



**Centre for European Reform**  
29 Tufton Street  
London SW1P 3QL UK  
T: 00 44 20 7233 1199  
F: 00 44 20 7233 1117  
[www.cer.org.uk](http://www.cer.org.uk)  
[info@cer.org.uk](mailto:info@cer.org.uk)

**May 2003**  
ISBN 1 901 229 44 0 ★ £5/€8

# **Guarding Europe**

**Adam Townsend**

**May 2003**

## ABOUT THE AUTHOR

Adam Townsend is a research fellow at the CER. He joined in September 2002 to work on justice and home affairs. This is his first publication for the CER.



## AUTHOR'S ACKNOWLEDGEMENTS

I would like to thank the many officials and law enforcement officers from around the European Union and beyond, who gave up their time and agreed to be interviewed during the researching of this paper. I am also indebted to various people outside the CER who commented on early drafts. However, I could not have written this paper without the extensive assistance I received from the CER team – thank you.

Any errors are my responsibility.



## Contents

About the author

Author's acknowledgements

1	Introduction	1
2	The forces for change	5
3	Internal security in the EU and the US	11
4	Improving security within the EU	23
5	Improving control of the EU's borders	31
6	A new framework for border control	39
7	Conclusion and a summary of recommendations	53

# The Schengen Area

## 1 Introduction



Many Europeans have a distorted image of what the European Union's justice and home affairs policies are all about. Some envisage that, in the near future, blue and gold police cars will speed about European streets, and the evening news will carry pictures of Europol detectives leading handcuffed suspects away. The truth is more prosaic: justice and home affairs is a brand new policy area for the EU, and agencies like the police office Europol are struggling to find their feet. Few European politicians are seriously proposing that the EU creates its own powerful intelligence service or establishes an independent federal police. However, it is increasingly clear that the EU must adopt new measures to protect itself against terrorism and organised crime.

Most member-states have removed their internal border controls, creating a vast zone of free movement stretching from Greenland to Greece – known as the Schengen area or 'Schengenland'.<sup>1</sup> The lack of internal border controls makes all the member-states more vulnerable to crime and terrorism for two reasons. First, most of the EU now relies only on Schengenland's external frontiers for border security. Second, organised crime and terrorist groups are free to roam across all the Schengen states, but police and other security forces cannot operate outside national and regional territories.

<sup>1</sup>The UK and Ireland are the only EU member-states which are not part of the Schengen area. Norway and Iceland are part of Schengen, but not members of the EU.

This paper addresses two problems posed by the creation of Schengen. First, what could member-states and the EU do to improve security within the area of free movement? Second, how should the Union improve control of its external borders?

The member-states have traditionally dealt with cross-border terrorism and crime by encouraging co-operation between their security services and police forces. For example, European police forces have exchanged information on suspects, and co-ordinated investigations and prosecutions for decades. The intelligence agencies have also routinely traded information and, occasionally, run joint operations. Some government officials insist that domestic reforms of police and security forces, coupled with increased security co-operation between member-states, should be sufficient to police the Schengen area. However, this paper argues that co-operation between national agencies is not enough to guarantee Europe's internal security on its own.

Helmut Kohl, the former German chancellor, was the first European politician to call for the EU to have its own police force to deal specifically with cross-border crime. In 1999, Europol, the European police office, began work. The member-states granted Europol only limited powers – it has no powers of arrest or investigation and is held in low esteem by some police officers. Most member-states remain adamant that internal security is a matter of national sovereignty, and that powers should not be transferred to EU bodies. Some governments also fear that powerful EU security forces would not be sufficiently constrained, because the EU does not have an adequate legal framework to protect human rights and the rule of law.

The practical obstacles to running successful EU security forces are almost as daunting as the political objections to creating them. Many police officers and members of the intelligence community say that while EU-level security agencies make good sense theoretically, the substantial differences between national laws and enforcement practices make EU-level bodies unworkable.

For example, member-states use very different combinations of customs services, immigration, police and military forces to guard their frontiers. French immigration officers carry guns and run undercover investigations, but their Swedish and UK counterparts

are administrative officials, and have no police powers. In Spain, the paramilitary *Guardia Civil* has partial responsibility for patrolling the seas; in Greece the navy plays a significant role; the UK uses customs boats. It strikes many policemen as fanciful that these different organisations could work under a unified command structure, and with common powers.

However, the Schengen states can no longer refuse to strengthen the EU's role on the grounds that internal security powers are a purely national prerogative. When governments removed their internal border controls, the security of each state became a seamless part of the EU's security. Moreover, member-states need not fear the creation of powerful new police forces and spy agencies. Such bodies are simply not feasible; on security policy, as in foreign policy, the Union must walk before it can run. The EU must find the means to improve its ability to tackle crime and terrorism, while accommodating member-states' fears about the loss of sovereignty.

This working paper argues that the Union should establish an EU-level intelligence office to compile and assess information gathered by member-states. The body would have no independent powers to gather raw intelligence, although its charter should compel participating member-states to send it information on certain threats, such as transnational terrorism.

The Union should also set up an EU border guard unit to co-ordinate the work of the national border forces and improve control of Europe's external borders. This border guard unit could also play an important role in plans to integrate national border forces into a single management framework – a project that most member-states support. The new unit would also provide EU-level analyses of threats to the border, such as drug and human trafficking, potential mass influxes of refugees and local cross-border crime.

The EU's efforts to improve collaboration between national security forces must be founded on a common base: increasing trust between

individual police and intelligence officers. Member-state governments should gradually reduce the legal and practical barriers to co-operation – for example by providing clear legal protocols to cover information exchange and joint operations, and by ensuring that communications equipment and procedures are inter-operable. And governments should put more pressure on their police and security officers to work with one another.

## 2 The forces for change

EU member-states need to reform the way they handle internal security for two reasons. First, the member-states' police, intelligence and military forces are designed to deal with the threats of the Cold War era, not the problems caused by transnational crime and terrorism. Second, the EU is now more vulnerable to cross-border crime and terrorism because most member-states have removed internal border controls.

EU governments designed their security operations to combat the threat of invasion from the communist bloc, and attacks by domestic terrorist groups, such as ETA, the IRA, the Red Army Faction and November 17. In the Cold War period, internal and external security agencies performed different tasks. Internal security forces concentrated on counter-espionage activities – catching spies and traitors – and thwarting domestic terrorists. The external intelligence agencies gathered information on other states' military and industrial strengths, troop deployments and internal political trends.

Governments also enforced a rigid separation between intelligence agencies and police forces. Police forces looked for evidence and followed strict procedures; governments gave intelligence agencies a freer hand. In the UK especially, cultural differences between the 'gentleman' spy, and the career 'bobby' reinforced this legal separation. To make matters worse, the police and intelligence agencies found it difficult to co-operate with one another owing to incompatible procedures and equipment.

Police and intelligence agencies did co-operate across borders but in a very inconsistent manner. The intelligence agencies often preferred to work independently in third countries, even in allied states, rather

than collaborate with local forces. When they did co-operate, they stuck firmly to traditional ‘clubs’. The British, in particular, clung to the ‘special relationship’ with the US, and white Commonwealth countries such as Australia and New Zealand. The UK did liaise with French and German intelligence but it did not routinely exchange the most sensitive information.

West European police and customs forces were generally more willing to collaborate with neighbouring forces on individual cases than the external intelligence agencies. However, law enforcement services found it difficult to work together consistently because there was no framework of laws to give them clear and comprehensive powers to act on one another’s territory. When they needed information from another country, most police officers preferred to deal informally with police officers they knew and trusted there. The absence of central computer databases and secure means of data transmission impeded the exchange of information, such as detailed lists of suspects, or summaries of ongoing investigations.

Governments also hindered cross-border co-operation by creating many different security bodies without co-ordinating their work satisfactorily. France, for example, has a dozen different agencies working on intelligence gathering. Germany has always struggled to accommodate the *Länder’s* many independent security and police forces within a centralised structure. Spain’s *Guardia Civil* consistently overlaps with its various national, regional and municipal police forces.

These security arrangements are ill-suited to fighting a transnational threat like al-Qaeda because they are too decentralised, poorly co-ordinated and unable to work effectively on a transnational basis. Its networked structure, its international range and the diversity of its activities distinguish al-Qaeda from other terrorist groups. The al-Qaeda inner core appears to be a close group of individuals, but the group co-operates with or supports numerous affiliates spread across the globe. Members of the network use illicit activities such as credit

card fraud, as well as heroin and arms trafficking, to finance their activities, while also taking advantage of modern banking networks to transfer money between accounts in different countries. The cells are loosely linked to the main leaders, but strong family-like ties bind the members of each individual cell, making them difficult to infiltrate. Al-Qaeda almost certainly uses the informal *hawala* money transfer networks, which operate outside the formal banking system and are difficult for Western security agencies to penetrate. Different security and police forces, anchored in their respective countries, detect the separate activities of different cells, but no one necessarily sees the links.

#### *Free movement for terrorists and criminals, but not policemen*

The creation of the Schengen area has made the EU more vulnerable to crime and terrorism. In the past, to supply more than one member-state, criminals needed to avoid multiple border controls. The removal of internal border controls means that traffickers need only avoid one set of controls to gain access to the entire area. Traffickers can land a shipment of cocaine in southern Spain, and, without the need to evade more border checks, ship it just as easily to Vienna or Helsinki as to Barcelona.

Moreover, police and security services remain bound to national territory. Terrorists and criminals thus enjoy a distinct operational advantage over the EU’s security forces. National police forces usually cannot follow a terrorist suspect across a border or intercept a criminal’s mobile phone calls in another state.<sup>2</sup> Instead, the police must ask their counterparts to take responsibility for surveillance of the suspect. The procedures for formal co-operation are cumbersome and slow. By the time the neighbouring force is able to take action, the suspect has often moved on and the trail gone cold. Security forces can and do co-operate informally to try and reduce delays. For example, a French policeman will telephone

<sup>2</sup> *The Schengen states have signed a network of bilateral agreements that allow neighbouring police forces to cross a border when they are in pursuit of a suspect. However, police forces cannot tap phones, question suspects and search offices in another country.*

a German colleague for an ‘off the record’ briefing on a suspect, rather than channel a formal request through the liaison office. Nevertheless, the EU is vulnerable because national police forces cannot easily mount cross-border investigations, and have no way of ensuring that relevant intelligence gathered in other member-states is passed onto them.

In their planning, terrorist and criminal organisations can also take advantage of the lack of seamless policing within the EU. European intelligence agencies say al-Qaeda, and related organisations, had cells in – at least – Germany, Italy, the Netherlands, Spain and France. If so, senior al-Qaeda leaders like Khalid Sheik Mohammed need only have risked passing through one set of border controls in order to visit all cells in the Schengen area. And by entering one Schengen state and then travelling overland, terrorists make it more difficult for security services to track them.

Recent arrests made across the EU indicate that terrorists are attempting to exploit the absence of internal borders. In September 2001, the Dutch police, working together with the

<sup>3</sup> *Geneva Centre for the Democratic Control of Armed Forces, ‘Historical overview: National Security Service (BVD) to General Intelligence and Security Service (AIVD)’, conference paper, October 2002.*

Dutch intelligence agency AIVD (formerly the BVD), arrested several members of a terrorist cell in Rotterdam. The cell was part of a French-Dutch-Belgian network that was planning attacks on the US Embassy in Paris, and a US military base in Belgium.<sup>3</sup> On March 10<sup>th</sup> 2003, a Frankfurt court sentenced four Algerian men based in Frankfurt to 10-12 years in jail for plotting to set off a bomb in the Strasbourg Christmas market. The prosecutor dropped charges that the men belonged to a terrorist network because it would have required testimony

from suspects in custody in France. Transporting the suspects from France would have been administratively difficult and time-consuming. A fifth member of the cell avoided arrest in Frankfurt and was subsequently apprehended by Spanish police in

Alicante.<sup>4</sup> The cases are a good example of the problems the EU faces in trying to regulate a borderless continent with 15 different national justice systems. <sup>4</sup> *The New York Times, March 11<sup>th</sup> 2003.*

### 3 Internal security in the EU and the US

The EU needs to make reforms to its security framework at three different levels to combat terrorism and organised crime more effectively. At the national level, member-states must ensure their security forces are sharing information and working closely together. Globally, member-states must co-operate with governments around the world on counter-terrorist and crime reduction policies. Most member-states are already pursuing reforms along these lines. However, member-states have not resolved the question of what the EU can do to improve security.

Logic suggests that if terrorists and criminals operate across internal borders, the member-states should create security forces which can operate smoothly across Europe to counter that threat. A comparison of the EU's current approach to security with the US helps show just how illogical the situation in the EU has become.

The Schengen states make up a single area of movement, just like the United States. The two are similar in size, and both have long land borders. The US and the EU are the world's two most valuable markets for illegal drugs, and they are the most important destinations for human traffickers. Yet they deal with internal security quite differently.

Many analysts suggest that the risk of terrorist attacks in Europe is as great as in the US – and some even claim the EU runs a greater risk of an attack. They argue, for example, that the EU's large and only partly integrated Muslim population provides natural cover for extremist Islamic groups, and that it is a possible source of recruits



and supporters. They also point to the EU's proximity to troubled areas like Chechnya, Algeria and especially the Balkans, which hosts a number of battle-hardened Muslim fighters.

*The EU's 'inter-governmental' approach to internal security*

The EU has attempted to deal with common security threats by encouraging the member-states' police and intelligence forces to co-operate more intensively than anywhere else in the world.

Member-states have developed detailed rules and procedures to support co-operation. For example, Schengen states must apply a set of common rules to some aspects of border controls, such as a common list of countries whose nationals require visas to enter the Schengen area, and common procedures for refusing entry. The police, immigration and consular officials of the Schengen states draw upon a huge computer database with many millions of files on people and goods that might be a risk to the Schengen area.

The member-states have set up various fora in which the heads of security organisations can get together informally and co-ordinate their work. For example, the heads of the larger member-states' internal security agencies, including Britain, France and Germany, meet frequently in the 'Club of Berne' (a non-EU body). The EU has developed more sophisticated mechanisms for police co-operation. Europol, the EU police office, which has some powers to co-ordinate information exchanges and joint operations between the member-states, began operation in 1999.

Member-states have also developed bilateral or multilateral agreements on security co-operation outside the EU's framework. France and Germany have signed a comprehensive agreement covering customs and police co-operation. German and French police officers work together in single locations – called 'nodes' – to co-ordinate joint operations in an area that covers parts of both countries. For example, officers based in the Franco-German office in Offenburg co-ordinate cross-border operations such as

surveillance on suspects who regularly cross the border. Sometimes such inter-governmental agreements grant particularly sweeping powers to another country's police forces. For instance, the German government has granted Swiss police officers permission to conduct undercover operations on German territory. In emergencies, the Swiss can do so without previously notifying the German police. In March 2003, the UK parliament was debating a bill that, if passed into law, would give foreign police and customs officers the ability to carry out surveillance inside the UK for up to five hours without notifying UK officials. The police forces of Northern Ireland and the Republic of Ireland recently signed a co-operation agreement with the aim of establishing 'a seamless security approach' across the whole island.<sup>5</sup> Regional-level agreements are especially important, because many <sup>5</sup> *Irish Times*, policemen in the EU work for a regional authority, *February 26<sup>th</sup> 2003*. rather than national governments.

However, the inter-governmental nature of such co-operation entails serious practical, legal and political limitations. Inter-governmental agreements notwithstanding, most policemen and intelligence officers are extremely hesitant to work with outsiders. A detective could be investigating a case where a suspect regularly travels to another country. But if the investigator did not have a trusted counterpart in that country's police force, he may be prepared to forgo the possible benefit of tracking the suspect in that country in order to avoid involving strangers in the investigation. So co-operation can be patchy and inconsistent. Conversely, different national security forces may be investigating the same transnational terrorist or criminal network, but may take decisions that adversely affect the investigation in another state. In late 2001, police and intelligence forces in France, Belgium and the Netherlands were investigating a series of related terrorist cells. After the attacks of September 11<sup>th</sup> in the US, the Dutch and Belgian police rushed to arrest the suspects in their territory. The French investigators are said to have been furious, because they wanted to keep monitoring the cells in France to gather more information about their intentions and connections to other groups.

Moreover, governments do not always agree on whether a person is a threat or not, or they may have different security priorities. For example, Italy was long frustrated by France's failure to extradite former Red Brigade terrorist Paolo Persichetti, who lived and worked in France throughout the 1990s before the government returned him to Italy in 2002. Equally, French police have long complained that British police are reluctant to take action against North Africans suspected of crimes in France.

Language differences also hinder co-operation between EU security forces. For example, a Europol officer related to the author how a national police force ignored a request for information, because it had been sent in English rather than their own language. Member-states' security services employ different kinds of equipment. As a result, incompatible computer systems, encryption standards and procedures hamper the rapid exchange of information and the co-ordination of sensitive operations.

Member-state internal intelligence agencies have traditionally co-operated more fully than the external services. The UK's special relationship with the United States, Canada, Australia, and New Zealand sometimes makes it difficult for its external intelligence agencies, MI6 and GCHQ, to pursue close ties with its European counterparts. Intelligence sources say the focus on terrorism since the attacks of September 11<sup>th</sup> has led to improved co-operation between all European countries. However, as long as European governments maintain different international political objectives, rivalries between their intelligence communities are unlikely to fade away completely.

Despite pressure from politicians to co-operate, police and intelligence agencies are not obliged to pass on intelligence or to participate in a joint operation. Given national governments' wish to retain total control of internal security, this is understandable. But it is also a potent limitation on the EU's internal security. It means, for example, that there is no guarantee that any security force is

compiling all the information on, say, a previously unknown terrorist group with cells in several EU cities. Some inter-agency protocols include a clause that puts a strong onus on the parties to pass on information that would be of interest to the other. But each agency is left to interpret the clause as it sees fit and there are no penalties for non-compliance.

When the member-states created the Schengen area, they effectively demoted the national security forces to a level equivalent to the state police in the United States. But there is no EU equivalent of the FBI to protect internal security and enforce federal law, no CIA fighting external threats, no US Coast Guard patrolling the territorial seas. For all the flaws of the American services, few people would argue that the United States would be safer with only state police forces.

The EU does not, in the short term, need such things as a European criminal code or agencies with the resources and powers of the FBI. But the EU does need an effective central body to analyse information from the widest possible sources. Without it, the Union is less able to identify threats that are spread across its internal borders. The following hypothetical example illustrates the problem:

A terrorist organisation plans to plant a bomb at the Olympic Games in Athens. The group assembles a team of willing individuals financed by funds collected in the Middle East and Asia and transferred from accounts in Malaysia and the United Arab Emirates to bank accounts in Germany and the UK. While in Spain, two of the would-be terrorists withdraw money from the two accounts and send it via a money transfer company to members of the team residing in Greece, France and Germany. They use the funds to purchase bomb-making material in Belgium and the Netherlands. Some of the terrorists overstay student visas in Germany and France.

Member-state police forces would probably react in the following manner:

Officers from the Greek central intelligence agency (KYP) photographed one terrorist's attempts to procure plans of Olympic facilities. The Dutch police note the sale of explosives to an unregistered dealer. Belgian customs officers record a suspicious import of restricted material from a Central Asian state, but they do not investigate what happened to it, and do not circulate the report. Dutch immigration issues a Schengen visa to one member of the group, unaware that person is on a French internal security watch list. The German and UK financial investigation units record a suspicious transaction reported by the bank that received the money sent from the Middle East and Asia. The money transfer company reports one of the transfers to the Spanish financial investigation unit.

Without central bodies to put the pieces of information together – and co-ordinate further investigations – it is unlikely that any government or agency would recognise the threat in time to do something about it. Europol should, in theory, fulfil the role of assessing threats based on information from all the member-states. But its charter does not compel member-states to pass it information and, in practice, member-states are reluctant to work through that body. Instead, governments could be left agonising over the failure of police and intelligence agencies to prevent the EU's own September 11<sup>th</sup>.

#### *US lessons from the September 11<sup>th</sup> attacks*

In the aftermath of September 11<sup>th</sup> 2001, most Americans demanded to know why a combined intelligence budget of \$27 billion and a policing budget of \$50 billion had failed to prevent the attacks. A special Congressional committee launched a review while the Bush administration conducted its own inquiries. Their findings are a clear warning to the EU of the dangers of not centralising intelligence gathering effectively.

They began with the question of who knew what and when.<sup>6</sup>

<sup>6</sup> *US Senate Select Committee on Intelligence, 'The intelligence community's knowledge of the September 11 hijackers prior to September 11, 2001', September 20<sup>th</sup> 2002.*

- ★ In 1995 Ramzi Yousef, the planner of the 1993 bombing of the World Trade Center, told Philippine authorities that he learned to fly at US flight schools and plotted to fly a plane into CIA headquarters.
- ★ Intelligence from various sources during the summer of 2001 suggested that a major attack on US soil was imminent.
- ★ An FBI agent wrote a memo theorising that Middle Eastern men training at a flight school in Phoenix, Arizona, could be training for a hijacking. The memo did not ascend beyond mid-level analysts at FBI headquarters.
- ★ Five of the attackers were on watch lists belonging to different federal agencies.
- ★ Three attackers were on a CIA watch list but had nevertheless been granted visas to enter the US.
- ★ Three of the attackers' visas had expired.
- ★ The FBI arrested Zacarias Moussaoui, the so-called 20<sup>th</sup> hijacker, on August 16<sup>th</sup> 2001 after his flight school told them Moussaoui wanted to learn how to fly a 747 – but not how to land it. FBI headquarters blocked a request to search Moussaoui's computer despite having information from the French internal security agency that indicated Moussaoui might have connections to known terrorists.
- ★ Although the FBI notified the CIA of Moussaoui, neither agency notified the Counter-terrorism Security Group at the White House.

Unsurprisingly, the administration and the Congressional review concluded that the main intelligence and enforcement agencies were not sharing enough information, and that they often responded to common threats independently of one another. Partly this was because of practical barriers – for example, key computer databases were incompatible. But partly it was because cultural and legal barriers between the many agencies made consistent co-operation difficult. For example, laws restricted the extent to which the FBI could use intelligence gathered abroad by the CIA.

Retired intelligence officials also said that the US had holes in its intelligence-gathering network. They cited Saudi Arabia, Sudan,

<sup>7</sup> *The Observer*, September 30<sup>th</sup> 2001.

<sup>8</sup> See Congressman Porter Goss, Chairman of the House Permanent Select Committee on Intelligence and ex-CIA officer in a PBS online interview, September 20<sup>th</sup> 2001 (<http://www.pbs.org/wgbh/pages/frontline/shows/terrorism/interviews/goss.html>).

<sup>9</sup> *Washington Times*, October 8<sup>th</sup> 2002.

<sup>10</sup> *Washington Times*, January 24<sup>th</sup> 2003.

Pakistan and Afghanistan as ‘blind spots’.<sup>7</sup> The American aversion to upsetting the Saudi regime hampered intelligence-gathering there. The US administration was reluctant to co-operate at all with the governments of Afghanistan, Pakistan and Sudan. This hesitation stopped the desk officers and field agents at the CIA from establishing close ties with members of these regimes. In Afghanistan and Sudan, the CIA also lacked agents with the appropriate language skills and local knowledge.<sup>8</sup> Other commentators said that the US was handicapping itself by being squeamish about courting unsavoury but potentially useful informants.<sup>9</sup> They added that the US was obsessed with intelligence gathered by electronic means, and did not put enough emphasis on using agents to infiltrate terrorist groups or crime gangs.<sup>10</sup>

The Bush administration responded with a raft of reforms, the most notable of which was the creation of the Office for Homeland Security, with an annual budget of \$30 billion. The office unites 22

formerly separate agencies and 170,000 staff, including the department of immigration, the land border police, the US Customs Service and the US Coast Guard. However, it will be several years before the government can assess whether the new body is improving the security of the US.









The US government wants the CIA to play a larger role in collecting intelligence domestically, and President Bush told the FBI’s director, Robert Mueller, to give intelligence-gathering equal weight with collecting evidence for prosecutions in the courts. Some congressmen say the laws which separate policing and intelligence activities need further reform.

The administration has also made changes aimed at improving co-operation and information exchange between the main intelligence and enforcement agencies. For example, the administration created the Terrorist Threat Integration Center, which is supposed “to merge and analyse all threat information in a single location.”<sup>11</sup> The Department of Justice has set up two groups of counter-terrorist task forces. One group brings together federal, state and local enforcement agencies to investigate and prevent attacks. The second group co-ordinates communications and operations between the agencies. The US has further moved to rebuild links with security services in countries that were formerly blacklisted, like Indonesia and Pakistan. The Bush administration has also set up a dedicated commission that will undertake a detailed inquiry into how the US should reform the way it gathers intelligence. The commission, which began work in December 2002, may recommend more reforms.

While the US is moving to centralise and improve co-ordination between its security services, European police and intelligence agencies remain highly fragmented (see Table 1 right). The EU spends far less on security than the US. On intelligence gathering, the gap is enormous. Worse, because the member-states barely

co-ordinate the overlapping networks of their intelligence agencies, Europe probably gets less value per euro from its spies than the US. Countless national and regional police force and security agencies are spread across the member-states – Europol says it works with around 40 different European law enforcement bodies. These police and security services use incompatible equipment and procedures and work with different powers and legal restrictions. European governments cannot cross their fingers and hope that terrorists and criminals do not exploit the area of free movement. They must give themselves the best possible chance of identifying and responding to security risks.

**Table 1: Comparison of US and EU intelligence and police capabilities**

	<b>US</b>	<b>EU</b>
Population (millions)	284.8	382
Area (sq kms)	9,167.00	3,154.00
<b>Capability</b>		
Intelligence budgets (euro billions)	25	6.5-8
Federal policing budget 2002 (euro billions)	13.5	0.052 (Europol)
Total policing budget (euro billions)	50	60
Terrorist arrests: 11/01-3/03 (includes Bosnia)	150	300-400
Positive cultural climate for inter-agency co-operation		
Positive legal framework for inter-agency co-operation		
Information technology is compatible		
Strong framework to manage inter-agency co-operation		

*Sources: Sourcebook of Criminal Justice Activities, 2001; Eurostat; Financial Times; The Economist; CER estimates.*

## 4 Improving security within the EU

The proposals that follow aim to:

- ★ Improve the EU's ability to identify and understand threats;
- ★ Enable member-states to co-ordinate their response to terrorists and criminals; but
- ★ Appreciate the limitations imposed by national sovereignty.

### *Create an EU intelligence body and border unit*

The EU should establish two new security bodies – an intelligence group and a border unit – to improve its ability to identify and understand threats and to co-ordinate the response of the member-states' security services better. Chapters 6 and 7 will examine in more detail how the border unit could improve EU security on its external frontiers. This section focuses on how a new 'European Intelligence Centre' (EIC) could pool and analyse information supplied by the member-states.

The EIC would give the EU a better capacity to make centralised intelligence assessments. It would be up to member-states to specify exactly which criminal or terrorist threats the EIC should analyse. The EIC's primary task would be to assess these threats based on information passed to it by the member-states' police and security services. The EIC could ask member-states to gather information on cases it was analysing. But it would have no independent powers to gather information from non-public sources – that is, no powers to tap phones, read email or put homes and offices under surveillance.



The EIC's secondary task would be to act as a base for joint operations conducted by the member-states. The EIC would create a network of member-state intelligence officers who knew one another and were familiar with each other's procedures. The EIC's charter should include legal provisions to govern information exchange and joint operations. The Centre would also provide the practical tools to support joint operations – computer and communications equipment, secure translation facilities, common procedures, single contact points. Thus the EIC would represent a modest, albeit important, step beyond the existing co-operation between member-state security agencies.

Intelligence officers from member-states working in the EIC would form teams on a case-by-case basis. These teams would only share information as far as was strictly necessary to carry out their duties. Not all participating member-states would automatically get to see all intelligence. The larger member-states, which possess the best intelligence capabilities, would probably conduct most of the EIC's work. But member-states should find it easier to use the EIC to make general requests for information about terrorist suspects or organised criminal gangs, as well as to plan and undertake operations together.

Because the EIC would have no independent intelligence-gathering powers, it would need guaranteed access to information held by the member-states. It is a weakness of inter-agency co-operation that intelligence agencies often fail to realise the importance of a piece of information unless it is combined with intelligence from other seemingly unconnected sources. National security forces should be compelled to pass the EIC any information relevant to its investigations.

There should be certain exceptions, however. National agencies should be permitted to withhold or alter information in order to protect their sources. Sometimes this might mean withholding original information and instead sending a sanitised version of the intelligence.

For example, a well-placed German intelligence source may have recorded a meeting between terrorist leaders in which they discuss the location of terrorist cells within the EU. German intelligence may share with the EIC only the general nature of the information, such as the location of possible terrorist cells, in order to avoid revealing that it had infiltrated the group. There could be situations where a case officer felt that sharing any information with the appropriate EIC task force would compromise the source. However, case officers should feel more comfortable sharing information with the delegated officers at the EIC than with foreign intelligence services because the EIC officer would be from their own service. They would be able to pass on information with strict instructions to their colleague within EIC about how it should be used.

The system would still be far from perfect. One national agency might not know information it possessed was relevant to the subject of the request – the FBI and CIA identified this as one cause of their failure to piece together the al-Qaeda hijackers' intentions before the September 11<sup>th</sup> attacks. Some might also argue that it would be impossible to define what was 'relevant'. However, intelligence and law enforcement agencies regularly send one another requests for information in which the sender must define the scope of the request and the recipients interpret it as best they can. As long as the member-states made sure their national agencies had a common understanding of the list of threats that the EIC taskforces should work on, their national agencies should then be able to develop a sufficiently similar working understanding of what would constitute 'relevant' information.

Some member-states will undoubtedly object that the compulsory pooling of information infringes on national sovereignty. However, member-states would retain total freedom to respond to security risks as they saw fit. The EIC would have no independent operational powers and its officers would all be seconded from the national intelligence agencies. Member-states would also decide what threats the EIC should investigate.

Moreover, member-state participation in the EIC should be voluntary. Each government could decide whether the potential intelligence gains from membership were outweighed by the perceived loss of national sovereignty.

National intelligence agencies could object that the EIC would be prone to leaking sensitive information. However, European intelligence agencies claim that they already routinely exchange information about threats with a European dimension, which entails the same risk of leaks. In fact, by providing a better regime for information exchange and joint task forces, the EIC could even reduce the risk of leaks. Finally, member-states could also restrict the scope of the EIC's work until they grew more comfortable with it.

The EIC would draw upon the strengths of the member-states' many intelligence-gathering resources. Member-states – especially the UK, Germany and France – have a diverse collection of intelligence 'assets', which are often complementary rather than overlapping. The UK has extensive networks of agents in key regions, as well as valuable intelligence-sharing partnerships with the US, Australia and New Zealand. France's North African networks have supplied intelligence that has led to the arrest of terrorist suspects in other member-states. Reports suggest that Germany, in co-operation with Chinese intelligence, until recently operated the only ground listening station in western China, deep in the Pamir Mountains. The

<sup>12</sup> *The Guardian*, September 15<sup>th</sup> 2001.

<sup>13</sup> See Charles Grant, 'Intimate relations', CER, May 2000 – which made the case for an EU intelligence body.

Pamir station intercepted communications traffic in Afghanistan and Central Asia.<sup>12</sup> Thus member-states could together greatly increase the EU's ability to detect and understand common threats. Additionally, the EIC could make recommendations on where countries could better deploy their assets by spotting overlaps or 'blind-spots' in intelligence gathering.<sup>13</sup>

However, member-states also have intelligence relationships with third countries. These partners might not want to pass on

information if they suspected that it would become available to every member-state. In the short term, national agencies could build 'Chinese walls' – or internal divisions – to try to prevent privileged information becoming freely available. Member-states would also have to create a further exception to the rule that relevant information must be passed to the EIC to protect, where necessary, privileged information from third countries. In the longer term, the member-state intelligence agencies should work towards convincing third countries that it would be in their interest to work with the EIC.

The EIC should also work closely with Europol. In the wake of September 11<sup>th</sup>, some member-states seconded officers from their intelligence services to a counter-terrorism taskforce inside Europol. Member-states could use this taskforce as the nucleus for the creation of an EIC. However, member-states should ensure that the proposed EIC retained extremely close links with Europol.

The EU would be unlikely to find the creation of an EIC straightforward. Spies and policemen do not like passing information to strangers, or to multilateral bodies, and they detest EU bureaucracy. The EIC would, initially at least, represent all three. The cultural and legal differences between member-state intelligence agencies are likely to persist and could hinder the EIC's development. But, over time, the EIC would help to intensify co-operation between the national agencies and thereby make the EU a safer place and a better international partner in counter-terrorist and counter-organised crime work.

***Governments must press their national intelligence and police forces to work with EU-level bodies***

Europol has no powers to undertake investigations or gather intelligence independently. The EIC would also be wholly reliant on information and co-operation from member-states. So far, member-states have been very reluctant to work with Europol. But neither Europol nor the EIC could provide useful analyses or help co-



ordinate transnational operations without strong support from the member-states' security services.

Europol could do more to win the trust of national police and intelligence officers. It could, for example, ensure a stronger culture of confidentiality and professionalism and maintain a low public profile. But ultimately national governments need to staff Europol, and in future the EIC, with respected, high-ranking officers, and then should also put more pressure on their police forces and intelligence agencies to share information with the EU bodies.

***The Union should improve co-ordination between EU-level security bodies***

US analysts describe their Cold War era security framework as a 'stovepipe' design. Separate agencies were insulated from one another. EU institutions likewise too often operate as autonomous agencies and as the EU takes on more and more security jobs, it is proliferating agencies, committees and units.

The EU should ensure that the EIC develops close links with other relevant EU organisations. The EIC, for example, should work extremely closely with Europol as well as with the High Representative

<sup>14</sup> In February 2003 the council of telecommunications ministers approved a Commission proposal to found an agency to work on reducing the threat posed by computer hackers.

for Foreign Policy's analysts, the EU's fledgling military staff and so on. Europol should work closely with the proposed EU cyber-security agency.<sup>14</sup> The Convention on the Future of Europe, a 105-member forum drafting a constitutional treaty for the EU, has proposed creating an EU internal security committee. Depending on who would sit on this committee, it could potentially help to strengthen co-ordination between the growing number of security-related bodies.

***Member-states must continue intensive co-operation with third countries***

Politicians regularly stress the need for close co-operation between countries to combat transnational crime and terrorism. Both the

member-states and the EU need to co-operate more closely with third countries. That means the EU may have to develop links with regimes which, in an ideal world, it would rather not deal with. For example, the powerful Egyptian state security service, called Jihaz Amn al Daoula, and Pakistan's security service, the ISI, have strong intelligence-gathering abilities among groups and in areas where European intelligence agencies would be hard-pressed to cultivate human networks. The EU should also co-operate on security matters with countries like Libya, Sudan and Indonesia, which are sometimes home to Islamic extremist groups, but are not necessarily supporters of such groups – contrary to perceptions in some EU and US circles. In fact, Libya was the first country to ask Interpol to circulate an arrest warrant for Osama bin Laden, in the late 1990s.<sup>15</sup>

<sup>15</sup> [http://www.interpol.int/public/Wanted/Notices/Data/1998/32/1998\\_20232.asp](http://www.interpol.int/public/Wanted/Notices/Data/1998/32/1998_20232.asp).

Many member-states have long-standing bilateral relationships with third countries. The EU should build on these relationships but improve co-ordination to minimise the overlap of resources. In this manner, the EU could enjoy a much broader intelligence-gathering network. And, by working together at the EU level, member-states can use all available resources to put diplomatic pressure on third countries to co-operate more on crime and terrorism. Apart from exchanging information, the Union should put pressure on third countries to sign extradition agreements, update their laws to criminalise all terrorist activities, and strengthen their judiciaries and police forces.

## 5 Improving control of the EU's borders

The Schengen area now encompasses 15 separate countries stretching from the Arctic to the Atlantic. Another 10 countries will join the Union in 2004, and they will join the zone of free movement some years later. More countries are queuing up to join, so the Schengen area is set to grow over the years ahead. The EU is acutely aware that the Schengen rules and regulations, which were originally devised for just five members, are not suitable for an area of free movement encompassing almost the whole of the European continent. At the same time, the public has grown more anxious about threats such as illegal immigration and drug and human trafficking, increasing the pressure on politicians to improve border security. At the Seville European Council in 2002, EU heads of government stated their desire to integrate their national border guards into a tighter EU border management framework.

The Union must answer two questions before it builds an EU-wide system to manage external borders. First, what sort of border controls should the EU develop? Second, what sort of institutions and laws are necessary to support an EU-level framework for border controls, rather than a system of independent national controls?

### *What sort of border controls should the EU develop?*

Some critics of the EU's approach to border control claim that European governments are building a 'fortress Europe'. In recent years, most member-states have tightened visa policies and have stepped up physical border controls such as higher fences and increased patrols. But member-states cannot secure the EU's long borders by putting up fences and attempting to search physically all

the people and goods that enter the Union. Instead, the EU should reform its border control policies and focus on adopting new technologies, co-operating more closely with third countries and making border controls ‘intelligence led’.

Politicians in rich countries sometimes ignore the fact that spending more money on border controls and policing alone cannot solve problems like drug trafficking and illegal immigration. They find solutions like reducing or regulating drug demand difficult to explain to voters and fear that conservative voters may see them as being ‘soft’ on crime.

‘Tough’ controls, if poorly implemented, can undermine human rights, slow down trade and travel and sour relations with third countries. In the summer of 1996, for example, the Spanish

<sup>16</sup> ‘Europe’s back doors’, *The Atlantic Online*, January 2000 (<http://www.theatlantic.com/issues/2000/01/001stolz.htm>).

government forcefully deported a group of would-be immigrants for staging a riot at a camp for immigrants without papers. Some were transported to African countries that were not their homelands, where the authorities promptly threw them in jail.<sup>16</sup>

It is difficult to quantify the economic costs of physical and bureaucratic border controls. Border controls impose both a direct cost – in terms of the extra expense of shipping products and the cost of maintaining the controls themselves – and an indirect cost, owing to lost trade and the subsequent decline in competition for certain goods. The 1988 Cecchini report into the creation of an EU

<sup>17</sup> Paolo Cecchini, ‘The Cost of Non-Europe’, *European Commission*, 1988.

single market estimated that EU internal border controls (physical controls were abolished in March 1995) were then costing industry and governments around €9 billion a year.<sup>17</sup>

By removing internal border controls, the Schengen states sent a clear signal to the world that they trust each other. But if they now craft a ‘fortress Europe’, by building guard towers and fences on the

external border and making it difficult for travellers to secure permission to visit the EU, they would send an equally clear message, whether intended or not, to those outside.

Strict border controls can also cause tension between countries. The European Commission and the US customs service are presently engaged in a dispute over the US Container Security Initiative. The Americans are demanding that all shipping to the US must arrive from ports that they deem secure. Many member-states have accepted the American demands, but the Commission claims the measures distort trade. This is the sort of language that could precede Commission action at the World Trade Organisation.

#### *How secure can the EU’s borders ever be?*

Expressing a view widely shared among European border policemen, a Lieutenant Colonel in the Finnish frontier guard said: “We should not talk about ‘securing’ the [EU’s] borders, it’s not physically possible. We just have to do the best we can.” The United Nations Office on Drugs and Crime estimates that most countries do well to catch 10 per cent of the total amount of illegal drugs smuggled into their territories. In the US, successive governments have increased spending on border controls on their frontier with Mexico every year for 30 years, but the flow of drugs and people into America has continued to grow.

The Schengen border is one of the world’s longer borders (see map in introduction). The EU adjoins areas of poverty and unrest. In fair weather, small boats can cross most of the north-south routes across the Mediterranean from Africa to the EU. Schengen’s eastern land borders stretch thousands of kilometres through mountains and forest all the way to the Arctic. In some places, the border is nothing more than a line on a map and a low fence in a field; often it is an empty coastline. It takes extreme measures to secure a small prison, so it makes no sense to talk of ‘securing’ the Union’s vast territory with fences and guard towers.

The sheer length of the border is one challenge; but the EU must also try to regulate the huge volume of goods and people flowing across it. EU governments cannot hope to make exhaustive physical searches of every person and vehicle that enters its territory. Even with thorough checks, traffickers are so well resourced and creative that they still slip their contraband through. South American drug traffickers have learned to make cocaine odourless to avoid sniffer dogs, changed the white powder to black to avoid visual detection, and even condensed the powder into solid bricks to pack it more easily. Earlier this year, Italian customs intercepted a package containing a nativity scene – made almost entirely from three kilograms of cocaine. Drug cartels combine their creativity with lots of money and influence. The US Drug Enforcement Agency once found cocaine packed into the frame of a Mexican government jet on an official mission to Texas. In 1997, the Drug Enforcement Agency observed the Colombian Cali drug cartel negotiating the purchase of a Russian submarine with Russian criminals. The cartel could have used the submarine to traffic huge quantities of drugs and avoid overflight and satellite surveillance in the Caribbean or Pacific.

The crime gangs plan their trafficking routes carefully, to take advantage of geography, poorly paid officials and badly patrolled borders. They repeatedly show an ability to vary a trafficking route rapidly in response to increased policing, a crackdown on corruption, political instability or even natural disaster. For example, before the Balkan wars of the 1990s, the heart of the so-called Balkan trafficking route ran straight through the former Yugoslavia. When the conflict escalated in the early 1990s, traffickers adjusted their supply routes into the EU from Turkey around the conflict and through Bulgaria and Romania, or south across the mountains into Greece and to Italy via Albania.

The EU can safely assume that if it fortifies one border, traffickers will soon find an alternative weak spot. So unless the EU is prepared to ring its entire external border with fences and guard towers, to

blockade the whole coastline and to make extensive searches of every person and container arriving in the EU, an emphasis on physical controls is unlikely to prove an effective way of keeping out unwanted people and goods.

Instead, the EU and its member-states should concentrate on:

- ★ Improved intelligence – to ensure border guards are more likely to catch traffickers and intercept shipments of unwanted goods and people.
- ★ Co-operation with third countries.
- ★ New technology – which makes identifying people and checking vehicles and shipments more efficient and effective.

#### *'Intelligence-led' border control*

The expression 'intelligence-led border control' simply means guards know what they are looking for, rather than just randomly searching people and suitcases. Border police use specific information – tip-offs from informants for example – to intercept shipments of prohibited goods. They also use more general assessments to build profiles of the sort of techniques smugglers are using, and their preferred routes.

The best intelligence on human and drug trafficking gangs can normally be found in their countries of origin or transit. Consequently, EU member-states need to build trust with authorities in third countries to obtain vital information. The UK, Sweden, France, Germany and other member-states all station police, immigration and customs liaison officers in third countries. These officers build links with the local governments and police forces and advise on technical assistance programmes. They also gather general intelligence about trafficking trends as well as work on specific cases.

For example, a UK customs officer was able to catch a British national who was living in Bolivia and trafficking cocaine into Denmark, by working ‘on site’. While combing Bolivian and Peruvian immigration records, the official noticed that a British national regularly circuited from Bolivia to Europe via Peru. The officer tracked the suspect and established that he had no obvious source of income. The next time the trafficker departed Bolivia, Bolivian anti-drug police stopped him and found cocaine in his stomach. “On the operational side, this is why we are here,” commented the officer. “We can work closely with the local authorities and piece the information together in a way we never could from London.”

Law enforcement officers need to be more active in passing intelligence to the officials in ministries that develop border related policies. These policy-makers need to be intelligence led as well. Are more patrols needed in the Greek islands to reduce illegal crossings, or should the EU instead spend money helping Georgia make its passports more resistant to forgery? Should the EU provide more training and equipment to police in the Balkans, or do traffickers prefer new routes through Russia and the Baltic states? Which areas are troubled by local cross-border crime and why? It is no use policemen and customs officers saying that policy-makers waste money on unhelpful schemes if they do not pass them the relevant information.

#### *Co-operate closely with the other side*

Neighbouring countries can improve both the security and efficiency of their border controls through bilateral co-operation. For example, Finnish and Russian border guards have established a relationship that goes well beyond information exchange alone. The bilateral agreement includes:

- ★ Agreed rules and procedures to cover co-operation from the lowest to the highest levels.
- ★ At the national level, the countries exchange information on

organised crime groups, and on other specific threats and vulnerabilities.

- ★ At a regional level, delegates from each side exchange information and co-ordinate each other’s investigations. These delegates are supposed to deal with border incidents at the regional level, and prevent them from escalating to the political level.
- ★ Liaison officers at the border checkpoints co-ordinate opening hours, procedures for checking traffic and patrols of the areas between checkpoints.

Border guards can improve the effectiveness of patrols by pooling resources. Both sides can identify threats better if they share intelligence. They can improve their techniques and build mutual trust by swapping best practice. And border police can make checkpoints more efficient via common search procedures and complementary working hours.

The value of the co-operation was emphasised in 1997 when Finnish border police uncovered a human smuggling scam following a tip-off from their Russian counterparts. Greek bus drivers were driving supposedly empty buses across the Russo-Finnish border. When the Finns acted on the Russian advice and took a bus apart, they found illegal immigrants huddled under a specially modified floor.

#### *Develop and apply new technologies*

The use of new technology is another promising route to making border checks more thorough and efficient. UK customs officers use mobile units that detect the heart beat or body temperature of people hiding in containers and trucks. Australia allows entrants from certain countries to use an electronic visa that is incorporated into the airline ticket and issued by travel agents. Travellers spend much less time making visa applications and it takes Australian

immigration staff a fraction of the time to process visas than when they were based on paper. In Australia and Iceland, immigration services are experimenting with machines that identify a person from a 10-second facial scan. The US Enhanced Border Security and Visa Entry Reform Act, which President Bush signed into law in 2002, requires that from October 26<sup>th</sup> 2004, passports issued to US citizens must include a 'biometric' identifier – that is, a unique biological indicator, such as the shape of a face, the pattern of the iris or a fingerprint.

In the EU, governments have only slowly begun to explore the possible benefits of using biometric methods of identification. In 2002, British immigration concluded a trial at Heathrow of equipment that identifies people using a scan of their iris. A report on the trial stated that participating passengers took about 12 seconds to pass through immigration. Dutch immigration already gives frequent travellers at Amsterdam's Schiphol airport the option of registering to use iris recognition so they can pass through immigration controls more quickly. More ambitiously, Otto Schily, Germany's interior minister, recently floated the idea of a database that would store a biometric identifier of every German citizen.

Governments may find that such new technologies can have a bigger impact if applied in the countries where unwanted people and goods originate from or pass through. UK customs provided equipment to identify forged documents at Sarajevo airport, which subsequently led to a large drop in the numbers of unusual nationalities travelling from Sarajevo into the EU.

## 6 A new framework for border control

The Schengen states recognise there is a pressing need for reform of border controls. However, the desire of interior ministries to integrate border police further clashes with the nationalist instinct not to give up any control over domestic security. There is a real risk that politicians are sacrificing security and efficiency in the name of national sovereignty.

In 1985, five states – Belgium, Luxembourg, the Netherlands, Germany and France – agreed in the town of Schengen to remove their internal border controls. They later reached agreement on the rules needed to adequately police the new Schengen area. The rules include: basic standards for checks on people entering and leaving the Schengen area; a legal framework for co-operation between national police forces; standard visa formats, and a list of countries whose nationals need visas to enter the Schengen area. The participating states also set up the Schengen Information System, a central database with information on people and goods that may pose a security risk. A handful of committees and working groups oversee the implementation of the Schengen rules, monitor co-operation between border guards and manage the development of the Information System.

In June 2002 the European Council endorsed a Commission plan for the 'integrated management' of the EU's external borders, which seeks to update and expand the old framework for managing the Schengen borders. Member-states have already begun running some test projects, such as establishing joint naval patrols, drafting a common curriculum for training border guards



and establishing a centre for co-operation between land border police. However, the Schengen states have not reached agreement on the key elements of the new framework, such as defining what sort of controls the EU should apply and which institutions should manage them.

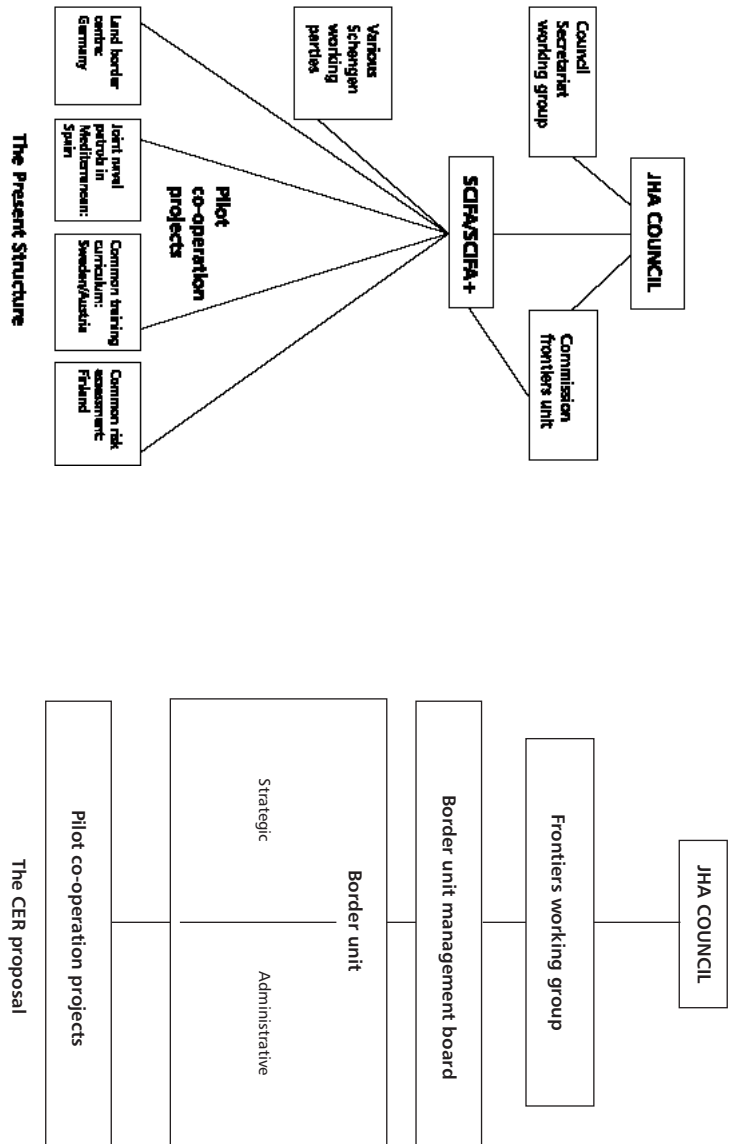
The EU committees and working groups that oversee both the Schengen rules and the integration of EU border guards are no longer up to the job. Instead, the EU should develop a new framework built around two bodies: a high level committee under the council of justice and home affairs ministers, called the ‘frontiers working group’; and a permanent border agency, called the ‘border unit’, which would manage the implementation of the EU’s border policies. Figure 1 (right) shows the impact of the proposed reforms.

The border unit should have the capacity to gather and analyse information on common threats, and to identify weak-points along the Union’s border. It makes no sense to have 15 separate national organisations each trying to assess common threats and vulnerabilities from different perspectives. Nor does it make sense to delegate the task of managing EU risk assessment to a single member-state, which is what member-states have decided to do. Problems such as cross-border organised crime, trafficking and the mass influx of refugees from regions of conflict threaten all the Schengen states – and can only be understood and resolved by using information from across the Union, and analysing it from an EU-wide perspective.

*The EU’s institutional structure confuses policy-making on border matters*

The Union must address a catalogue of institutional, practical and political problems in order to meld national border guards into a coherent corps. In particular, member-states will have to overcome difficulties created by the EU’s legal structure. The EU treaties lay out different law and decision-making procedures for different policy areas. The treaties group policies into three separate ‘pillars’.

Figure 1: Streamlining the management framework



The third pillar, which gives the strongest powers to the member-states and reserves only a consultative role for the European Parliament, governs the sensitive areas of police co-operation and judicial co-operation on criminal matters. The second pillar governs decision-making regarding the Common Foreign and Security Policy. The other policy areas over which the Union has competence fall into the first pillar.

The EU is likely to find it difficult to develop and implement coherent border policies because the issue touches all three legal pillars. For example, a proposal to create an EU border agency with powers to monitor the Schengen rules (first pillar), as well as to co-ordinate border police co-operation (third pillar), would have to be split into different pieces of legislation to be drafted, debated and implemented using different procedures. Although the new EU treaty scheduled to enter into force in 2006 is likely to abolish the three-pillar structure, it will probably still stipulate special decision and law-making procedures for certain policy areas including co-operation on police matters.

The EU also treats customs, immigration and border policing in different ways. Most member-states also give institutions with varying powers responsibility for these three elements of border. But in practice, the division between customs, immigration and border policing is blurred: people drive cars over the border, they carry luggage on trains and planes and if border police find someone in a forest near a border, they may wish to check their passport or search their luggage.

“Ideally, customs would be merged with immigration,” says a senior UK customs officer. A single contact point for customs, immigration and border police would make cross-border co-operation much easier as well. For example, at the Franco-German co-operation centre at Kehl, and the Franco-Belgian equivalent at Lille, officers from customs, immigration and policing all share offices.

Unfortunately, Schengen and the EU’s Customs Union, the name for the area made up of European countries that have agreed to follow a common set of rules for checks on goods, have totally distinct structures and separate rulebooks. They even cover different geographies. This makes co-ordination of policy-making at the EU level harder, and undermines the effectiveness of border controls.

*Europol: an indication of the challenges the EU will face in creating the border unit*

After years of debate, member-states signed the Europol convention in 1995. National parliaments took a further three years to ratify the convention and Europol finally began operations in July 1999. However, national sensitivity about internal security meant governments spent a long time wrangling over safeguards in Europol’s convention. An odd coalition of civil liberties groups, nationalist politicians and tabloid media lobbied hard against the creation of an effective body.

One senior policeman commented that Europol was “political window-dressing” – something that ministers could use to show the public they were getting tough on crime, but lacking any real powers or purpose. There are now signs that national police forces are slowly beginning to see Europol’s potential. But if member-states are to press ahead with common border policies they should first take note of the flaws in Europol’s design:

- ★ Member-states founded Europol using a convention outside the EU framework. Consequently, member-states are reluctant to reform Europol because national parliaments must ratify any changes to its charter, which takes a lot of political energy and time. This has made it difficult for Europol to evolve.
- ★ Some member-states politicised Europol’s management board by appointing bureaucrats rather than professional policemen to it. As a result, the management board is sometimes slow to make decisions: the bureaucrats are continually sending home



to receive instructions from their home ministry or advice on technical policing questions.

- ★ The management board is too closely involved in Europol's day-to-day activities. For example, Europol officers require the management board's approval every time they wish to create a new computer file on a person.

- ★ Member-states wrote a limitation into Europol's charter that prevents it from exchanging information directly with national police officers. Ministers and police chiefs, uneasy about the 'interference of Brussels', wanted to see the

<sup>18</sup> Member-states agreed an amendment to Europol's convention in 2002 that, if ratified by national parliaments, would allow Europol to deal directly with police officers if member-states grant it permission.

information that was passing between national forces and Europol. Europol officers can only deal with police indirectly through a national liaison unit, which forwards on requests and replies. This painstaking process slows down information exchange and makes police officers cautious about sending on sensitive information.<sup>18</sup>

- ★ For the reasons above, and because it is a foreign body staffed by strangers, many national police officers do not trust Europol. This creates a vicious circle where Europol – starved of consistent information from the national police – is unable to make insightful analyses and thus national police officers do not see the value of it. If Europol could build trust and show that it could improve cross-border crime-fighting, national law enforcement officers would then send it more information, which Europol could use to make better analyses. This in turn would convince national forces of Europol's value. But member-states must put pressure on their police to share information with Europol, in order to create this virtuous circle.

### *Member-states should merge the Schengen-related committees into a single 'frontiers working group'*

Even informed insiders find the EU's policy-making system difficult to understand. A Swedish professor, Torbjörn Larsson, found it was composed of over 1300 different committees, some dormant, sprawling across every conceivable topic.<sup>19</sup> Professor Larsson discovered that sometimes member-states were not even aware on which committees their officials served. Management of border control policy has not been exempt from committee proliferation; the EU should urgently reduce the number of committees working on border-related issues and clarify their functions.

<sup>19</sup> Torbjörn Larsson, 'Precooking in the European Union – the world of expert groups', Swedish government expert group on public finance, April 11<sup>th</sup> 2003.

The Strategic Committee for Immigration Frontiers and Asylum (SCIFA) is currently responsible for high-level planning on immigration, frontiers and asylum policy. SCIFA is a collection of committees that meet in different formations depending on the topic at hand. The committee that covers border matters is called the Practitioners Common Unit. SCIFA tries to be both a cross-border body of border police professionals and a forum for high-level policy co-ordination. It does not fully succeed in either ambition.

SCIFA does not meet often enough nor does it have the necessary personnel to co-ordinate border policy effectively. For example, SCIFA excludes representatives from the customs services and from the EU's foreign policy secretariat. SCIFA does not succeed as a forum for border police professionals either. Some member-states send bureaucrats from their immigration or interior ministries to SCIFA's Practitioners Common Unit, rather than high-ranking officers from their border guards. This deprives SCIFA of the right expertise to make decisions and give advice to the council of justice and home affairs ministers (JHA council) about operational aspects of border controls. It also limits SCIFA's ability to liaise with national border police. Moreover, SCIFA's mandate covers only

‘first pillar’ matters, so it does not have the power to make policies concerning police co-operation.

The member-states should instead create a frontiers working group with sole responsibility for making high-level policy on border matters. It would bring together key policy-makers to discuss border issues and co-ordinate the EU’s work on related issues such as immigration and asylum, development and external relations. The committee would prepare legislation for the JHA council and would also oversee the work of the border unit.

The frontiers working group would consist of representatives from the member-states, the Commission, the Customs Co-operation Working Group – which directs EU policy-making on customs, and staff from the High Representative’s policy unit. Apart from its policy-making duties, the frontiers working group should also oversee the border unit’s work and liaise closely with national security bodies and the Customs Co-operation Working Group. The border unit would support the frontiers working group by giving recommendations and advice on particular questions, such as reform of the Schengen rules, or the frontiers working group’s response to specific JHA council proposals.

The frontiers working group would help improve EU policy-making on borders in other ways too. The group could give a stronger steer to the JHA council’s work on borders by maintaining pressure on the JHA council to stick to what it has agreed, and deliver what it has promised. The group should help insulate the border unit from political manoeuvring on the JHA council – member-states would ideally thrash out policies in the JHA council and the frontiers working group. The frontiers working group would also increase political oversight of the border unit’s activities. Finally, the delegates on the frontiers working group could supply another connection between the border unit and the member-states’ ministries, immigration officers, border guards and customs agencies.

### *The border unit*

While the frontiers working group would help to elaborate policy, the border unit could concentrate on making frontier controls better on the ground. It would co-ordinate the work of member-states’ border guards and manage the integration of national border police forces. The border unit would also improve EU security more directly, by pooling information and assessing threats and vulnerabilities at an EU level.

The EU should structure the border in the following manner:

- ★ a director-general and two deputy directors-general;
- ★ a management board;
- ★ an administrative division; and
- ★ a strategic division.

The EU treaties divide responsibility for overseeing the EU’s borders between the Commission, which is in charge of ‘administrative’ co-operation on border matters, and the Council, which oversees police co-operation. To mirror this divide, the border unit should have separate administrative and strategic divisions, each division headed by its own deputy director-general. The Commission would be responsible for overseeing the border unit’s administrative functions, which include developing and monitoring the Schengen rules, co-ordinating the exchange of liaison officers between the national customs, border police and immigration services. The Council would have power over the rest of the unit’s work. However, the director-general and the two deputies should jointly devise the unit’s work programme to ensure coherence in the unit’s overall planning.

The Council and the Commission should share management control and oversight of the border unit. The Commission should have the right to appoint representatives to the frontiers working group and

the border unit's management board, and should nominate a deputy director-general of the unit. The unit should also be accountable to the European Parliament. The unit's director-general, together with his or her deputies, should present a detailed annual report to the European Parliament and answer questions. The unit should comply with privacy-protection legislation and the EU's human rights obligations. The European Ombudsman should have the power to investigate complaints from citizens, the European Parliament or national parliaments concerning the activities of the border unit.

The border unit's management board would act as the link between the frontiers working group and the unit itself. The management board should work with the border unit's director-general and deputies to devise its work programme, which the JHA council would then approve. The management board would also oversee the unit's work and, in particular, ensure it does not exceed its powers or ignore privacy and human rights legislation. The existence of the management board should reassure member-states that the unit is not going to overstep its powers – a fear that held up the creation of Europol for some years.

Like many EU bodies, the management board would be at risk of becoming overcrowded and unwieldy after enlargement. So member-states should use a rotation system for nominating management board representatives, in order to restrict the board's size. The member-states should arrange themselves into six blocs. As far as possible, countries with common interests on border matters should be grouped together. For example, Poland, Estonia, Lithuania, Latvia and Finland could be in one group, while Greece, Italy, Spain and Portugal could form another. Each group would be permitted two representatives for a fixed term. The Commission should also nominate a representative to the management board. The director-general would represent himself or herself on the board with powers equal to each bloc. If the board fails to achieve a consensus on key decisions, it should use a form of qualified majority voting.

Member-states are likely to object to not being guaranteed their own representative on the board. But member-states must be prepared to sacrifice permanent representation for the sake of efficiency. If every state had a seat on the management board, it would be too large to function effectively. Besides, the management board should be a professional body. Member-states should have adequate representation in the council of JHA ministers and on the frontiers working group – both of which would have strong oversight powers over the border unit. And the European Parliament would provide additional democratic oversight.

Member-states should be ready to amend the border unit's mandate quite frequently to keep pace with increasing EU-level activity on border policy. Member-states should not repeat the mistakes they made with Europol and instead should establish the unit as an EU body, and not by a convention, because EU law is quicker to enact and amend. And they should grant the unit a broad mandate for co-operation. The unit should work closely with other EU bodies, like Europol, as well as directly with member-state border guards, and with the police forces, customs and immigration services of third countries.

Ideally, the border unit would co-ordinate all EU activity on external borders – both immigration and customs work. However, member-states organise customs, immigration and border patrolling in very different ways. And the EU structure currently separates the management of border patrols and immigration from customs. If, in the future, EU-level customs co-operation led to the creation of a permanent EU customs agency, the border unit and this EU customs agency should integrate their work and eventually plan for a full merger.

#### *Developing and enforcing the Schengen rules*

The border unit should advise on the EU's technical assistance programmes which provide money and training to law enforcement and judicial bodies in third countries. It should encourage member-

state border guards to exchange best practice, and should also inquire and report on how the EU could improve border control through the use of technology. The EU should permit the border unit a say in the award of some research grants from the EU budget. But the unit's most important administrative role would be to enforce agreed border control standards.

The Schengen *acquis* cover details such as how member-states should set up and run border control points, data storage, and the common list of countries whose nationals require a visa to enter the Schengen area. However, many officials argue that the existing rules contain too many omissions and are often imprecise. For example, the rules do not cover training practices, provide guidance on the frequency of patrols on unguarded borders or even supply a definition of a 'security risk'. Moreover, many officials voice concern that not all member-states apply the Schengen standards rigorously enough – a problem that is likely to become worse after enlargement.

“What is the point of changing Schengen or adding new requirements when some people are not even applying what we have now?” asked one official. An Austrian detective in charge of a Schengen training programme complained that “the divergences between us are really incredibly wide.” The reluctance or inability of member-states to enforce common standards is creating a climate of distrust between border guard forces. The Schengen system needs independent and robust evaluation and enforcement of standards in order to encourage member-states to agree the necessary steps to integrate border police. Member-states' willingness to conduct joint patrols and investigations, exchange intelligence and share equipment and financing partly depends on national border police believing that all are upholding the same high standards.

The Schengen framework includes a standing committee to develop the Schengen rules and to make sure that the member-states implement the rules properly. But officials that have taken part in the

committee's inspections say they are not thorough, and are more a diplomatic exercise than a technical inspection process. Moreover, the inspection committee has no powers to sanction rule breaches. The border unit's administrative division should assume responsibility for developing the Schengen rules. In addition, the border unit should have powers to conduct two kinds of inspections: routine inspections to review standards and to share best practice; and short notice inspections to check compliance.

The EU should also toughen enforcement procedures for the Schengen rules. The border unit should notify the frontiers working group of persistent rule breaches. The frontiers working group could then discuss the problem with the offending member-state and agree measures to rectify the breach. In extreme cases, the frontiers working group could sanction a repeat offender by suspending the right of that country to participate on the border unit's management board and the frontiers working group. There should be no excuse for flagrant and consistent breaches of rules that affect the security of all the Schengen states.

#### *The border unit should conduct EU-level risk analysis*

The border unit would help fill a crucial gap in Schengen border security: the mismatch between threats common to the EU, and national-level responses. It could contribute directly to operations and planning on the EU's borders by pooling information and making threat assessments. But the unit could only fulfil this role if member-states pass on information.

The unit should develop its information and intelligence-gathering networks; assess and disseminate reports on threats to the EU; analyse vulnerabilities; co-ordinate information exchange between border units, with other security services in the EU and in third countries; and spread best practice. In addition, member-states should inform the unit of major investigations they are conducting. The unit could store this information to identify overlaps and synergies in the work of the member-states. For

example, if the border unit saw that two member-states were independently investigating the same drug trafficking gang, it could advise them of the overlap and seek to encourage the countries to work together.

### *Third-country liaison officers*

Apart from their regular consular staff, many member-states have large numbers of police, customs and immigration liaison officers in their embassies and overseas representations around the globe.

<sup>20</sup> *The council of justice and home affairs ministers of February 27<sup>th</sup> 2003 agreed to put in place measures to create a network among member-states' third-country liaison officers.*

These officers co-ordinate technical assistance, information exchange and, occasionally, joint operations. In addition, consular staff process visa applications. Member-states should allow the border unit to request information directly from these officers.<sup>20</sup> This would give the unit a potentially wide network from which to gather information at very little cost.

## 7 Conclusion and a summary of recommendations

Even the most nationalistic politicians accept that member-states respond better to transnational threats like terrorism and organised crime when they co-ordinate the operations of their security forces. But the need for reform is more powerful than this logic alone. Without frontier controls, cross-border threats become common threats – which demand a common response beyond national police forces working together.

The lessons learned in the US following the September 11<sup>th</sup> attacks strongly suggest that member-states should create permanent EU-level agencies. EU agencies would not only improve and intensify co-operation among the national law enforcement and intelligence services, but would also assess intelligence from across the Union and thus enable the EU to identify and understand its security risks better. National leaders must stop instinctively blocking proposals that appear to infringe on their sovereignty, and instead consider the benefits that effective EU agencies could make to their citizens' security. They should make clear to voters that future EU involvement in JHA, such as integrating national border police, is vital to the EU's long-term security and efficiency.

Member-states would only need to take small steps at the EU level to produce a measurable improvement in security. They do not need to re-write the treaties and spend billions of euro. But the costs of failing to improve security are high. As a senior official in the Spanish ministry of foreign affairs said recently:

I tell my colleagues across Europe, if we do not do these things [make Europol work, share terrorist information among ourselves, improve border controls] then, when something terrible happens, the people will turn to us and say: “Why didn’t you stop this?” And what will we say then? What will be our excuse? That we didn’t think of it? That we couldn’t agree the details?

The European Union should do the following:

*To improve internal security*

- ★ Break down the barriers to co-operation between the many national police forces and security agencies.
- ★ Create an EU intelligence body, to pool and assess information from the member-states.
- ★ Encourage national security forces to work more closely with EU bodies, including Europol.
- ★ Increase co-ordination among EU security-related organisations, such as the Customs Co-operation Working Group, the High Representative for Foreign Policy’s analysts, the Police Chiefs’ Task Force, the EU’s military staff, Eurojust and Europol.
- ★ Work better with third countries to improve information exchange, reform laws, and strengthen judiciaries and police forces.

*To improve border controls*

- ★ Employ new technology to increase the efficiency of controls, rather than physical measures such as building fences and searching more travellers.

- ★ Encourage co-operation at all levels between EU border guards and third-country authorities, especially neighbouring states.

*To create a better EU framework for control of the external borders*

- ★ Create a frontiers working group to oversee strategic planning on border matters, and co-ordinate with other bodies working on related policies.
- ★ Establish a border unit to manage the integration of national border guards, inspect and enforce agreed standards for external border controls, gather intelligence, and assess threats to the EU.
- ★ Integrate customs services as closely as possible with the border unit’s work, and in the long term, aim to merge EU-level customs and border control work.

★