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## 1 Introduction

After the EU's eastern enlargement on 1 May 2004, its relationship with neighbouring non-member states became one of the EU's new priority issues. Security questions are at the very core of the relationship. With the enlargement many threats moved closer to the Union; there is no longer any "buffer zone" between the core and the 'outside'. In order to achieve the goal of a stable, safe and secure Europe, the EU needs a good, functioning relationship based on mutual trust and close cooperation with the neighbouring 'outsider' states.

This article looks into the efforts to tackle new security issues such as illegal/irregular immigration<sup>1</sup> and human trafficking at the European borders with Russia, Moldova and Ukraine. Cooperation on borders and migration from the angle of security can be seen as a litmus test for how well relations with the EU's neighbouring states work in practice. This is due to the fact that the issue of border controls and migration management represent some of the most controversial questions; these issues are loaded with potential tension. Simultaneous processes of inclusion and exclusion affect security issues at the external borders of the Union. On the one hand, new security problems can be solved only through engaging with the outsider states and their societies. On the other hand, because of real or perceived danger from the outside, there is pressure to resort to the comforting idea of state sovereignty and build up physical borders and exclude the outsiders. The significance of borders is further highlighted by the fact that in the eyes of an individual, borders can represent the most concrete form of exclusion.

More broadly, this article takes part in the debate on the limits and possibilities of cooperation between the EU and the permanent 'outsider' states. Should the EU try to develop some kind

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<sup>1</sup> There is no common, clearly-established definition of illegal immigration. Many researchers refuse to use the term illegal migration but talk instead of "irregular migration". This is because the term "illegal" presumes too much: any foreign nation60348 010.98 0 0 10.9.00101 Tw 10.98 r8 0 64 144 0.59999 ref/Art 60

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edges grow sharper.<sup>4</sup> This trend is evidenced by the fact that for example Poland had to give up visa-free policy with Ukraine, Moldova and Russia in order to conform to the Schengen acquis.<sup>5</sup>

It has become increasingly evident that states that are neither EU members nor candidate countries are in danger of becoming permanent outsiders of the new Europe. Many of these states are considered to be hotbeds of organised crime and other threats. After the enlargement, the dangerous outside has moved closer: there is no buffer zone between the safe inside and the dangerous outside. This development pushes the EU to strengthen its external borders: the traditional response to instability is to build up physical borders and try to contain instability at the margins of the security system, that is, at the border areas of the new enlarged Europe. This traditional response is easy to market to national electorates. Eye-catching statements and exclusionist measures appeal to the common desire for order, control and protection. However, this strategy is growing increasingly inefficient in the globalising world and it does not address the actual causes for instability.

### **Inclusion and the long-term solving of threats**

Alongside the factors that pull towards exclusion there are other factors that drive towards greater engagement, integration and inclusion of the outsiders. First and foremost the process of inclusion is strengthened by the nature of new security threats. In the new security environment where interstate wars are no longer the main threat, traditional approaches to state security are no longer efficient. New threats are blurring the boundaries of internal and external security.<sup>6</sup> Threats such as terrorism, transnational organised crime, irregular migration and human trafficking all need to be dealt with in close cooperation with outsider states and their civil societies.

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<sup>4</sup> Heather Grabbe, "The Sharp Edges of Europe: Extending Schengen Eastwards," *International Affairs* 76, no. 3 (2000).

<sup>5</sup> See the SCADPlus website on the Polish implementation of community acquis on JHA at <<http://europa.eu.int/scadplus/leg/en/lvb/e22106.htm>>.

<sup>6</sup> See e.g. Malcolm Anderson and Joanna Apap, "Changing Conceptions of Security and Their Implications for EU Home and Justice Affairs," (Brussels: Centre for European Policy Studies, 2002), Didier Bigo, "Internal and External Security(Ies): The Möbius Ribbon," in *Identities, Borders and Orders*, ed. Mathias Albert, David Jacobson, and Yosef Lapid (Minneapolis: Minnesota University Press, 2001).

The idea that security threats need to be address

some other benefit.<sup>11</sup> The contact between the smuggled person and the smuggler will end after the border-crossing. In a case like this, both the smuggler and smuggled person are treated usually as offenders of law.<sup>12</sup>

However, this article focuses on the more complex question of human trafficking. Human trafficking is in question when a person enters a country – legally or illegally – assisted by a person or criminal network, which afterwards forces the trafficked person into labour or prostitution.<sup>13</sup> In a case like this, the trafficking activity is criminal and a grave human rights violation of the trafficked person, regardless of his or her possible initial consent. The trafficked persons should not be treated as criminals but instead as victims of a serious human rights violation.

It has been estimated that around 200 000 women, men and children are trafficked annually from Eastern Europe.<sup>14</sup> The wealthy western part of the EU is the main destination for trafficking from Eastern Europe. In 2001 the Commission estimated that around 120 000

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<sup>11</sup> The difference in terms is clearly established in international law by the two protocols to the UN Convention against Transnational Organized Crime (UN TOC) dealing with trafficking and smuggling. The Trafficking and Smuggling Protocols (the Palermo Protocols) were concluded in 2000 and came into force in December 2003 and in January 2004 respectively. The smuggling protocol defines smuggling of migrants as: "the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident" (Article 3). See *Protocol against the Smuggling of Migrants by Land, Sea and Air to the United Nations Convention against Transnational Organized Crime*, A/RES/55/25.

<sup>12</sup> The most evident exception is persons fleeing as refugees who often enter a state without valid documentation. This action should not be considered as criminal by law.

<sup>13</sup> UN TOC trafficking protocol defines human trafficking in these terms: "[...] the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitute. 980Ts3 198.32072 Tm 10.98 139.B6p90.98065 T61440123 of p of ruitmer

victims were trafficked annually to the EU are from Central and Eastern European states.<sup>15</sup> Some of the trafficked individuals become domestic servants or work in sweatshops or construction sites. Sometimes they are forced into begging and crime. Most of trafficked victims are, however, forced into prostitution.

A study on trafficking for sexual exploitation from the Russian Federation offers several reasons for this flourishing criminal activity: the lure of great profits, high-degree of criminalisation in Russian society, corruption of police and officials on all levels, poor legislation of the issue as well as many social and economic problems stemming partly from the transition and partly from the more traditional characteristics of Russian society. These include a growing pool of homeless children, chronic unemployment in many regions and within many social groups, deep and long-term poverty, poor status of women in society, and general lenience towards sexual and physical violence against them.<sup>16</sup> Reasons for trafficking are fairly similar in Moldova and Ukraine.<sup>17</sup>

The European response to new security threats is outlined in the European Security Strategy (ESS, 2003). The document admits that traditional direct military threats are becoming less and less important. Instead, the document highlights new security threats including irregular migration and human trafficking. The document notes the blurry nature of these threats and claims that the only long-term solution is to include the neighbouring states into the sphere of cooperation and general well-being: the union needs to share the benefits of the economic and political cooperation within the union with its neighbours in the east.<sup>18</sup> Therefore the challenge for the EU is to increase security and freedom within the EU without excluding and marginalising the outsiders but instead accommodating and encouraging interaction with – and potential change within – those states.

### **Dealing with the neighbours**

Inclusion and strengthened engagement of neighbours is exactly what the Union attempted when it drafted its new Neighbourhood Policy in 2003. The initiative was outlined in the

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<sup>15</sup> *Trafficking in Women. The Misery Behind the Fantasy: From Poverty to Sex Slavery. A Comprehensive European Strategy*, 8.3.2001.

<sup>16</sup> Donna M. Hughes, "Trafficking for Sexual Exploitation: The Case of Russian Federation," (Brussels: IOM, June 2002).

<sup>17</sup> See "Trafficking in Persons Report," (Washington DC: The US Department of State, June 2005), pp. 157-59 and 217-18.

<sup>18</sup> *A Secure Europe in a Better World: European Security Strategy*, 12 December 2003.



Commission Communication Wider Europe - Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours.<sup>19</sup> The document envisaged inclusion of the neighbouring countries in the internal market as well as through increasing cooperation and free movement of persons. The ESS and European Neighbourhood Policy suggest that European strategy towards its neighbours is founded on the ideal of increasing inclusion of outsider states, their societies and citizens. According to this ideal borders should not be built as barriers but as permeable and fluid constructions capable of accommodating change and interaction.<sup>20</sup>

Nevertheless, in practice the EU's strategy on JHA matters have been cautious and concentrated primarily on placing obligations on the neighbouring states on migration and border management issues. One of its first and foremost priorities has been negotiation on readmission agreements with the neighbouring states and making border management and control more efficient. By a readmission agreement a state agrees to take back to its territory without strict formalities their own nationals found irregularly in the territory of the EU as well as foreign nationals who have arrived there via their territory. Elspeth Guild has suggested in her research that the EU's current policy towards third states that obliges governments to take measures directly against their citizens and citizens of its neighbouring states, is creating more tensions and hence increasing instability in the region.



### **The EU assistance programmes in the fight against human trafficking**

STOP 1996-2000, STOP II 2001-2002

- Focused on the fight against human trafficking and sexual exploitation of children as well as on the assistance of victims of trafficking

- For more information see:

[http://europa.eu.int/comm/justice\\_home/funding/stop/funding\\_stop\\_en.htm](http://europa.eu.int/comm/justice_home/funding/stop/funding_stop_en.htm)

AGIS 2003-2007

- Supports cooperation of legal practitioners, law enforcement officials and representatives of victim assistance service in the fight against organised crime

- For more information see:

[http://europa.eu.int/comm/justice\\_home/funding/agis/funding\\_agis\\_en.htm](http://europa.eu.int/comm/justice_home/funding/agis/funding_agis_en.htm)

AENEAS 2004-2008

- Supports third countries in the area of migration and asylum

- For more information see:

[http://europa.eu.int/comm/europeaid/projects/eidhr/themes-migration\\_en.htm](http://europa.eu.int/comm/europeaid/projects/eidhr/themes-migration_en.htm)

DAPHNE 2000-2004, DAPHNE 2004-2008

- Combats violence against women and children

- For more information see:

[http://europa.eu.int/comm/justice\\_home/funding/daphne/funding\\_daphne\\_en.htm](http://europa.eu.int/comm/justice_home/funding/daphne/funding_daphne_en.htm)

TACIS 1991-

- Regional assistance framework programme concentrating on Eastern Europe and Central Asia

- For more information see:

[http://europa.eu.int/comm/europeaid/projects/tacis/index\\_en.htm](http://europa.eu.int/comm/europeaid/projects/tacis/index_en.htm)

PHARE 1989-

- Regional assistance programme concentrating on the eight new member states, and on Bulgaria and Romania

- For more information see:

<http://europa.eu.int/comm/enlargement/pas/phare/index.htm>

CARDS 2000-

- Regional assistance programme concentrating on Western Balkans

- For more information see:

[http://europa.eu.int/comm/enlargement/cards/index\\_en.htm](http://europa.eu.int/comm/enlargement/cards/index_en.htm)

Secondly, the EU has been active in making judicial reviews of national legislation and urging for minimum standards and ratification of UN TOC protocol by its member states. Worth mentioning are the 1997 the Hague Ministerial Declaration on European guidelines for effective measures to prevent and combat trafficking in women for the purpose of sexual exploitation, the Council Resolution on initiatives to combat trafficking in human beings, in particular women (2003) and the most recent Commission Communication 'Fighting trafficking in human beings – an integrated approach and proposals for an action plan' (2005)<sup>22</sup> This form of anti-trafficking activity aims to strengthen legislation and hence the

<sup>22</sup> Commission Communication "Fighting Trafficking in Human Bein0602 0 0 202 0.7(065TT1 1 Tf0 Tc 07gh4m(hting)



on the same topic in October 2005. The 2002 conference adopted Brussels Declaration<sup>23</sup> and set up a Commission-funded Experts Group on Trafficking in Human Beings. The Experts group published its report in December 2004.<sup>24</sup> The report assesses human trafficking as a phenomenon and the EU's handling of the question comprehensively and critically. The Commission took their report as a guideline for the drafting of communication 'Fighting trafficking in human beings – an integrated approach and proposals for an action plan'. This document reflects somewhat more humanitarian approach to the question of human trafficking. The concrete steps are, however, still missing.

### **Anti-trafficking cooperation with Moldova, Ukraine and Russia**

Ukraine, Moldova and Russia are all major source and transit countries for human trafficking. The main destination is Western Europe but people are also trafficked within these states (especially from Ukraine and Moldova to Russia), and to such states as Turkey, Israel, the United Arab Emirates and the United States. Most of the victims are forced into prostitution; some are also forced into begging, criminality or forced labour.<sup>25</sup> Fighting trafficking is especially difficult because of weak state controro

place under the framework of AGIS and it involved EUROPOL, IOM, European Parliament and Commission as well as relevant agencies from Albania, Bulgaria, France, Italy, Romania, Moldova, Russian Federation and Ukraine.<sup>26</sup>

About 10 million euros of the TACIS funds has been allocated over the period 2002-2004 to Belarus, Moldova, Ukraine and Russia for specific anti-trafficking activity. In general, Tacis funding has contributed to the fact that legislation and border controls have improved considerably, especially in Ukraine and Russia.

In the judicial, legislative area, cooperation schemes between Eurojust and national general prosecutor's offices in Ukraine, Moldova and Russia have been developed.<sup>27</sup> The EU has also actively encouraged its neighbouring non-member states to accept and implement international standards and best practices against human trafficking. This has been done mainly through political dialogue within the Neighbourhood Policy framework (and the Common Spaces scheme with Russia). In particular, Russia has been actively cooperating in transnational law enforcement investigations. The EU has adopted an Action Plan against Organised Crime on Russia. All these states have been working hard towards implementing the international anti-trafficking standards in recent year, but none of them yet fully complies with them.

Cooperation on the issues of border and migration control has been one of the primary concerns for the EU. Country action plans and the Common Space for Security, Justice and Freedom reflect this emphasis. The EU's typical measures in this area include information gathering and distribution as well as educational programmes. It has carried out feasibility studies on the issue in neighbouring states including Russia, Moldova and Ukraine and taken the issue up in all main political documents and summits.

There have also been some interesting new openings. One of the most problematic issues of border control has been the break-away region of Transnistria at the Moldovan-Ukrainian

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<sup>26</sup> More on the project, see <<http://www.belgium.iom.int/AGIS2003/>>.

<sup>27</sup> See *European Union Action Plan on Common Action for the Russian Federation on Combating Organised Crime*, (2000/C 106/02), *European Union Action Plan on Justice and Home Affairs Concerning Ukraine*, 6 December 2001, *Proposed EU-Moldova Action Plan*, 09 December 2004, *Proposed EU-Ukraine Action Plan*, 9 December 2004, *Road Map on the Common Space of Freedom, Security and Justice between the Russian Federation and the European Union*, 10 May 2005. See also "Eurojust and Human Trafficking: The State of Affairs," (Eurojust, October 2005). Available at <<http://home.student.uva.nl/boudewijn.dejonge/Eurojust&HumanTrafficking.pdf>>.



with the countries".<sup>32</sup> Moreover, The Hague Programme envisaged partnerships with third countries on issues of migration and anti-trafficking activity.<sup>33</sup>

In 2002 the Commission issued a communication, in which it states that the cooperation with the outsider states in the area of migration wa





regardless of their willingness or ability to file a complaint or provide information against the traffickers.<sup>40</sup>

However, humanitarian considerations alone are not the only reasons for a softer, more inclusionist strategy with the victims. A more inclusionist and humane policy is also likely to enhance the effectiveness of the fight against trafficking. Currently very few of the trafficked persons are willing to report to the authorities and thus the traffickers care inclusion

criticism but very little has been achieved in practice to change the situation.<sup>42</sup> It seems that illegal immigration has become such a feared and securitised topic within the EU that it is failing to see human trafficking in its proper context and proportion.<sup>43</sup> Or perhaps, the EU is seeing the picture corr70 12 70.92004 7U tha

threats despite the inclusionist formulations of its strategic documents. This is a response to the unfocused, general anxiety about frontiers so common in today's Europe.<sup>46</sup> It may be understandable but it does not address the root causes of threats and only helps in  
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term stability and mutual trust.<sup>51</sup> A European wide security community would allow for comprehensive and integrated strategies to combat new security threats such as human trafficking. In an atmosphere of mutual trust security could be reconstructed as first and foremost human security.

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