracies. Nevertheless, since the 1970s the EU member states have been experiencing a gradual blurring of the boundaries between the two security dimensions in the form of the externalization of their internal security. This externalization goes together with the Europeanization. The paper focuses on the trends in changing the security concept within the European Union. The changes are illustrated by the constitution of the Schengen Area (Schengen Information System), and the European Arrest Warrant.

Keywords: European Union, internal security, externalization, Europeanization, Schengen Information System, European Arrest Warrant

Externalizace a europeizace vnitřní bezpečnosti EU: Schengenský prostor a eurozatykač

Radka Druláková (drulakr@vse.cz)

Abstrakt:

Bezpečnost státu má podle tradičních teorií dvě dimenze – vnitřní a vnější, a to vzhledem k vnitřní a vnější suverenitě státu. Obě dimenze bývají spravovány různými úřady. Nicméně členské státy Evropské unie od 70. let 20. století získávají zkušenost s postupným překrýváním obou dimenzí ve smyslu externalizace vnitřní bezpečnosti. Externalizaci doprovází europeizace. Tento Working Paper se zaměřuje na trendy ve změnách bezpečnostního konceptu Evropské unie. Změny jsou ilustrovány na příkladech vytváření Schengenského prostoru (Schengenského informačního systému) a evropského zatýkácího rozkazu.

Klíčová slova: Evropská unie, vnitřní bezpečnost, externalizace, europeizace, Schengenský informační systém, evropský zatýkácí rozkaz

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Introduction¹

The internal and external security of the state has long been perceived as two separate elements of state security. Both have been defined by their relevance to the state borders and were aimed either inside or outside the state. Internal security has usually been the domain of the Ministry of the Interior, while external security has been governed by the Ministry of Defence. The question is, what will happen should the borders at least slightly lose their relevance. It is not a hypothetical question, as we may observe such trends developing within the European Union.

The abolition of border controls at internal frontiers is the basic principle underpinning the Schengen Area. Thus, within the Schengen Area, borders do not fulfil their original function, i.e. primarily that of protecting the state's territory. Therefore, I shall mention the externalization of internal security as the internal environment of every member state must tackle external affairs together with the other participants on the European scene. Literature dealing with the externalization of internal security is more plentiful, especially after 2000. In addition, there are even research projects focusing on this trend (Liberty & Security Challenges; Centre for European Policy Studies etc.).

Nevertheless, internal security measures are not only influenced by externalization; Europeanization plays an important role, as well, with internal security is becoming increasingly European due to the common counter-terrorism policy, asylum policy etc. I will examine both the externalization and Europeanization using the examples of the Schengen Area and the implementation of the Eurowarrant. Firstly, I will discuss the nature of internal and external security, as such, against the background of Justice and Home Affairs (JHA) cooperation within the European Union since the 1970s. Secondly, construction of the Schengen Area and the establishment of the Schengen Information System will be discussed to demonstrate just how inherent both the externalization and Europeanization processes are. Furthermore, the implementation of the European Arrest Warrant will be studied as another example of these processes in practice. I cannot do full justice to the selected processes in all their aspects; I want to demonstrate the immanent presence of the externalization and Europeanization of internal security within the European Union in the above-mentioned examples of cooperation in JHA.

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1. Externalization and Europeanization Processes in the European Union

According to traditional theories, state security has two dimensions: internal and external. External security is linked to the state's existence and its survival in the international environment amongst other states; internal security should ensure public order within the state's borders. The distinction between these two dimensions of state security has been made some centuries ago – even Macchiavelli in 16th century divided the state's enemies into internal and external threats: e.g. conspirators inside and invasion by foreign states from the outside, with each state having varying means of suppressing these threats to the state's existence (Macchiavelli 1997: 67).

The division of internal and external security was even more marked due to the Westphalian system of states by virtue of their sovereignty “... because, since the 17th century, the two were regarded as conceptually distinct – the external threat was that of invasion by a hostile power, whilst the internal threat was subversion and threats to public order” (Liberty & Security Challenges 2005). Such a concept of security is, to a certain extent, still present in contemporary theories. Even today, the administration of the internal security is an inherent part of the sovereign state's powers, a symbol of sovereignty. This, persisting separation of internal and external security is evident in the state administration; where the Ministry of Internal Affairs (and/or Ministry of Justice) looks after internal security, whilst external security is administered by the Ministry of Defence.

But, at the same time, we can examine the gradual overlapping of the two security concepts, at least on the Continent, within the European Union and after the end of the Cold War. This trend is acknowledged in many scholarly works (e.g. in the newest book by Balzacq, T. (ed): *The External Dimension of EU Justice and Home Affairs*, Palgrave 2009). And as Collins states, “the process of globalization has led to internal issues becoming externalized and external issues internalized.” (Collins 2006: 2–3)

Changes in the security concept have been evident since the end of the Cold War; however, this gradual process started in the European Community during the 1970s. The first signs of the inevitable cooperation between the internal and external security services became apparent at the end of 1960s as a result of security risk transformation and security interdependence. Former intrastate problems have been appearing on the international scene, demanding adequate, usually international, measures. These are for example terrorist threats “... which have both internal and external dimensions and need to be treated together” (Liberty & Security Challenges 2005). It is not only terrorist threats but also the wide range of cross-border organized crime activities which has had an influence on the overlap of internal and external security.

Despite this, internal security, closely linked as it is to state sovereignty², remains a very sensitive issue for international cooperation. Its specific nature has proven an obstacle to cooperation among the respective authorities (police, courts, etc.). Therefore, cooperation has taken place on an *ad hoc* basis, initially³; e.g.: the Ad hoc Group for Immigration (1986); the Mutual Assistance Group '92 [for customs cooperation]; the Pompidou Group (1971) for drug law enforcement cooperation etc.⁴ However, more organized police cooperation took place already in mid 1970s, meaning especially the so-called TREVI Group⁵, which tested the will of the then member states to cooperate in police matters and which was evaluated more or less positively.

The end of the Cold War has brought about not only the new international system replacing the previous animosity between the East and West (with the conventional attendant external threats); but also the new phenomenon which endangers both the internal and external security of the state; – international terrorism. Internal security has traditionally been perceived as the exclusive domain of the national state authorities, but the rise of terrorism has influenced the externalization of internal security. The concept of internal security has changed as states tackle more and more criminal issues which transcend state borders (international organized crime – drugs, human trafficking; international terrorism; illegal immigration etc.). This process is called the externalization of internal security.⁶ Hence, the member states have started to search for a new platform of cooperation which reflects, and responds to, the changes in the threats to security.

And it has been the European Union, emerging in 1990s, which started to act as a security ‘mover and shaker’, *sui generis*, of the international community. The Treaty on the European Union (1992) incorporated both dimensions of security separately. The external dimension of the security is dealt with within the Common Foreign and Security Policy (CFSP; the Second Pillar) whilst the internal dimension is dealt with by the Justice and Home Affairs Policy (JHA, the Third Pillar). “As the practice after the 09/11 reflects, the terms of internal

² Police and judicial authorities, intelligence services and other bodies safeguarding internal security fall exclusively under the control of the relevant state authorities (Druláková 2005: 11).

³ Nevertheless, it does not mean that systematic cooperation among the states in internal security matters was absolutely lacking in those years. We should for example mention Interpol, established in 1923 to enable cooperation among states in fighting the organized crime internationally. However, Interpol respects state sovereignty and does not involve itself in any legislative harmonization of the national law, for instance.

⁴ Based within the Council of Europe.

⁵ Terrorisme, Radicalisme, Extremisme et Violence Internationale.

⁶ Some researchers speak of the globalization of internal security as the ‘usual elements’ which endanger state security from the inside have gained a supranational dimension, both by their structure and the scope of their operation (Pikna 2005).

security and public order cannot be strictly divided and are rather complementary both at EU and intrastate levels” (Pikna 2005). Contrary to the first pillar of the community, these two pillars were based on intergovernmental cooperation and agreement was reached by consensus.

In the European Union, the externalization of internal security has been accompanied by its Europeanization. The latter shows that “internal security was now defined as a legitimate field for European co-operation” (Liberty & Security Challenges 2005). There is no common definition of Europeanization, and there is much debate over this phenomenon; however, Radaelli’s works are considered to be fundamental for research purposes. He states that “Europeanisation consists of processes of: a) construction, b) diffusion, and: c) institutionalisation of formal and informal rules, procedures, policy paradigms, styles, ‘ways of doing things’ and shared beliefs and norms which are first defined and consolidated in the EU policy process, and then incorporated into the logic of domestic (national and subnational) discourse, political structures and public policies” (Bulmer – Radaelli 2004: 4). Others say that Europeanization takes place when something in the domestic political system is affected by something in the European system. Thus, we can define Europeanization for the moment, and very briefly, as domestic changes caused by European integration (Vink 2002: 1).

Looking comprehensively at Europeanization, we see can see it as a process whereby the EU institutions and policies influence national institutions and policies, and vice versa. That is why not only the European Union states influence the EU structure and policies, but also the European institutions influence the national institutions and the member states policies (so called ‘bottom-up’ and ‘top-down’ approaches). Member states are not merely passive takers of European demands for domestic change (Börzel 2003: 3). Therefore, both the EU member states and the European institutions involve themselves in building up internal security, not only by adopting the common measures to strengthen the EU area, but also by institutionalizing the whole process.

There can be several examples of such processes – the Schengen cooperation being one of them (building the Schengen Area, and the establishment of the Schengen Information System to secure that area), or, the adoption of the European Arrest Warrant (EAW) as another one. Both these examples testify to the externalization and Europeanization of internal security within the EU area – both measures respond to the external aspects of the internal security (e.g. externalization), and both of them were adopted by member states which have to follow them afterwards, and are bound by them in the execution of their sovereign powers (e.g. Europeanization).

2. Schengen Information System (SIS)

The Schengen Information System was included in the European Union legislative framework by the Treaty of Amsterdam. Police and judicial cooperation in criminal matters is part of EU law; the free movement of persons is part of EC law. The Europeanization of the SIS (or, more precisely, of the whole Schengen system) is evident in the process in which the Schengen Area members have to act in compliance with the adopted standards, and adapt their national legislation to the European legislation. An example of the process of normative and institutional Europeanization is evident in the case of the Schengen enlargement (2004) when all acceding countries must adapt to the Schengen Acquis without any exemptions. They had to adapt their legislation to the Schengen Treaties, as well as to establish new institutions for its regular implementation.

The signatories to the Schengen Treaties were conscious of their exceeding the boundaries of intrastate security and rendering difficult the enforcement of “public order and the state security” (art. 2 Schengen II⁷). The Schengen Treaties should have made easier the establishment of the real free movement area by the abolition of border controls, while at the same time securing the Schengen area. Much of the Head III of the Schengen II; “Police and security”; addresses the exchange of information among the police forces of the contracting parties – its possibilities, conditions, improvement etc. In the Treaty, there is an interesting instrument of police cooperation; crossing state borders; i.e. hot pursuit (article 40–43 Schengen II).⁸ This instrument affects the internal sovereignty of the state to a certain extent – when following a suspicious person it provides police force of one member state with the authority to intervene, under certain circumstances, in another member state. Thus, the member states are obliged to allow the police from a neighbouring state to conduct certain activities on their soil in the interests of increasing the security of the Schengen Area as a whole.

Moreover, Europeanization spreads over the EU frontiers⁹ as not only Norway and Iceland (linked to Denmark, Finland and Sweden by the Nordic Union); but also Switzerland and Liechtenstein have decided to join the Schengen Area. Even Great Britain and Ireland, though non-members of the Schengen Area, are affected by the process of Europeanization in this field. Their citizens can enjoy the Schengen benefits on Continental Europe on the one hand, as well as both

⁷ The Convention implementing the Schengen Agreement was signed in 1990 and entered into force in 1995.

⁸ For more detail: Druláková (2006: 28–29).

⁹ According to Olsen, Europeanization even concerns non-European territories and signifies a more positive export/import balance as non-European countries import more from Europe than vice versa (Olsen 2001: 3).

countries being able to take advantage of segmented cooperation through the SIS.

The SIS represents the most important tool for preserving the security of the Schengen area. The SIS is aimed at “... maintain[ing] public policy and public security, including national security, in the territories of the Contracting Parties ...” (Article 93 Schengen II). The SIS is a database, which contains data on persons and/or ... which are exchanged amongst the competent authorities to secure the Schengen area. It includes information about persons wanted for arrest for extradition purposes (Article 95 Schengen II); data on aliens for whom an alert has been issued for the purposes of refusing entry (Article 96 Schengen II); data on missing persons, or persons who need to be placed temporarily under police protection (Article 97 and 98 Schengen II). Further, there are also included data on persons, or vehicles, for the purposes of discreet surveillance or of specific checks (Article 99 Schengen II); and some more data on objects (stolen, misappropriated or lost) – motor vehicles, trailers and caravans, firearms, blank official documents, issued identity papers and banknotes (Article 100 Schengen II).

The SIS is the database consisting of a central unit (C.SIS), national units (N.SIS) and the SIRENE units.¹⁰ The authorities intended for the recording of the relevant data into the system, and having access to the database, are assigned by every state itself (usually the police, customs or judicial bodies are concerned). The SIS provides the contracting parties with the information on the objects and persons through a computerized search; however, under the strict conditions for the protection of personal data, and the security of data (Articles 102–118 Schengen II); and only for the purpose of external border controls, customs controls, issuing residence permits, examining visa applications, etc.¹¹

Looking at Table 1 we can see that the SIS is widely used by the member states. About 90% of the inserted data consist of records on objects.

Table 1: Persons and Stolen/Missing Objects in the SIS (in thousands)

Year	Art. 95	Art. 96	Art. 97	Art. 98	Art. 99	Persons total	Art. 100	Art. 99/100	Objects total	Total
2003	13.8	775.9	33.6	34.4	16.3	874.0	8,634.0	1,107.0	9,741.0	10,615.0
2006	15.4	752.0	39.0	45.2	31.0	882.6	12,307.3	1,472.5	13,779.8	14,662.4

Source: Statewatch (2007).

¹⁰ The Supplementary Information Request at the National Entry (SIRENE) is a kind of support system to the SIS.

¹¹ For more information on the data treatment, see, for example, Fučík – Šípek (2001).

The operation of the SIS database is based on the “hit/no hit” procedure. It means that there are two possible outcomes if the relevant authorities ask the central SIS unit (in Strasbourg) – either there is a positive match with records (“hit”), or there is not (“no-hit”).¹² Let us have a look at the number of times the authorities find a record in the SIS (Table 2).

Table 2: “Hit” Statistics in the SIS (in thousands)

Year	Art. 95	Art. 96	Art. 97	Art. 98	Art. 99	Persons total	Art. 100	Art. 99/100	Objects total	Total
2003	1.5	23.3	1.0	2.1	1.3	29.2	5.0	7.3	12.3	41.5
2004	1.9	12.7	1.1	2.5	1.6	19.8	4.8	7.2	12.0	31.8
2005	1.9	11.6	1.3	3.6	2.2	20.6	4.9	6.1	11.0	31.6

Source: Statewatch (2007).

At first glance, the most successful hits are realized within Article 96, where the number of times authorities find a record in SIS is the highest. But, relatively speaking, when comparing the number of hits with the number of inserted data in this category, the hits on third country nationals to be refused entry are the least successful (in 2003 there was only about 3% successful hits).

SIS is a system responding to the external aspects of internal security which helps to tackle the cross-border issues intersecting internal security (e.g. it represents an example of externalization). Concerning Europeanization, Schengen’s origins in the 1980s show evidence of a more bottom-up Europeanization; (the five founding states affected Schengen the most); while recent developments tends to be more top-down oriented as the new member states had to adapt their legislation to the Schengen Treaties without exception.

3. European Arrest Warrant (EAW)

The EAW was adopted to address the terrorist problem as well as other serious crimes. The first attempt at establishing the EAW was made in the Tampere conclusions (1999). Its aim is to speed up extradition procedures throughout the European Union; it was designed to replace extradition procedures in operation hitherto (according to Council of Europe agreements¹³). The EAW’s adoption and implementation has been, above all, speeded up by the 2001 terrorist attacks.

¹² It indicates only whether there is a record in the SIS or not. The exchange of relevant data takes place through the SIRENE national bureaux. For more information see Druláková (2008: 123–136).

¹³ The European Extradition Convention (1957) and the European Convention on the Suppression of Terrorism (1978), as regards extradition.

The European Arrest Warrant was adopted by the Council framework decision¹⁴ in 2002; therefore, it is obligatory concerning the aim, while the signatory states have a free hand as to how to implement it. The EAW “... is considered to be one of the basic steps leading to the establishing the common area of freedom, security and justice within the European Union” (Pikna 2004: 282). Again, the EAW is a piece of European legislation produced and adopted by the member states, which are obliged to respect it in all its related activities. It corresponds to the structures set out in the Europeanization process; in this case in the judicial cooperation having criminal aspects.

The EAW represents a request (court judgment) made by the relevant authority of one member state to another member state to: locate, arrest and hand over the fugitive if he/she has committed a criminal act which is punishable by imprisonment for a period of at least one year.¹⁵

Table 3 tries to assess the EAW’s effectiveness, though the system of the annual evaluation of the EAW’s effectiveness has yet to be agreed upon among the member states and EU institutions. There is no common statistical tool, thus the statistics are not perfect.¹⁶ Nevertheless, the EAW’s application is an everyday occurrence in international justice cooperation, and its main aim – to speed up extradition – has been achieved (the average time for extradition within the EU now is only a couple of weeks; using the conventional extradition procedure it took a year, on average).

Table 3: The EAW Statistics¹⁷

Year ¹⁸	EAW issued	EAW received	Persons arrested upon the EAW	Persons actually surrendered
2004*	2,900	2,650	620	405
2005**	2,470	6,900	550	500
2006***	6,320	2,750	1,690	1,670

Source: EC (2007), Council of the EU (2007), Council of the EU (2005).

¹⁴ 2002/584/JHA The Framework Decision establishing the EAW was signed in 2002 and entered into force at the beginning of 2004.

¹⁵ The EAW can also be applied for in the case of custodial sentences which are at least four months long.

¹⁶ For example, in the questionnaire for the year of 2004, only 17 member states answered the questions; it was even 5 states less in the following year and either in the year of 2006 not all members included in the required data (e.g. Belgium, Czech Republic, United Kingdom etc.) (Druláková 2007: 123–136).

¹⁷ Rounded off to tens.

¹⁸ * Data collected from 17 member states.

** Data collected from 12 member states.

*** Data collected from 17 member states.

By adopting the EAW, the member states have accepted the Europeanization of justice cooperation in criminal matters as well; they had to adopt the EAW Framework Decision into their national legislation and conform to its wording. This has been evident especially in countries where some, both political and nonpolitical, groups – objected to the Framework Decision saying that it contradicts their national law (some of them even filed an appeal to the constitutional court¹⁹). This took place in the Czech Republic soon after the EAW came into force. A right-wing party accused the EAW of contradicting the Charter of the basic rights and freedoms (according to which no citizen of the Czech Republic can be forced to leave the country against his/her will). The controversy was brought to the Constitutional Court which rejected the objection by commenting that the Czech Republic is a member of the European Union having not only rights from, but also duties to, the European Union.

Conclusion

The internal and external aspects of state security are like two sides of the same coin. Both ensure the sovereignty of the state both outside and inside. External security focuses on the survival of state in the international environment; internal security focuses on the guarantee of public order within the state. The two can be considered interconnected as the rising threats to external security project themselves on internal security, and vice versa.

It was the end of the Cold War and the end of the conventional military-political threats from abroad which led to changes in the perception of the concepts of internal and external security; up until then they had been perceived as two separate spheres of research. Some say that external threats will turn into internal threats after the real abolition of the territorial borders (Veverka 2005).

Thus, the externalization of the internal security is a process tightly connected, among other things, to the constitution of the Schengen Area. The security of this area is ensured by, *inter alia*, the SIS, whose national offices operate in every member state. Every signatory to the Schengen Agreement has to adapt the national legislation to its provisions which reflects the Europeanization of this area. Building the Schengen Area demonstrated both the bottom-up Europeanization (prevailing in 1980s and 1990s), and the top-down Europeanization (especially since the turn of the millenium).

The functional implementation of the EAW is evidence of the externalization, and Europeanization, as well. Implementation of the framework decision

¹⁹ It was the case not only of the Czech Republic but also of Poland, Germany or Cyprus. “The complaints were partly successful in Germany, Poland and Cyprus, [...] nevertheless, the national constitutional courts could not abolish the Union measure“ (Šlosarčík 2007).

represents the response to the external aspects of internal security (mostly to terrorist threats). Furthermore, member states agreed to adopt the measure and are bound by it in the execution of their sovereign powers afterwards. Thus, both the surveyed processes operate in this case too.

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University of Economics, Prague
Faculty of International Relations
Náměstí Winstona Churchilla 4
130 67 Prague 3
<http://vz.fmv.vse.cz/>



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