THE EUROPEAN COMMISSION AND THE FIGHT AGAINST CYBERCRIME: FROM MARKETIZATION TO SECURITIZATION?

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AGENDA

SECURITY ACTORNESS AND SECURITY GOVERNANCE

WHY EU/CYBERCRIME?

EUROPEAN COMMISSION APPROACH TO CYBERCRIME
SECURITY ACTORNESS…
(B&V)

Opportunity
- Security broadening and deepening + security nexus
- Internal market and transnational security threats

Capability
- Institutional
- Legal, political, policy, resources

Presence
- (collective) Internal security …
- External dimension of internal security (‘external governance’)

...SECURITY GOVERNANCE

... without a government

“who governs and how?” (Chryssochoou 2001)

“who controls for whom?” (Institute on Governance)

Transformation of the State (K&S)
Interstates system
role of individual Member States (Bulmer 1997)
Security environment

Sui generis EU
Hybridness/“Betweeness ”
Less than a State, more than a IO (Wallace)
External/internal security

Complex system of governance
Diversity of actors, instruments and policies
Multilevel (local, national, European)

Intellectual labyrinth” (Burgess)

“ongoing social scientific puzzle” (Puchala 1999)

Laboratory - post-Westphalian security actor
<table>
<thead>
<tr>
<th>Tasks</th>
<th>Description</th>
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<tbody>
<tr>
<td>Prevention</td>
<td>• inter/intra-state conflict prevention through the building of democratic institutions and the consolidation of civil society [e.g. enlargement; conditionality; ENP]</td>
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<td>Assurance</td>
<td>• peace-building [e.g. Stability Pact; Stabilization and Association Program]</td>
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<td>Compellence</td>
<td>• implementation of the CSDP through peace-making, peace-keeping and peace-enforcement autonomous missions</td>
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<td>Protection</td>
<td>• (collective) internal security</td>
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WHY EU/CYBERCRIME?

- Transboundary security problem ⇔ “comprehensive approach”
- EU, a key target
- Expansion and sophistication
  - “computer-related fraud and forgery” (Europol 2013)
  - “computer-related production, distribution or possession of child pornography” (UNODC 2013)
- Public-private nexus
  - European Commission – internal market and private sector
  - [European Parliament - fundamental rights]
WHY CYBERCRIME?

Areas
- child sexual exploitation
- cyber attacks
- payment fraud

Trends
- professionalization of cybercriminals
- more aggressive and confrontational cybercrime
- blurring of the lines between APT and groups and profit-driven cybercriminals

Investig challenges
- attribution
- anonymisation
- encryption
- jurisdiction

Europol 2015
COMMISSION APPROACH

93 IMarket
98 COM CRIME
00 Creating Safe.... Cybercrime
eEurope APIPlan
01 9/11
07 Cybercrime policy
10 ISS
12 SIP
13 CyberS Stratg
15 European Defence Action Plan
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- Securitization

“major security threat”, “a priority”, “an urgent need to take action”

“I don't think I exaggerate when I say that this must be the golden age for cyber criminals” (Malmström 2011)

“The surge in Internet users has made cybercrime and terrorist use of the Internet a new frontier of 21st century warfare.” (HR/VP 2016)
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• For a common definition of cybercrime
  • “criminal acts committed using electronic communications networks and information systems or against such networks and systems"
  • 3 categories of activities: traditional forms of crime; publication of illegal content over electronic media; crimes unique to electronic network (European Commission 2007)

• Comprehensive approach
  • multi-stakeholder cooperation
  • multi-policy areas
  • multi-instruments
  • security nexus (internal-external; public-private)
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1993 TEU Pillars
- CSFP (2nd pillar)
- Police Cooperation and Judicial Cooperation in Criminal (3rd pillar JHA)

90’s/00 Interpillarization
- Conflict Prevention (1st and 2nd pillars)
- Fight Against Transnational Crime (2nd and 3rd pillars)

Post-9/11 Crosspillarization
- Fight against terrorism (1st, 2nd and 3rd Pillars)

Comprehensive approach
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<th>Lisbon Treaty</th>
<th>EU legal personality – end of the dual system</th>
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<td>Security area under a IO</td>
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<td>Internal security – TFEU + community method</td>
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<td>Covered pillar – CSF/CSDP</td>
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<td>High Representative – Council</td>
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<td>President - European Council</td>
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<td>Goals</td>
<td>Economy</td>
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<td>growth, competitiveness and employment</td>
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<td>Policy Domains and Issues</td>
<td>Internal market</td>
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<td>Liberalization of telecommunications markets</td>
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<td>Information Society and Digital Europe (IST dissemination, market liberalization, data protection, copyrights)</td>
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<td>Security Industrial Policy</td>
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• Public-Private cooperation
  • definition of a “strategy for cooperation between the public sector and private sector operators, including civil society organisations”

• Horizontal Coordination
  • structures for cross-border operational cooperation

• Normative dimension
  • Fundamental rights (freedom of expression, respect for private and family life, protection of personal data)
FROM MARKET... TO SECURITY...?

Presence

From absence to presence

Security actoness/governance

market security

Single market
Digital Europe
Security industry / SIP

JHA/AFSJ/'Internal Security
JAIX
Security Research, S. products
FROM MARKET... TO SECURITY...?

“true internal market for security”
a pre-requisite for building the so-called “EU Security Union” (COM 2016)
FINAL REMARKS

- Gradual presence of the European Commission in the sensitive security domain


- European Commission and cybercrime
  - the Commission’s experience in Justice and Home Affairs/Area of Freedom, Security and Justice, including its external dimension; COM knowledge about the private sector (i.e. internal market, competition policy); the ‘window of opportunity’ of the “digital agenda for Europe” and cybersecurity as a part of the Europe 2020 strategy.
  - Upgraded role in internal security (vs external); historical presence, influence and accumulated experience – internal market, private sector
  - securitization actor, entrepreneur, policy-shaper
post-Westphalian (non-statecentric) threat (multi-actor, multi-dimensional, cross-border threat)

post-Westphalian system of governance based on “sharing of tasks and responsibilities” and “doing things together instead of doing them alone” (Kooiman 1993)

European Commission

as the promoter of the common interest, with presence in all phases of the policy cycle, is a key actor of the European system that faces the major challenge of complex coordination.

active both in agenda setting and policy formulation, contributing to the move from politicization to securitization of the cyber issue: cybersecurity is one of the priorities of the 2015 Strategic Assessment
“a specific EU policy”

- “improved operational law enforcement cooperation
- better political cooperation and coordination between Member States
- political and legal cooperation with third countries
- awareness raising
- training
- a reinforced dialogue with industry and possible legislative action”
  (European Commission 2007).

Enhance cybersecurity (EU Internal Security Strategy 2010)

- build capacity in law enforcement and the judiciary (action 1)
- work with industry to empower and protect citizens (action 2)
- improve capability for dealing with cyber-attacks (action 3)