Grair Magakian*

THE EXTERNAL DIMENSION OF THE EUROPEAN UNION'S AREA OF FREEDOM, SECURITY AND JUSTICE

Abstract

The paper covers the External Dimension (ED) of the European Union's Area of Freedom, Security and Justice (AFSJ) and discusses the matter by the point of view of the nature and determinants of the dimension's functioning. The author discusses problems of the perception of ED AFSJ by Europeans and analyzes the very concept of Europeanism. He examines also the truth of the existence of the ED both from the perspective of EU Member States and the European Union itself which, however, is not a subject of international law and may not always represent the unified attitude to the problems of EU countries outside the EU (as the ED AFSJ). As examples of the lack of the European identity (without which the ED AFSJ can neither be consistent nor realistic), the author draws attention to the signs of the Islamic extremism, the "egoism" of EU nation-states and so on. As the conclusion, the paper proposes to answer some questions that can help to improve EU policies in the matter of ED AFSJ.

Keywords: external dimension area, freedom, security, justice, muslim, extremism, european

Introduction

This paper does not concern the legal aspects of the External Dimension of the European Union's Area of Freedom, Security and Justice (ED AFSJ), because the matter is so extensive that I decided to focus only on a small "slice": the nature and determinants of the functioning of ED AFSJ.

A huge number of scientific and political treatises and quasi-treatises highlight some questions which can help to fully understand the meaning of ED AFSJ.

As evidenced in EU documents:
• the Union shall constitute an area of freedom, security and justice with respect for the
  fundamental rights and different legal systems and traditions of the Member States;

* Association for Development of Democracy ERWIN in Ostrowiec Świętokrzyski; erwin@erwin.org.pl

- EU shall ascertain the absence of internal border controls for persons and shall frame a common policy on sanctuary, immigration and external border control, based on solidarity between the Member States, which would be fair towards Third Country Nationals (stateless persons shall be treated as Third Country Nationals);
- the Community has to endeavour to ensure a high level of security through measures for preventing and combating crime, racism and xenophobia, and through measures for coordination and cooperation between the police, judicial authorities and other competent authorities, as well as through mutual recognition of judgments in criminal matters and, if necessary, through the standardization of criminal laws (Official Jurnal 2012).

Considering these commitments, a serious question arises: does the EU have the resources to ensure these liabilities, is it able to achieve its objectives in that area, spending extensive funds on different procedures "to guarantee" the ED AFSJ?

1. Where is the AFSJ?

At the beginning of 2010s, the EU experienced two basic changes in the areas of freedom, security and justice:
- the *Lisbon* Treaty was ratified (structural changes of the EU regulatory powers in ED AFSJ came into effect);
- the five-year Stockholm Programme (establishing the EU's work programme in the general perception of AFSJ for 2011–2014) was agreed as the key issue for the EU's medium-term activity (Šlosarcík 2011: 205–206).

Unfortunately, the visibility of AFSJ and its profile in the political debate (in the meaning of internal and external "ventures") seemed to decrease significantly in 2010 only and the AFSJ agenda received only relatively modest attention in the Presidency programmes of 2011–2012 (Šlosarcík 2011: 205–206). Under these circumstances, some fundamental doubts can bother the EU citizens:
- why are other EU actions more important than external security (yet … ED AFSJ is fundamental to the smooth and efficient functioning of each Member State of the EU)?;
- why, in particular, is the ED of EU's AFSJ still in the background?;
- does any ED AFSJ exist as a common activity for the EU Member States or is it only a sophisticated political trick to pretend that something is being done in the field of EU's (supranational) security?

In the light of the abovementioned questions we can recognize the possible presumption that the ED AFSJ makes sense only if the EU is at least a federal or (better!) a unitary[1] state because, in order to act outside (i.e. outside the EU countries), the EU has to have an "international legal personality" (Craven 1998: 142–162; Shukalo 2011; Kammin 1996: 469–488) and the authority over each Member State.

As emphasized in Vara (2008: 577–599), one of the changes with the potential to have a more positive impact on the external projection of the AFSJ is the explicit recognition of the EU's international personality. As a consequence of the abovementioned actions, we have the situation when the Member States are not willing to transfer their external competences on these important issues completely to the EU. A brilliant example is Ukraine: in the international area the EU (as a full power body) is unable to do much, because Russia negotiates not with the EU (as an international legal entity) but with France and Germany. Of course, "the AFSJ appears to be a new legal concept, or legal construction, tailored to the specific nature of the subject area. […] Yet, the AFSJ is not an intergovernmental area of cooperation, but one in which the Member States clearly allow the Union as such to play a normative role" (Wessel, Marin, Matera 2011: 274).

2. National Identity … Against ED AFSJ

The phenomena of ED AFSJ "is not an objective in itself. Its primary purpose is to contribute to the establishment of an area of freedom, security and justice" (Wessel, Marin, Matera 2011: 280), including the external dimension. But the question is: for whom does the ED AFSJ exist?:
• for the EU or the whole Europe – something like the "screen" against external dangers?;
• for the *E*uropeans? However, this explanation automatically creates another dilemma: who are the Europeans or what does a European mean? Do they have any common identity/identities?

It is obvious that having only separate national identities, we are not able to ensure any external security of the EU (in the meantime just taking care of our so-called nation-state). So, "can an entity, founded on nations of wildly different customs, expectations and economies long endure and share a common fate?" (Friedman

---

[1] The aim of this paper is not to discuss which government system is better – federal or unitary, so I will not analyze that matter.

2015b). Regrettably, the idea of identity has seldom been defined in a clear and explicit way, because the question is: "Do we mean a collective identity, a variety of interlinking collective identities, an aggregation of personal identities, a broadly defined cultural category, or an official cultural or political EU identity? Whether Europe is unable to compete with national societies because national identities are more real or powerful than collective ones depends on what kind of collective identity we mean when we refer to largescale social groups or societal complexes having an identity" (Delanty 2003).

The relationships between the national identities in the EU and ED AFSJ are so strong that we should take into account the fact that "the idea of a European identity is a discourse in which competing claims are worked out, and this idea has been part of many national traditions" (Delanty 2003). Some authors consider that "as a result of globalisation, multiculturalism, global civil society and cosmopolitan political and cultural currents, societies are becoming more and more pluralised and interpenetrating, and less and less discrete wholes anchored in unique cultures and territorial nation-states" (Delanty 2003; see also: Parekh 1998). Unfortunately, it is a fact that there are only some examples of the definition of the common European identity which are not the expression of the nations' consciousness but the efforts of Europeanists to create one (Delanty 2003; Wang 2009; Paasi 2001; Laflan 2004). A special place in these efforts belongs to The Declaration on European Identity which was signed in 1973 in Copenhagen by nine Member States of the contemporary European Community (Aei.pit.edu 1973) – Germany, France, Italy, the Netherlands, Belgium, Luxembourg, Denmark, Ireland and the United Kingdom. That attempt was probably justified at that time but in the last 40 years the EU has undergone so many changes that the attempt reflects neither the internal, nor the external realities of modern Europe and its environment. "However, one point can be made: the European identity is not exclusively constructed on the basis of a collective "Us" who define themselves against an alien "Other", for the simple reason that, as a result of three decades of cultural diffusion and mixing, there is no clearly definable "Us". In most European countries the opposition to the Iraq War showed very clearly that the values that define Europe are not Islamophobic. Although xenophobia is a major problem in European societies, it has not become the dominant social imaginary" (Delanty 2003; comp: Neumann 2006; Woolf 2000; Passerini 2012: Patrutiu-Baltes 2013).

So, how to understand the ED AFSJ common for the EU when in the European identities we have the Others against Us? Having the Others instead of Us, we could not treat the ED as common unite, but only as the boundaries of particular Member States. Though in reality what is external to the EU (as a whole unit) is paradoxically twice external for the EU Member States:

- the EU's external actions, functions etc. (common externality) are common for all Member States,
- each Member State (as a separate nation-state) has its own relations with the other ones and the so-called third countries (particular externality).

To be able to solve the problems of the ED AFSJ, we have to visualize that "as a result of the ongoing process of Europeanisation as well as wider processes of globalisation and the cross-fertilisation of cultures, there is an increase in the number of European personal identities within the populations of European societies; but there is less evidence for the existence of a European collective identity" (Delanty 2003).

3. New Factor of ED of ASFJ

There is no doubt that the ED AFSJ has become more important after the Muslim extremist attacks in the USA and Europe. It is also obvious that the EU tries to build a European identity (the base for external perception as the common dimension of AFSJ) on democracy and democratic values which is unfortunately very often just a misunderstanding, especially for a certain number of immigrants from the Muslim countries (Tyler 2008; Friedman 2015a; Elgvin 2011; Flood, Hutchings, Nickels, Miazhevich 2007). "The research, conducted by the Motivaction group in Amsterdam, concerns the attitude of Dutch Turks (…) about the Islamic State (also known as ISIS) and found that '80% saw nothing wrong in jihad, or holy war, against nonbelievers'. (…) The survey found 90% of young Turks think those fighting against Syrian president Assad's troops are 'heroes' and half thought it would be a good thing if Dutch Muslims went to join the fight" (Duke 2014). The greater part of Muslims in Netherlands, Germany, France, Belgium, Austria and Sweden (~65%) believe that Islamic Sharia law (Islamic religious law) should have the supremacy over the secular constitutions and laws of their European host countries: according to a new study, Islamic fundamentalism is widespread and rising sharply in Western Europe (Kern 2013, see also Ersanilli, Koopmans 2013).

The conflict between the European identity and the extremist perception of the separate Islamic identity is obvious, because almost 60% of Muslims believe their community should return to its "Islamic roots". 44% of the Moroccans and Turks in the abovementioned EU Member States can even be defined as fundamentalists (Koopmans 2013; Kern 2015; Sience.20.com.2015; Harrod 2013; Molschky 2014).

In these circumstances, "asserting the EU's identity on the international scene is one of the core objectives of the European Union. (…) It is (…) a difficult task in view

of the number of actors (…)" (Hillion 2008: 10). Basically it is hard to speak about a coherent European identity and, as a result, about the common ED AFSJ. To have an integrated ED AFSJ, the EU has to also have the integrated society which is absolutely impossible – there isn't even any multiculturism or multicultural integration processes, especially for a huge number of Muslim immigrants in the EU. "While about one in five natives (European people – G.M.) can be considered as Islamophobic, the level of phobia against the West among Muslims (in Europe – G.M.) – for which, oddly enough, there is no word; one might call it *Occidentophobia* – is much higher still, with 54% believing that the West is out to destroy Islam" (Koopmans 2013: 3).

These results clearly say the opposite to the often-heard argument that Islamic religious fundamentalism is an insignificant incident in Western Europe (Koopmans 2013: 3). It is a knotty phenomenon which can influence not only the external, but also internal dimensions of AFSJ (when things are wrong inside they can never be right outside). To achieve an ED AFSJ efficient and common for the EU all Member Countries' citizens, we have to answer the question "(…) why Europe found it so difficult to assimilate immigrants and why it resorted to multiculturalism" (Friedman 2015b). One of the possible answers is: "the customs of the nation-state made it impossible to imagine someone born outside the customs of the nation-state to truly become part of its brotherhood" (Friedman 2015b).

Do we lose the European supranational identity (Stanley 2013; Kiratli 2015)? Actually, there is no supranational European identity, because that idea worked only for some time, especially at the economic level, where institutions quickly achieved integration (Stratfor.com 2015).

Conclusions (or Which Values the ED AFSJ has to Protect?)

In 2010 the EU officially declared that "internal and external security are inseparable […] even far away from our continent" (Official Jurnal 2010: 33). Indeed, to have ED AFSJ, the Union must at least:
• have "a single external relations policy" (Official Jurnal 2010: 33) (which is unluckily only a declaration without any specifics or actual actions: the case of Ukraine is an undeniable proof of that);
• realize that "the Union and the Member States will actively develop and promote European and international standards" (Official Jurnal 2010: 34) (where? for whom? how? – there is no answer besides declarative sentences);

• take into consideration that "as regards the situation in the Mediterranean area, the European Council considers that a stronger partnership with third countries of transit and of origin is necessary, based on reciprocal requirements and operational support, including border control, fight against organised crime, return and readmission. Rapid action to face the challenges in this region is a priority" (The Stockholm … 2010: 36) (the present situation of immigrants coming to Italy testifies on something entirely different – we can rather talk about humanitarian tragedy and the loss of control of the EU borders (Kingsley 2014; Charat 2015) etc.

In fact, the main concept of the ED AFSJ doesn't have to be what to do outside of the EU, but how to react to what happens (under the influence of the exterior) on the inside (like in the case of illegal migration) and how to protect the EU (like in the case of fundamentalist terrorism).

To achieve the effects of the abovementioned measures, the following questions need to be answered in the nearest future:

• do the priorities of ED AFSJ have to be changed when we see that "the world can either accept periodic attacks or see the entire Muslim community as a potential threat until proved otherwise" (Friedman 2015a), taking into consideration that a considerable part of it are new immigrants, who have appeared as a result of warfare imposed on them (also by the EU)?;

• should the EU allow the Member States' Intelligence Services to cooperate with external partners (as they want) or should there be strict regulations? (keeping in mind "Snowden revelations of mass-surveillance by the EU Member States, and their cooperation with the US and other states' intelligence communities" (Carrera, Guild 2014: 8–9);

• despite the fact that "the Lisbon Treaty effectively creates a legal framework in which European institutions can adopt legal instruments and operative actions that respond efficiently to the challenges that affect the external dimension of the AFSJ, without infringing upon the protection of human rights and the respect for democratic values" (Vara 2009), can we say that the EU Member States implement these instruments? Where and how?

The lack of answers to these and a number of other questions complicates and blocks the construction of the EU's common ED for AFSJ.

References

Aei.pitt.edu (1973), *Document on the European Identity published by the Nine Foreign Ministers (Copenhagen, 14 December 1973), European Political Co-operation. Fifth Edition Press*

and Information Office, Federal Republic of Germany, Bonn, 1988, http://www.aei.pitt. edu/4545/1/epc_identity_doc.pdf [accessed on 27.04.2015]

Carrera, S., Guild, E. (2014), 'The European Council's Guidelines for the Area of Freedom, Security and Justice 2020. Subverting the 'Lisbonisation' of Justice and Home Affairs?', *CEPS1 essay*, 13/14 July

Charat, S. (2015), *Illegal immigration: Is Europe losing control of its borders?*, http://www. humanevents.com/2015/01/19/illegal-immigration-is-europe-losing-control-of-its-borders [accessed on 19.04.2015]

Craven, M.C.R. (1998), 'The Problem of State Succession and the Identity of States under International Law', *European Journal of International Law* 9: 142–162

Delanty, G. (2003), 'Is There a European Identity?', *Global dialogue*, Summer/Autumn, Vol. 5, No. 3/4: 76–86

Drent, M., Landman, L., Zandee, D. (2014), *The EU as a Security Provider. Clingendael report*, Hague: Netherlands Institute of International Relations Clingendael

Duke, S. (2014), *80 Percent of Holland's Young Turkish Muslims Support Jihad*, http://www. thenewamerican.com [accessed on 04.05.2015]

Ec.europa.eu (2004), *The Hague Programme: strengthening freedom, security and justice in the European Union,* Council of the EU, Brussels, 13 December, http://www.ec.europa.eu/ home-affairs/doc_centre/docs/hague_programme_en.pdf [accessed on 13.05.2015]

Elgvin, O. (2011), *Secularists, Democratic Islamists and Utopian Dreamers How Muslim Religious Leaders in Norway fit Islam into the Norwegian Political System*, Oslo: University of Oslo

Ersanilli, E., Koopmans, R. (2013), *The Six Country Immigrant Integration Comparative Survey (SCIICS) – Technical report. Discussion Paper SP VI 2013/102*, Berlin: Wissenschaftszentrum Berlin für Sozialforschung gGmbH, https://www.pdffiller.com/en/project/39646715. htm?form_id=56209082 [accessed on 11.05.2015]

EUCO (2014), 79/14, 26/27 June 2014, *European Council, Conclusions*, Brussels, http://www. consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf [accessed on 15.04.2015]

Europarl.europa.eu (1999)*, Tampere European Council 15–16.10.1999. Presidency Conclusions*, http://www.europarl.europa.eu/summits/tam_en.htm [accessed 23.04.2015]

Flood, C., Hutchings, S., Nickels, H., Miazhevich, G. (2007), *European Identity and Islamic Otherness in British, French and Russian TV News, Broadcasts*, paper presented at the UACES 37th Annual Conference, University of Portsmouth, 3–5/09, http://www. surrey.ac.uk/politics/files/European%20Identity%20and%20Islamic%20Otherness,%20 UACES%20Paper.pdf [accessed on: 05.05.2015]

Friedman, G. (2015a), 'A War Between Two Worlds', in: *Geopolitical Weekly Stratfor*, 13/1, http:// www.stratfor.com/weekly/war-between-two-worlds [accessed on 13.05.2015]

Friedman, G. (2015b), 'The European Union, Nationalism and the Crisis of Europe', in: *Geopolitical Weekly*, 20/01, http://www.stratfor.com/weekly/european-union-nationalism-and-crisis-europe [accessed on 10.05.2015]

Harrod, A. (2013), *Study: Widespread Islamic Fundamentalism in Europe*, 16/12, http://www.frontpagemag.com/2013/andrew-harrod/study-widespread-islamic-fundamentalism-in-europe [accessed on 05.05.2015]

Held, D., McNally, K. (2014), *Europe, the EU and European identity*, 07/02, http://www.opendemocracy.net/can-europe-make-it/david-held-kyle-mcnally/europe-eu-and-european-identity [accessed on 03.05.2015]

Herrmann, R., Marilynn, B. (2004), 'Identities and institutions: Becoming European in the EU', in: Herrmann, R., Risse, Th., Brewer, M. (eds.) *Transnational identities: becoming European in the EU*, Oxford: Rowman & Littlefield Publishers: 1–24

Hillion, C. (2008), 'Tous pour un, Un pour tous! Coherence in the External relations of the European Union', in: Cremona M. (ed.), *Developments in EU External Relations Law, Collected Courses of the Academy of European Law*, Oxford: Oxford University Press

Kammin, M. T. (1996), 'State Succession in Respect of Human Rights Treaties', *European Journal of International Law* 7: 469–484

Kern, S. (2013), *Europe: Islamic Fundamentalism is Widespread*, 16/12, http://www.gatestoneinstitute.org/4092/europeislamicfundamentalism [accessed on 15.05.2015]

Kingsley, P. (2014), 'Desperate Syrian refugees risk all in bid to reach Europe', *The Guardian*, 18 September 2014, http://www.theguardian.com/global-development/2014/sep/18/desperate-syrian-refugees-europe-mediterranean [accessed on 05.05.2015]

Kiratli, O. S. (2015), 'The role of identity in support for supranational integration in EU Foreign and Security Policies', *European Integration online Papers* (EIoP) 19, article 7: 1–37

Koopmans, R. (2013), *Fundamentalism and out-group hostility Muslim immigrants and Christian natives in Western Europe*, WZB Mitteilungen, http://www.wzb.eu/sites/default/files/u6/koopmans_englisch_ed.pdf [accessed on 05.05.2015]

Laflan, B. (2004), 'The European Union and its institutions as "identity builders"', in: Herrmann, R., Risse, Th., Brewer, M. (eds.), *Transnational identities: becoming European in the EU*, Oxford: Rowman & Littlefield Publishers: 75–96

Molschky, R. (2014), *The Support for Sharia Law Around the World*, 04/07, http://www.chersonandmolschky.com/2014/04/07/support-sharia-law-world. [accessed on: 30.05.2015]

Neumann, I.B. (2006), *European Identity and Its Changing Others*, Oslo: Norwegian Institute of International Affairs, no 710, http://mercury.ethz.ch/serviceengine/Files/ISN/27901/ipublicationdocument_singledocument/1b2d99da-8cb1-4e0c-b799-215f0da83ba8/en/710.pdf [accessed on 05.05.2015]

Official Journal (1973), C 326/73, *Consolidated version of the Treaty on the Functioning of the European Union*, 26.10.2012, http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN [accessed on 19.04.2015]

Official Journal (2012), 04.05.2010 / C 115 / 01, *The Stockholm programme – an open and secure Europe serving and protecting citizens*, http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010XG0504(01)&from=EN [accessed on 29.12.2012]

Official Journal (2015), C115, vol. 53, Information and Notices, 4 May 2010*, The Stockholm Programme — An open and secure Europe serving and protecting citizens*, http://www.eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2010:115:FULL&from=EN [accessed on 22.04.2015]

Passerini, L. (2012), 'Europe and its Others: Is there a European Identity?', in: Stone, D. (ed.) *The Oxford Handbook of Postwar European History*, Oxford: Oxford University Press: 120–140

Paasi, A. (2001), 'Europe as a social process and discourse. Considerations of place, boundaries and identity', *European Urban and Regional Studies* 01: 7–28

Pascouau, Y. (2014), *The future of the area of freedom, security and justice. Addressing mobility, protection and effectiveness in the long run*, European Policy Centre, http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2013/pdf/0027/organisations/european_policy_centre_discussion_paper_en.pdf [accessed 18.05.2015]

Patrutiu-Baltes, L. (2013), *Europe and Europeans – questions of identity*, 14/10, http://www.one-europe.info/europe-and-europeans-questions-of-identity [accessed on 05.05.2015]

Science20.com (2015), *How Prevalent Is Islamic Fundamentalism In Europe? It's Alarming* 16/01, http://www.science20.com/news_articles/how_prevalent_is_islamic_fundamentalism_in_europe_its_alarming-152350 [accessed on 30.04.2015]

Shukalo, N. (2011), *What is International Legal. Personality and why does it matter?*, University of Nicosia, http://www.academia.edu/1220009/What_is_International_Legal_Personality_and_why_does_it_matter, [accessed on 25.05.2015]

Stanley, L. (2013), *A European Supra-National Identity: The Solution to the European Union's Crisis of Legitimacy?*, London: The Bruges Group

Stratfor.com (2015), *Europe Rediscovers Nationalism, Analysis* (2015), in: *Geopolitical Weekly Stratfor*, 11/01, http://www.stratfor.com/analysis/europeredi\scoversnationalism#axzz3PvIjiauV [accessed on 12.05.2015]

Šlosracik, I. (2011), 'EU's Area of Freedom, Security and Justice: From Post-Lisbon Tactics to EU Citizen-Oriented Strategy', in: Fabry, E. (ed.), *The Contribution of 16 European Think Tanks to the Polish, Danish, and Cypriot Trio Presidency of the European Union*, Paris: Notre Europe: 205–208

Tyler, A. (2008), *Islam, the West, and Tolerance. Conceiving Coexistence*, New York: Palgrave Macmillan

Vara, J.S. (2008), 'The External Dimension of the Area of Freedom, Security and Justice', *European Journal of Law Reform*, Vol. 10, No. 4: 577–599

Vara, J. S. (2009), *The External Dimension of the Area of Freedom, Security and Justice, European Union Studies Association, for the 11th Biennial International Conference, Los Angeles, California, 23–25/04*, http://www.euce.org/eusa2009/papers/santos%20vara_03C.pdf [accessed on 28.09.2014]

Wang, Y. (2009), 'On the Significance of Culture Construction of European Identity', *Review of European Studies*, Vol. 1, No. 2 / Dec., http://www.ccsenet.org/journal/index.php/res/article/download/4587/3926&gws_rd=cr&ei=bkM_VbPLPIHkUKC2g4gP [accessed on 05.05.2015]

Wessel, R.A., Marin, L., Matera, C. (2011), 'The External Dimension of the EU's Area of Freedom, Security and Justice' in: Eckes, C., Konstadinides, T. (eds.), *Crime within the Area of Freedom, Security and Justice. A European Public Order*, Cambridge: Cambridge University Press: 272–300

Woolf, S. (2000), 'Knowledge of others and self-perceptions of European identity', *Historian*, Vol. 2: 55–63