The Resources of European Security

Edoardo Chiti – Bernardo Giorgio Mattarella

Table of contents:

(Report for the Conference 2007 of the European Group of Public Law on "The European Security" - Legraina, 14-16.9.2007)

1. Introduction

The term "security" indicates protection from dangers. According to the kind of danger and to the kind of instrument of protection, the term may have different meaning. Of course, in the legal discourse, not every kind of danger and protection is implied by the term. Therefore, to state the meaning of "European security" and define the scope of this report, it is necessary to stipulate the dangers that will be considered.

Security may be intended in a very broad meaning, which includes protection against different kinds of threats to personal integrity, welfare and social life. In this broad sense, the law couples the term with different adjectives: health security, food security, aviation security, social security, information security, electronic security, and similar expressions. All these expressions are used by the European law as well as by domestic laws: and on this basis one can build an extensive theory of "European integral security"[1], which shows the importance of the solidarity principle in European law and the different ways in which the European Union is concerned about the people's well-being. This meaning of security, however, indicates a fundamental purpose of European law, which arises from several different policies.

In a narrower sense, security is often used without adjectives, to indicate protection from some very serious dangers, which directly threaten life or personal integrity. In this sense, security does not include financial and social security, nor security of personal data processing: the corresponding rights need to be protected, but their protection is not as essential to life – or as hystorically grounded – as protection against physical violence. This restriction, relating to the protected interests, still allows a relatively broad notion of security, including some serious dangers, such as those deriving from epidemics and wars: not casually, the European law uses the word security to indicate the foreign and military area (in the expression "Common Foreign and Security Policy").

A further restriction is given by the instruments used to protect from dangers: both at the European and at the national level, security is often referred to protection against those dangers, brought forward within a certain jurisdiction by individuals, against which the law reacts with criminal sanctions. Security, in this sense, tends to be

[1] L. Ortega Álvarez, *Hacia un concepto integral de seguridad europea*, in L. Ortega Álvarez (ed.), *La Seguridad integral europea*, Valladolid, Lex Nova, 2005, p. 25.

restricted to the battle against crimes, which is fought with both criminal and administrative instruments. In this sense, security is the object of one public policy, which engages judges and police forces, and often implies the use of coercion towards individuals who threaten life or peaceful social relations. This excludes dangers such as natural disasters and military offences. Not even this notion of security has crystal clear borders, especially in the European space: the reaction against dangers varies not only historically, but also geographically, and each member state may include single dangers in the security policy or exclude them from it.

Nevertheless, in this report security will be intended in this narrow sense, for two main reasons. The first is that the task to examine the resources of security forces to focus on one single policy, where rules and legal instruments are sufficiently homogenous. The second is that in the European law, as well as in the domestic ones, it is quite easy to identify one single security policy, falling partly into the first pillar and partly into the third pillar of the European Union. The report will consider the legal instruments which are normally included in the legal texts and documents referring to the European area of freedom, security and justice, on the basis of the Treaty provisions and of European Council documents such as the Tampere programme and the Hague programme. It is an historical notion of security, which also corresponds to the notion of security in the national laws. Consequently, it will allow a comparison not only between the security policy and other European policies, but also between European security law and national security law.

Although the European law contributes to the precision of the notion of security, thus limiting the uncertainty of its borders, these borders remain far from being precise. For example, prevention from epidemics falls clearly outside of this notion of European security, but prevention from drug dependence falls probably within; the distinction between citizens' protection and investors' protection is clear, but the fight against frauds seems halfway. As it will be shown in the next sections, not even the borders between the different pillars are always clear and stable. Therefore, the report will apply a narrow but elastic notion of security, at times considering areas which are not clearly included in it, such as civil protection. But it will not consider instruments and regulations whose purpose falls clearly within other policies: for example, the European Gendarmerie Force, whose tasks are instrumental to common foreign and military

policies. The report will consider the legal regulations already existing in the European law and also some predictable developments: for example, it will consider the Prüm Convention, although it is not yet been integrated into the Union's legal framework.

Finally, the report will not analyse all the regulations referring to the area of freedom, security and justice, but only those which are significant for public law, with a particular focus on administrative implementation of security policy. It will not examine the criminal law and the civil procedural law profiles. It will, for example, discuss the organization and tasks of the Europol, but not those of the Eurojust: once again, this choice depends from an assessment of the relevance of the administrative aspects, which are present even in the Eurojust (which is composed not only of judges, but also of administrative personnel), but not as relevant as in other European bodies.

In the four following sections, the approach which has been described will be applied in the study of the regulatory framework, of the organizational arrangements, of the administrative powers, and of the instruments of individual protection. In each section, the European security policy will be described, it will be compared with other European policies and with national security policies and the degree of European integration will be assessed. The results of the analysis will be summarized in the conclusions.

2. Rules

2.1. The law of European security displays some contradictory features: it has a broad and unitary purpose, but partial instruments; it is based on an abundant legislation, but has an unsatisfactory degree of execution; it creates a European legality, but does not ensure its respect; it is fragmented in different kinds of acts and procedures, but shows a certain tendency to simplification. These contradictory features will be examined. Then, European security will be compared with national security and the degree of legal integration in this sector will be considered.

2.2. The European security law has a broad and unitary purpose: ensuring people's security in the territory of the European Union: security in the traditional sense,

indicated in the previous section. Peoples' security is the purpose of a great number of legal regulations, which are more and more autonomous from other policies: although the development of an area of freedom, security and justice could at first be considered an instrument of free movement of persons, the autonomy of this policy is now shown by much evidence, which will be provided in the next sections.

This law, however, has partial instruments, because it protects the people only from some dangers, leaving the others to member States' law. European security is security from European or global dangers. This is shown, for example, by the Council Framework Decision 2004/757, according to which «By virtue of the principle of subsidiarity, European Union action should focus on the most serious types of drug offence»[2]. Similarly, the Europol's competence is limited to the case in which «two or more Member States are affected by the forms of crime in question» (serious international crimes)[3]. Moreover, European security policy has important gaps, such as the discipline of regular immigration.

However, European and global dangers are nowadays the most serious and difficult to deal with, and the fight against them engages some of the best energies of member States' police. Moreover, the instruments of European security tend to increase, including measures not strictly connected with security of persons, such as critical infrastructures[4] and not dealing with global or continental dangers, such as juvenile and urban crime, considered by the Tampere programme[5]. The Europol convention itself, while limiting the Office's competence, provides for its enlargement[6].

A second contradiction is given by the abundance of legal acts and the unsatisfactory degree of execution. In the European Union internet site, the section relating to the legislation in force in the area of freedom, security and justice lists roughly five hundred legal texts. In the matters falling into the first Pillar, directives and regulations prevail. In those falling into the third pillar, decisions and framework decisions do. Many other documents, such as Presidency Conclusions of several

---

[2] Council Framework Decision 2004/757/GAI, of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (fourth recital).

[3] Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (so called Europol Convention), art. 1, § 1.

[4] COM(2006) 786 final.

[5] Presidency Conclusions of Tampere European Council, 15-16 October 1999, § 42.

[6] Art. 2, § 2.

European Council meetings and communications from the Commission, address general and particular issues of the European security policy.

Nevertheless, the European Council's programmes encounter obstacles and resistance and many acts have quite a low degree of implementation[7]: this is true, in particular, for conventions, which have consequently declined as a kind of legal act in this area (the Europol convention itself is likely to be turned into a Council decision[8]). The reports of the European Commission illustrate the inconstant execution of single acts and measures: for example, Common Position 2005/69 on exchanging certain data with Interpol[9], is partially unexecuted because of organizational difficulties of many member States[10].

The low degree of implementation is partially explained by a third paradox: the law of European security creates a European legality, a system of legal norms ruling the European space; but it does not ensure its respect. Justice and internal affairs are strictly connected with the implementation of the law, and many European legal acts, in this area, refer to the law enforcement authorities: it is the action of these authorities that this law aims at coordinating. However, it is not very much concerned with its implementation: the European Commission is not in charge of the control over the application of the law based on the third pillar; the lack of an infringement procedure makes the European security law a (partially) judgeless law; even in the first pillar, the limitations to the jurisdiction of the Court of Justice (ECJ) to give rulings on the interpretation and validity, in this area, take away an important instrument to affirm the European legality.

Fourth paradox: the European security law is a fragmentary one, on several accounts. First of all, its swing between different pillars causes a great diversity of legal acts, as well as uncertainty and ambiguity of their legal basis. As we have already noticed, European security policy is a unitary one, with one fundamental purpose, but the acts and measures relating to it have to be distributed between the first and the third

---

[7] As for the Tampere programme, E. Paciotti, *Quadro generale della costruzione dello Spazio di libertà, sicurezza e giustizia*, in G. Amato and E. Paciotti (eds.), *Verso l'Europa dei diritti. Lo Spazione europeo di libertà, sicurezza e giustizia*, Bologna, Il Mulino, 2005, p. 20 ff.

[8] As proposed by the Commission: COM(2006) 817 final. The replacement of the Convention with a Council decision had already been envisaged by European Parliament recommendation to the Council on the future development of Europol and its automatic incorporation into the institutional system of the European Union, of 30 may 2002, P5_TA(2002)0269.

[9] Common Position 2005/69/GAI, of 24 January 2005.

[10] COM(2006) 167 final § 3.1 and 3.6.

pillar of the European Union: this forces to distinguish offices and duties which are strictly connected, to find the right legal basis for every act and to solve difficult problems concerning, for example, financial aspects[11]. In some cases, the boundary with the second pillar, dealing with EU defence and external security, is difficult as well: this is the case with internal security services[12].

Within the single pillars, fragmentation causes problems as well. In the III pillar, some kinds of legal acts, such as common positions, have undetermined nature and effects. Even in the Community pillar, different rules and procedures coexist and some matters (customs cooperation, drugs, frauds[13]) seem to be placed halfway between the two pillars; article 67 of the Community treaty arranges for one transitional procedure, two subsequent ones, and several exceptional ones; some regulations suffer the absence of a global strategy[14]. As admitted by the European Council, responding to citizens' expectations, in this area, «is difficult within the framework of existing decision-making procedures[15]».

Finally, European security law is asymmetrical as to the territory: exceptions are quite more frequent than in other sectors. The borders of European security are sometimes narrower, sometimes broader than those of the European Union. Limitations and specifications are sometimes confusing, as in the case of the Schengen Borders Code[16]. The enlargement process increases the asymmetry, allowing special provisions for new member states.

Fragmentation is due to the particular nature of the powers connected with the security policy and to the varying resistances opposed by member States to integration, which had left their mark even in the Constitutional Treaty: if entered into force, it would have unified the three pillars, but would have maintained a special legislative procedure for this sector. A certain amount of fragmentation will also survive after the work of the Intergovernmental Conference established by the European Council

[11] As in the case of Schengen Information System II: Com(2001) 720 final.
[12] N. Garrido Cuenca, *Seguridad y servicios de inteligencia en Europa*, in L. Ortega Álvarez (ed.), *La Seguridad integral europea*, p. 145.
[13] Art. 135, 152 and 280 Community Treaty.
[14] As noticed, for the visa and immigration sector, by L.F. Maeso Seco, *Visado, asilo e inmigraciòn en los textos de los Tratados: una politica de "extranerìa" comunitaria?*, in L. Ortega Álvarez (ed.), *La Seguridad integral europea*, 267 ff.
[15] Presidency Conclusions of Brussels European Council, 14-15 December 2006, § 18.
[16] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code): see recitals 21-28.

meeting of June 2007: in the revised treaties, the security policy will be unified in the future "Treaty on the Functioning of the Union" (the Community Treaty), with substantial progress in procedural terms, but an opting-out device and some stress on restricted cooperation remain.

This future order, however, is the result of a tendency towards simplification of the security policy, which has gradually approached the first pillar policies (much more than the defence and external security has done). As it will be exposed in the next sections, the European Commission and other European bodies have increasing powers; sophisticated coordination devices have been developed; third pillar instruments, such as conventions, are set aside; first pillar instruments, such as the rules of interpretation of national law[17], have already been extended to the security policy[18].

2.3. These contradictions introduce the issue of integration among European law and national law in this sector. As a general remark, European security looks two-faced: mainly international in the third pillar, quite strictly integrated in the first pillar.

International law mechanisms, of course, prevail in the third pillar, where state governments keep their hold over the law and the law enforcement authorities. The decision rule is decision by unanimity; treaties with third countries are made by the Council; the role of the European is quite limited; the limitations of the Court of Justice's competences – which have already been mentioned and will be better examined in the fifth section – make the states judges of the disputes arising from their own behaviour; the establishment of new European bodies meets strong resistances, as in the case of the European prosecutor.

The relation between security and democracy seems to have only a national setting. Opposition to a stronger integration is often justified exactly with reference to the democratic principle, which causes member States to keep control of both the legislative process and the administrative execution. But democracy itself is an instrument of control over police power, and it is questionable whether European legality is a less effective protection than national ones. In fact, resistance to integration seems to be determined less by real democratic concerns than by the affection to some

[17] European Court of Justice, 16 June 2005, Case C-105/03, *Pupino*.
[18] A. Lang, *Giustizia e affari interni*, in M.P. Chiti and G. Greco (eds.), *Trattato di diritto amministrativo europeo*, II ed., Milano, Giuffrè, 2006, *parte speciale*, t. II, p. 1150 ss.

powers, traditionally connected with the use of force and state sovereignty. It is with international law instruments, not even falling into the third pillar, that the European security has taken some of its most important steps: as in the case of the Schengen Agreement and, more recently, in the case of the Prüm Convention[19], whose essential provisions are going to be integrated into the Union's legal framework.

In the first pillar, on the contrary, one can find some typical Community regulatory techniques: strong harmonization of legislations, especially in the regulation of administrative tasks; mutual recognition, applied both to judicial decisions and administrative acts; establishment of multinational or supranational administrative bodies. Decisions are taken by majority, although with some specific procedures. Here, the European Union is more like a state than like an international organization. But the first pillar includes the part of security policy which is less strictly connected with traditional sovereign prerogatives: asylum, migration, border management, but not justice, police and criminal law.

This two-faced nature of European security and the limited integration of the third pillar show their drawbacks in the relation with global law and third states: member States are very cautious in providing exchanges of data concerning crimes and criminals, but allow the American Government the use of personal data of European citizens and travellers, without distinctions. Moreover, leaving legality and individual protection to the national law may determine failures when European law is in charge of the implementation of global law, as in the case of financial restrictions on terrorism suspects[20]. Overall, this combination of intergovernmental and community features makes the European security policy weaker and not as crucial as national security policies, leading the scholarship to deny the existence of a European *puissance publique*[21].

---

[19] Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, signed in Prüm (Germany) on 27 May 2005.

[20] As in the cases decided by the Court of First Instance, 21 September 2005, case T-306/01, *Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*; and 21 September 2005, Case T-315/01, *Kadi v Council of the European Union and Commission of the European Communities*.

[21] C. Denizeau, *L'idée de puissance publique à l'épreuve de l'Union Européenne*, Paris, L.G.D.J., 2004, p. 444 ff.

Despite these flaws and drawbacks, integration in the field of European security is altogether remarkable. The shift of some matters from the intergovernmental pillar to the Community one; the establishment of multinational administrations, such as Europol; the extension of the co-decision procedure; the expanding scope of the policy, from the Tampere programme to the Hague programme; and the treaties' amendments envisaged by the European Council: these are steps of a the slow but constant shift from international law mechanisms to community law ones.

Harmonization of national legislations is the main instrument of integration. Administrative integration, however, is not less significant than legislative integration. First pillar regulations affect intensively national administrations' action: as a matter of fact, European security legislation is quite more detailed when it regulates administrative cooperation than when it promotes approximation of national criminal laws. Financial integration should not be disregarded either: according to art. 41 of EU Treaty, not only administrative expenditure sustained by Community institutions, but also operating expenditure connected with the implementation of security policy are charged to the budget of the European Communities. Finally, integration in the field of European security prompts integration in other fields: for example, the fight against illegal migration requires common orientations for illegal employment, labour market, return policy and repatriation measures[22]; similarly, a common policy of migration and development requires reforms in the payments sector, to make the remittances cheaper and more effective[23].

2.4. As to the comparison between European security and national security, what has been said so far suggests two differences. First, in many national states the law of public security is a quite simple one, with few kinds of legal acts and procedures, resulting of relatively few rules, often codified in single fundamental statutes. On the contrary, European security law is a very complex and fragmented law, resulting of many different kinds of acts and procedures.

The organizational complexity, which will be described in the next section, suggests the second difference: the main organizational principle, ruling the European security system, is coordination, in order to make national authorities work together

[22] COM(2006) 402 final.
[23] COM(2005) 390 final.

effectively. In national security laws, on the contrary, the main principle is hierarchy, which marks the police forces, although not as much as the military ones.

As for powers and tasks, on the opposite, European security is simpler than national ones, at least on the administrative side: not only because – as already noticed – it focuses only on some dangers and crimes, but also because it focuses on prevention rather than on repression. As it will be shown by the analysis of powers, repression is usually left to national authorities, while European ones are involved in oreventions tasks, such as information and training.

Another principle, which plays different roles at the national level and at the European one, is the rule of law, obviously having a strong tradition in this sector. As it will be shown by the analysis of the police powers, in a subsequent section, all administrative duties provided for by European law have a clear legal basis and a detailed regulation. However, while in national security law this principles protects citizens towards administrative authorities and ensures the democratic grounds for the police forces, at the European level it is an instrument of distribution of powers: detailed regulations are aimed at the respect of the States' and the Union's competences.

In fact, the European security law does not need to worry too much about the protection of individuals, because they are already well protected by national laws. It does not need to invent new protection devices, because they are well designed by national laws. The European security law was already mature at the moment of its birth: it has profited from the national experiences. This is connected to another difference. At the national level, public security was one of the first concerns of public authorities: first came the powers, then their legal regulation, with detailed procedures and remedies. At the European level, the powers and the law were born at the same time.

Established much later than other European policies, for some years the security policy seemed to have an ancillary role. Some original provisions of the Treaty on European Union could corroborate this idea[24]. As already noticed, however, the latter is no longer validated by legal texts and official documents. The Presidency conclusions of the last meeting of the European Council state that «Europe's citizens expect the EU

[24] Art. K.1: «For the purposes of achieving the objectives of the Union, in particular the free movement of persons, …».

and its Member States to take decisive action to preserve their freedom and security, particularly in the fight against terrorism and organised crime»[25].

In fact, the European security tends to resemble to the national ones. It has, in particular, one feature that is typical of the latter and is based on a principle of community and solidarity. In national systems, security policy is not only a solution to common problems, but also the commitment of all citizens to ensuring the security of each of them: some dangers threaten only some of them, but all of them are committed to their defence. One could think that the European security has a different logic, because – as already noticed – it focuses on continental dangers. But such a conclusion would be misleading: after all, migration affects some member States much more than others. The European Union aims at protecting from common dangers, but common dangers are not always dangers of all Europeans.

As the future general provisions concerning the area of freedom, security and justice of the Treaty on the Functioning of the European Union will state, this area is «based on solidarity between Member States, which is fair towards third-country nationals»[26]. Evidence of this principle of solidarity can be found in the legislation: for example, in the Council Directive concerning the status of third-country nationals who are long-term residents, according to which «Economic considerations should not be a ground for refusing to grant long-term resident status and shall not be considered as interfering with the relevant conditions», and the decision to expel a long term resident cannot be founded on economic considerations[27].

3. Organization

3.1. The above discussion of the general characters of European security law is to be followed by a reconstruction of the EU administration responsible for its execution. Is it possible to identify a number of organizational arrangements through which the administrative implementation of European security law takes place? What are the distinguishing features of the overall EU administration responsible for such

[25] Presidency Conclusions of Brussels European Council, 21-22 June 2007, § 24.
[26] Art. 61. See Conference of the representatives of Governments of the member States, Brussels, 23 july 2007, Cig 1/07.
[27] Council Directive 2003/109/EC of 25 November 2003, recital 9 and art. 12.

implementation process? Does it differ from the administrative organization established in other fields of EU administrative law? And what is its relationship with the experience of the member States?

3.2. The EU administration responsible for the execution of European security law is a plural organization, as the European Union operates both through its own apparatus and through the administrations of its member States. Moreover, such organization is not ordered around a single centre, but it has a polycentric structure. In addition to this, it is a differentiated organization, being articulated in a number of bodies having different organizational features. Finally, it is a multi-level organization, because it is based on the stable co-operation between European authorities and domestic administrations.

In the general perspective adopted in this report, it is possible to identify six main organizational arrangements through which the administrative execution of the European law concerning the field of security takes place.

Firstly, in order to implement the relevant European rules and policies, adopted both under the first and the third pillar, the EU may rely upon the member States' administrations, such as, for example, the ministries of interiors, the ministries of justice, the police forces and the customs administrations. In this hypothesis, national administrations are called by a EU discipline to pursue EU objectives, under the scheme of indirect administrative execution, while maintaining their structural anchorage within the domestic administrative systems. Moreover, EU regulation may impose to the member States the establishment or identification of an administration provided with specific tasks and organizational features. For example, article 9 of Directive 2006/24, aimed at harmonising the retention of data by service providers for the purpose of the investigation, detection and prosecution of serious crimes, requires each member State to designate one or more independent authorities to be responsible for monitoring the application within its territory of the national implementing provisions regarding the security of the stored data[28].

Secondly, EU objectives in the field of security may be pursued through the stable

[28] Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ 2006 L 105.

and formalized co-operation among the national competent administrations, without any form of co-ordination by the Commission or other European bodies. This hypothesis represents a specific development of the scheme of indirect execution, as EU regulation makes the competent national administrations subject to specific requirements of mutual assistance, while at the same time avoiding a European co-ordination. An example is provided by the Council Framework Decision 2006/960, which, on the one hand, qualifies the effective and expeditious exchange of information and intelligence between the law enforcement authorities of the various member States as a EU objective, functional to the more general EU target of a high level of security for EU citizens, on the other hand, it establishes a set of detailed rules of co-operation among the member States' law enforcement authorities through which such objective may be achieved[29].

The third organizational arrangement for the administrative execution of European security law is represented by the establishment of transnational «European common systems»[30]. The main examples are the system for police information co-ordinated by Europol[31], the system for transnational investigations and prosecutions co-ordinated by Eurojust[32] and the system for training of senior officers of police forces co-ordinated by the European Police College (Cepol)[33]. In all these cases, the EU discipline expressly confers the administrative tasks necessary to carry out the relevant European function among a plurality of national, mixed and European administrations, with the exclusion of the Commission. All such offices are thus jointly responsible for the achievement of specific European objectives and the function is distributed on various levels. For example, the tasks necessary to carry out the function of police information are conferred, at the European level, to Europol, the collegiate body composed of the Heads of Europol National Units, the Liaison Officers and the Joint Supervisory Board, at the

[29] Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the member States of the European Union, OJ 2006 L 386.

[30] On the notion of «European common system», S. Cassese, *European Administrative Proceedings*, in F. Bignami e S. Cassese (eds.), *Law and Contemporary Problems*, vol. 68, 2004, n. 1, *The Administrative Law of the European Union*, p. 21 ff.

[31] Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (so called Europol Convention), in OJ 1995 C 316.

[32] Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ 2002 L 63, as amended by Decision 2003/659/JH, OJ 2003 L 245.

[33] Council Decision 2000/820/JHA, OJ 2000 L 336, amended by Decision 2004/567/JHA, OJ 2004 L 251 and repealed by Council Decision 2005/681/JHA of 20 September 2005 establishing the European Police College (CEPOL) and repealing Decision 2000/820/J, OJ 2005 L 256.

national level, to the National Units, the national competent authorities and the National Supervisory Bodies. A second common feature is the provision of several instruments of administrative interconnection among the various competent bodies. Such instruments may have organizational or procedural character and differ from case to case. In all hypotheses, however, the instruments of administrative interconnection envisaged by the EU discipline determine the integration of the various competent offices in a functionally and structurally unitary administration. For example, in the case of the system coordinated by Cepol, the effect of the administrative integration is achieved both by making subject the national police training institutes in the member States to a general obligation of co-operation with Cepol and by the setting up in each State a «Cepol national contact point»: this contact point may be organised as the State sees fit, but should preferably be composed of the Member State's delegation at the Cepol Governing Board; and its function consists in ensuring effective co-operation between Cepol and the national training institutes. The third and last common element is the conferral of the role of co-ordinator of the overall European common system to a EU office endowed with legal personality and designed as a mechanism of administrative co-operation. In particular, such office constitutes a mechanism of «bottom-up» co-operation, that is to say a mechanism of association of the national bodies, where co-operation, though encouraged and structured, maintains an essentially voluntary basis. Moreover, the administrative co-operation involves national administrations only, assigning an absolutely marginal position to the Commission. For example, the internal organization of Europol gives «voice» to the national security administrations distinguishing between the bodies at the top of the national administrative systems, which are «represented» in the Management Board and in the Financial Committee, and the police forces, «represented» in the expert committees set up with reference to specific technical issues. The Director, the Deputy Directors and the employees of Europol, instead, are called to be guided in their actions by the objectives and tasks of Europol and not take or seek orders from any government, authority, organization or person outside Europol. Such position of independence, however, is not sufficient to identify a supranational element within Europol and may be better reconstructed in negative terms, as an ab-national element, as the Director and the Deputy Directors are appointed and may be dismissed by a decision of the Council and

the Director is in charge of the staff. As for the Commission, the Convention simply provides that it is invited to attend meetings of the Management Board with non-voting status, clarifying that the Management Board may decide to meet without the Commission representative[34].

Fourthly, EU regulation may provide that the administrative execution of European security law is carried out by a European common system characterized by the combination of the transnational and the supranational component. The main differences with the common systems co-ordinated by Europol, Eurojust and Cepol are the following: the Commission participates with relevant tasks to the common system; and the co-ordination body is not a complex transnational organization provided with legal personality, but a simple collegiate office made up of «representatives» both of the national authorities and of the Commission. In this type of composite administration, therefore, the transnational component, though maintaining a preminent role, is corrected with the supranational element, expressed by the involvement of an organization – the Commission - whose members are required to carry out their tasks in full independence from the governments of the Member States and to pursue the general interest of the Community. An example is provided by the system responsible of the implementation of the European Programme for Critical Infrastructure Protection proposed by the Commission in the late 2006, aimed at protecting critical infrastructure from terrorism and other threats: such system consists, at the national level, of one CIP Contact Point for each member State, called to co-ordinate all relevant issues within the member State and with other member States, the Council and the Commission; at the EU level, of a CIP Contact Group established at the EU level, bringing together the CIP Contact Points from each Member State and chaired by the Commission, called to serve as a strategic co-ordination and co-operation platform, of CIP Expert Groups set up by the Commission where specific expertise is needed, of the Commission itself[35].

The fifth organizational arrangement represents a development of the previous one. Even in this case, EU regulation establishes a European common system in which the transnational element is corrected with the supranational component, as the Commission

[34] An analogous discipline is laid down with reference to Cepol, while the role of the Commission seems to be more promising in the decision establishing Eurojust and in its rules of procedure, where it is established that the Commission shall be fully associated with the work of Eurojust, in accordance with Article 36(2) of the Treaty (art. 11 of the establishing decision and art. 21 of the rules of procedure, OJ 2002 C 286.

[35] COM (2006) 786 final.

participates with relevant tasks to the common system and to the EU body responsible for overall co-ordination of the system. The co-ordination body, however, is not a simple collegiate office, but a EU office provided with legal personality and based on a complex internal organization. More precisely, the EU body acting as the co-ordinator is in this case a Community office, established under the first pillar, and presents two main features: it is auxiliary to the Commission, which is entrusted by the establishing regulations some power over the European body, albeit in varying degrees; and its internal organization is structured around various collegiate bodies composed in such a way to establish and manage a plurality of relationships involving the Commission and the national administrations. In functional terms, such design, to which one could shortly refer as the typical design of a «European agency»[36], responds to the double exigency of technical decentralisation and administrative integration: on the one hand, it is intended to ensure the performance of an activity which, for political or technical reasons, cannot be directly carried out by the Community central administration (the Commission); on the other hand, it aims at ordering the interactions among the various components of the overall common system, by allowing and structuring such interactions within the context of a Community body. An example of such construct is that of the European Monitoring Centre for Drugs and Drug Addiction, established in 1993 and responsible for the management and the co-ordination of the Reitox network[37]. Another example is that of a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex), which co-ordinates the operational co-operation between the national administrations in the process of implementation of the EU rules on standards and procedures for the control of external borders, aimed at ensuring a uniform and high level of control and surveillance[38].

Lastly, in order to implement European security law, the EU may rely upon a European common system co-ordinated by the Commission itself. In this case, the

[36] On the reconstruction of such model, E. Chiti, *Le agenzie europee. Unità e decentramento nelle amministrazioni comunitarie*, Padova, Cedam, 2002; for a shorter account of the matter and the discussion on some further implications, Id., *Decentralisation and Integration into the Community Administrations: A New Perspective on European Agencies*, in *European Law Journal*, 2004, p. 403 ff.

[37] Council Regulation 302/93 of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction, OJ 1993 L 36.

[38] Council Regulation 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ 2004 L 349.

system maintains its transnational element, in so far as it is based on the participation of national administrations, but the supranational institution is placed in a position of functional preminence over the other components of the system. Among the various examples, one could mention the so called Schengen Borders Code, providing for the absence of border control of persons crossing the internal borders between the EU member States and establishing rules governing border control of persons crossing the EU external borders[39]: in this hypothesis, the main executive tasks are conferred to the national administrations, co-operating among themselves; but the national administrations operate in strict contact with the Commission, to which they notify a great number of information and which participates directly to the implementation process. A second example is that of the Community Mechanism for Civil Protection: national administrations may carry out civil protection assistance interventions in the territory of a member State affected by a major emergency and requesting for assistance; and the Commission operates as the co-ordinator of the system, through the Monitoring and Information Centre set up within the DG Environment and responsible for receiving assistance requests and matching offers of assistance put forward by participating States to the needs of the disaster-stricken country[40].

3.3. What has been said so far illustrates the great complexity of the organization through which the administrative execution of European security law takes place. Moreover, it should be recognized that the six identified organizational arrangements, though representing the schemes provided with a higher degree of consolidation, do not exhaust the variety of mechanisms envisaged by EU regulation, which may be based on even more nuanced combinations of transnationalism and supranationalism.

The reconstructed framework is further complicated by the influence of global regulation. Actually, the EU security administration is not only a matter of relationships between national and European bodies, as the EU operates within the wider context of the «global legal space»[41] and its sectorial organization establishes a number of connections with the global regulatory systems active in the field of security. The

[39] Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ 2006 L 105.

[40] See Council Decision n. 792 of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions, OJ 2001 L 297; see also the Commission proposal for a recast of Council Decision n. 792/2001, COM (2006) 29.

position of the EU organization *vis-à-vis* the relevant global regulatory systems depends on the relation between the EU and the global regulation. In this regard, it is possible to identify two different hypotheses: the case in which the EU and the global regulation are on an equal foot; and the case in which the global regulation prevails over the EU regulation. In the first hypothesis, the relationship between the EU administration and a global system has a «horizontal» character and aims at a more effective exercise of the tasks conferred to each of the administrations proceeding to their interconnection. For example, article 42/4 of the Europol convention provides that, insofar as is required for the performance of its tasks, Europol may establish and maintain relations with international organizations and other international public law bodies[42]; and Council Common Position 2005/69 provides that the competent law enforcement authorities of the member States shall exchange all passport data with Interpol for the purpose of protecting the Union against threats posed by international and organised crime[43]. In the second hypothesis, the EU organization is called to implement the regulation of the relevant global regulatory system and the EU implementing regulation, and it may establish a relationship with the bodies of the global regulatory system. An example is provided by the measures imposing financial restrictions on individuals adopted in the late 1990s by the Security Council of the United Nations[44]. The Member States of the United Nations were required to give effect, directly or through regional organizations, to the sanctions envisaged by the Security Council. At the European level, the implementation of the Security Council resolutions implied the adoption of a number of EU Council common positions and regulations imposing specific restrictive measures on the persons and entities designated in a list. Such list was prepared, depending on the Security Council resolution at stake, either by the Commission on the basis of determinations made by the Security Council and the Sanctions Committee or by the EU Council on the basis of its own determinations, while the national administrations were in charge of the execution of the restrictive measures. In this hypothesis, therefore, the multi-level EU administration operated in function of UN objectives defined by the

[41] On this notion, S. Cassese, *Lo spazio giuridico globale*, in *Rivista trimestrale di diritto pubblico*, 2002, p. 323 ff., also published in S. Cassese, *Lo spazio giuridico globale*, Bari-Roma, Laterza, 2003, p. 3.

[42] The list includes the International Criminal Police Organization (ICPO), the International Money Laundering Information Network (IMoLIN), the International Narcotics Control Board (INCB) and International Organization for Migration (IOM).

[43] Council Common Position 2005/69/JHA of 24 January 2005 on exchanging certain data with Interpol, OJ 2005 L 27.

[44] See resolution 1333 of 19 October 2000, § 8 (c), and resolution 1373 of 28 September 2001.

UN regulation and by the implementing EU regulation. This situation, which in itself simply reflects the growing interconnections among the various actors of the global legal space, may give rise to some uneasy problems, concerning the precise definition of the administrative implications of the prevalence of UN regulation over EU law, such as the foundation and the extent of the duty of European and national administrations to leave aside EU provisions in case of their conflict with UN regulation[45].

3.4. All in all, the execution of European security law involves a highly complex organization, based on an articulated «game of forces» between national and European bodies and establishing a number of connections with the relevant global regulatory systems.

Such organization presents a number of similarities with other EU organizations by sector. As it happens in most sectors falling within the scope of the EU competence, ranging from economic regulation (for example, electronic communications) to social regulation (for example, environmental and consumer protection) and social policy (for example, social protection), the administrative implementation of the existing EU regulation is mainly a joint effort of member States' administrations and EU bodies. In this sense, the exam of the security sector confirms the general tendency towards the emergence and consolidation of regulatory schemes of joint execution of EU law and policies, as well as towards the parallel erosion of the recourse to purely indirect and purely direct execution[46]. Moreover, the quantitatively prevalent organizational arrangement is the establishment of European common systems, which institutionalize and structure the interactions among a plurality of national, EU and mixed bodies within a European composite administration co-ordinated by a EU body. Thirdly, EU regulation influences either directly or indirectly the organizational features of member

[45] For a radical formulation of such duty, see the well known and much debated jurisprudence of the Court of First Instance, 21 September 2005, case T-306/01, *Ahmed Ali Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*; and 21 September 2005, Case T-315/01, *Kadi v Council of the European Union and Commission of the European Communities*. See also the developments of such jurisprudence: Court of First Instance, 12 July 2006, Case T-253/02, *Chafiq Ayadi v Council of the European Union*; 12 July 2006, Case T-49/04, *Faraj Hassan v Council of the European Union and Commission of the European Communities*; and 12 December 2006, Case T-228/02, *Organisation des Modjahedines du peuple d'Iran v. Council of the European Union*; 11 July 2007, Case T−47/03, *Jose Maria Sison v. Council of the European Union*; 11 July 2007, Case T-327/03, *Stichting Al-Aqsa v. Council of the European Union*.

[46] On this tendency, in general terms, E. Chiti and C. Franchini, *L'integrazione amministrativa europea*, Bologna, Il Mulino, 2003, *passim*.

States' administrations.

At the same time, however, the EU security organization is characterized by a peculiar design. The main difference with the other EU organizations by sector may be illustrated as follows. The «administrative integration» in the sectors of the Community pillar has in most cases a top-down character: although the organizations responsible of those sectors normally involves national and multinational administrations, the implementation process is regulated in detail by Community law; the Commission participates to the administrative execution of the relevant EU law with relevant powers; in case a European agency is established, such agency is a decentralised Community body, in which the Commission itself is represented. The administrative integration in the sectors exclusively falling within an intergovernmental pillar, such as, for example, the sector of EU defence and external security, has a bottom-up character: it may develop outside of any EU framework, such as in the case of the European Gendarmerie Force; only the general aspects of the implementation process are regulated by EU law; the co-operation among the various national administrations is encouraged and at least to a certain extent structured, but it maintains an essentially voluntary basis and escapes any co-ordination by the Commission; in so far as EU multinational bodies of associative nature are established, they are provided essentially with co-ordination tasks; the EU organization is particularly subject to the influence of global administrative law. The EU security organization combines elements of both models, being based in part on bottom-up in part on top-down organizational arrangements. The result, however, is not a multi-facet organization, where several different models are simply juxtaposed. Rather, the bottom-up and the top-down organizational arrangements present themselves in a nuanced way, where transnationalism and supranationalism are pragmatically balanced and the organizational solutions identified by the EU regulation tend to converge around mechanisms of strengthened transnational co-operation under light EU co-ordination.

The reasons of such design, combining the two main models of European administrative integration, are clear. Security is one of the EU's most diverse policy areas[47], bringing together matters that belong both to the Community and the third pillar and reflecting different degrees of political and legal integration. In any case, the

[47] In this sense, for example, COM (2006) 332, § 8.

difference between the EU security organization and the other EU organizations by sector should not be over-evaluated. Beyond the obvious peculiarities of each sectorial administrations, a number of elements that are common to most EU administrations, as it has been noticed, may be identified. In this sense, the European Union may be certainly seen as a composite and differentiated legal order with reference to the rule-making procedures and the involved political institutions. But it shows a tendency to a certain degree of unity at the level of the administrative organization responsible for the execution of EU laws and policies.

Finally, in the perspective of «vertical» comparison, it should be highlighted that the emerging administrative organization for European security presents many differences with the member States' experience. In national legal orders, the administration for internal security and public order has a complex but hierarchically ordered organization. It is a single mission administration, responsible only for security and public order. It is provided with powers that may imply the use of coercion. It plays a central role in the legal order, not only by reason of the originary link between internal security and the foundation of the modern State, but also because of the preminence of the security administration. In the EU legal order, instead, the security function is distributed to a plurality of administrations operating without a unitary vertex. The polycentric organization corresponds to a composite mission, in which the objective of the European security is articulated in a number of specific aspects belonging to various sectors. It is provided of powers implying the use of coercive force only at the level of the national administrations, while the EU bodies are usually conferred powers of co-ordination only. It still plays a limited role in the EU legal order, given the late inclusion of the security issue within the competences of the European Union and the only embryonic stage of development of such sector of EU action.

4. Powers

4.1. The different kinds of powers provided for by the European security law reflects the variety of organizational arrangements, described in the previous pages. A main distinction can, however, be suggested: broadly speaking, national administrations

are entrusted final powers, while European administrations, in the different combinations of supranational and multinational elements, are entrusted instrumental powers.

In fact, only in very exceptional cases European administrations exercise the typical powers, connected with public safety and affecting the rights of individuals. The reason lies obviously in the delicate nature of this matter and on member States' jealousy of powers which are traditionally considered sovereign prerogatives. Therefore, European administrations' powers consist mainly of gathering and processing information, assisting domestic authorities, coordinating and promoting connection among them, training their personnel, producing and publishing studies. These functions are instrumental to those carried out by domestic administrations and affecting the citizens' rights, such as investigations, inspections and arrests. Examples of similar instrumental powers are provided by the Europol, which has essentially coordination and information processing functions; by the Schengen Information System, which has similar functions; by the Frontex Agency, which performs study, assistance, support and training tasks; by the European Monitoring Centre for Drugs and Drug Addiction, which performs data gathering, analysis and publication tasks[48]; and by the national football information points, which gather and exchange police information exchange in connection with football matches with an international dimension[49].

These are obviously not the kind of tasks over which the theory of public security law was developed in national laws, nor particularly sensible ones in terms of relations between public authority and individual liberty. Not casually, many legal texts deal with only one problem of individual protection, that of personal data treatment: as European administrations mainly treat information, the only threat to the individuals' rights, which may come from them, is the danger of a harmful treatment of information. Final tasks, on the contrary, are conferred to national administrations, which are competent for police operations, investigations, visa issuing, refugee qualification.

In spite of the instrumental nature of powers, however, one should not underestimate their importance. The very existence of European administrations shows that, in such a sensitive area, European law goes beyond the scheme of indirect

[48] Council Regulation (EEC) No 302/93 of 8 February 1993 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction.

[49] Council Decision of 25 April 2002, concerning security in connection with football matches with an international dimension.

administrative execution. And the establishment of multinational and supranational administrations, with the task of coordination of domestic administrations, shows that the security policy's scope has broadened, as an effect of factors like global dangers: the coordination tasks, that European administrations are vested with, are in present times an important part of the crime prevention job. There are not new administrations which join the old ones in carrying out their functions, but new functions which impose the establishment of European administrations.

Moreover, the described distribution of powers has exceptions, as European administrations have final powers, like investigation ones. The Europol, in particular, can take part to the investigations carried out by national authorities, evaluate information and intelligence and transmit it to them. The constitutional Treaty would have provided for "operational actions" carried out by Europol in liaison and in agreement with the authorities of the Member State or States whose territory would have been concerned (art. III-276, par. 3). New powers, which can affect individuals' rights to a great extent, are conferred by global law, as in the case of financial restrictions on terrorism suspects. There are also cases of joint execution of administrative powers: an example is provided by the case of protection of critical infrastructures, where the Commission has proposed a complex distribution of tasks between the Commission, the States and the other interested parties, often requiring joint decisions.

Furthermore, although final powers are conferred to national administrations, their exercise is often regulated, at times intensively, by European law. This happens, in particular, in the areas falling into the Community pillar, for powers of different kinds: permissions as well as penalties (as in the case or visa and residence permit issuing and revocation), individual decisions as well as planning (as with protection of critical infrastructures). Overall, there is a European regulation of national administrative powers: European law confers powers to new national administrations (as the supervisory bodies in the Europol system); encourages, promotes or commands the exercise of powers already belonging to them (for example, the investigating powers[50] or the expulsion or refusal of entry of third country nationals[51]), forbids such exercise

[50] See, for example, art. 3 and 10 of the Europol Convention.

[51] See, for example, art. 13 of Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

(police powers having an effect equivalent to border checks are prohibited[52]) or limits it (listing the cases in which national authorities may reduce or withdraw reception conditions for asylum seekers[53]); determine the object of certain kinds of act (the issuing of a visa[54]), the steps of a procedure (border checks) or substantive standards (for the applications for asylum). Even material action, not giving rise to legal acts or procedure, is subject to European regulation (as in the case of border surveillance).

4.2. What has been said so far explains the difference between the regulatory approach of the first and the third pillar: the regulation of administrative powers is quite more detailed in the former than in the latter. Third pillar legal texts often establish only generic purposes for member States to achieve (an example is given by the Council's framework decision on combating fraud and counterfeiting of non-cash means of payment[55]); European law consists mainly of coordination of powers, which remain subject to national discipline. In the Community pillar, on the contrary, there is a strong harmonization of the exercise of domestic administrations' powers. The highest degree of harmonization can probably be found in the Schengen Borders Code, which regulates in details items like street signs and travel documents stamping.

In the Community pillar, conferral of powers respects carefully the rule of law. The Treaty provisions themselves are quite detailed: Title IV provisions, unlike other provisions of the EC Treaty, lists the single objects of European istitutions' regulatory powers[56]. But this depends more on the need to define their competences and the member States' ones, than on individual protection concerns. What has been observed in describing the regulatory framework, thus, is confirmed: in the European security, the rule of law has a different role than in the national security; it is an instrument of protection of States' authority, rather than of individuals' liberty.

This does not mean that the regulation of administrative powers is not concerned with the protection of citizens' rights. On the opposite, many substantial and procedural provisions reveal this concern: for instance, legal acts frequently refer to the respect of

[52] Art. 21, Schengen Borders Code.
[53] Art. 16, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.
[54] See, for example, Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas.
[55] Council Framework Decision 2001/413/JHA, of 28 May 2001.
[56] See A. Lang, *Giustizia e affari interni*, p. 1178.

human dignity (as in the regulation of borders checks); the procedural regulation often incorporates the common principles of European administrative law (interested parties' participation and due process, statement of reasons, communication of administrative acts[57]); European law requires that certain decisions are adopted by domestic administrations "individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned […] taking into account the principle of proportionality"[58]; at times, particular principles, concerning single sectors, are established, such as the principle of the best interest of the child[59]. The provisions concerning administrative instruments of individual protection will be examined and assessed in the next section.

4.3. As already observed, most of final powers are conferred to national administrations. But, of course, this does not mean that the effects of administrative acts are restricted to the territory of the corresponding member States. It does not even mean that each national administration may operate only on the territory of the corresponding State. In fact, extra-territoriality is a relevant feature of European security law.

Firstly, several acts, performed by administrative and judicial authorities of one member State, produce effects on the territory of the whole European Union. This is obviously the case with the control of the external borders, and also with other kinds of act: the European arrest warrant, which can be enforced in other States; visas and residence permits, which grant the right to reside in the territory of Member States other than the one which issued them[60]; expulsions of third country nationals, for which the mutual recognition principle operates[61]; stadium bans for violent individuals, which may be extended to cover football matches held in other Member States[62].

---

[57] See, for example, art. 7 and 10, Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. On the common procedural principles of European administrative law, S. Battini – B.G. Mattarella – A. Sandulli, *Il procedimento*, in G. Napolitano (ed.), *Diritto amministrativo comparato*, Milano, Giuffrè, 2007, p. 107.

[58] Art. 16.4, Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

[59] Art. 18, Council Directive 2003/9/EC.

[60] See, for example, art. 14.1, Council Directive 2003/109/EC.

[61] Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals.

[62] Council resolution of 17 November 2003, on the use by Member States of bans on access to venues of football matches with an international dimension.

Secondly, in certain cases and under certain conditions, police officers of one member State can act on the territory of another member State: in this case, border crossing is real and not just virtual. This may depend on the existence of joint investigation teams[63] or Rapid Border Intervention Teams. More generally, it may depend on rules enacted by the Council according to article 32 of EC Treaty. Much further, on this path, has gone the Prüm Convention, concluded by seven member States, which – as already reported – will be integrated into the Union's legal framework and is likely to be joined by other member States. It establishes that contracting states may second their officers to other States, as documents advisers, to advise and train their own representations abroad as well as host country's border control authorities and institutions; provides for officers from one State to carry arms and ammunitions on flights to or from another State; allows State officers to cross the border with another State and take provisional measures, without its prior consent; settles that officers from one state, who are involved in a joint operation within another State's territory, may wear their own national uniforms there, as well as carry arms, ammunitions and equipment; admits that a member State may "confer sovereign powers on other Contracting Parties' officers involved in joint operations or, in so far as the host State's law permits, allow other Contracting Parties' officers to exercise their sovereign powers in accordance with the seconding State's law"[64].

4.4. Many circumstances, in the legal regulation of security powers, can induce to believe that integration between European and domestic laws and administrations is limited. First of all, provisions as art. 64 of EC Treaty and art. 33 of EU Treaty, which preserve the «responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security». Secondly, similar cautionary provisions which may be found in secondary law: for example, the Frontex regulation provision, according to which "Exercise of executive powers by the Agency's staff and the Member States' experts acting on the territory of another Member State shall be subject to the national law of that Member State"[65]. Thirdly,

[63] Council Framework Decision of 13 June 2002 on joint investigation teams.

[64] Convention on the stepping up of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, artt. 18 ss.

[65] Art. 10, Council Regulation (EC) N. 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.

national administrations hold most of their powers, although the exercise of these powers is regulated by European law. Fourthly, the functioning of common administrations: in Europol data banks, for instance, each national administration contributes with the available information, but in some sense remains the "owner" of it, as changes and removals of the information that it provided are normally reserved to it. Finally, as already noticed, in other sectors, such as competition, the European Commission can use coercion towards citizens, deciding and carrying out inspections; in the security sector, where the use of force is normal, it cannot.

Nevertheless, neither "vertical" nor "horizontal" integration should be underestimated. As for the former, national security administrative tasks increasingly require European authorities' support. As for the latter, bilateral relations among national administrations are ever more frequent: an example is provided by the communications envisaged by the Schengen Information System and described in details by the Sirene Manual[66].

Furthermore, legislative harmonization, administrative and judicial cooperation strengthen each other, as shown by the provision that the Eurojust should make agreements with Europol and with other European authorities entitled security tasks[67], as well as by the proposal to allow these institutions access to the Schengen Information System. Integration in the security area, in addition, facilitates integration in other areas: in general terms, as it creates the conditions of a better functioning of free movements; and also for single policies, such as those which imply private businesses' funding (by preventing frauds) or export of cultural goods (by providing for the Return of cultural objects unlawfully removed from the territory of a Member State).

4.5. What about the comparison between European security and national security? As to the functions, there are some differences. European security policy focuses on prevention rather than on repression: borders and immigration control, data bank setting, study and training are obviously components of a prevention strategy. This policy does not disregard repression – as shown by the European arrest warrant – but national policies have a comparatively greater role in it.

[66] In Official Journal C 038, of 17 February 2003. Sirene stands for Supplementary Information Request at the National Entries.

[67] Art. 26, Council Decision 2002/187/JHA of 28 February 2002, setting up Eurojust with a view to reinforcing the fight against serious crime.

Owing to this feature, to the sensitiveness of the matter, and to the States' jealousy of sovereign powers, European security is less strictly connected with coercion, than national security policies: the latter provide rules for the use of coercion and include their execution; the former provides the rules, but leaves the execution to national authorities[68]. The use of force and the correspondent citizens' guarantees are regulated by national law. However, one should not overestimate the fact that European administrations cannot use coercion towards citizens. It should be considered that, even at the national level, the use of force is reserved not to all public bodies, but only to some of them[69]. Most public bodies, when they need coercion to be used against individuals, have to ask police authorities, not differently from what European administrations have to do. It is true, however, that the lack of direct coercion power, for European administrations, makes the security policy weaker than other European policies, such as the competition policy (which can be carried out through inspection decided and carried out by the European Commission).

Another difference, resulting from the ones described so far, is the following: while in national security law, administrative powers' objects are both persons and places or situations, in European law ones' the objects are mainly persons. National laws do not only worry about dangerous persons, but also about dangerous situations (such as dangerous businesses or areas), and the control of territory is an important component of national security policy. European security law, on the opposite, focuses almost exclusively on persons: the Europol information system, for instance, is fashioned around suspected and convicted persons. The control of territory is left to national authorities, with the important exception of external borders: this is very much regulated by European law, but – once again – as a place for checks over persons.

One last difference, connected with the previous: in European law administrative powers are always conferred by the law with precise provisions, without those open and indefinite clauses which are provided by national laws in order to allow national administrations to face emergency situations. Special provisions for emergency

[68] Stressing the lack of coercive power by European administrations, and Europol in particolar, L.M. Diez Picazo, *Hacia una teorìa de la coacciòn en el Derecho de la Uniòn Europea*, in L. Ortega Álvarez (ed.), *La Seguridad integral europea*, p. 119; C. Denizeau, *L'idée de puissance publique à l'épreuve de l'Union Européenne*, p. 479 ff.

[69] On the relations between European administrative law and the use of coercion, B.G. Mattarella, *Il rapporto autorità-libertà e il diritto amministrativo europeo*, in *Rivista trimestrale di diritto pubblico*, 2006, p. 921 f.

situations can be found in European law as well, but they define precisely the object of powers (such as crossing the border with another state and take provisional measures[70]) or, at least, the events that justify extraordinary measures (as in the case of a sudden inflow of nationals of third countries[71]).

In spite of these differences, European and domestic regulations of security powers have important common features: they aim at the same purposes and incorporate the same principles (such as those, already mentioned, concerning the administrative procedures). And, in spite of appearances, they show a remarkable degree of integration.

5. Instruments of Individual Protection

5.1. In the previous pages, the features of the EU security regulation, as well as the organization and the powers of the EU administration responsible for its implementation, have been reconstructed. It is now necessary to verify whether the development of such field of EU administrative law is paralleled by the provision of mechanisms of individual protection, aimed at guaranteeing the position of individuals *vis-à-vis* the emergent EU security administration. In the tradition of the European liberal and democratic States, expressly reaffirmed by the European Union, the exercise of administrative powers comes along with guarantees. Are such guarantees actually part of the EU security administrative law? If so, how are they constructed? And do they differ from the instruments of protection envisaged in other fields of EU administrative action and from the experience of statal administrative law?

An articulated answer to these questions requires to consider both the administrative and judicial instruments of individual protection, distinguishing for both types of instruments between protection against the EU and the national components of the «plural» organization responsible for the execution of European security law[72].

[70] As in the Prüm Convention.
[71] Art. 64, §2, Community Treaty.
[72] *Supra*, § 3.

5.2. As for the means of administrative individual protection, the national guarantees and mechanisms of protection apply with respect to the action of the national components of EU security administration. Admittedly, such instruments are not fully developed. By reason of the peculiar features of the administrative action, which has an essentially executive and material character, there is only limited room for procedural defensive mechanisms[73] and the rule of law institutes tend to be traditionally circumscribed to judicial review. It is interesting to highlight that EU regulation itself is a source of enrichment of the domestic guarantees and instruments of protection. In some cases, in fact, EU law requires member States to establish specific forms of control over the administrative activity carried out by national bodies in the exercise of a EU function. For example, under the Europol convention, each Member State has to designate a national supervisory body provided with the task of monitoring independently the permissibility of any communication to Europol of personal data by the Member State concerned and to examine whether this violates the rights of the data subject; and each individual is granted the right to request the national supervisory body to ensure that the entry or communication of data concerning him to Europol in any form and the consultation of the data by the Member State concerned are lawful[74].

The administrative instruments of protection have a limited development also with respect to the European components of the EU security administration. The exercise of their administrative powers is subject to the institutes having a general application, such as the procedural guarantees falling within the scope of the principle of good administration. The general institutes, however, are not always reaffirmed and developed in the EU regulations by sector. The latter are often reluctant to envisage administrative instruments of individual protection *vis-à-vis* the competent EU bodies: this is the case, for example, of the regulation establishing the European Monitoring Centre for Drugs and Drug Addiction and the European Agency for the Management of Operational Cooperation at the EU External Borders. The rationale of such choice, reflecting the little degree of proceduralization of the administrative action, may be found in the circumstance that the activity carried out by the EU body is in most cases essentially instrumental to the activity carried out by the national administrations, to

[73] With reference to the Italian legal order, G. Caia, *L'ordine e la sicurezza pubblica*, in *Trattato di diritto amministrativo*, directed by S. Cassese, Milano, Giuffrè, II ed., 2003, *Diritto amministrativo speciale*, I, p. 281 ff., p. 298.
[74] Europol Convention, cit., Article 23.

which the exercise of authoritative powers is reserved. There are, however, some significant exceptions to the tendency to minimize individual protection in the exercise of administrative functions by EU offices. Among the main exceptions, one can refer to the setting up of the independent joint supervisory bodies with the task of reviewing the activities of Europol and Eurojust in order to ensure that individuals' rights are not violated by the storage, processing and utilization of the data held by those organizations[75].

5.3. As for judicial instruments of protection, the possibility of individuals to bring an action against the EU bodies responsible for the execution of European security law is subject to some limitations.

Firstly, individuals have a limited right to act directly before the ECJ. Under the Community pillar, any natural or legal person may bring an action «against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former»[76]. Yet, it is well known that the condition of «direct and individual concern» has been restrictively interpreted by the ECJ, on the basis, among the other things, of the possibility for individuals to receive adequate protection before the national courts in litigation where a national implementing measure is at stake. Under the third pillar, the conduct of EU bodies cannot be challenged before the ECJ by a natural or legal person. In fact, the ECJ is granted only the jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission, on the assumption that such measures may have only a normative character and cannot directly affect an individual position[77].

Secondly, individual judicial protection is limited also in the cases of indirect review of EU measures, that is to say in the hypothesis of actions brought before a national court and raising the issue of the validity of a EU measure. The conduct of EU bodies established under the first pillar may be indirectly reviewed by the ECJ by means of a preliminary ruling. Article 68/1 of the EC Treaty, however, specifies that article 234 applies to title IV of the Treaty only where a question on the validity of acts of the

[75] Europol Convention, cit., Article 24; Eurojust Decision, cit., Article 23.
[76] Article 230/4 EC Treaty.
[77] Article 35/6 EU Treaty.

institutions of the Community based on this title is raised in a case pending before a national court against whose decisions there is no judicial remedy under national law and such court considers that a decision on the question is necessary to enable it to give judgment. Moreover, the ECJ has no jurisdiction to rule on measures or decisions taken by the Council pursuant to Article 62/1 relating to the maintenance of law and order and the safeguarding of internal security[78]. As for the conduct of bodies established under the third pillar, the ECJ has jurisdiction to give preliminary rulings on the validity of framework decisions, decisions and measures implementing them. But such jurisdiction is subject to a formal acceptance from any member State, which has also to decide whether any court or only those courts against whose decisions there is no judicial remedy may request the ECJ of a preliminary ruling[79].

Individual protection is limited also in so far as judicial review of the administrative measures adopted by the national components of the EU security administration is concerned.

Firstly, individuals cannot bring an action directly before the EU courts challenging the compatibility with EU law of the action of the national relevant administrations. Such review is envisaged both by the EU and the EC Treaty. What is at stake in the various hypotheses provided by the two treaties, however, is an inter-institutional litigation, involving the member States, the Commission and the Council. Under the EC Treaty, the review of the Community legitimacy of domestic measures takes place only through the action that the Commission or a member State may bring against another member State for an alleged infringement of a Community obligation[80]. Within the third pillar, the ECJ has jurisdiction to rule on any dispute between member States regarding the interpretation or the application of acts adopted under Article 34/2 whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The ECJ has also jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions[81]. Moreover, the EU Treaty excludes that the ECJ may review the validity or proportionality of operations carried out by the police or other law

[78] Article 68/2 EC Treaty.
[79] Article 35/1-3 EU Treaty. The so called opt-in declaration has been so far expressed by 14 member States.
[80] Article 226 and ff. EC Treaty.
[81] Article 35/7 EU Treaty.

enforcement services of a member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security[82].

Secondly, individuals may proceed before a domestic court against the measures adopted by the national components of the EU security administration. This judicial path, which follows the conditions laid down by national law, is the normal mechanism for challenging national administrative measures taken in the execution of EU tasks. It should be highlighted, however, that the ECJ has a limited possibility to intervene in the proceedings to give its interpretation of the relevant EU law provisions: the above mentioned conditions on the preliminary references concerning the validity of certain acts of EU and EC law, laid down, respectively, by Article 68/1 of the EC Treaty and by Article 35/1-3 of the EU Treaty, apply also to preliminary references on the interpretation of title IV of the EC Treaty and title VI of the EC Treaty.

5.4. The instruments of individual protection against the EU security administration, therefore, give place to an articulated framework, combining administrative and judicial mechanisms and mainly relying upon the instruments provided by national law.

Such framework responds to a composite rationale. It expresses the choice not to conflate individual protection in judicial review, anticipating defence in the phase of exercise of the administrative powers. It is based on the assumption that the European components of the EU security administration carry out in most cases a co-ordination and organizational activity, instrumental to that of the national public powers, to which the exercise of authoritative powers is reserved. It aims at not over-burdening the ECJ, while exploiting the capacities of the national judicial systems. It constitutes a politically acceptable solution for the national governments.

In a functional perspective, these elements may be seen as points of strength of the described set of instruments of individual protection. At the same time, however, the ambiguities of the latter should be highlighted. Firstly, the basic assumption of the overall framework of instruments of individual protection against the EU security administration is less certain than one might think. On the one side, it is true that the European components of the EU security administration carry out in most cases an

[82] Article 35/5 EU Treaty.

activity instrumental to the authoritative action of the national public powers, so that administrative and judicial instruments of individual protection are to be guaranteed essentially at the domestic level, *vis-à-vis* the national components of the EU security administration. On the other side, the distinction between instrumental and final activity is not always clear. An example is provided by the factual background of the C-503/03 judgment of the ECJ[83]. In that case, the Spanish authorities had refused entry into the Schengen Area to two Algerian nationals who are the spouses of Spanish nationals on the sole ground that they were the subject of an alert entered in the SIS, that is the Information System through which the authorities of the contracting parties of the Schengen Agreement exchange data concerning persons and properties for the purposes of border checks and other police and customs checks. Thus, the individual decision was certainly taken by the domestic authorities. At the same time, however, such decision was not based on any autonomous assessment by the national administrations that the presence of the two Algerian nationals represented a genuine and serious threat, but it merely incorporated a datum elaborated by the SIS. This example shows that an instrumental activity may at times take a final character or be so strictly inter-twined with a final activity to require to be counter-balanced by adequate mechanisms of individual protection. In this perspective, the choice of establishing defensive mechanisms mainly at the domestic level, limiting the possibility of individual control on the EU bodies' conduct, may be said to jeopardize the objective of an effective individual protection against the EU security administration. This is the case, in particular, of the administrative instruments, that could be extensively developed following the promising examples of the Europol and Eurojust discipline. But one could also call for an extension of the ECJ jurisdiction to review the legality of the EU bodies' conduct, starting with the alignment of direct judicial review under the third pillar to the general scheme of Article 230 of the EC Treaty. Secondly, the choice to confer a limited role to the ECJ in the direct or indirect review of national administrative measures might determine a lack of individual protection. This is true in particular with reference to the limited possibility for the ECJ to intervene in the proceedings to give its interpretation of the relevant EU law provisions. Under the first pillar, litigants can be forced to exhaust national remedies to have a question referred for a preliminary ruling

[83] Court of Justice, 31 January 2006, case C-503/03, *Commission of the European Communities vs Kingdom of Spain*.

to clarify their rights. And this inconvenient is accentuated under the third pillar, where the ECJ jurisdiction is subject to the member States' formal acceptance. As it has been correctly pointed out by the Commission with specific reference to the first pillar, such situation «is likely to have the practical effect of depriving people of effective judicial protection», particularly in consideration of the fact that in the matters in question persons protected (asylum-seekers, third-country nationals challenging expulsion orders or discriminatory treatment, etc.) «often do not have the financial resources needed to exhaust all national redress procedures, and/or they need rapid legal guidance»[84].

5.5. A further source of complication of the individual protection against the EU security administration is represented by the influence of global regulation. Such influence is to be assessed on a case-by-case basis, given the many possible relations between global regulation and EU law. The most problematic case, however, is that in which the global regulation prevails over the EU regulation and the EU organization is called to implement the regulation of the relevant global regulatory system and the EU implementing regulation. In this hypothesis, the concerned individuals are granted the administrative and judicial instruments of protection that may be provided by global regulation. But it is not clear whether such instruments can be complemented by the administrative and judicial mechanisms envisaged by EU law. An example is provided by the litigation concerning the freezing of funds of persons involved in terrorist activities. On the basis of a clear-cut formulation of the doctrine of prevalence of UN regulation over EU regulation, the EC Court of First Instance held that the Community organization is bound to observe the rights of the defence of the concerned parties in the context of the adoption and implementation of such measures only when the implementation of UN regulation involves «the exercise of the Community's own powers, entailing a discretionary assessment by the Community»[85]; while the Community organization is not required to hear the parties concerned if the Community institutions have merely transposed UN regulation into the EC legal order. And yet, such solution seems the result of an excessively radical understanding of the supremacy of UN regulation over EU regulation, which is likely to be redefined by the Court of Justice in the very next future.

[84] COM (2006) 346, p. 6.
[85] 11 July 2007, Case T−47/03, *Jose Maria Sison v. Council of the European Union*, §§ 139-154.

5.6. The observations made so far allow to distinguish the security regulation from that of other EU sectors.

On the one side, the set of instruments of individual protection available in the field of security is wider and more articulated than the guarantees envisaged with reference to the action of EU administrations under the second pillar. In particular, while judicial review has a certain degree of development in the security sector, the Court of Justice has no jurisdiction in the European common foreign and security policy (ECFSP). As it is well known, Article 46 of the EU Treaty does not extend the ECJ jurisdiction to the provisions of Title V of the same Treaty, dedicated to the ECFSP. And the ECJ might be considered to have jurisdiction to review measures adopted on the basis of Title V only in order to assess whether they adversely affect the Community prerogatives[86].

On the other side, the mechanisms of individual protection available in the field of security present a number of differences with those available in the sectors falling exclusively under the Community pillar. As a matter of fact, administrative protection in the security field is less developed and refined than it is in the sectors falling exclusively under the Community pillar, where administrative individual protection is granted through a detailed procedural regulation resulting both from legislative provisions by sector and by the ECJ and CFI case-law[87]. Analogously, judicial protection in the security field is less extended than it is in the Community sectors, where the lacunae in the individual protection are a matter of exception and the available judicial remedies give place to a tendentially coherent system of effective

[86] See, for example, Müller-Graff, *The Legal Bases of the Third Pillar and its Position in the Framework of the Union Treaty*, in *Common Market Law Review*, 1994, p. 493 ff., and A. Lang, *Risoluzioni del Consiglio di Sicurezza, obblighi comunitari e politica estera dell'Unione europea*, in *Comunicazioni e studi dell'Istituto di diritto internazionale e straniero della Università di Milano*, 1997, p. 535 ff., p. 575 ff. Such thesis seems confirmed by the judgment *Commission of the European Communities v Council of the European Union*, Case C-170/96, where the ECJ was called to decide an action brought by the Commission under Article 230 of the EC Treaty for annulment of a Joint Action adopted by the Council on the basis of former Article K.3 EU Treaty. In this judgement, which appears extendible to measures adopted under the second pillar, the ECJ derived from Articles 46 and 47 of the EU Treaty «the task of the Court to ensure that acts which, according to the Council, fall within the scope of Article K.3(2) of the Treaty on European Union do not encroach upon the powers conferred by the EC Treaty on the Community». On the judgement, see C. Novi, *La competenza della Corte di giustizia in materia di atti contemplati dal titolo VI del Trattato UE*, in *Diritto del commercio e degli scambi internazionali*, 1998, p. 399 ff.

[87] For an updated overview of the matter, G. della Cananea, *I procedimenti amministrativi dell'Unione europea*, in *Trattato di diritto amministrativo europeo*, M.P. Chiti and G. Greco (eds), II ed., Milano, Giuffrè, 2007, general part, vol. I, p. 497 ff.

judicial protection. In the security field, moreover, the different exigencies of the effectiveness of European law and of an effective judicial protection are in a peculiar relationship. While in most Community sectors the two exigencies are often one instrumental to the other, in the sense that the achievement of one of them normally implies the achievement of the other, in the security field the objective of a full individual protection normally clashes with the exigency of giving full effectiveness to European law.

Finally, it should be observed that the development of a set of instruments of individual protection recalls the overall experience of the member States, in which the growth of administrative powers and functions have been paralleled by the elaboration of individual guarantees. At the same time, however, the set of instruments of individual protection in the field of security differs from the correspondent systems of individual protection in the national orders. Two main differences may be highlighted, both of them concerning the design of judicial protection. Firstly, judicial protection in the EU security field has an incomplete extension. Secondly, judicial protection maintains an international law rationale, in so far as it essentially relies on the capacities of national courts.

6. Conclusions

The analysis carried out in this essay shows that the European Union is gradually developing a significant regulation in the field of security.

Such regulation is somehow contradictory. It is oriented towards the broad and ambitious purpose of ensuring people's security in the EU territory, but it has a limited extension and remarkable gaps. It is a quantitatively significant regulation, but its full effectiveness is jeopardized by the relatively low degree of its normative implementation at the domestic level. It establishes a European legality, but it does not fully take the responsibility of ensuring its respect. It is a highly fragmented regulation, but a tendency towards simplification may be registered.

The complexity of the emerging EU security regulation is paralleled by the complexity of the process of its administrative implementation.

Firstly, the administrative execution of EU security law involves a plural and composite administration, as the European Union operates both through its own apparatus and through the administrations of its member States and the two «levels» of authorities are often made reciprocally inter-dependent. Moreover, the EU security administration is a differentiated and polycentric organization, being articulated in a number of bodies having different organizational features and not ordered around a single centre. In addition to this, the EU security administration is characterized by the thick pattern of relationships with the relevant global regulatory systems and by the peculiar combination of transnationalism and supranationalism, which responds to the rationale of strengthened transnational co-operation under light EU co-ordination.

Secondly, the relevant administrative powers are distributed among the various competent bodies on a case-by-case basis. Beyond the differentiation deriving from such *ad hoc* approach, however, final administrative powers are usually granted to national public powers, while the European components of the EU security administration are mainly granted co-ordination and support tasks. In any case, the national and European administrative powers are functionally inter-twined and the distinction between final and instrumental powers tends at times to become extremely nuanced.

Thirdly, the discipline governing the functioning of the EU administration responsible for the execution of European security law provides a number of instruments of individual protection. Such instruments give place to an articulated framework. Individual protection is not conflated in judicial review, as defence is anticipated in the phase of exercise of the administrative powers. Moreover, individual protection mainly relies upon the instruments envisaged by domestic law, on the assumption that the exercise of authoritative powers is reserved to national administrations and the European components of the EU security administration are in most cases responsible for a co-ordination and organizational activity only.

The reconstructed EU security regulation presents a number of similarities and differences with other EU regulations by sector.

Analogously to what happens in most sectors falling within the scope of the EU competence, the developing EU security regulation is at the same time unitary and differentiated, in so far as it aims at achieving EU interests without pursuing the

objective of regulatory uniformity. Moreover, the analysis of the security sector confirms the general tendency towards the erosion of the models of purely indirect and direct execution of EU policies and the establishment of regulatory schemes of joint execution, mainly through the establishment of European common administrative systems made up of a plurality of national, EU and mixed bodies and co-ordinated by a EU office. In addition to this, in line with the mainstream of the EU experience, the development of a EU security regulation entails the provision of mechanisms of individual protection, aimed at guaranteeing the position of individuals *vis-à-vis* the emergent EU security administration.

At the same time, however, several differences with other EU regulations by sector may be identified. The balance between unity and differentiation in the security regulation is less stable and more experimental than it is in other EU sectors. The formula of strengthened transnational co-operation under light EU co-ordination emerging in the security field differs both from the top-down organizational arrangements typical of the sectors exclusively falling within the Community pillar and from the bottom-up administrative integration typical of the sectors exclusively falling within an intergovernmental pillar. And the instruments of individual protection available in the field of security are on the one side wider and more articulated than the guarantees envisaged with reference to the action of EU administrations under the second pillar, on the other side less developed than the mechanisms of individual protection provided in the sectors falling exclusively under the Community pillar.

The development of a EU security regulation is peculiar even with relation to the experience of the member States. On the one hand, one may register certain similarities with the national legal orders. Thus, for example, the circumstance that European security regulation is based on a principle of solidarity and the development of a set of instruments of individual protection are certainly in line with the tradition of the member States. On the other hand, however, several differences stand out. In particular, the national tradition of hierarchically ordered, single mission administrations, provided with repressive powers that may imply the use of coercion, is not reiterated at the European level, where the security function is distributed to a plurality of administrations operating without a unitary vertex, the objective of the European security is fragmented in a number of specific aspects and the EU security

administration is provided of powers implying the use of coercive force only at the level of the national administrations and mainly with prevention finalities. Moreover, a number of principles governing administrative action in the field of national security, *in primis* the rule of law, take in the EU order an at least partly different meaning. And individual protection in the field of EU security differs from individual protection in the national orders in so far as judicial protection in the EU security field has an incomplete extension and essentially maintains an international law rationale.

Finally, from a functional point of view, it should be observed that the emerging EU security regulation is deeply ambivalent. The move towards a closer integration in the field by means of enhanced co-ordination and exploitation of national resources certainly matches the exigencies of political realism and pragmatism. But the same realism and pragmatism should lead to recognize that a number of issues still require to be adequately addressed, both from the side of the effectiveness of EU administration action and from the side of individual protection.