

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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The European Union's Policies on Counter-Terrorism

Relevance, Coherence and Effectiveness

STUDY FOR THE LIBE COMMITTEE



DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT C: CITIZENS' RIGHTS AND
CONSTITUTIONAL AFFAIRS

CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

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Counter-Terrorism
Relevance, Coherence and Effectiveness

STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee, identifies (counter-) terrorism trends, threats and policies in the EU, focussing particularly on seven themes, including database access and interoperability, measures on border security, criminal justice and prevention of radicalisation. It also analyses the coherence and effectiveness of the counter-terrorism policy (architecture), and issues of cooperation, oversight and implementation, in particular of seven focus Member States: Belgium, Bulgaria, France, Germany, the Netherlands, Slovakia and Spain. Moreover, this study addresses future scenarios and formulates concrete policy options and recommendations.

ABOUT THE PUBLICATION

This research paper was requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs and was commissioned, overseen and published by the Policy Department for Citizens' Rights and Constitutional Affairs.

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LINGUISTIC VERSION

Original: EN

Manuscript completed in January 2017

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This document is available on the internet at:

<http://www.europarl.europa.eu/supporting-analyses>

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LIST OF ABBREVIATIONS

- AFSJ** Area of Freedom, Security and Justice
- AIVD** Algemene Inlichtingen- en Veiligheidsdienst, General Intelligence and Security Service (of the Netherlands)
- AML(D)** Anti-Money Laundering (Directive)
- API** Advanced Passenger Information
- AVE** Against Violent Extremism
- AWF** Analytical Working File
- C4C** Counter-Narration for Counter-Terrorism
- CATS** Clearance Audit Trail System
- CATS** Coordinating Committee in the area of police and judicial cooperation in criminal matters
- CENAA** Centre for European and North Atlantic Affairs
- CFR** Charter of Fundamental Rights
- CFR-CDR** EU Network of Experts on Fundamental Rights
- CFT** Countering the Financing of Terrorism
- CJEU** Court of Justice of the European Union
- CNN** Central News Network
- COCOP** The Working Party on the Application of Specific Measures to Combat Terrorism
- COCORA** Community Counteracting Radicalisation
- CoE** Centre of Excellence
- CoE** Council of Europe
- COPRA** Community Policing and the Prevention of Radicalisation

- COSI** Standing Committee on Operational Cooperation on Internal Security
- COTER** The Working Party on Terrorism (International Aspects)
- CSFP/CSDP** Common Security and Foreign Policy / Common Security and Defence Policy
- CTC** UN Counter-Terrorism Committee
- CTG** Counter Terrorism Group
- CVATF** Comisión de Vigilancia de Actividades de la Financiación del Terrorismo (Commission for Terrorist Financing, Spain)
- CVE** Countering Violent Extremism
- DG** Directorate General
- DNB** De Nederlandsche Bank, the Dutch Central Bank
- EAS** Europol Analysis System
- EAW** European Arrest Warrant
- EBCG** European Border and Coast Guard
- EBF** External Borders Fund
- EC** European Commission
- EC** European Community
- EC** European Council
- ECRIS** European Criminal Records Information System
- ECTC** European Counter Terrorism Centre
- EEAS** European External Action Centre
- EES** EU Entry-Exit System
- EFP** European Firearms Pass
- EIS** Europol Information System

- EIXM** European Information Exchange Model
- EP** European Parliament
- EPPO** European Public Prosecutor's Office
- ESTA** European System for Travel Authorisation
- ETIAS** EU Travel Information and Authorisation System
- EU** European Union
- EU INTCEN** European Union Intelligence and Situation Centre
- EURODAC** European Dactyloscopy
- EUROPOL** European Union Agency for Law Enforcement Cooperation
- EUROSUR** European Border Surveillance System
- FATF** Fight Against Terrorism Financing
- FD** Framework Decision
- FF** Foreign (terrorist) fighter(s)
- FIU** Financial Intelligence Unit
- FPT** Focal Points Travellers
- GCC** Cooperation Council for the Arab States of the Gulf
- GCERF** Global Community Engagement Resilience Fund
- GCTF** Global Counter-Terrorism Forum
- GTD** Global Terrorism Database
- HLEG** High Level Expert Group on Information Systems and Interoperability
- ICCT** International Centre for Counter-Terrorism – The Hague
- ICSP** Instrument to Stability and Peace
- IMF** International Monetary Fund

- IMS** Council Information Management Strategy
- INSPEC2T** Inspiring Citizen's Participation for enhanced Community Action
- IntCen** EU Intelligence and Situation Centre
- INTERPOL** International Criminal Police Organisation
- IPCR** Integrated Political Crisis Response
- IRU** EU Internet Referral Unit
- ISDEP** Improving Security By Democratic Participation
- ISGA** Leiden University's Institute of Security and Global Affairs
- ISIS** Islamic State in Iraq and Syria
- ISS** Internal Security Strategy
- JHA** Justice and Home Affairs
- JIT** Joint Investigation Team(s)
- LIBE** Civil Liberties, Justice and Home Affairs Committee
- MENA** Middle East and North Africa
- MS** Member State(s) (of the EU)
- MSECU** Market and Supervision of Explosives for Civil Uses
- NCB** National Central Bureau
- NCTV** Nationaal Coordinator Terrorismebestrijding en Veiligheid
(Netherlands National Coordinator for Security and Counterterrorism)
- OJ** Official Journal of the European Union
- OLAF** Office de Lutte Anti-Fraude (European Anti-Fraud Office)
- OSCE** Organization for Security and Co-operation in Europe
- P2P** Peer-to-Peer
- PCTF** Police Chiefs Task Force

PNR	Passenger Name Records
PwC	PricewaterhouseCoopers
PWGT	Police Working Group on Terrorism
R&R Action Plan	EU Action Plan on Combatting Radicalisation and Recruitment to Terrorism
RABIT	Rapid Border Intervention Teams
RAN	Radical Awareness network
ReCoRa	Recognising and Responding to Radicalism
RELEX	Working Party of Foreign Relations Counsellors
REP	Regulation on Explosive Precursors
RFF	Returning foreign (terrorist) fighters
RFF	Returning Foreign (terrorist) Fighters
SALW	Small Arms and Light Weapons
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
SIENA	Secure Information Exchange Network Application
SIS (II)	Schengen Information System (II)
SLTD	Stolen and Lost Travel Documents
SMART	Specific, Measurable, Achievable, Relevant, Time-bound
SMN	Partnership of Moroccan Communities in the Netherlands
SRIEU	Special Representative of INTERPOL to the European Union
SSCAT	Syria Strategic Communications Advisory Team
STRIVE	Strengthening Resilience to Violence and Extremism
TCM	Terrorism Convictions Monitor
TE-SAT	Europol's annual EU Terrorism Situation and Trend Report

- TEU** Treaty on European Union
- TFEU** Treaty on the Functioning of the European Union
- TFTP** Terrorist Finance Tracking Programme
- TFTS** Terrorist Finance Tracking System
- ToR** Terms of Reference
- TracFin** Traitement du renseignement et action contre les circuits financiers clandestins (French FUI)
- UK** United Kingdom
- UN** United Nations
- UNSC** United Nations Security Council
- US** United States
- VE-TCN** Visa-Exempted Third Country National
- VIS** Visa Information System
- WomEx** Women / girls in violent extremism
- WTC** World Trade Centre

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EXECUTIVE SUMMARY

Background and aim

The series of recent terrorist attacks, as well as the various foiled and failed terrorist plots on European soil, have more than ever reinforced the popular awareness of the vulnerabilities that go hand-in-hand with the open democracies in the European Union (EU). The fact that these attacks followed each other with short intervals, but mostly due to the fact that they often did not fit the profile and modus operandi of previous attacks, have significantly contributed to the difficulty for security agencies to signal the threats as they are materialising. The modus operandi used showed a diversity of targets chosen, were committed by a variety of actors including foreign fighter returnees, home-grown jihadist extremists, and lone actors, and were executed with a variety of weapons or explosives. Furthermore, another complicating factor is the trend towards the weaponisation of ordinary life in which a truck or a kitchen knife already fulfils the purpose.

Governments, policy-makers, and politicians in most EU Member States feel the pressure of the population who call for adequate responses to these threats. Similarly, the various actors of the EU on their own accord, or the European Council driven by (some) Member States, have stressed the importance of effective responses to these increased threats, and have specifically underlined the importance of sharing of information and good cooperation. Very illustrating in this respect are the conclusions adopted during the European Council meeting of 15 December 2016, in which the European Council stressed the importance of the political agreement on the Counter-Terrorism Directive, emphasised the need to swiftly adopt the proposals on regulation of firearms and anti-money laundering, as well as the implementation of the new passenger name record (PNR) legislation.¹ The European Council furthermore welcomed the agreement on the revised Schengen Borders Code, and stressed the importance of finding agreement on the Entry/Exit System and the European Travel Information and Authorisation System.²

Although the easy way to satisfy the call for action by the national populations seems to be to just take action for the sake of it, the responsibility lies with the relevant actors, in line with the objectives and principles of the EU Treaty and the values the EU represents³, to actually assess the security situation, and implement, amend or suggest (new) policies that are adequate, legitimate, coherent and effective in the long run. It is with that objective in mind that this study, commissioned by the European Parliament, has made an assessment of the current policy architecture of the EU in combating terrorism, particularly looking into loopholes, gaps or overlap in policies in areas ranging from international and inter-agency cooperation, data exchange, external border security, access to firearms and explosives, limiting the financing of terrorist activities, criminalising terrorist behaviour and prevention of radicalisation. This study furthermore looks into the effectiveness of the implementation of policies in Member States and the legitimacy and coherence of the policies.

¹ European Council, Conclusions of the European Council meeting of 15 December 2016, EUCO 34/16.

² Ibid.

³ Since the Treaty of Lisbon in 2009, according to article 6 of the Treaty of the European Union, the Charter of Fundamental Rights are part and parcel of the mandate of the EU.

Seven major policy themes were selected and addressed in depth by this study:

- Measures and tools for operational cooperation and intelligence/law enforcement and judicial information exchange;
- Data collection and database access and interoperability;
- Measures to enhance external border security;
- Measures to combat terrorist financing;
- Measures to reduce terrorists' access to weapons and explosives;
- Criminal justice measures;
- Measures to combat radicalisation and recruitment.

The research team has assessed the degree of implementation of EU counter-terrorism measures under these seven themes in a selection of seven Member States: Belgium, Bulgaria, France, Germany, the Netherlands, Slovakia and Spain. This study sets out policy options for the future direction of EU counter-terrorism policy. The focus of policy options is on future threats and developments, and on developing creative yet feasible policy solutions.

Main findings

Trend analysis and future developments

The EU's counter-terrorism agenda has been to a large extent 'crisis-driven', and was heavily influenced by four major shock waves: (1) 9/11; (2) the Madrid and London bombings; (3) the Syrian civil war and rise of ISIS, the foreign (terrorist) fighters phenomenon, and the attacks on Charlie Hebdo, the Bataclan and Brussel/Zaventem; (4) the Nice and Berlin attacks and a series of small-scale attacks, featuring the rise of the lone actors and the weaponisation of ordinary life. Since these shocks were all related to Islamic terrorism, this has been the main EU counter-terrorism focus.

The past ten years have shown a steady increase in the number of terrorist attacks in Europe. Attacks by separatist and left-wing extremist movements have been on a steady decline, whereas these last years show an increase in right-wing and jihadist extremism.

Researchers agree that lone-wolf terrorism is on the rise, facilitated by increased availability of information on the internet that can be used for terrorist acts and calls upon Muslims in Western countries to commit lone-actor attacks in their countries of residence by Al-Qaeda and more recently ISIS.

One prominent researcher has estimated that one in 15 to 20 returnees poses a security risk. This was based on foreign fighters who travelled to the conflict zone before 2011, and it is very likely that the risks with regard to those who left after 2011 is higher. Due to increased military pressure on ISIS both the number of returnees and the relative risk associated with their return are expected to increase.

Mapping the EU Counter-terrorism policy architecture

Prior to 11 September 2001, cooperation in the field of counter-terrorism was informal and not officially part of the institutional structure of the then European Community. In response to the bombings in London on 7 July 2005, the United Kingdom (UK), holding the Presidency for the second half of the year, drafted what was ultimately adopted in December 2005 as the 'European Union Counter-Terrorism Strategy'. The added value of the 2005 EU Counter-Terrorism Strategy and particularly its coherence with the plethora of overarching (e.g. the EU's internal and external security strategies) and sub-strategies (e.g. on countering radicalisation and recruitment, countering terrorist finance, protection of critical infrastructure and customs) are unclear. It was concluded that counter-terrorism is a 'composite' policy area with challenges related to coordination, coherence and consistency, and that it is not always clear who is in charge of these processes. However, more recently, there were two additional initiatives to improve cooperation regarding internal security. The 'European Agenda on Security' was launched in 2015 in order to "bring added value to support the Member States in ensuring security" by improving information sharing and the prevention of radicalisation.⁴ Following the attacks in Brussels in March 2016, the concept of a 'Security Union' was launched as a way to "move beyond the concept of cooperating to protect national internal security to the idea of protecting the collective security of the Union as a whole" and to this extent, again, emphasising the need to improve information sharing.⁵

Currently, too many actors are involved in the design and implementation of this policy area, the tasks of the individual actors at times overlap. This is notably the case when it concerns strategies that can be issued by the European Council, the Council of the EU and by the Commission, making it unclear who is in the lead. The recently appointed Commissioner for the Security Union and the delimitation of his competences vis-à-vis the EU Counter-Terrorism Coordinator furthermore complicates the questions concerning coordination.

Certainly not helpful to this situation is the lack of clarity on the scope of the term 'internal security', and the extent to which Member States are willing to call on that exceptional clause in order to give priority to their national competences. This seems to be at odds with the otherwise regularly expressed conviction that the nature of the threat of terrorism has a cross-border character, and therefore merely a sum of national actions would fall short to address the true nature of the threat.

Observations concerning relevance, coherence and effectiveness

The highly dynamic environment and asymmetric counter-terrorism strategy development require a policy architecture that allows policymakers to – collaboratively – respond fast to today's challenges, while taking sufficient time to prepare for the evolution that takes place in society to be able to meet tomorrow's challenges equally well. From the perspective of the latter, ensuring long-term counter-terrorism capacity and capabilities on all levels, and

⁴ European Commission, "Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Agenda on Security", COM (2015) 185 final, 28 April 2015.

⁵ European Commission, "Communication from the Commission to the European Parliament, the European Council and the Council – delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union", COM (2016) 230 final, 20 April 2016, pp. 2 and 9.

conducting strategically vital research on which measures are most effective, are some key elements the EU can contribute to.

The EU policy architecture in the way it is organised at the moment does not include a regular centralised update on the threats the EU and its Member States are dealing with, and the way threat assessments have implications for the various policies in place. Also, future foresight studies addressing longer-term developments (5-10 years in the future) are currently not part of the EU's policy-making instruments. Both Europol and the EU Intelligence and Situation Centre are dealing with threat assessments, but not in an integrated manner, and lacking the regularity needed to meet the constantly changing threats, and lacking the general public outreach to inform multiple stakeholders at the same time.

The counter-terrorism agenda primarily reflects the security concerns of Western and Northern European Member States around jihadism. Threat perceptions and counter-terrorist 'legacies' in Central and Eastern European Member States might be different. Moreover, the potential for political violence does not solely rest with jihadists as the attack by Anders Behring Breivik in Norway in 2011 showed.

The EU's counter-terrorism policy architecture would benefit from making both its objectives and its underlying assumptions more explicit. In fact, the EU has been 'widening the net' of counter-terrorism, by increasingly criminalising preparatory acts in the context of the new EU Directive on Countering Terrorism. This is considered ineffective by the experts consulted for this research.

Counter-terrorism measures can have higher legitimacy – and therefore overall effectiveness – if critical human rights organisations are involved in the policy-making phase, rather than making measures vulnerable to their criticism after implementation. Because of the risk of harming human rights, better oversight is justified. This could be achieved for instance through a modified mandate of the Fundamental Rights Agency, the European Parliament ('s LIBE committee) or through an independent reviewer comparable to the one in the UK.

In spite of assurances regarding more involvement of citizens in the preparation of new initiatives, of the 88 legislative initiatives regarding counter-terrorism since 2001, in merely three cases a public consultation was performed. Only one quarter of the legally binding measures adopted since 2001 were subjected to Impact Assessments. Particularly striking is the lack of an Impact Assessment where the new Directive on Combating Terrorism that is to replace Framework Decision 2002/475 is concerned. None of the Council initiatives have been accompanied by an Impact Assessment. The lack of public consultations and ex ante assessments is not compensated by ex post reviews or evaluations.

One of the recurring issues amongst practitioners and experts alike is the apparent lack of trust between services within and between Member States, accompanied by complex legal boundaries that hinder effective sharing of information. Particularly, the Commission's call upon the Member States to "facilitate an information exchange hub based on the interaction between the law enforcement community and the intelligence community, within the framework of the CTG and the ECTC, in accordance with relevant EU and national rules and arrangements" (COM (2016) 602 final) is one of the findings of this study would support.

Conclusions and recommendations

When assessing the developments with regard to the terrorism threats as well as the policy design and implementation over time, the question of whether one has moved ahead of the *informal and non-official network for cooperation* that was set up during the Trevi process comes to mind. In areas of data exchange and judicial and police cooperation, the subsidiarity principle still applies, as well as the exception clause related to issues concerning internal security, allowing Member States to call upon their national sovereignty and deviate from the EU policy line.

Considering the plethora of sub-strategies, action plans, an overlapping policy fields with multiple measures, the question arises whether the EU counter-terrorism strategy indeed brings the strategic “conceptual guidance” and the framework to tie all the sub policy fields together, meanwhile ensuring coherence and consistency and to serve both the short and long-term security concerns in an effective manner in order to stay relevant. Instead, the effect of the sub-strategies (as well as the action plans) is to break up counter-terrorism in a number of ‘composite’ parts and to embed them across a range of different policy fields, ranging from amongst others the social domain, the financial sector, law enforcement, critical infrastructure, and border security. It is important to go back to the drawing table and redesign the entire policy field, to start with a clean slate and reassess what works and what does not.

Meanwhile, the overarching strategies have performed a similar function by linking counter-terrorism with the EU’s CFSP and by stressing not only the linkages across international borders and thereby blurring the line between internal and external security as well as with other insecurities such as (organised) crime. This brings up questions of where the boundaries are of the counter-terrorism domain. It is for instance difficult to clearly distinguish between counterterrorism measures, other security measures and measures with counterterrorism objectives. In fact, most measures included in this study could not be designated as 100% counterterrorism measures, but are counterterrorism ‘relevant’ or counterterrorism ‘related’.⁶ It seems sometimes the case that the counterterrorism relevance of a measure is emphasised in policy debates leading up to the adoption of the measure. In other words, measures may sometimes be introduced as a silver bullet for counterterrorism purposes, whereas in practice these measures are only used in a minor portion of the cases for counterterrorism purposes⁷. It should be emphasised that this is not always the result of deliberate ‘spinning’ or coherent action. For instance, the introduction of the European Arrest Warrant was already underway (in fact, the decision was taken at the Tampere Council in 1999) when it was introduced just after ‘9/11’ and presented as a measure that “ ... greatly contributes to speeding up the prosecution of terrorists and other serious criminals operating within EU territory” in the Commissions ‘stock-taking’ exercise⁸.

⁶ A remark that was also made in 2011 by PwC, *Estimated costs of EU counterterrorism measures*, report for the Civil Liberties, Justice and Home Affairs of the European Parliament, accessed at [http://www.europarl.europa.eu/RegData/etudes/note/join/2011/453181/IPOL-LIBE_NT\(2011\)453181_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/note/join/2011/453181/IPOL-LIBE_NT(2011)453181_EN.pdf).

⁷ This has been one of the outcomes of the counter-terrorism evaluation in the Netherlands, see <https://www.rijksoverheid.nl/documenten/kamerstukken/2011/07/22/5682945-antiterrorismemaatregelen-in-nederland-in-het-eerste-decenium-van-de-21e-eeuw>.

⁸ Commission staff working paper ‘Taking stock of EU Counterterrorism Measures. Accompanying document to the communication from the Commission to the European Parliament and the Council The EU Counterterrorism Policy: main achievements and future challenges, COM(2010) 386 final, p.17.

However, the constantly evolving security environment, which requires a simultaneous short-term and long-term responsiveness, requires the EU to show qualities of ambidexterity. For that to work out, it would at least be necessary to know who is in the lead of the overall strategy and coordination of activities, but the current situation rather shows a very crowded market place with too many actors involved in the design and implementation of the various policies, and at times with even overlapping mandates.

When looking at effectiveness in terms of cooperation, it became clear from the interviews that there is a formal channel to cooperate, as well as an informal channel and that the latter is extremely important and hence should be strengthened, rather than creating yet another framework for cooperation or data sharing.

Below, this study's recommendations with regard to the policy architecture's relevance, coherence and effectiveness are given. The full recommendations, with more clarifying text and concrete suggestions, are presented in chapter 6 of this report. The policy recommendations on the seven policy fields can also be found in chapter 6.

Recommendations and policy options for improving the policy cycle and effectiveness of EU counter-terrorism policies

1. In general, the EU should also invest in the tools it already has in place and connect the different stakeholders and dots, such as the crime-terror nexus. The EU should prefer evidence-based policy and law-making, involvement of citizens and stakeholders and transparency throughout the process. This implies quality over quantity, meaning for example that it should improve data exchange rather than support the collection of more data.
2. The EU is recommended to commission annual future foresight studies (five-ten years ahead) that assess the possible development of certain risks and threats, as well as its underlying driving factors.
3. Since the potential for political violence and terrorist attacks does not rest exclusively with jihadists, the EU is advised to keep an open attitude to other forms of political violence and the differentiated manner in which this manifests across the Union.
4. A system is recommended that issues quarterly public threat assessments that combine the intel and information gathered by Europol and INTCEN.
5. Calls for new policy measures should be properly and thoroughly scrutinised to ensure that there is indeed a gap or lacuna in the existing policies that needs to be addressed.
6. The EU is advised to reflect on its objectives and underlying assumptions before adopting new policies, legislation, or other kinds of measures. In this process the EU is recommended to make explicit what the specific counter-terrorism objectives are for the various policies, and to formulate them in a SMART manner, so that its effectiveness – and not just its effects – can be measured.
7. It is recommended that a multidisciplinary and geographically spread pool of experts and practitioners is consulted as part of the expert consultations that contribute to the qualitative part of the threat assessments and future foresight analysis, as well as the assessment of the relevance of certain policies.

8. European institutions, and especially the European Parliament (‘s LIBE Committee), are recommended to actively involve – at the earliest stage possible – a pool of experts and practitioners in the design of new counter-terrorism policies, legislation and measures to increase its legitimacy and overall effectiveness.
9. The EU needs to invest in its own oversight system. It is considered worthwhile to explore the possibility of modifying the mandate of the Fundamental Rights Agency, increase the role of the European Parliament (‘s LIBE committee) or through the appointment of an independent reviewer comparable to the one in the UK.
10. It is paramount that the EU sets up an institutionalised system to regularly monitor and evaluate the policies and measures in place. For economic policies, a system for monitoring already exists in the form of the European Semester. A similar approach could be applied to counter-terrorism policies.

1. INTRODUCTION

The series of recent terrorist attacks, as well as the various foiled and failed terrorist plots on European soil, have more than ever reinforced the popular awareness of the vulnerabilities that go hand-in-hand with the open democracies in the EU. The fact that these attacks followed each other with short intervals, but mostly due to the fact that they did not fit the profile and modus operandi of previous attacks, have significantly contributed to the difficulty for security agencies to signal the threats as they are materialising. The modus operandi used showed a diversity of targets chosen, were committed by a variety of actors including foreign fighter returnees, home-grown jihadist extremists, and lone actors, and were executed with a variety of weapons or explosives. Furthermore, another complicating factor is the trend towards the weaponisation of ordinary life in which a truck or a kitchen knife already fulfils the purpose.

Governments, policy-makers, and politicians in most EU Member States feel the pressure of the population who call for adequate responses to these threats. Similarly, the various actors of the EU on their own accord, or the European Council driven by (some) Member States, have stressed the importance of effective responses to these increased threats, and have specifically underlined the importance of sharing of information and good cooperation. Very illustrating in this respect, are the conclusions adopted during the European Council meeting of 15 December 2016, in which the European Council stressed the importance of the political agreement on the Counter-Terrorism Directive, emphasised the need to swiftly adopt the proposals on regulation of firearms and anti-money laundering, as well as the implementation of the new passenger name record (PNR) legislation.⁹ The European Council furthermore welcomed the agreement on the revised Schengen Borders Code, and stressed the importance of finding agreement on the Entry/Exit System and the European Travel Information and Authorisation System.¹⁰

Although the easy way to satisfy the call for action by the national populations seems to be to just take action for the sake of it, the responsibility lies with the relevant actors, in line with the objectives and principles of the EU Treaty and the values the EU represents¹¹, to actually assess the security situation, and implement, amend or suggest (new) policies that are adequate, legitimate, coherent and effective in the long run. It is with that objective in mind that this study has made an assessment of the current policy architecture of the EU in combating terrorism, particularly looking into loopholes, gaps or overlap in policies in areas ranging from international and inter-agency cooperation, data exchange, external border security, access to firearms and explosives, limiting the financing of terrorist activities, criminalising terrorist behaviour and prevention of radicalisation. This study furthermore looks into the effectiveness of the implementation of policies in Member States and the legitimacy and coherence of the policies. During the period of research for this study, the proposals for the Security Union were tabled, and a Commissioner for the Security Union was nominated. The objectives behind the establishment of the Security Union in some ways run parallel with this study's analysis of the situation as it still is, and in some ways might lead to recommendations that go beyond its ambitions formulated so far.

⁹ European Council, Conclusions of the European Council meeting of 15 December 2016, EUCO 34/16.

¹⁰ Ibid.

¹¹ Since the Treaty of Lisbon in 2009, according to article 6 of the Treaty of the European Union, the Charter of Fundamental Rights are part and parcel of the mandate of the EU.

1.1. Objectives and research questions

The overall aim of this study is, as pointed out in the subsection above, to provide a comprehensive assessment of the EU's counter-terrorism policy architecture, identifying the various actors, the relevant policies, the gaps and overlaps in those policies, and the overall relevance, coherence, legitimacy and effectiveness of the policies and their implementation in Member States. Where possible, this study has identified some good practices in various policy fields in different Member States that could inform future policy development. However, due to reluctance from the side of practitioners in the field, and the confidential nature of many of the work in the area of counter-terrorism, the number of good practices is limited and it remains difficult to assess to what extent practices are in fact successful. A stocktaking of practices and an assessment of their effects and effectiveness requires much more time and resources and almost full access to data and information that is now inaccessible for such research. In particular, this report covers the following aspects:

- It outlines the current status quo of the EU counter-terrorism policy, including the legal framework governing EU counter-terrorism policy and the nexus between EU and national competences. In this respect, the report considers in depth seven policy themes that cover major counter-terrorism policy initiatives of the past ten years. The research team's analysis shows how this policy has developed over the past decade and it maps the most relevant counter-terrorism measures that have been put in place by the EU and those that are under development in each of these seven areas:
 - a) Measures and tools for operational cooperation and intelligence/law enforcement and judicial information exchange (including notably the Europol and Eurojust reforms, the proposed Directive on the European Criminal Records Information System (ECRIS) and existing tools such as Joint Investigation Teams (JITs));
 - b) Data collection and database access and interoperability (notably use of relevant Justice and Home Affairs (JHA) and Interpol databases, as well as the new Passenger Name Records (PNR) Directive and bilateral PNR agreements the EU has with Australia, Canada and the US);
 - c) Measures to enhance external border security (including the above-mentioned proposals on systematic checks on EU citizens entering EU territory against relevant databases, the European Border and Coast Guard (EBCG) and on a new Entry-Exit System (EES));
 - d) Measures to combat terrorist financing (including the Anti-Money Laundering Directive (AML(D)) and the Terrorist Finance Tracking Programme (TFTP), as well as measures envisaged in the above-mentioned terrorist financing action plan);
 - e) Measures to reduce terrorists' access to weapons and explosives (including the proposed revision of the Firearms Directive);
 - f) Criminal justice measures (including the new Directive on combating terrorism);
 - g) Measures to combat radicalisation and recruitment (notably the work of the Radicalisation Awareness Network (RAN) and some of the best practices that have been identified on, inter alia, prisons, online radicalisation, youth engagement and community policing).

- Where relevant, the report also maps agreements in place between the EU and third countries (especially the US) and international organisations (Interpol etc.) in the field of counter-terrorism and how these contribute to EU counter-terrorism policy.
- The research team has assessed the degree of implementation of EU counter-terrorism measures in – as well as the design and implementation of operational cooperation and information sharing, and whether existing mechanisms work (and if not, why not) in – a selection of seven Member States.¹² The aim of this part of the study is to understand as clearly and with as much detail as possible how Member States implement EU counter-terrorism policy on the ground and how they cooperate on counter-terrorism.
- On the basis of the mapping exercise and the assessment of current implementation, the research team has assessed the loopholes, gaps and overlaps in EU counter-terrorism policy and evaluate the extent to which, collectively, the measures in place or in the pipeline meet operational counter-terrorism aims, achieve policy coherence and provide consistent and robust fundamental rights safeguards.
- This study sets out policy options for the future direction of EU counter-terrorism policy, looking specifically at how operational, technical and legislative tools could be optimised and how information exchange could be enhanced. This includes developing a more direct EU response in line with calls either for a European intelligence agency or for enhanced powers for existing organisations, such as Eurojust, Europol, including its recently-established European Counter Terrorism Centre (ECTC), the nascent European Public Prosecutor's Office (EPPO), or the EU Intelligence and Situation Centre (IntCen). The focus of policy options is on future threats and developments, and on developing creative yet feasible policy solutions.

1.2. Outline of the report

This report is set out under the following headings:

- Chapter 2 describes the scoping of the study and serves as a theoretical framework for the assessment of the policies' effectiveness.
- Chapter 3 presents an overview of the interplay between the EU as a policy-making institution and the policy realm of counter-terrorism. It shows how the EU has responded to threats from terrorism during the 2001-2016 research period.
- Chapter 4 contains a mapping of the EU's counter-terrorism policy architecture, including its strategies, actors and mandates and the measures that have been identified for each of the seven themes under study. For each of these themes, this chapter contains the research team's key observations, based on a detailed factsheet drafted for each theme, which are included in Annex I.
- Chapter 5 presents this study's general observations on policy coherence and effectiveness in the EU policy arena.
- Finally, chapter 6 presents the concluding remarks, general recommendations and policy options.

The report also contains the following annexes:

¹² See Annex III to this report for the selection process.

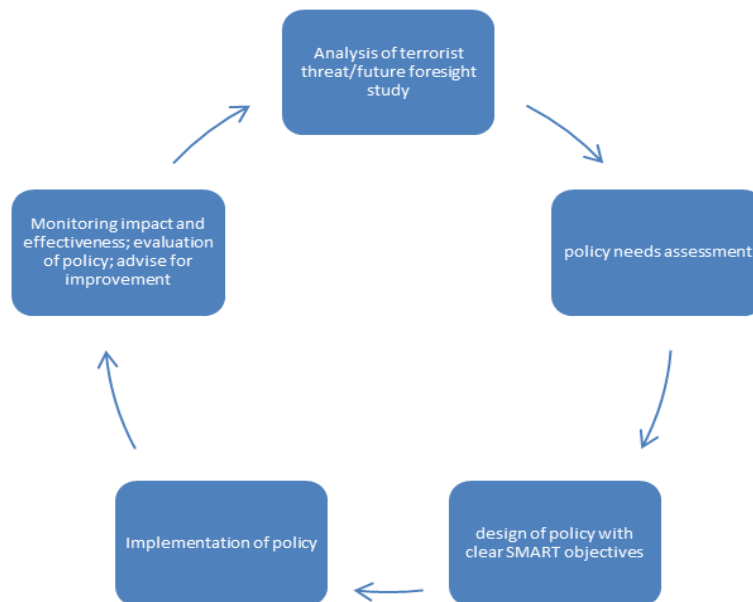
- Annex I contains factsheets on each of the seven themes covered by the study.
- Annex II contains a mapping of the measures the research team has identified that together form the EU's policy architecture on counter-terrorism.
- Annex III describes the methodology applied in the study in more detail, including the reasons for selecting the seven EU Member States covered in more detail in this report.
- Annex IV provides an overview of the interviews conducted and presents the main outcomes of the policy lab workshop that was held on 9 November 2016 as a part of this study.
- Annex V presents the data used to compile the graphs in figures 2, 12 and 13 and explains why a selection has been made.

2. THEORETICAL FRAMEWORK AND SCOPE OF THE STUDY

2.1. Theoretical framework for the assessment of the effectiveness of the EU policy architecture on counter-terrorism

In an ideal world, the design of a policy architecture would be the result of an analysis of a societal problem (in this case a terrorist threat analysis), a policy needs assessment, policy design based on formulated objectives, an implementation of these policies, followed by monitoring and evaluation, and subsequent adjustment if needed (see cycle below). However, the current EU counter-terrorism policy architecture is arguably the result of an incremental process (see more elaborate on this section 5.3). This has resulted in a myriad of EU policies, strategies, action plans, legal and other policy measures, bodies, units and agencies. As such, the policy architecture is not necessarily a top-down coordinated and coherent structure, but rather the ex-post interpretation of what could be considered important initiatives at the EU level to combat terrorism. Worthwhile to mention in this respect is that the first attempt within the EU to introduce a balanced policy cycle dynamic consisted of only four-steps: “policy preparation on the basis of risk assessment; political policy setting by the Council through the identification of priorities as well as the development of multi-annual strategic plans for each priority; the development and implementation of operational action plans aligned with the defined strategic goals; the evaluation of the policy cycle.”¹³

Figure 1: The EU Policy Cycle for counter-terrorism policy development



Source: PwC and ICCT.

¹³ See for a more elaborate analysis, see European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens’ Rights and Constitutional Affairs, *The EU Internal Security Strategy, The EU Policy Cycle and the Role of (AFSJ) Agencies; Promise, Perils and Pre-requisites*, Study for the LIBE Committee (2011), p. 4.

The purpose of this study is nevertheless to assess the EU counter-terrorism policy architecture, and to recommend on possible ways forward to improve its relevance, coherence and effectiveness. According to the 'Evaluation Standards' of the European Commission (EC) an "[e]valuation involves a judgement of interventions according to their results, impacts and needs they aim to satisfy. It is a systematic tool which provides a rigorous evidence base to inform decision-making and contributing to making Commission activities more effective, coherent, useful, relevant and efficient."¹⁴ In a footnote in the same document, the Commission continues to explain that "[t]he evaluation question should reflect the following evaluation issues whenever relevant: effectiveness, efficiency/cost-effectiveness, relevance, coherence, sustainability, utility and/or community added value, and where relevant the contribution to broader strategic objectives."¹⁵ Notwithstanding these guidelines, and in line with the terms of reference for this study, the current assessment is a little less ambitious, and does not qualify as a full-fledged evaluation, but should at least demonstrate whether the counter-terrorism policy architecture is a coherent policy architecture which, using the terms used in the European Parliament's terms of reference for this evaluation, prevents "loopholes, gaps or duplication of effort".¹⁶ This study will thus be aimed at an assessment of the relevance and coherence of the policy architecture. The focus will be on certain aspects of the policy's effectiveness.

In general, the public debate on the effectiveness of counter-terrorism policies often seems to be obscured by the lack of proper definition of what one is evaluating, lack of properly formulated policy objectives, policies based on assumptions that do not follow from evidence and analysis and good standards applied to value the so-called effectiveness. It is, for instance, not possible to measure the effectiveness of repressive and punitive measures in the same way that one should measure effectiveness of preventive measures, because, for one thing, the timeframe in which one can expect any results varies substantially between short-term results and long-term results. Furthermore, it would be a mistake to measure the effectiveness of policies by simply looking at the development of the threat levels, the number of terrorist attacks or casualties or economical damage. The causal link between the measure and/or policy is never that direct. In other words, the art of measuring effectiveness is not one that one can easily master.

Since the term *effectiveness* often lacks a proper definition as to its scope and meaning, it is important to elaborate on this term and to explain the way in which it will be used in this assessment study.

In general, a distinction can be made between *formal* effectiveness and *material* effectiveness. Ultimately, the objective of policies is to *effectively* impact reality as it has been assessed prior to the design of the policy. *Formal* effectiveness can be achieved if a policy has been adopted (following the right procedure), is in line with the powers allotted to the EU organs (according to mandate), does not undermine the principles (including fundamental and human rights principles) of the EU, is subsequently adopted and implemented in the national jurisdictions of the EU Member States, and is coherent and does not undermine any other policies. The various elements that contribute to the formal effectiveness of a measure, moreover, contribute to the measure's (perception of) legitimacy, which Franck explains as a function that contributes to a pull to compliance of

¹⁴ European Commission, Annex to the Internal Charter for the Evaluation Function in DG ECFIN, March 2016, p. 9.

¹⁵ Ibid., p. 9, footnote 8.

¹⁶ See Annex VI.

the rules.¹⁷ Others have pointed to principles of good governance, which might include concepts as accountability, transparency, and procedural and substantive fairness as core principles that contribute to the legitimacy of the policy.¹⁸ The material *effect* – the impact a policy has on reality – could be positive or negative to the underlying objective of a policy. Whether a policy can be considered to indeed possess *material effectiveness* depends on whether the policy furthermore provides a *proper* response to the underlying objective of the policy, which is based on a proper evidence-based needs assessment that spurred the adoption of the EU policy in the first place (relevance).

Measuring *material effectiveness* is very challenging and something that – to its full extent – falls outside the scope of this study. It would require, in the first place, a comprehensive analysis of the various aspects of the threats the EU and its Member States are facing, an analysis of the underlying assumptions that have inspired the design of the various policies, and an analysis on whether the objectives of these policies are meeting the requirements of a theory of change tailored to the context of the specific interventions at Member State level, preferably with a SMART (Specific, Measurable, Achievable, Relevant, Time-bound) measuring system. The extent to which this study can therefore assess the overall relevance of the EU counterterrorism policy is thus limited.

This study will henceforth focus on evaluating the *formal effectiveness* of EU measures and policies and questions such as: "Have the measures and policies followed the right EU procedure at adoption, taking into account fundamental rights?" "Have measures/policies been implemented/adopted by Member States?" "Do the new measures/policies fit well in the national systems, not providing any controversies?"¹⁹ For the related questions on coherence, this study will also look into overlap and gaps. In order to make an assessment of the gaps in the policies and the relevance of the policies adopted, the next chapter will first elaborate on the threat development throughout the recent years and how that has dictated the policy agenda. Taking the above into account, this study's approach is therefore aimed at determining:

1. which EU policies, strategies, action plans, legal and other policy measures, bodies, units and agencies have been created on each of the seven themes covered by this study, since 2001;
2. which agreements exist between the EU and third countries in the field of counter-terrorism;
3. whether the EU measures have been implemented in the legal and institutional structures of the seven focus Member States and, if so, how;
4. to what extent the EU measures are implemented in the national practice of Member States;
5. which loopholes, gaps and duplications of effort have arisen in the implementation at Member State level;

¹⁷ T.M. Franck, *The power of legitimacy among nations*, (New York/Oxford: Oxford University Press 1990), pp. 41-49.

¹⁸ See for example Curtin, D.M. & Dekker, I.F., 'Good Governance: The concept and its application by the European Union', in: Curtin D.M. and Wessel R.A. (eds.), *Good Governance and the European Union; Reflections on Concepts, Institutions and Substance* (Intersentia: Antwerp/Oxford/New York 2005), pp. 3-20;

Wouters, J. and Ryngaert, C., "Good Governance: Lessons from International Organizations", in: D.M. Curtin D.M. and Wessel R.A. (eds.), *Good Governance and the European Union; Reflections on Concepts, Institutions and Substance* (Intersentia: Antwerp/Oxford/New York 2005), pp. 69-104 and Woods, N., 'Good Governance in international organisations', *Global Governance*, Jan-March 1999, Vol. 5, Issue 1, pp. 39-52.

¹⁹ Beatrice de Graaf calls this "measuring performance" (Tansey, R., *Evaluating an Evaluation: The EU Counter-Terrorism Policy: Main Achievements and Future Challenges*, QCEA Briefing Paper 13 (October 2011, p. 7).

6. what experiences practitioners –as retrieved through conducted interviews- have with cooperation between counter-terrorism agencies within and between Member States, and with the relevant EU agencies; and
7. what recommendations can be made in terms of policy options for the future direction of EU counter-terrorism policy, looking specifically at how operational, technical and legislative tools could be optimised and how information exchange could be enhanced.

With the first five points this study will therefore look into the formal effectiveness of the EU counter-terrorism policy architecture, as well as its coherence. The sixth point refers to a more subjective assessment of the relevance of the measures and policies as perceived by various practitioners based on the outcomes of the interviews conducted. Finally, and as mentioned in the seventh point, the research team has formulated policy recommendations to enhance the coherence and the relevance of the EU counter-terrorism policy architecture with the aim to improve both its formal and material effectiveness. Beyond that, this study will link the recommendations to outcomes of the future foresight analysis based on the trend analysis in the next chapter.

2.2. Scope of the study

2.2.1. Policy measures

In order to limit the scope of this research project/evaluation exercise, the research team has limited itself to mapping out the current policy architecture and the policies and measures applicable to:

- Terrorism;
- Countering radicalisation towards violent extremism;
- Foreign (terrorist) Fighters (FF);
- Returning Foreign (terrorist) Fighters (RFF);
- Travel and border control to the extent that these are used to prevent terrorism;
- Judicial and intelligence data exchange, and judicial cooperation and law enforcement;
- Cooperation with third states and institutions.

For these topics, the research team has both looked at the policies and measures adopted by the EU, and – as mentioned before – the way in which implementation of these measures by the Member States has been realised (formal effectiveness). The team has only touched upon the question whether and in what way Member States have implemented these measures and policies. With regard to the issues of data exchange and judicial cooperation, the team has solely focused on the implementation in seven Member States (see Annex I).

2.2.2. Focus on binding measures

EU counter-terrorism policy and measures encompass both legally binding and non-binding measures. Binding measures encompass regulations, directives, framework decisions, decisions and international agreements. In terms of scope of this study, it was decided to put the focus on these binding EU measures and their implementation in the selected EU Member States. Non-binding measures, also referred to as soft law (as opposed to the hard law, binding measures) are for example action plans, recommendations, and sharing of

best practices. Whenever relevant, attention is also devoted to non-binding measures, notably to sketch the background for the binding measures or to explain what the EU does to tackle particular challenges where it does not have the powers to adopt binding measures.

3. THE EU AND COUNTER-TERRORISM: THREATS, TRENDS AND ITS IMPACT ON POLICY DEVELOPMENT

KEY FINDINGS

- The EU's counter-terrorism agenda has been to a large extent 'crisis-driven', and was heavily influenced by various major shocks: 9/11; the Madrid and London bombings; and the rise of the Islamic State in Iraq and Syria (ISIS) and; the terrorist attacks in France of 2015 and 2016; and the attacks in Brussels and Berlin in 2016. Since these shocks were all related to Islamic terrorism, this has been the main EU counter-terrorism focus.
- The past ten years have shown a steady increase in the number of terrorist attacks in Europe. Attacks by separatist and left-wing extremist movements have been on a steady decline, whereas these last years show an increase in right-wing extremism and jihadist extremism.
- Researchers agree that lone-wolf terrorism is on the increase, facilitated by increased availability of information on the internet and calls upon Muslims in Western countries to commit lone actor attacks in their countries of residence by Al-Qaeda and more recently ISIS.
- One researcher has estimated that 1 in 15 to 20 returnees poses a security risk. This was based on foreign fighters who travelled to the conflict zone before 2011, and it is very likely that the risks with regard to those who left after 2011 is higher. This risk assessment in combination with the expected increase in returnees due to the potential defeat of ISIS, makes the risk that returnees pose to the security in the EU a very substantial one, and certainly one that needs to play a prominent role when assessing the needs for new or revised policies.

3.1. The EU and counter-terrorism: a historical perspective on threat perceptions

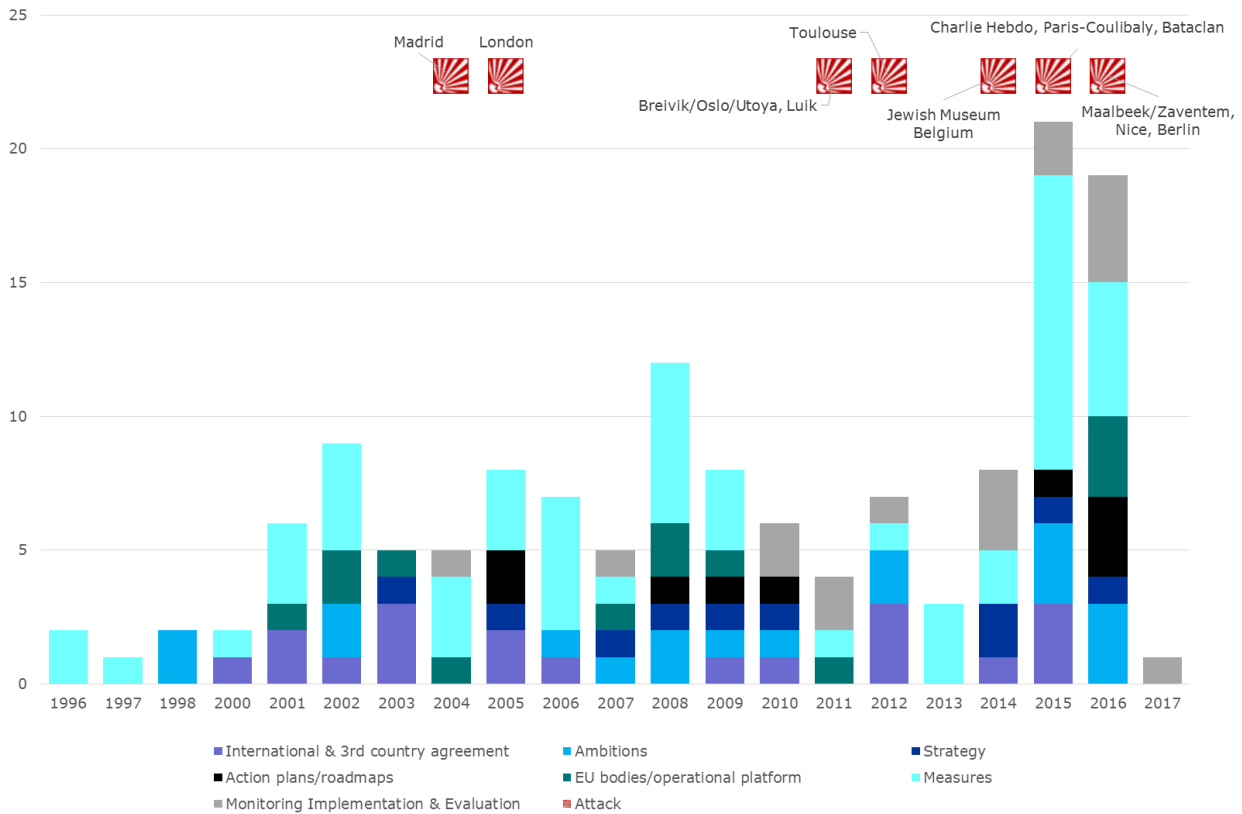
This section will give a concise overview of EU terrorist threat perceptions, its impact on counter-terrorism policies and the reality of terrorism over time. Understanding the nature of a threat is crucial for successful counter-terrorism: if plots or actual attacks are misdiagnosed by intelligence agencies, "governments are less likely to invest to pre-empt future threats".²⁰ Understanding the developments in the past, the various different trends, and how things are constantly evolving, hopefully contributes to a better judgement in the future.

The EU's counter-terrorism agenda has been to a large extent 'crisis-driven', and was heavily influenced by several major shocks: 9/11; the Madrid and London bombings; the rise of the Islamic State in Iraq and Syria (ISIS); the terrorist attacks in France of 2015

²⁰ Omand, D., "Keeping Europe Safe: Counterterrorism for the Continent", *Foreign Affairs* (August/September 2016), pp. 83-93.

and 2016; and the attacks in Brussels and Berlin in 2016.²¹ The compiled data in figure 2 show the number of strategies, action plans and measures etcetera adopted in each year, clearly showing a steep increase in the years 2001, 2005/2006, 2008, and 2015/2016, illustrating the fact that the EU has a tendency to be crisis-driven in its policy response. The increase in adoption of measures, strategies etcetera in 2008 seems to be an exception, but can be explained by the number of revisions of earlier measures and strategies. Since the aforementioned shocks were all related to Islamic terrorism,²² this has been the main EU counter-terrorism focus.

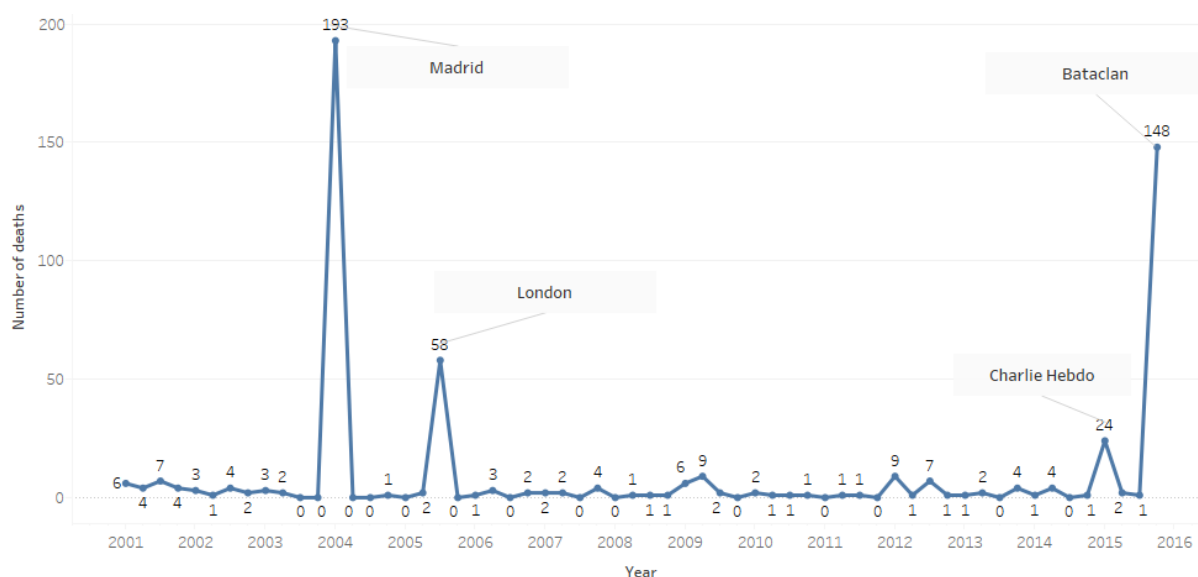
Figure 2: Strategies, action plans, measures etc. adopted per year, 1996-2017



Source: PwC and ICCT. The years 1996-2000 are included to demonstrate the increase that started in 2001.

²¹ Data and information for this study was collected from 1 July 2016 to 15 December 2016. The attack on the Berlin Christmas Market happened after this date, as have other events and policy actions - these were not included in the analysis.

²² See figure 3 (Global Terrorism Database) for an overview of terrorism-related casualties in the EU between 2001-2015. The attacks in Madrid, London, and France (Charlie Hebdo and Bataclan) stand out: they were important catalysts in changing EU perceptions of and policies towards terrorism. Since the Brussels/Zaventem attack took place in March 2016, the Nice attack in July 2016, and the Berlin attack in December 2016, these numbers are not included in this figure, since the Global Terrorism Database still needs to compile all data over 2016.

Figure 3: Number of deaths by terrorism in EU, 2001-2015

Source: Global Terrorism Database.

3.1.1. 9/11: terrorism as an external threat

When the World Trade Centre (WTC) and the Pentagon were hit on 11 September 2001, terrorism was hardly a priority on the common EU agenda. 9/11 proved to be a turning point: a mere ten days after the attacks, in an extraordinary meeting, the European Council (EC) declared the fight against terrorism to be an EU priority objective. The attacks have allowed the EU to become an important actor in the fight against terrorism.^{23 24}

The terrorist threat at that time was perceived to be of an external nature and the Council's Action Plan of 2001 reflected this, stating that "the fight against the scourge of terrorism will be all the more effective if it is based on an in-depth political dialogue with those countries and regions of the world in which terrorism comes into being".²⁵ Still, against the backdrop of the attacks of 9/11, the EU adopted the Framework Decision that criminalised certain offences in relation with terrorist activity, including the financing of terrorism.²⁶ Despite the gradually converging threat perception regarding terrorism within the EU post-9/11, it was not until 2004 and 2005, when Madrid and London were hit by terrorist attacks, that a more coherent EU counter-terrorism policy would take shape, modelled on the "structures and processes of the most concerned and active states – namely the UK and France".²⁷

²³ Bures, O., *EU Counterterrorism Policy: A Paper Tiger?* (Routledge: London 2011).

²⁴ European Council, *Conclusions and Plan of Action of the extraordinary European Council Meeting on 21 September 2001* (2001).

²⁵ Ibid.

²⁶ Council of the European Union, *Framework Decision of 13 June 2002 on combating terrorism* (2002/475/JHA).

²⁷ Meyer, C., "International terrorism as a force of homogenisation? A constructivist approach to understanding cross-national threat perceptions and responses", *Cambridge Review of International Affairs* 22 4 (2009), p. 662.

3.1.2. Madrid and London: the threat of home-grown terrorism and terrorism as an internal threat

The Madrid and London bombings of 2004 and 2005 prompted the EU to develop initiatives to better understand the root causes of terrorism, ultimately leading to a singling out of radicalisation as the main focal point in combatting terrorism.²⁸ The attacks did not "show a clear link with Al-Qaeda or any other global Salafi network".²⁹ In the London case, the jihadi terrorists were home-grown and to a large extent operated independently. This self-organisation of jihadist terrorist groups, operating without consent or financial and operational support from a central terrorist organisation, brought about "an important change in the perception of the terrorist threat in Europe, moving from the almost exclusive focus on Al-Qaeda prevalent after the 9/11 attacks to home-grown terrorism as a product of intra-EU radicalisation processes and terrorist recruitment".³⁰

Measures that were taken after the Madrid attack included the improvement of border control, judicial cooperation, and information exchange, as well as the appointment of an EU counter-terrorism coordinator (2004). The new Revised Plan of Action of 2004 sought to change counter-terrorism policy at the strategic level, by including a focus on the root causes of terrorism and radicalisation in the EU and the world. However, little would be done in this field until the London attacks in 2005.³¹

Until the London attacks, the EU's response to terrorism was "largely ad hoc and reactive in its nature, whereby a major terrorist attack provided the impetus for a sudden proliferation of counter-terrorism measures, only to be followed by decelerations and inertia once the memories of the attack began to fade".³² 'London' brought about an EU Counter-Terrorism Strategy and parallel Strategy for Combatting Radicalisation and Recruitment to Terrorism in 2005, which, while acknowledging that "much of the terrorist threat to Europe originates outside the EU",³³ reflected the reality of a 'leaderless jihad', emphasising the need to understand why people become involved in terrorism, as well as "identify and counter the ways, propaganda and conditions through which people are drawn into terrorism and consider it a legitimate course of action".³⁴ New in this strategy was its focus on preventive actions such as the disruption of networks and individuals who draw people into terrorism. EU counter-radicalisation efforts were to be extended beyond the EU, for "development assistance can help erode the support base for terrorist networks and movements".³⁵ The amendment of the Framework Decision 2002/475/JHA in 2008,³⁶ adding several more activities to the list of criminalised activities, also showed a shift towards criminalising preparatory acts as well as incitement to terrorism, thereby underlining the refocus to taking preventative action, albeit of the punitive sort this time. In 2011, and following the adoption of the 'EU Internal Security Strategy in Action: Five steps towards a more secure

²⁸ Coolsaet, R., "EU counterterrorism strategy: value added or chimera?", *International Affairs* 86 4 (2010), p. 869.

²⁹ Bakker, E., "Jihadi terrorists in Europe: their characteristics and the circumstances in which they joined the jihad: an exploratory study", *Clingendael Institute* (December 2006).

³⁰ Bures, O., *EU Counterterrorism Policy: A Paper Tiger?* (Routledge: London 2011).

³¹ *Ibid.*

³² *Ibid.*

³³ Coolsaet, R., "EU counterterrorism strategy: value added or chimera?", *International Affairs* 86 4 (2010), p. 869.

³⁴ European Council, *The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism* (14781/1/05 REV 1) (24 November 2005).

³⁵ Bures, O., *EU Counterterrorism Policy: A Paper Tiger?* (Routledge: London 2011).

³⁶ Council of the European Union, *Framework Decision 2008/919/JHA of 29 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism* (2008/919/JHA).

Europe', the EU Radicalisation Awareness Network was launched as an umbrella network connecting first line practitioners from various EU Member States.³⁷

Until 2013, the EU counter-terrorism agenda would not change substantially. The Syrian civil war, the rise of ISIS and the Charlie Hebdo and Bataclan attacks, however, would prompt the EU to reconsider its counter-terrorism policies due to yet again a change in the threat perception.

3.1.3. The Syrian civil war and ISIS, the foreign (terrorist) fighters phenomenon, and the attacks on Charlie Hebdo, the Bataclan and Brussel/Zaventem

The civil war in Syria and rise of ISIS have attracted a large number of foreign fighters from all over the world, including the EU. While in June 2014 about 2500 European foreign fighters had travelled to Syria, this number has risen to more than 5000 as of November 2015 according to Europol (other reports come to different numbers though, see for instance the Foreign Fighters Report by the International Centre for Counter-Terrorism – The Hague (ICCT)).³⁸ The great majority of these fighters have joined extremist groups and about 30% of them have returned to Europe.³⁹ While not all of these returnees will be terrorists,⁴⁰ many of them have been exposed to sustained radicalisation and violence. Furthermore, even small numbers of experienced fighters can pose a significant threat to their homelands.⁴¹ Not only the situation in Syria poses a threat to EU Member States; developments in the Middle East and North Africa (MENA) region, such as political unrest in Libya, enable ISIS to gain a foothold in countries bordering the EU.⁴² The nexus between internal and external security has with these developments become more prominent. As Figure 4 - based on the Fragile State Index - shows, Europe is surrounded by fragile states with low(er) levels of stability and facing various internal pressures.⁴³

³⁷ European Commission, Communication from the Commission to the European Parliament and the Council, *The EU Internal Security Strategy in Action : Five steps towards a more secure Europe* (COM (2010) 673).

³⁸ Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague 7*, no. 2 (2016).

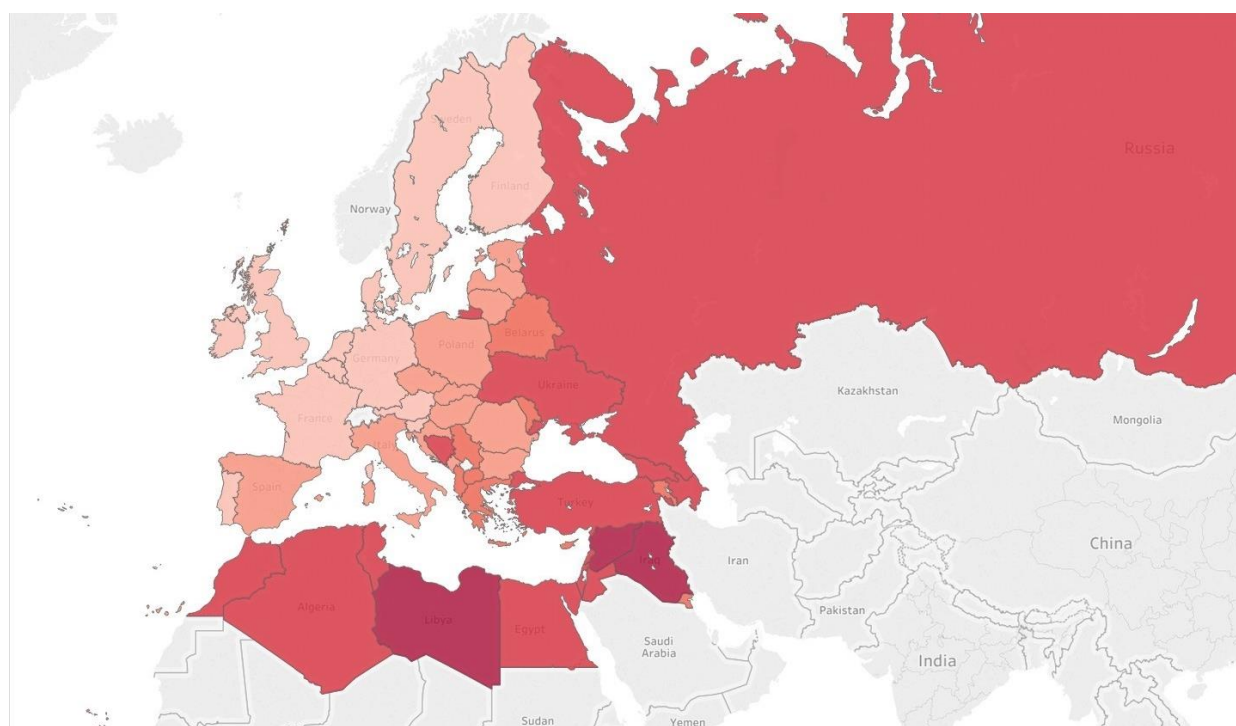
³⁹ Ibid.

⁴⁰ Hegghammer, T., "Will ISIS 'weaponize' Foreign Fighters?", *CNN Opinion* (17 October 2014); Hegghammer, T., "Should I stay or should I go? Explaining Variation in Western Jihadists' Choices between domestic and foreign fighting", *American Political Science Review* (February 2013), p. 10.

⁴¹ The Soufan Group, *Foreign Fighters in Syria* (2014) and *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq* (2015).

⁴² See figure 2 for a map of Europe and its 'ring of instability', which constitutes a breeding ground for terrorism (Fragile State Index, 2014).

⁴³ See <http://fsi.fundforpeace.org/>.

Figure 4: Europe's fragile neighbourhood, 2016

Source: Fragile State Index⁴⁴. Darker colours red indicate a higher ranking in the Fragile State Index.

This threat from foreign fighters has been exemplified by two terrorist attacks in France in 2015. The Charlie Hebdo attackers reportedly received terrorist training in Yemen, while some of the Bataclan perpetrators were EU citizens that had returned from Syria.⁴⁵ The attack on Charlie Hebdo in January 2015 led the EU JHA Council to issue the 'Riga Statement',⁴⁶ qualifying terrorism, radicalisation, recruitment and terrorist financing among the main threats to EU internal security.⁴⁷ Clearly the threat is no longer merely perceived as an internal threat, but rather as a threat with three dimensions: internal, inside out and outside in. The investigations that followed these attacks showed the transnational aspects of the operative cells that prepared the attacks and the international support networks related to that. In response to the developments, the Commission in December 2015⁴⁸ issued a proposal for the adoption of new Directive on combating terrorism, which was supposed to replace the previous mentioned Framework Decisions. This proposal intends to strengthen the Framework Decisions and add new criminal offences that address the foreign terrorist fighters phenomenon, including the receiving of terrorist training, travelling and attempting to travel abroad for terrorism, and funding or facilitating such travel. It is

⁴⁴ Fragile State Index (2016), <http://fsi.fundforpeace.org/>. The Fragile State Index focuses on the indicators of risk and is based on thousands of articles and reports. A state that is fragile has several attributes, and such fragility may manifest itself in various ways. Nevertheless, some of the most common attributes of state fragility may include: the loss of physical control of its territory or a monopoly on the legitimate use of force; the erosion of legitimate authority to make collective decisions; an inability to provide reasonable public services; the inability to interact with other states as a full member of the international community.

⁴⁵ European Parliamentary Research Service (EPRS), *Foreign fighters – Member State responses and EU action* (2016).

⁴⁶ European Justice and Home Affairs Ministers, *Riga Joint Statement*, (2015).

⁴⁷ Europol, *European Union Terrorism Situation and Trend Report (TE-SAT) 2016*.

⁴⁸ European Commission, "Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism", 2 December 2015, COM (2015) 625 final, 2015/0281 (COD).

interesting to note that the explanatory memorandum accompanying the proposal for the Directive states that "this proposal is exceptionally presented without an impact assessment".⁴⁹

The perpetrators of the attacks in Brussels in March 2016 also appeared to be connected to the earlier mentioned international support networks, though no conclusive evidence could be found in open sources. The sense of urgency with regard to improving the mechanisms of data exchange and mutual legal assistance were clearly felt, and the EU took further steps in proposing and adopting measures and policies related to the prevention of radicalisation, detection of travel for suspicious purposes, the criminal justice sector, and cooperation with third countries.⁵⁰ Furthermore, the EU Internet Referral Unit was established and placed under Europol's European Counter Terrorism Centre,⁵¹ as well the launch of the EU Internet Forum⁵² and the Syria Strategic Communications Advisory Team⁵³ (now renamed the Strategic Communication Network) to deal with the ever increasing use of the internet and social media by recruiters and extremist terrorist organisations. Moreover, and the day after the attacks of the Brussels metro station, and airport Zaventem, the President of the Commission, Jean-Claude Juncker, launched the idea of a 'Security Union'.⁵⁴ The objective of this new idea, which was subsequently put on the agenda by the Commission in April 2016, was to improve the coordination within the EU's internal security domain particularly vis-à-vis transnational threats such as terrorism, in order to create the necessary infrastructure for national authorities to work effectively together, to close operational loopholes and gaps, and provide an environment in which national police forces will develop an automatic reflex to share relevant information with colleagues in other Member States.⁵⁵

3.1.4. The Nice and Berlin attacks and a series of small-scale attacks: rise of the lone actors and the weaponisation of ordinary life

The attack in Nice in July 2016, as well as the series of small-scale attacks in inter alia Rouen and Germany that followed in the same month, have been second latest shocks for the EU and its counter-terrorism community, the latest shock was the attack on the Christmas Market in Berlin in December 2016. These attacks seemed to exemplify a shift in the threat assessments to the citizens of the EU: the rise of the lone wolf and the weaponisation of ordinary life.

While there certainly remain gaps in the research on lone-wolf (or: lone-actor) terrorism,⁵⁶ there is a general consensus that "not only is it re-emerging, but current trends suggest an increasing threat"⁵⁷ (see also figures 5-7). The lone-actor terrorist is not new. However, internet has made it easier for terrorists to not only disseminate extremist material at a

⁴⁹ Ibid.

⁵⁰ European Parliamentary Research Service (EPRS), *Foreign fighters – Member State responses and EU action* (2016).

⁵¹ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union (COM (2016) 230 final), paragraph 2.2.

⁵² Ibid.

⁵³ European Parliament, Answer given by Mr Avramopoulos on behalf of the Commission, EP Parliamentary questions (2011).

⁵⁴ Barigazzi, J., "Jean-Claude Juncker: EU needs 'a security union'", *Politico* (23 March 2016).

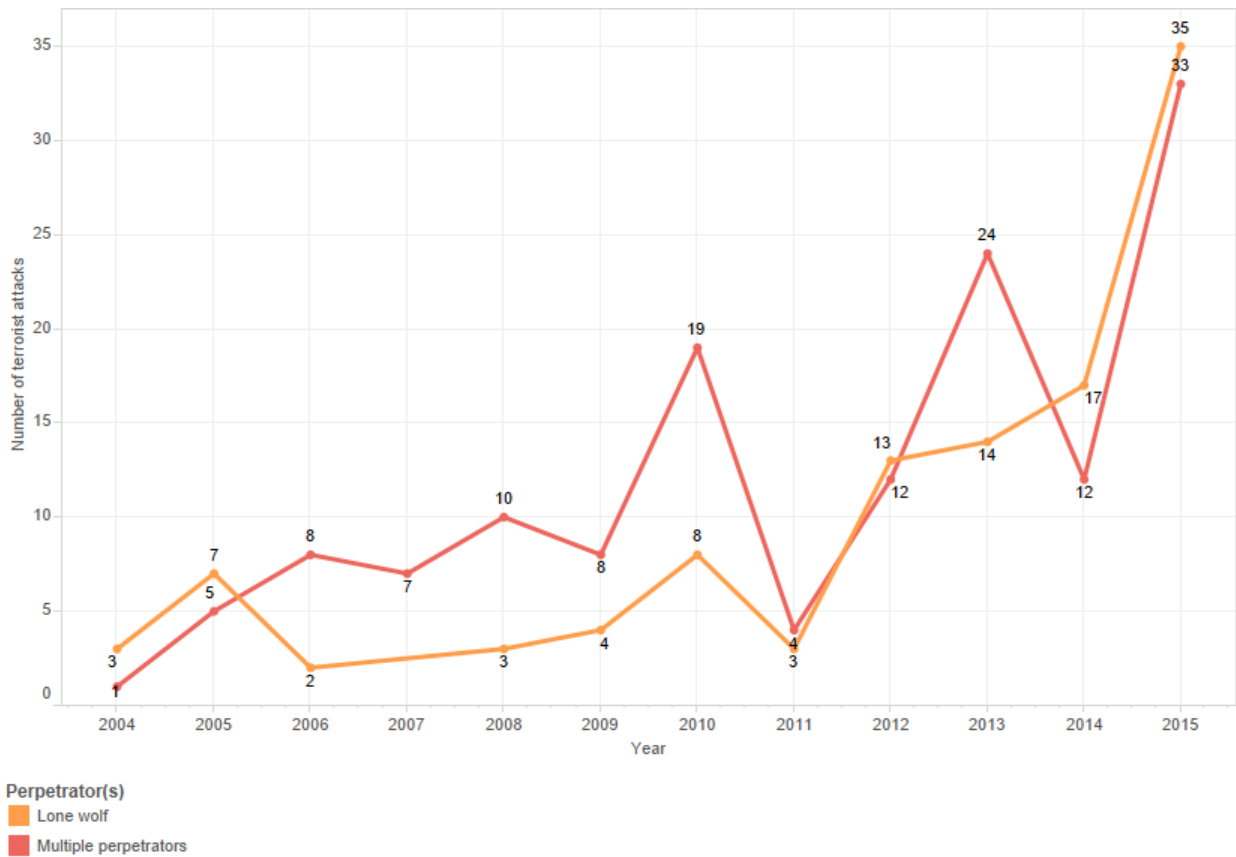
⁵⁵ European Commission, "European Agenda on Security: Paving the way towards a Security Union", Commission Press Release (20 April 2016).

⁵⁶ See inter alia De Roy van Zuijdewijn, J. and Bakker, E., "Lone-Actor Terrorism, Policy Paper 1: Personal characteristics of Lone-Actor Terrorists", *Countering Lone-Actor Terrorism Series No. 5*, p. 4.

⁵⁷ Pantucci, R. et al., "Lone-Actor Terrorism: Literature Review", *Countering Lone-Actor Terrorism Series No. 1* (2015), p. 2.

fast rate, thereby leading to radicalisation of lone actors, but also to more easily find already radicalised individuals and inspire them to launch attacks in their home countries. Conversely, it is easier for (potential) lone actors to find radicalising material and guidance for conducting attacks.⁵⁸ The increase in lone actor attacks can be attributed to the change in tactics of Al-Qaeda, who after the death of Osama bin Laden in 2011 called upon Muslims in Western countries to commit lone actor attacks in their countries of residence.⁵⁹ The call by ISIS at the beginning of 2015 echoed the same request.⁶⁰

Figure 5: Lone wolf attacks in Europe, 2004-2015



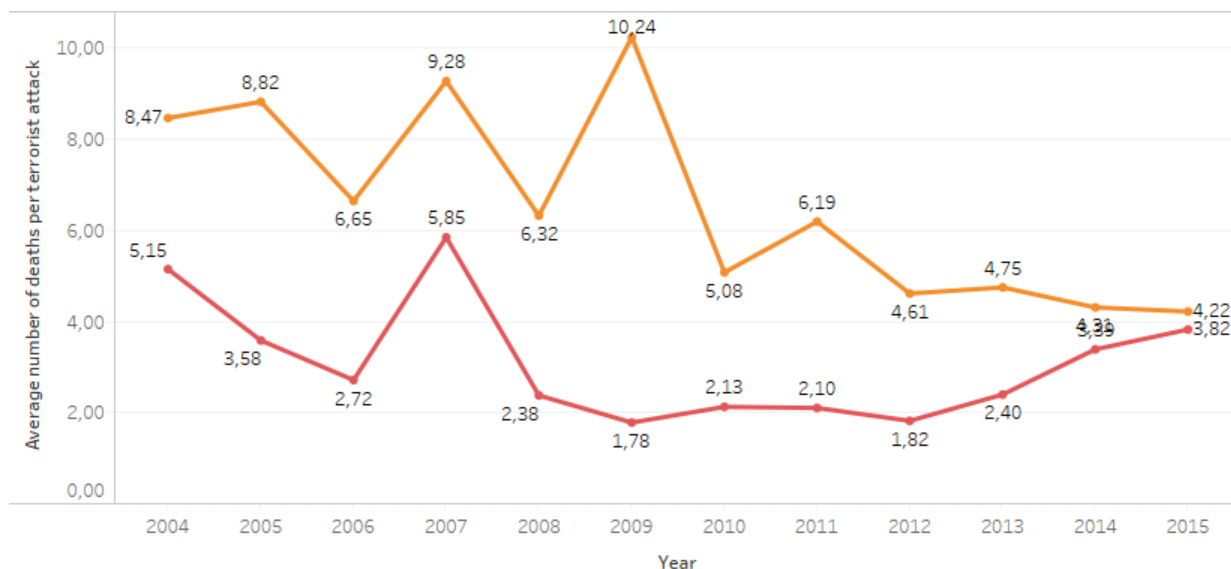
Source: National Consortium for the Study of Terrorism and Responses to Terrorism (START), *Global Terrorism Database 2016*. This figure shows a steady increase in the number of terrorist attacks by lone wolves.

⁵⁸ Ibid., pp. 2-6.

⁵⁹ Europol, European Union Terrorism Situation and Trend Report (TE-SAT) 2016, p. 26.

⁶⁰ Pantucci, R. et al., "Lone-Actor Terrorism: Literature Review", *Countering Lone-Actor Terrorism Series No. 1* (2015).

Figure 6: Average number of deaths per terrorist attack worldwide, lone wolves vs. multiple perpetrators, 2004-2015



In many of the terrorist events listed in the GTD-database information about the number of perpetrators is unknown. These events have thus not been included in this analysis, which results in a larger margin of error. However, the number of terrorist where information on the number of perpetrators is available still is significant. This trend analysis shows that over the period '04-'15, lone wolf-attacks on average have been more deadly than attacks by more than one perpetrator. However, there is convergence in the deadliness of groups and lone wolves.

Perpetrator(s)
■ Lone wolf
■ Multiple perpetrators

Source: Global Terrorism Database (GTD) 2016. This figure shows that in the period of 2004-2015, lone wolf-attacks on average have been more deadly than those perpetrated by multiple actors.

The rise in lone-actor threats may very well be attributed to the effectiveness of counter-terrorism efforts, pressuring terrorists to 'tactically adapt': the isolation of lone actors, acting without true guidance from and communications with a terrorist organisation, make them more difficult to detect and disrupt.⁶¹ In any case, the numbers suggest that lone actor attacks are on average more deadly than attacks committed by multiple perpetrators (figures 5-6), explaining the rise in concern with the various national security agencies. Adding to that concern is the infinite access to weapons if potential terrorists are no longer dependant on the criminal networks that need to supply arms and explosives, but can simply look into their kitchen drawer or turn to a car rental service to rent a truck, thereby weaponising ordinary life.

To improve the cooperation between police and judicial agencies within the EU and the data exchange between Member States, the European Counter Terrorism Centre was launched in January 2016. In June 2016, under the Presidency of the Netherlands, the Council produced a 'Roadmap to enhance information exchange and information management including interoperability solution in the Justice and Home Affairs area'.⁶² Finally, and although the Security Union still has to materialise, the Council of the European Union already appointed a new Commissioner for the Security Union, Sir Julian King.⁶³

⁶¹ Pantucci, R. et al., "Lone-Actor Terrorism: Literature Review", *Countering Lone-Actor Terrorism Series No. 1* (2015).

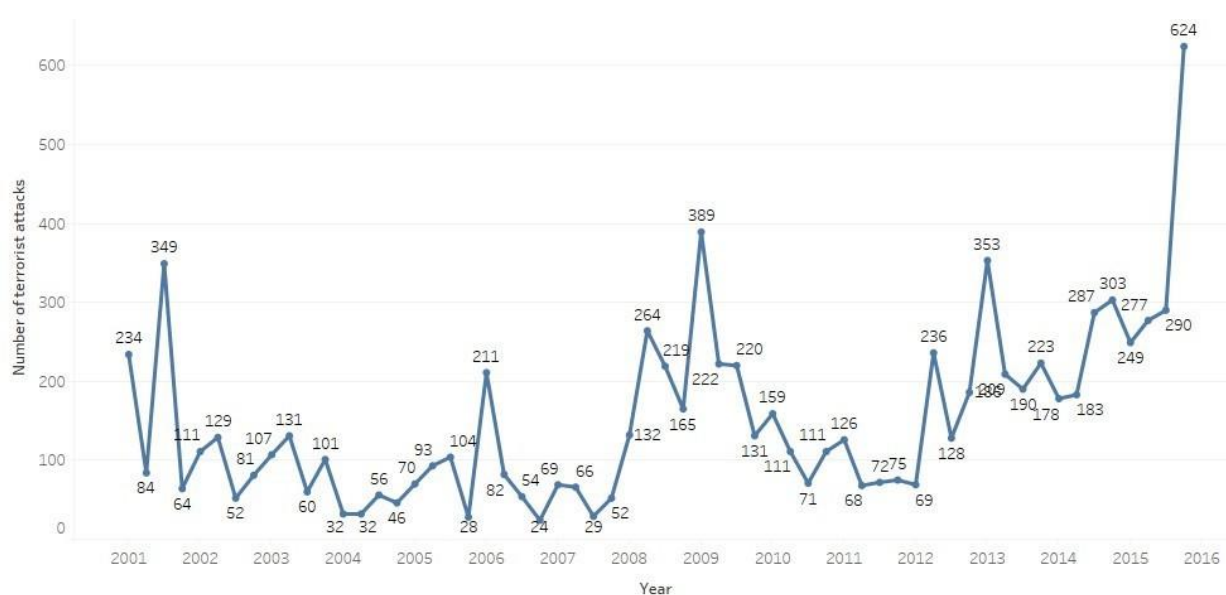
⁶² Council of the European Union, Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area, 9368/1/16 Rev 1, (6 June 2016).

⁶³ European Council and Council of the European Union, *Julian King appointed new commissioner for security union*, Press release 515/16 (19 September 2016).

3.2. Long-term trends and future developments

An analysis of the past ten years shows a steady increase in the number of terrorist attacks in Europe (figure 6), as well as in the number of deaths.⁶⁴ The same goes for Europe's direct neighbourhood and the rest of the world, but there the increase is more profound. The terrorist surge in Europe's 'ring of fragility' (figure 2) – especially MENA – has had and will continue to have implications for Europe. Firstly, because of the rising number of refugees towards Europe, especially since 2015,⁶⁵ but secondly because of the stream of foreign fighters moving to and returning from MENA, battle-hardened and having been exposed to sustained radicalisation. Attacks by separatist and left-wing extremist movements have been on a steady decline, whereas these last years show an increase in right-wing extremism and jihadist extremism.⁶⁶

Figure 7: Number of terrorist attacks in EU, 2001-2016



Source: Global Terrorism Database 2016.

Experts and security services expect these past developments, in particular the ones of the last two years, to predict a trend that will continue into the future for the coming five years with an expected increase of attacks. This is inter alia related to the fact that over a longer period of time, a very diffuse picture appears when it comes to the targets chosen by terrorists (see figure 8): although vital infrastructure as a potential target shows a constant pattern, targets such as the private sector, civil society, government or civilian locations

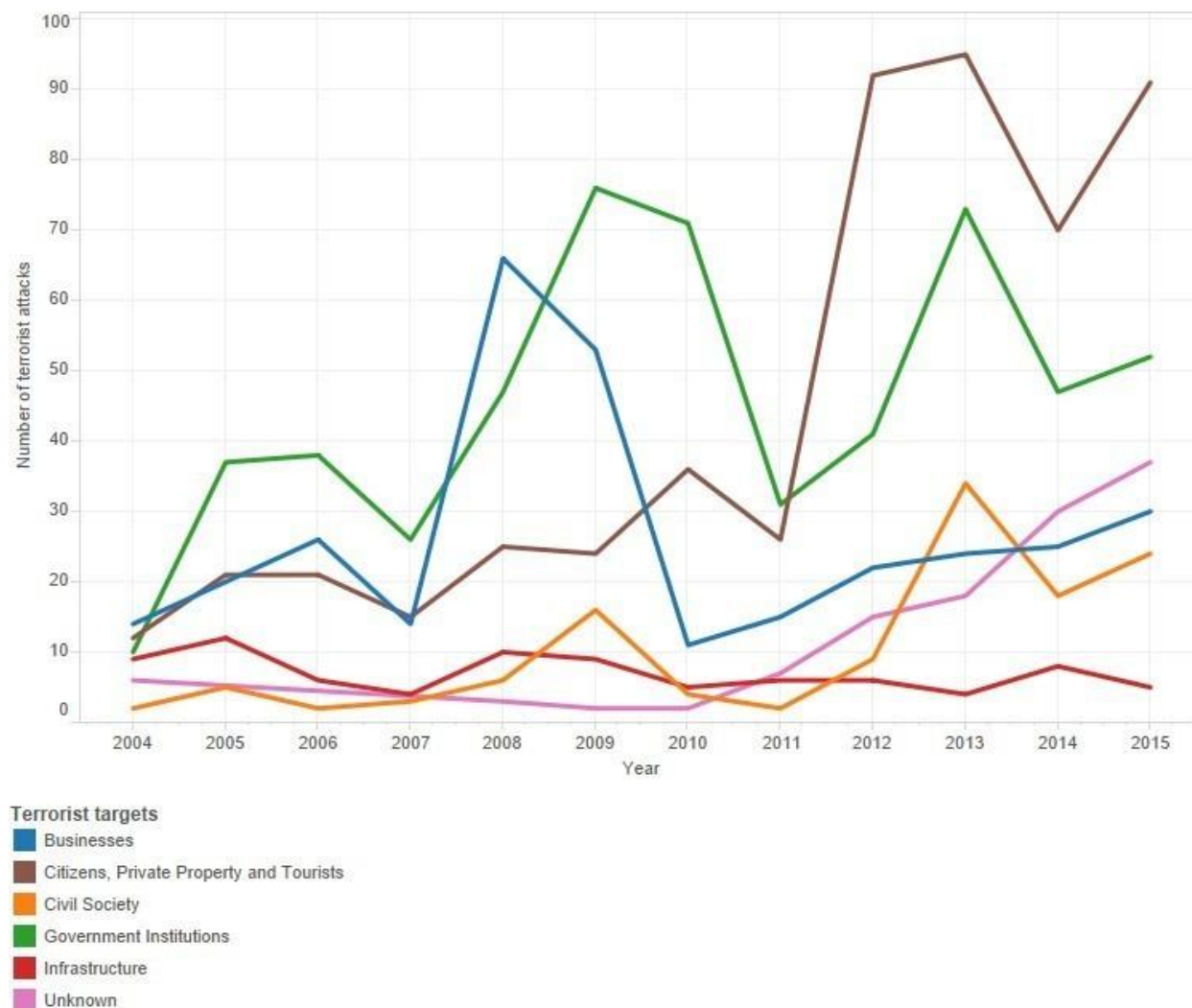
⁶⁴ While in 2014 four people died in the EU due to terrorist attacks, in 2015 this number rose to 151. See Europol, *European Union Terrorism Situation and Trend Report (TE-SAT) 2015*, p. 8 and Europol, *European Union Terrorism Situation and Trend Report (TE-SAT) 2016*, p. 10.

⁶⁵ Data from Eurostat show that the number of asylum applicants in the EU surged from 626,960 in 2014 to 1,322,825 in 2015. From January to September 2016, 944,275 refugees applied for asylum, outpacing the 2015 numbers.

⁶⁶ The number of jihadi attacks in the EU increased from four in 2014 to 17 in 2015. While no right-wing terrorist attacks took place in 2014, in 2015 nine attacks were classified as such. See Europol, *European Union Terrorism Situation and Trend Report (TE-SAT) 2016*, pp. 22 and 41.

seem to be interchangeable with a decrease in one being compensated by an increase in another target. The same diffuse pattern comes up when looking at the historical differences in choice of weapons or means of attack (see figures 9 and 10). In a recently published report, Europol also signalled these trends and warned for emerging *modus operandi*, changes in target selection, and changes in profiles of perpetrators.⁶⁷ In addition, Europol warns for the interest shown by ISIS in the use of chemical and/or biological weapons and the strong terrorism-organised crime nexus.⁶⁸

Figure 8: Terrorist targets in the EU, 2004-2015



Source: Trend analysis by PwC and ICCT, based on the Global Terrorism Database (2016).

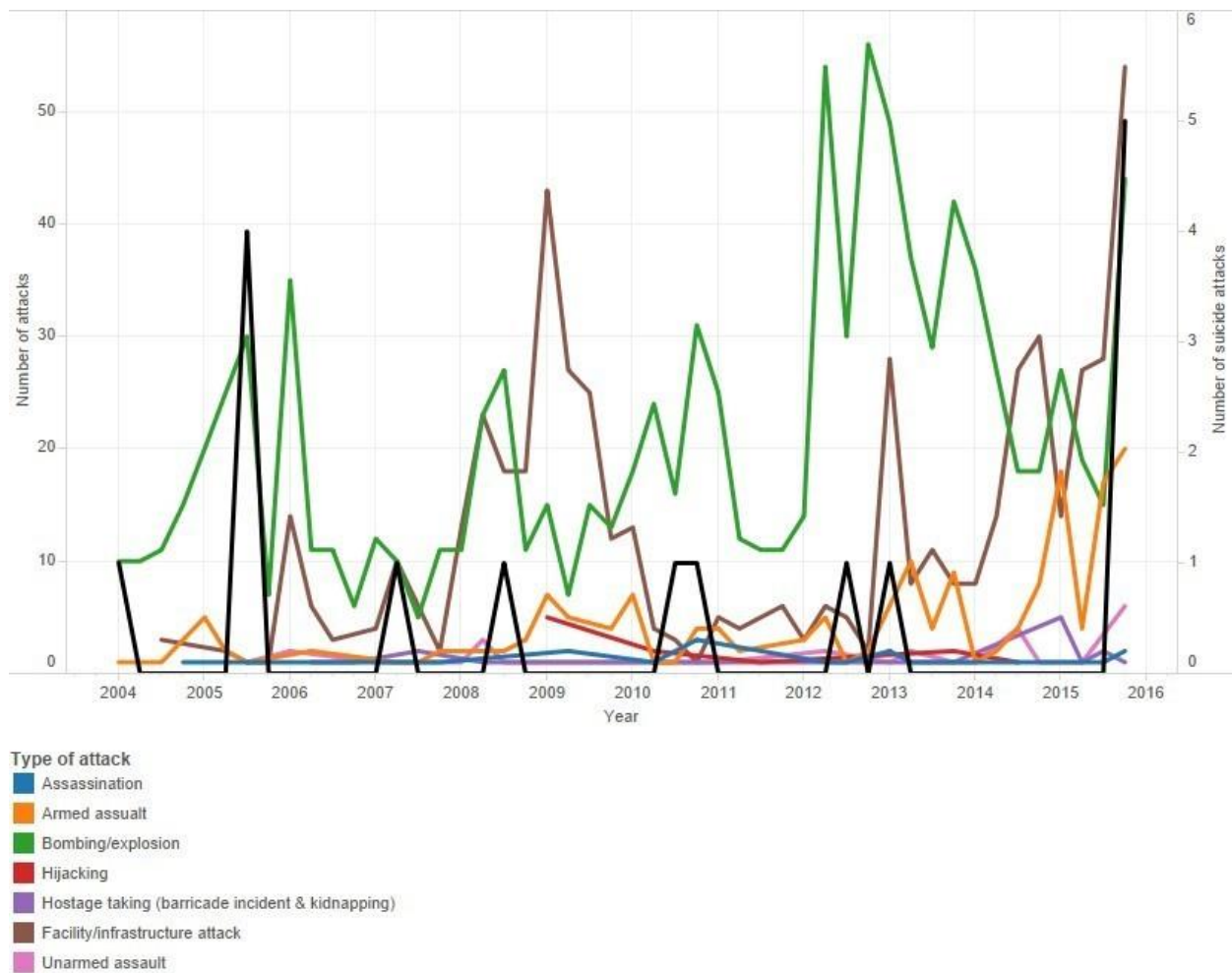
And finally, the trends with regard to organisational background and patterns of preparation and planning, including the increase of lone-actor attacks (see figure 5) also show that the degree of variation among them is increasing. All of this makes it extremely difficult for security agencies to detect and intervene at an early stage in order to prevent these attacks from happening.

⁶⁷ "Changes in *modus operandi* of Islamic State (IS) revisited", *Europol Press Release* (2 December 2016).

⁶⁸ *Ibid.*

The relative success of the ISIS and Al Qaida inspired recent attacks on EU soil, in general, could encourage other potential perpetrators to follow in the predecessor's footsteps in the coming years. In addition, the increasing military pressure on ISIS and the potential defeat of their strongholds in Syria and Iraq and the Middle East/North African region (MENA) in the coming years will likely trigger yet two other developments. From historical research it is known that increased military pressure on a militant organisation at first triggers more terrorist attacks in the conflict region itself and in other countries that are considered to be adversaries.⁶⁹ Europol is also warning for this fall-out effect of the enhanced military pressure on ISIS.⁷⁰

Figure 9: Type of terrorist attacks, 2004-2016



Source: Trend analysis by PwC and ICCT, based on the Global Terrorism Database (2016).

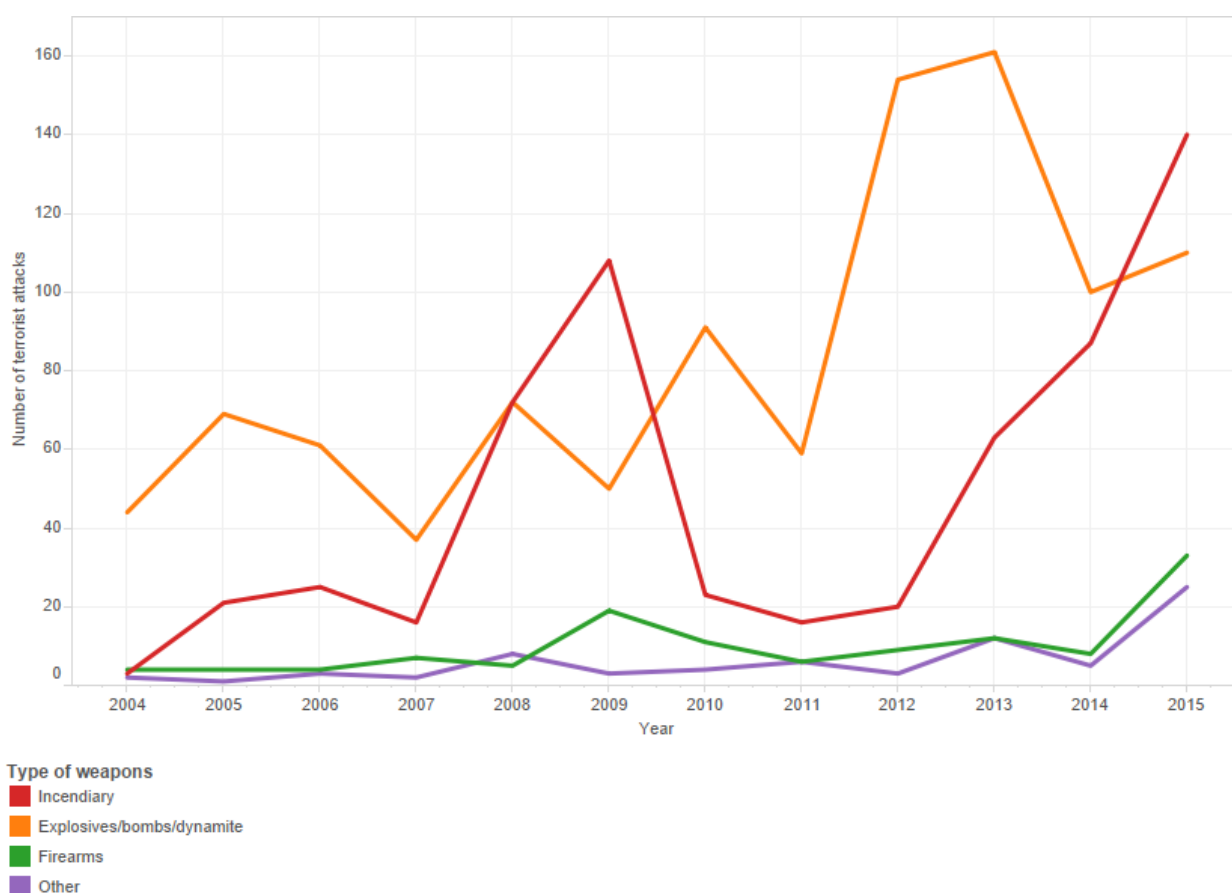
And secondly, the potential defeat of ISIS in its current strongholds in Syria, Iraq and the MENA region in the coming years has immediate implications for the thousands of foreign fighters, including between 4000-5000 from the EU, that travelled to the region to join the ranks of ISIS and other extremist jihadist organisations. If they are still alive, what will be

⁶⁹ For instance, the conflict Chechnya, the pressure on Hezbollah, the PKK, and the FLN. See also, A. Kurth Conin, A., "How al-Qaida ends; The decline and demise of terrorist groups", *International Security*, 31 (1) 1 (2006), pp30-31; Frish, H., "Strategic Change in Terrorist Movements; Lessons from Hamas", *Studies in Conflict and Terrorism*, 32 (12) (2008), pp. 1049-1065.

⁷⁰ Europol, European Union Terrorism Situation and Trend Report (TE-SAT) 2016, p. 26.

their pathways?⁷¹ Will they stay in the region? Will they get arrested and prosecuted? Will they travel on to the next conflict or safe haven where what is left of the jihadist organisation will set up its camp? Or will they return to their countries of origin? So far, and as mentioned before, an estimate of 30% of the European foreign fighters have returned.⁷² And if the latter is the case, with what intentions do they come back? Based on earlier cases, Hegghammer estimates that approximately one in 15-20 of the returnees pose a security risk.⁷³ His research was based on those foreign fighters that travelled to the conflict zone before 2011, and it is very likely that the risks with regard to those who left after 2011 is higher. This risk assessment in combination with the expected increase in returnees due to the potential defeat of ISIS, makes the risk that returnees pose to the security in the EU a very substantial one, and certainly one that needs to play a prominent role when assessing the needs for new or revised policies.

Figure 10: Type of weapons used in terrorist attacks, 2004-2016



Source: Trend analysis by PwC and ICCT, based on the Global Terrorism Database (2016).

⁷¹ Bakker, E., Reed, A. and de Roy van Zuijdewijn, J., "Pathways of Foreign Fighters: Policy Options and Their (Un)Intended Consequences", *The International Centre for Counter-Terrorism- The Hague* 6 no. 1 (2015).

⁷² Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague* 7, no. 2 (2016).

⁷³ Hegghammer, T., "Will ISIS 'weaponize' Foreign Fighters?", *CNN Opinion* (17 October 2014); Hegghammer, T., "Should I stay or should I go? Explaining Variation in Western Jihadists' Choices between domestic and foreign fighting", *American Political Science Review* (February 2013), p. 10.

4. MAPPING OUT THE EU COUNTER-TERRORISM POLICY ARCHITECTURE

KEY FINDINGS

- Prior to 11 September 2001, cooperation in the field of counter-terrorism was informal and not officially part of the institutional structure of the then European Community (EC). In response to the bombings in London on 7 July 2005, the United Kingdom (UK), holding the Presidency for the second half of the year, drafted what was ultimately adopted in December 2005 as the 'European Union Counter-Terrorism Strategy'. The Strategy has not been updated since 2005.
- The added value of the 2005 EU Counter-Terrorism Strategy and its coherence with various overarching (the EU's internal and external security strategies) and sub-strategies (e.g. on countering radicalisation and recruitment, countering terrorist finance, protection of critical infrastructure and customs) are unclear. It was concluded that counter-terrorism is a 'composite' policy area with challenges related to coordination, coherence, and consistency, and that it is not always clear who is in charge of these processes.
- Currently, too many actors are involved in the design and implementation of this policy area, the tasks of the individual actors at times overlap. This is notably the case when it concerns strategies that can be issued by the European Council, the Council of the EU and by the Commission, making it unclear who is in the lead. The recently appointed Commissioner for the Security Union and the delimitation of his competences vis-à-vis the EU Counter-Terrorism Coordinator furthermore complicates the questions concerning coordination.
- Certainly not helpful to this situation is the lack of clarity on the scope of the term 'internal security', and the extent to which Member States are willing to call on that exceptional clause in order to give priority to their national competences. This seems to be at odds with the otherwise regularly expressed conviction that the nature of the threat of terrorism has a cross-border character, and therefore merely a sum of national actions would fall short to address the true nature of the threat.
- In spite of assurances regarding more involvement of citizens in the preparation of new initiatives, of the 88 legislative initiatives regarding counter-terrorism since 2001, in merely three cases a public consultation was performed. Only one quarter of the legally binding measures adopted since 2001 were subjected to Impact Assessments. Particularly striking is the lack of an Impact Assessment where the new Directive on Combating Terrorism that is to replace Framework Decision 2002/475 is concerned. None of the Council initiatives have been accompanied by an Impact Assessment. The lack of public consultations and ex ante assessments is not compensated by ex post reviews or evaluations.
- Seven themes are prominent in the EU policy architecture and explored in more detailed in this chapter.

This chapter outlines the EU counter-terrorism policy architecture. It begins by exploring the role and the place of the 2005 Counter-Terrorism Strategy and related documents in terms of the gaps these documents seek to fill and the overlap they might create. A similar question is posed with regard to the actors and their mandates in relation to counter-terrorism. The chapter ends with an exploration of the developments on the seven themes as outlined in the introduction in terms of implementation and effectiveness.

4.1. Counter-terrorism strategy as presented in general communications of the EU

The EU refers to its approach of counter-terrorism as a 'comprehensive' approach.⁷⁴ This section introduces and reflects on the place the EU Counter-Terrorism Strategy has in the general communication of the EU with regard to security policies. This section begins with contextualising the need for a counter-terrorism strategy by discussing several earlier initiatives, both before and after the attacks on 11 September 2001. It continues to outline the components of the Strategy itself. It then situates the Strategy in relation to overarching strategies that place concerns about terrorism in a broader context of insecurities as well as sub-strategies on tackling terrorist financing and radicalisation. This section ends with reflections on this constellation of documents that together constitute counter-terrorism as a so-called composite policy area. The focus is on the official representation and not so much on how intentions played out in practice.

4.1.1. Predecessors

The EU adopted a formal Counter-Terrorism Strategy in December 2005. It is worthwhile to briefly revisit some of the broader historical context in order to understand that its standing as a distinct policy domain was not given (and neither will it be in the future). Counter-terrorism was discussed among the Member States in the so-called Trevi-framework (1975-1993).⁷⁵ This concerned the exchange of information and best practices among police and judicial officials in the Member States. Cooperation was informal and not officially part of the institutional structure of the then European Community (EC). The Trevi-initiative is the first step of the European Community/EU in the field of internal security. The formalising of police and judicial cooperation in criminal matters under Title VI of the Maastricht Treaty in February 1992 referred to terrorism as one of the areas of concern.⁷⁶ However, actual policy development in the context of what became known as 'Justice and Home Affairs' (JHA) focused on tackling organised crime, drug trafficking, and illegal migration.⁷⁷ Terrorism was, at least on the level of policy communications (European Council Conclusions), often seen as part of organised crime. The 'Action Plan to Combat Organized Crime' is a case in point.⁷⁸

⁷⁴ Council of the European Union, "The European Union Counter-Terrorism Strategy", 14469/4/05 Rev 4, 30 November 2005, p. 6.

⁷⁵ Monar, J., "EU internal security governance: the case of counter-terrorism", *European Security* vol. 23, no. 2 (2014), p. 197.

⁷⁶ Title VI, Treaty on European Union, OJ C 191, 29.7.1992.

⁷⁷ Den Boer, M., "The EU Counter-Terrorism Wave: Window of Opportunity or Profound Policy Transformation?" in Van Leeuwen, M (ed), *Confronting Terrorism: European Experiences, Threat Perceptions and Policies*. Kluwer Law International: The Hague, London, New York (2003), p. 188.

⁷⁸ Council of the European Union, "Action Plan to Combat Organized Crime", OJ C 251, (Adopted by the Council on 28 April 1997).

Matters changed in response to the attacks of 11 September 2001 in the United States. At the end of an informal and extraordinary meeting of the European Council in Brussels, the Belgian Presidency presented 'Conclusions and [a] Plan of Action' which prioritised several themes: 'Solidarity and Cooperation with the United States', 'The Union's involvement in the world' which linked efforts to tackle terrorism with the EU's Common Foreign and Security Policy (CFSP), and 'World economic prospects' about ensuring economic and financial stability.⁷⁹ The most elaborate theme was 'The European policy to combat terrorism', the first high-level EU intention to work towards an EU approach to countering terrorism. It focused on implementing the policy agenda on police and judicial cooperation formulated at the European Council meeting in Tampere, Finland, in October 1999. In addition, it asked for the implementation of international legal instruments on counter-terrorism, highlighted the need to take action on the 'funding of terrorism', a strengthening of air security, and to coordinate EU policies regarding counter-terrorism. The approach focused mostly on the implementation of existing policies.

4.1.2. The 2005 Counter-Terrorism Strategy

After the bombings in Madrid on 11 March 2004 the European Council adopted a 'Declaration on combating terrorism' which both called for the implementation of existing measures as well as the development of new ones.⁸⁰ The Declaration was accompanied by an 'EU Plan of Action on Combating Terrorism', a long table or 'roadmap' for the purposes of monitoring implementation and creating an overview, and listing measures, the competent bodies, and deadlines.⁸¹ This roadmap was structured according to seven so-called Strategic Objectives. These focused on: (1) international cooperation, (2) terrorist financing, (3) the detection, investigation, prosecution, and prevention of terrorist attacks, (4) transport security and border control, (5) adequate response capacity after a terrorist attack, (6) support for and recruitment into terrorism, and (7) a focus on priority Third Countries in terms of external action.⁸² The roadmap was structured according to these seven objectives. The seven objectives also show how the approach to counter-terrorism became more fine-grained and specialised into distinct topics.

The organisation of the roadmap according to the seven objectives turned out to be short-lived. In response to the bombings in London on 7 July 2005, the United Kingdom (UK), holding the Presidency for the second half of the year, drafted what was ultimately adopted in December 2005 as the 'European Union Counter-Terrorism Strategy'.⁸³ It was the first time EU public policy documents of this nature began referring to 'countering' rather than 'combating' terrorism. This might suggest a broader interpretation of what was needed to deal with terrorism as well as perhaps a more institutionalised approach since 'combating' carries a more ad hoc connotation. The Strategy was closely modelled on the UK's own strategy and consisted of four so-called 'pillars': prevent, protect, pursue, and respond. Prevent concerns policies to anticipate people from "turning to terrorism and to stop the next generation of terrorists from emerging".⁸⁴ Protect is about better defending against attacks and the impact of attacks. Improvements with regard to (external) border security, and transport and other critical infrastructure is central under this pillar. Pursue refers to

⁷⁹ European Council, Conclusions and Plan of Action of the extraordinary European Council Meeting on 21 September 2001, pp. 11-14.

⁸⁰ Council of the European Union, "Declaration on combating terrorism", 7906/04, 29 March 2004.

⁸¹ Council of the European Union, "EU Plan of Action on Combating Terrorism", 10586/04, 15 June 2004, p. 5.

⁸² *Ibid.*, p. 5.

⁸³ Council of the European Union, "The European Union Counter-Terrorism Strategy", 14469/4/05 Rev 4, 30 November 2005.

⁸⁴ *Ibid.*, p. 7.

“disrupt terrorist activity and pursue terrorists across borders” and revolves around the strengthening of capabilities for improved police and judicial cooperation.⁸⁵ Police and judicial cooperation as well as countering terrorist financing are key aspects here. Respond involves dealing with the consequences of terrorist attacks and refers to crisis management arrangements. The Strategy has not been updated since 2005.

The Strategy settles on the scope of counter-terrorism, but also positions it in relation to the values, goals and institutional procedure that governs it. The four pillars are preceded by a ‘strategic commitment’ that sets out the values and goals of the strategy: “To combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice”.⁸⁶ The role and responsibilities of the EU as a counter-terrorism actor is then outlined. It clarifies that Member States have the primary responsibility for counter-terrorism, and that the EU mainly serves in a supporting role. This role is envisaged as (1) the “strengthening [of] national capabilities” through the sharing of information and best practices, (2) “facilitating European cooperation”, (3) “developing collective capability”, both in terms of understanding and EU policy responses, and (4) taking international action in the context of the United Nations and with third countries.⁸⁷ These four strands are ‘priorities’ and not necessarily obligations for the Member States to follow. It brings up the question what role the strategy fulfils: is it an ‘inspirational sketch’, a ‘mission statement’, or a ‘basic reference point’ for policy-makers?⁸⁸

The Strategy then outlines how ‘political oversight’, i.e. democratic procedure and accountability, is administered. The European Council should maintain political oversight. A ‘high-level political dialogue on counter-terrorism’ between the Council, the European Parliament, and the Commission should meet every half-year to discuss inter-institutional relations. The Committee of Permanent Representatives (COREPER), in conjunction with the EU Counter-Terrorism Coordinator and the Commission, is tasked with keeping an eye on the progress on the Strategy.⁸⁹

4.1.3. Overarching and sub-strategies

The EU’s counter-terrorism policies are also part of a broader architecture concerning security. How does the 2005 Counter-Terrorism Strategy as well as affiliated sub-strategies fit within the broader EU security architecture and what does this mean in terms of overlap, gaps and effectiveness? There are several strategies (and action plans) that break up and situate the task of counter-terrorism across a range of fields. Documents detail the relation between counter-terrorism and critical infrastructure protection, customs, explosives, transport and air cargo security, and a security industry to mention a few. Perhaps the most important sub-strategies are those on countering radicalisation and recruitment, and countering terrorist finance. A ‘Strategy for Combating Radicalisation and Recruitment to Terrorism’ appeared in 2005 and with updates in 2008 and 2014. This involves to “prevent people from becoming radicalised, being radicalised and being recruited to terrorism and to

⁸⁵ Ibid., p. 12.

⁸⁶ Ibid., p. 2.

⁸⁷ Ibid., p. 4.

⁸⁸ For ‘inspirational sketch’, see Duke, S (2004), “The European Security Strategy in a Comparative Framework: Does it Make for Secure Alliances in a Better World?”, *European Foreign Affairs Review* vol. 9, no. 4 (2004), p. 460. For ‘mission statement’ and ‘basic reference point’, see Argomaniz, J., *The EU and Counter-Terrorism: Politics, polity and policies after 9/11*, Routledge: London and New York (2011), p. 100.

⁸⁹ Council of the European Union, “The European Union Counter-Terrorism Strategy”, 14469/4/05 Rev 4, 30 November 2005, p. 5.

prevent a new generation of terrorists from emerging".⁹⁰ The emphasis is on acting before the threat materialises and the strategy stresses the participation of non-traditional security actors such as social workers and civil society organisations, and traditional security actors in a new role such as community police officers. Countering terrorist finance is expected to "make a powerful contribution to the fight against terrorism".⁹¹ A strategy on countering terrorist financing appeared in October 2004, before the general Counter-Terrorism Strategy in December 2005, and a revision appeared in July 2008, after which the Commission published an action plan in February 2016.⁹² Tackling terrorist financing involves the financial sector in reporting suspicious or usual activities to the authorities and underlines the need for these authorities to cooperate and share information with the intelligence and security services and law enforcement authorities.⁹³ The sub-strategies work out in more detail specific aspects of the 2005 general Counter-Terrorism Strategy. Counter-terrorism is in this sense a 'composite' policy area; it brings together a number of different fields, ranging from amongst others the social domain, the financial sector, law enforcement, critical infrastructure, and border security.⁹⁴ This brings up three questions. First, since there are many sub-strategies or action plans, issues of coordination, coherence, and consistency emerge as pressing matters. Second, who is in charge of these processes (see section 4.2 on the mapping of the various actors)? Three, what function does the 2005 Counter-Terrorism Strategy have in this regard?

Similar concerns exist with regard to the overarching strategies. The EU's policy activity in the field of security is structured according to an internal (within the EU) and external domain (outside the EU). Externally, the 'European Security Strategy' appeared in 2003, its successor - the 'Shared Vision, Common Action: A Stronger Europe' - in 2016.⁹⁵ Both documents listed terrorism among several other concerns. For instance, the 2016 strategy places terrorism alongside "hybrid threats, climate change, economic volatility and energy insecurity".⁹⁶ Internally an 'Internal Security Strategy' (ISS) was published in 2010 with a renewed version in 2015.⁹⁷ Similar to the external strategies, both ISSs outline a broader insecurity landscape of which terrorism is a part together with "serious and organised crime" and "cybercrime"; the 2010 ISS offered several other issues, including "violence itself" and "road traffic accidents".⁹⁸ More recently, there were two additional initiatives to improve cooperation regarding internal security. The 'European Agenda on Security' was launched in 2015 in order to "bring added value to support the Member States in ensuring

⁹⁰ Council of the European Union, "Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism", 9956/14, 19 May 2014, p. 3.

⁹¹ European Commission, "Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing", COM(2016) 50 final, p. 2; See also Council of the European Union, "The fight against terrorist financing", 16089/04, 14 December 2004, p. 2; Council of the European Union, "Revised Strategy on Terrorist Financing", 11778/1/08 Rev 1, 17 July 2008, pp. 2 and 4.

⁹² Council of the European Union, *The fight against terrorist financing*, 16089/04 (14 December 2004); Council of the European Union, *Revised Strategy on Terrorist Financing*, 11778/1/08 Rev 1 (17 July 2008); European Commission, Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 50 final).

⁹³ Council of the European Union, "The fight against terrorist financing", 16089/04, 14 December 2004, p. 4.

⁹⁴ For counter-terrorism as a 'composite' policy, see Argomaniz, J. *The EU and Counter-Terrorism: Politics, polity and policies after 9/11*. Routledge: London and New York (2011), p. 98.

⁹⁵ Council of the European Union, "European Security Strategy", 15849/03, 5 December 2003, p. 4; European External Action Service, "Shared Vision, Common Action: A Stronger Europe" (2016).

⁹⁶ European External Action Service, "Shared Vision, Common Action: A Stronger Europe" (2016), pp. 18-19.

⁹⁷ Council of the European Union, 'Draft Internal Security Strategy for the European Union: "Towards a European Security Model"', 5842/2/10 Rev 2, 23 February 2010; Council of the European Union, "Draft Council Conclusions on the Renewed European Union Internal Security Strategy 2015-2020", 9798/15, 10 June 2015.

⁹⁸ Council of the European Union, 'Draft Internal Security Strategy for the European Union: "Towards a European Security Model"', 5842/2/10 Rev 2, 23 February 2010, pp. 5-6.

security” by improving information sharing and the prevention of radicalisation.⁹⁹ Following the attacks in Brussels in March 2016, the concept of a ‘Security Union’ was launched as a way to “move beyond the concept of cooperating to protect national internal security to the idea of protecting the collective security of the Union as a whole” and to this extent, again, emphasising the need to improve information sharing.¹⁰⁰ Despite their different focus, the documents on the internal and external dimension share two underlying assumptions. One is the interlinking of internal and external security.¹⁰¹ The other – of more importance here – is the insistence on a multidisciplinary approach in dealing with threats and conflicts.¹⁰² The overarching strategies thus seek to address the apparent gap of stand-alone strategies such as the 2005 EU Counter-Terrorism Strategy. At the same time, this brings up the question what the added value is of the 2005 EU Counter-Terrorism Strategy? Does the Strategy serve to signal the importance of the theme of counter-terrorism? Does it highlight the values guiding EU counter-terrorism policies? Or does the strategy offer mere ‘conceptual guidance’?¹⁰³ The various overarching and sub-strategies do not seem to foster the coherence that might be needed to govern in a policy domain so taken by events such as counter-terrorism.

4.2. Actors and mandates

In the previous section, the EU counter-terrorism policy documents were discussed. It was concluded that counter-terrorism is a ‘composite’ policy area with challenges related to coordination, coherence, and consistency, and that it is not always clear who is in charge of these processes. In this section, the various EU actors and their mandates are examined. Attention is paid to the actors responsible for setting out strategies and policies, for adopting concrete measures, and for applying and enforcing these measures. The way the EU actors normally operate in other EU policy areas (i.e. other than the areas under which counter-terrorism is dealt with) will be contrasted with the special characteristics of the way in which the work on counter-terrorism is organised. For instance, overlapping competences and unclear mandates can make it difficult to establish who is in the lead of specific actions, who is in charge of coordination etc. Furthermore, attention is paid to the manner in which the actors abide by their own guidelines on evidence based policy making, public participation and better regulation.

⁹⁹ European Commission, “Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: The European Agenda on Security”, COM (2015) 185 final, 28 April 2015.

¹⁰⁰ European Commission, “Communication from the Commission to the European Parliament, the European Council and the Council – delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union”, COM (2016) 230 final, 20 April 2016, pp. 2 and 9.

¹⁰¹ Council of the European Union, “European Security Strategy”, 15849/03, 5 December 2003, p. 4; European External Action Service, “Shared Vision, Common Action: A Stronger Europe” (2016), p. 14, 17; Council of the European Union, ‘Draft Internal Security Strategy for the European Union: “Towards a European Security Model”’, 5842/2/10 Rev 2, 23 February 2010, pp. 2 and 4; Council of the European Union, “Draft Council Conclusions on the Renewed European Union Internal Security Strategy 2015-2020”, 9798/15, 10 June 2015, pp. 6 and 8.

¹⁰² Council of the European Union, “European Security Strategy”, 15849/03, 5 December 2003, p. 9; European External Action Service, “Shared Vision, Common Action: A Stronger Europe” (2016), p. 28; Council of the European Union, ‘Draft Internal Security Strategy for the European Union: “Towards a European Security Model”’, 5842/2/10 Rev 2, 23 February 2010, pp. 2 and 4; Council of the European Union, “Draft Council Conclusions on the Renewed European Union Internal Security Strategy 2015-2020”, 9798/15, 10 June 2015, pp. 6 and 8.

¹⁰³ Argomaniz, J., *The EU and Counter-Terrorism: Politics, polity and policies after 9/11*. London: Abingdon and London 2011, p. 100.

The main EU actors are the EU institutions, notably the European Council,¹⁰⁴ the Council of the European Union (the Council),¹⁰⁵ the European Parliament, the European Commission (including, since September 2016, the Commissioner for the Security Union)¹⁰⁶ and the Court of Justice of the European Union (CJEU). Besides these official institutions, several other actors are also involved, such as the Counter-Terrorism Coordinator (CTC)¹⁰⁷ established by the European Council in 2004 and Europol's European Counter Terrorism Centre (ECTC), which was created in January 2016.

Any action from the side of the EU actors needs a basis in the EU Treaties, as the EU can act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein.¹⁰⁸ In principle, EU competences are either exclusive or shared with the Member States, but there also exist special competences. The ones on counter-terrorism are shared competences that can be found in the provisions dealing with the EU's area of freedom, security and justice (AFSJ), and special competences where the Common Foreign and Security Policy (CFSP) is concerned.¹⁰⁹ Given the complex underlying causes and background of terrorism, its overlap with several other societal problems such as organised crime and arms trafficking, and the clear nexus between internal and external security, the way the overall EU mandate is divided over two separate main working areas is historically understandable. Once EU norms are in place, the Member States need to ensure that they act in line with those norms.¹¹⁰ As a general principle, even if it has the competence to act, the EU actors are to observe the subsidiarity principle.¹¹¹ This principle requires that the EU only adopt measures where EU-level initiatives will better secure the fulfilment of the objectives in the Treaties than Member State action. In spite of the general applicability of the subsidiarity principle to EU action in all the areas where the EU does not have exclusive competence, it is specifically underlined that the principle also applies in the AFSJ.¹¹² Since the Union also does not have exclusive CFSP competences, in principle the subsidiarity principle applies here as well.¹¹³

The mandates of the actors involved in shaping this counter-terrorism policy demonstrate specific features when compared to other EU policy areas, which might be among the reasons why this policy area is widely regarded as complex, even after the changes brought about by the Treaty of Lisbon.¹¹⁴ First of all, it can be noted that where the AFSJ is concerned, the Union is reminded that the different legal systems and traditions of the Member States are to be respected (art. 67(1) of the Treaty on the Functioning of the EU

¹⁰⁴ The European Council consists of the Heads of State and Government of the EU Member States and the President of the European Council and the President of the Commission.

¹⁰⁵ The Council consists of national ministers and meets in ten different formations, depending on the topic at hand. Counter-terrorism is notably discussed in the JHA Council and the Foreign Affairs Council.

¹⁰⁶ A post currently occupied by the UK Commissioner Julian King.

¹⁰⁷ A post currently occupied by Gilles de Kerchove.

¹⁰⁸ Art. 5(2) TEU, the principle of conferral.

¹⁰⁹ See art. 4(2) sub j TFEU for the AFSJ. No similar provision exists concerning the CFSP, but art. 24 TEU sets out a special competence in this area that can be compared to a shared competence. See Wessel, R.A. and Den Hertog, L., "EU Foreign, Security and Defence Policy: a competence-responsibility gap", in Evans, M. and Koutrakos, P. (eds.), *International responsibility: EU and international perspectives*, Hart Publishing, Oxford 2013, pp. 339-358.

¹¹⁰ The Union and the Member States may legislate and adopt legally binding acts in that area and that the Member States exercise their competence to the extent that the Union has not exercised its competence (art. 2(2) TFEU).

¹¹¹ Art. 5(3) TEU and the Protocol on the Application of the Principles of Subsidiarity and Proportionality.

¹¹² See Art. 69 TFEU.

¹¹³ Since the Protocol (no. 2) to the Treaty of Lisbon on the application of the principles of subsidiarity and proportionality focuses mainly on legislative procedures, it is less relevant for the area of CFSP where the adoption of legislative acts by the EU is excluded (art. 24(1) TEU).

¹¹⁴ The Treaty of Lisbon abandoned the old pillar structure under which special intergovernmental rules applied for matters of security, justice and foreign affairs, and supranational rules in the other areas.

(TFEU)). This provision underlines that the Union is not to aim at full harmonisation of issues like combatting terrorism. This is confirmed by art. 72 TFEU, where it is stipulated that the exercise of responsibilities incumbent upon Member States relating to the safeguarding of internal security is not to be affected. The provision has been explained to constitute a safeguard clause that allows Member States to deviate from common decisions adopted at EU level, to the extent that they can prove that law and order as well as internal security are affected by such an initiative or action.¹¹⁵ Additionally, art. 4(2) of the Treaty on European Union (TEU) stipulates that "national security remains the sole responsibility of each Member States". Another author said the article means that "any action at EU level will be complementary and subject to the principle of subsidiarity".¹¹⁶ Yet another author is of the opinion that art. 72 TFEU merely confirms that measures are to be implemented by the Member States, particularly as regards coercive sanctions.¹¹⁷ Whatever the exact meaning of these Treaty provisions is, it seems clear that the area of combatting terrorism (notably where AFSJ is concerned) does not form an ordinary shared competence, but rather one in which the EU depends heavily on the willingness of Member States to move forward and the way that Member States interpret the term 'internal security', and want to call upon that exception.

Normally speaking, the European Council is responsible for providing political impetus for the development of the EU. Where security is concerned, it is assigned more concrete tasks. In the AFSJ, it is to "define strategic guidelines and operational planning within the area of freedom, security and justice" (art. 68 TFEU). As for external security, it is to identify the strategic interests and objectives, where need be in the form of a thematic approach (art. 22 TEU). Hence, the treaties seem to designate that the European Council should be the lead EU institution where strategic matters of combatting terrorism are concerned. However, the Council also adopts conclusions setting out strategies and measures that need to be adopted in order to fight terrorism. At times, the Commission also adopts strategies on this topic.¹¹⁸ This overlap can lead to confusion regarding the question who is in charge of the strategies.

Once strategic guidelines, interests and objectives are set out by the European Council and/or the Council, or at times by the European Commission, normally speaking concrete proposal for binding legislation are to be proposed by the European Commission. Extraordinarily, in the AFSJ, a quarter of the Member States can also initiate proposals. In all other cases, the Council (by a simple majority) can only request the Commission to submit a proposal (art. 241 TFEU); in a similar vein, the European Parliament can, by a majority of its component Members, request the Commission to submit a proposal (art. 225 TFEU).

The category of relevant stakeholders who need to be consulted in the process of Impact Assessments constitute an often overlooked and undervalued other actor in EU counter-terrorism policy. In spite of assurances regarding more involvement of citizens in the preparation of new initiatives, of the 88 legislative initiatives regarding counter-terrorism

¹¹⁵ Wolff, S., Goudappel, F. and De Zwaan, J., *Freedom, Security and Justice after Lisbon and Stockholm*, (T.M.C. Asser Press: The Hague 2011), p. 14.

¹¹⁶ Kaczorowska, A., *European Union Law* (2d ed.), Routledge, London and New York (2011), under point 2.4.2. Her latter point is not typical for counter terrorism measures: any measure proposed under a shared competence needs to meet the subsidiarity principle. The author also points at art. 4(2) TEU, which stipulates that "national security remains the sole responsibility of each Member States".

¹¹⁷ Peers, S. *EU Justice and Home Affairs Law* (3d ed.), Oxford University Press, Oxford and New York (2011), p. 156.

¹¹⁸ For example Commission, The European Agenda on Security (COM(2015)185 final).

since 2001, a public consultation was performed in merely three cases.¹¹⁹ Impact Assessments should accompany any major initiative and describe impacts of initiatives, alternative options, and costs and benefits etc.¹²⁰ These assessments can contribute to a more evidence-based approach in EU policy and law making. Unfortunately, in the area of counter-terrorism, the Commission has also not been forthcoming in subjecting its proposals to Impact Assessments. Only one quarter of the legally binding measures adopted since 2001 were subjected to Impact Assessments.¹²¹ Particularly striking is the lack of an Impact Assessment where the new Directive on Combating Terrorism that is to replace Framework Decision 2002/475 is concerned.¹²² None of the Council initiatives have been accompanied by an Impact Assessment.¹²³ The lack of public consultations and ex ante assessments is not compensated by ex post reviews or evaluations.¹²⁴ The fact that better regulation guidelines regarding ex ante Impact Assessments of new proposals, and review and evaluation of the functioning of existing measures have often not been observed, does not help in working towards a more coherent and effective approach.

In the pre-Lisbon period, the European Parliament did not yet act as co-legislator in matters of counter-terrorism. As a result, some three quarters of the EU legislative measures adopted since 2001 were adopted without the European Parliament operating as co-legislator. Often, the institution was only consulted. However, after the adoption of the Lisbon Treaty, generally speaking the European Parliament received full co-decision powers in the AFSJ, with exceptions in cases related to specific and sensitive subject matters.¹²⁵

Where the Council is concerned, it was already mentioned that it meets in different configurations and that for each of these, the work on counter-terrorism is carried out with the help of numerous different working groups.¹²⁶ Within the Foreign Affairs configuration of the Council alone, for instance, three different Working Groups contribute to the preparation of legislation: the Working Party on Terrorism (International Aspects) (COTER), the Working Party on the Application of Specific Measures to Combat Terrorism (COCOP), and the Working Party of Foreign Relations Counsellors (RELEX). Within the JHA Council Configuration, no less than five Working Groups help out.

The Commission is normally in charge of executive tasks, but in the area of counter-terrorism these tasks are often assigned to the Council. The Commission has divided its tasks over various Directorates General (DGs). The bulk of the Commission's involvement with counter-terrorism lies with DG Home, but given the complex nature of the subject, other DGs are regularly involved as well.¹²⁷ As of 1 December 2014, its regular task of

¹¹⁹ De Londras, F. and Doody, J., *The impact, legitimacy and effectiveness of EU counter-terrorism*, Routledge, New York (2013), p. 26.

¹²⁰ See Commission of the European Communities, *Communication from the Commission on Impact Assessment (COM(2002) 276 final)*.

¹²¹ *Ibid.*, p. 27.

¹²² European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism (COM(2015) 625 final)*. The lack of an Impact Assessment was criticized by a number of NGOs, see International Commission of Jurists, Amnesty International, Open Society Justice Initiative and the European Policy Institute, 'Joint submission – European Commission's proposal for a Directive of the European Parliament and of the Council on Combating Terrorism and Replacing Council Framework Decision 2002/475/JHA on Combating Terrorism' (February 2016), accessed at <https://www.opensocietyfoundations.org/sites/default/files/submission-ec-terrorism-directive-20160219.PDF>.

¹²³ De Londras, F. and Doody, J. (2013), *The impact, legitimacy and effectiveness of EU counter-terrorism*, p. 28.

¹²⁴ *Ibid.*, pp. 31-32.

¹²⁵ For instance where passports and identity cards are concerned (art. 77(3) TFEU).

¹²⁶ *Ibid.*, p. 50.

¹²⁷ For instance, where the EU Data Retention Directive is concerned, DG Information Society and Media and DG Internal Market and Services also played a role.

checking whether Member States abide by EU law norms was expanded to measures in the field of police cooperation and judicial cooperation adopted before the entry into force of the Treaty of Lisbon (13 December 2007).¹²⁸ With the appointment of the new Commissioner for the Security Union, Sir Julian King, as of September 2016, with a mandate to strengthen the overall effort to combat terrorism, prevent radicalisation and strengthen the cooperation and data exchange ambitions, it will have to be seen how this actor will relate to the other actors on the marketplace of counter-terrorism, and to what extent he can take a leading and coordinating role.

To complete the mapping of the various actors involved in counter-terrorism, one can add the position of the CTC, created in 2004 by the European Council as mentioned earlier in this subsection. It was declared that a comprehensive and strongly coordinated approach is required in response to the threat posed by terrorism, but it turned out that the mandate of the CTC is nevertheless limited. For instance, while the CTC is to maintain an overview of all the instruments at the Union's disposal with a view to regular reporting to the Council and effective follow-up of Council decisions,¹²⁹ he is neither entitled to oblige Member States to provide information to the EU bodies nor coordinate individual Member States' national counter-terrorism structures or operations – though the CTC is able to name and shame laggard Member States.¹³⁰ Clear improvements brought about by the CTC are lacking, according to some of the participants of this project's Policy Lab workshop and others.¹³¹ In a study commissioned by the LIBE Committee in 2011 entitled 'Developing an EU Internal Security Strategy, fighting terrorism and organised crime', the authors already pointed out that it was not clear how the work of the CTC would relate to the work of COSI or the EEAS for that matter.¹³² More recently, however, others have pointed out that, despite the limitations inherent in his post, the CTC has made significant progress in the process of establishing himself as a fully-fledged counter-terrorism actor on the international stage, and concluded that the CTC is increasingly considered an important component of the external dimension of EU counter-terrorism policy by both Member States and third states and bodies.¹³³ How the division of tasks and responsibilities between the CTC and the new Commissioner for Security Union will play out, was not yet clear when writing this study.

In conclusion, when examining the actors and their mandates in the area of EU counter-terrorism policy and law, it is generally felt that the situation after the Treaty of Lisbon did not bring about more clarity. Currently, too many actors (see figure 11 below) are involved in the design and implementation of this policy area, and the tasks of the individual actors at times overlap. This overcrowding of EU counter-terrorism policy is especially clear when it concerns strategies that can be issued by the European Council, the Council as well as by the Commission, making it unclear who is in the lead. Furthermore, it is at times unclear

¹²⁸ I.e. five years after the entry into force of the Treaty of Lisbon, in line with art. 10 Protocol 36 to the Treaty of Lisbon.

¹²⁹ Council of the European Union, Declaration on combatting terrorism, 7906/04, 29 March 2004.

¹³⁰ Wahl, T., "The European Union as an actor in the fight against terrorism", in: Wade, M. and Maljevic, A., *A war on terror? The European stance on a new threat, changing laws and human rights implications*, Springer, New York Dordrecht Heidelberg London (2010), pp. 107-170.

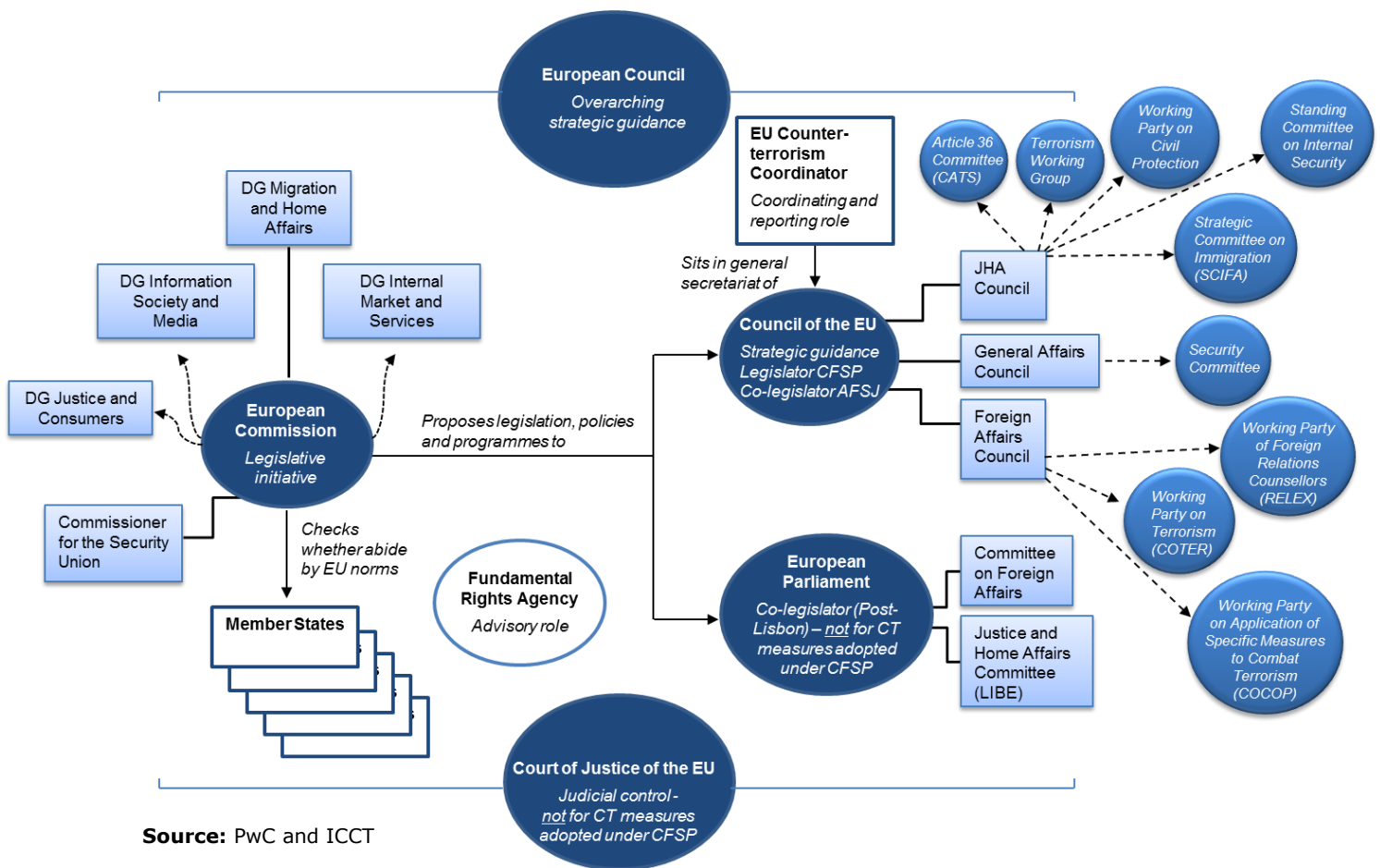
¹³¹ See Annex E. Also critical are Hayes, B. and Jones, C., Taking stock: the evolution, adoption, implementation and evaluation of EU counter-terrorism policy, in: De Londras, F. and Doody, J., *The impact, legitimacy and effectiveness of EU counter-terrorism*, Routledge, London and New York (2013), pp. 13-39, at 35 and 36.

¹³² European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Developing an EU Internal Security Strategy, fighting terrorism and organized crime*, Study for the LIBE Committee (2011), pp. 72-73.

¹³³ Mackenzie, A., Bures, O., Kaunert, C. and Léonard, S., "The European Union Counter-terrorism Coordinator and the external dimension of the European Union counter-terrorism policy, Perspectives on European Politics and Society", 14(3) (2013) pp. 325-338.

which responsibilities individual actors have, what the limits of their competences are, in which manner their interactions are to take place and who is in charge of coordination. Certainly not helpful to this situation is the lack of clarity on the scope of the term 'internal security', and the extent to which Member States are willing to call on that exceptional clause in order to give priority to their national competences. This seems to be at odds with the otherwise regularly expressed conviction that the nature of the threat of terrorism has a cross-border character, and therefore merely a sum of national actions would fall short of addressing the true nature of the threat. Furthermore, the dynamic of the six months rotation of the EU Presidency implies that expectations as to the European Council's or the Council's capabilities – driven by the ambitions of the various Presidencies – to design and follow-up on a long-term vision, strategy and implementation of action plans need to be limited.

Figure 11: Selected actors in EU counter-terrorism policy



4.3. Exploring the policy developments on seven themes

The EU counter-terrorism policies cover a range of specific areas. There have been a series of legislative and policy proposals on:

- border security;
- terrorist financing;
- firearms;
- criminal records exchange; and
- re-defining terrorist offences.

In addition, the European Parliament identifies efforts to improve EU work on *radicalisation and recruitment*, notably through the Radicalisation Awareness Network, as an interesting area in EU counter-terrorism policy. Finally, the Parliament points to the challenge of improving *information and intelligence sharing*.

While these seven themes can be analytically separated from one another, it is clear that they are also interlinked. Clear examples are the linkages between border security and information sharing, and between terrorist financing and re-defining terrorist offences.

In the following section contains a short introduction as well as the research team's key observations on each of the seven themes. In chapter 5, the team's general observations will be presented, which include aspects above and beyond these individual themes. A more detailed analysis of each of the seven themes is included in the Factsheets for each theme in Annex I.

4.3.1. Fora, measures and tools for operational cooperation and intelligence/law enforcement and judicial information exchange

Various mechanisms have been developed at the EU level for engaging in operational cooperation and information exchange in order to assist in law enforcement or the management of migration. Most of these have not been developed specifically with a counter-terrorism purpose in mind. However, counter-terrorism is becoming a more prominent rationale in relation to cooperation and exchange.

Following terrorist attacks, frequently political calls are risen for the need to share more information between the Member States. From the perspective of practitioners this is easier said than done. Sharing more information is not necessarily a good thing as it can produce data overflow. Of more importance in this respect is the capacity for analysis in the Member States to process the information. Several interviewees indicated that effective cooperation *between* Member States is dependent on how well different agencies (police, intelligence, security service, and judicial) *within* a Member State cooperate with each other. The degree of collaboration among agencies within the Member States varies across the EU.

Another point raised is that the institutional and organisational set-up of police, intelligence and security services differs across Member States.¹³⁴ Certain Member States have

¹³⁴ See also European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *The EU Internal Security Strategy, the EU Policy Cycle and The Role of (AFSJ) Agencies. Promise, Peril and Pre-requisites*, Study for the LIBE Committee (2011), p. 9.

gendarmerie-type police organisations (e.g. France, Spain and Italy) while others do not (e.g. the Netherlands and Germany). Certain Member States combine security and intelligence capabilities in one organisation (e.g. the Netherlands, Belgium, and Slovakia) while others have separate organisations (e.g. France, Germany, Bulgaria and Spain). Moreover, some security services are police organisations (e.g. Denmark) while in others they are not (e.g. the Netherlands and Germany). As a corollary, some Member States treat criminal intelligence (short cyclical) and security intelligence (long cyclical) as distinct processes (e.g. the Netherlands and Germany), while other Member States do less so.

Moreover, agencies are bound by legal mandates which put limitations on what information can be shared with whom, in what form and under what circumstances. Effective collaboration between and among police, intelligence, and judicial agencies across borders therefore requires, first of all, a proper understanding of each other's impossibilities. These requirements are exacerbated in terms of organising such cooperation and exchange with third countries as they are generally not beholden to, for instance, the formal EU data protection framework and not regularly a part of the routinised structure of meetings that the EU context facilitates.

Informal structures remain key in terms of information exchange and operational cooperation among member states, notwithstanding the formal policy architecture of the EU (EU databases and Europol). For intelligence and security services, as well as for police forces the most important information sharing platforms are informal non-EU structures: respectively the Counter Terrorist Group (CTG) and the Police Working Group on Terrorism (PWGT). The PWGT – in existence since 1976 – allows for the exchange of police information with a classification (Secret) that is not possible (yet) within EU structures, although SIENA was recently upgraded to allow for the exchange of information with the label Confidential.¹³⁵

Despite the existence of a formal policy architecture for operational cooperation and information exchange (see Factsheet A and B in Annex I for more details), trust engendered by personal contacts in other Member States remains an essential ingredient for effective cooperation. An interviewee gave the example of intelligence agencies who prefer to talk directly to the responsible police officer when sharing sensitive information rather than an administrative unit. Legal practitioners also use personal contacts to coordinate an approach to a particular case. The importance attached to trust and personal contacts puts limits on the extent to which information sharing and cooperation can be technologised through databases (see below).

When it comes to implementation, informal channels remain important and are prioritised over EU information systems when speed and trust are needed most. In addition, there are differences in terms of how much data is shared with and how much use is made of these EU information systems, including Europol and Eurojust. The effectiveness of these cooperation and sharing mechanisms also relates to the Member States knowing each other's limitations.

¹³⁵ Council of the European Union, "Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area: - State of play of the implementation of its Actions 1 to 16 (Chapter 2)", 13283/16, 14 October 2016, p. 15.

4.3.2. Data collection and database access and interoperability

The EU has created multiple structures in order to facilitate operational cooperation and information exchange with regard to intelligence, law enforcement and justice. There is the recognition at the EU level that the plethora of different information systems is not helpful and interoperability is proposed as the way to increase more coherence.¹³⁶ On the basis of the interviews it can be questioned whether the prominence attached to interoperability as a way to bring more coherence among the different EU information system forgoes several more fundamental questions. A 2011 study also highlighted these issues.¹³⁷

While interviewees reported that more use is made of systems such as Europol's Secure Information Exchange Network Application (SIENA), not all Member States have the right infrastructure to operate the system. Moreover, in terms of implementation, the amount of information fed into these information systems also differentiated among the Member States. Another interviewee argued data sharing through these systems is mainly of reactive nature, e.g. in reaction to an attack. In addition, it has also been pointed out that SIS II and Focal Point Travellers (FPT) are useful for the purpose of investigation, but not well suited to, for instance, prevent the travel of (potential) foreign fighters.

The information systems have been developed as a "solution for particular problems in specific areas".¹³⁸ An interviewee echoed this observation. Certain purposes for which, for instance the Schengen Information System II (SIS II), is now in demand (investigation and prosecution) were not foreseen at the outset. In addition, as can be observed on the basis of the legal mandates: certain systems have been designed explicitly for law enforcement goals (SIS II and the Passenger Name Records (PNR) system) while others have been repurposed for this end (European Dactyloscopy (EuroDac) and the Visa Information System (VIS)). Another aspect to this is the organisation of cooperation and exchange with third countries. Since EU information systems are designed to meet the demands of the Member States, need to facilitate the administration of common policies (e.g. in the context of migration), and are subject to EU data protection rules, cooperation with third countries will be a challenge.

Moreover, several interviewees questioned the added value of certain systems (PNR) for the purposes of counter-terrorism. This means that in a changing context at different times different demands are placed on these systems. As a result, a continuous interplay ensues between system functionalities and the expectations they are required to meet. In terms of best practices as well as effectiveness, it is necessary to keep going an exchange between the users of these information systems in order to manage their expectations.

4.3.3. Measures to enhance external border security

Border management regards the entering of people and goods into the EU. In order to mitigate the risk of security risks such as terrorism cross the borders of the EU, border security controls are in place. The EU embraced the policy of performing risk based

¹³⁶ Council of the European Union, "Draft Council Conclusions on an updated Information Management Strategy (IMS) for EU internal security", 15701/1/14, 24 November 2014, p. 6. See also Council of the European Union, "Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area", 9368/1/16 Rev 1, 6 June 2016, p. 2.

¹³⁷ European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Developing an EU Internal Security Strategy, fighting terrorism and organised crime* (2011), Study for the LIBE Committee, pp. 91-98.

¹³⁸ Council of the European Union, "Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area", 9368/1/16 Rev 1, 6 June 2016, p. 8.

controls, in order not to hinder the flows of travellers and goods too much. To facilitate the smooth traffic of people and goods, and with the availability of new ICT-solutions, possibilities are explored to perform a risk analysis as early as possible in the process of people travelling and goods shipping towards the EU. This is complemented by checks at the border.

Most measures to enhance external border security are not solely developed for counter-terrorism purposes, and the fight against terrorism is not even the main objective of these measures. Nevertheless, in many cases terrorist incidents or reference to the terrorist threat drove the development of many of the measures to enhance the security risk management of the EU borders for travellers and goods alike. The Advanced Passenger Information (API) Directive for instance helped combating illegal immigration and improving border control, but the (perceived or potential) effectiveness of API systems in enhancing border security and public order is less obvious.

An important element of all measures to enhance external border management is the collection of advance data at EU-level and to perform risk analysis on persons and goods. The development of these systems is to a certain extent based on the assumption that Member States will use the data that is collected and/or generated in these border management systems to match with their own data. It is also based on the idea that Member States enter relevant data in EU systems (such as SIS II) so that an automated match can be made with data that is collected and/or generated in these border management systems. The underlying assumption is that Member States are able to risk analyse the data that is collected on people and on goods, preferably in an equal manner. This however presupposes that Member States possess the same data (in intelligence and police databases for instance) to match the data collected at EU level, and that they will come to the same conclusion regardless which Member States performed the analysis. In most of the impact assessments, however, these assumptions remain implicit, as remain the consequences if these assumptions prove not to be correct. Based on the feedback from experts and professionals in the Member States, this is not (yet) the case and is not foreseen in the nearby future. Most Member States have different databases, different legal regimes to collect and retain data and to match this data with other data or to share data with third parties, including to upload data in EU systems. Although a positive trend is recognised, the extent to which Member States are willing to upload data in EU systems is perceived to vary to a large extent. If EU systems contain far from all relevant risk information from all Member States, and if data collected at EU level is matched with databases that are incomplete or of various quality, then this gives rise to the idea that this effort is – in view of the objective to fight terrorism – not adding the value that it could. The effectiveness of all initiatives in the area of customs risk management thus still depend on interagency cooperation and information sharing between border management agencies, customs and other authorities at the Member States and EU level, and that has still to be developed.

Experts and professionals in general do not call for additional systems to enhance external border security at this moment. They recognise the threat of returning foreign fighters, but they also believe with the current systems, a lot can be done already. One possible additional feature that could add value would be the possibility to collect biometrics (i.a. fingerprints) in SIS II and to be able to match these biometrics of for instance people entering the EU coming from countries like Syria and Iraq. In these countries, in places where ISIS was active, the coalition collected fingerprints from explosives and other military equipment potentially used by ISIS. These might be of use to identify returning

fighters in migration flows into the EU, and/or be used – if properly collected and treated – as evidence in court cases against foreign terrorist fighters.¹³⁹

4.3.4. Combating terrorist financing

The EU policy regarding combating terrorist financing and sanctions aims at disrupting the flow of financial resources to and from terrorist organisations and individual terrorists. The two main strands of action are measures by which private entities that handle funds for clients are to ensure that suspicious transactions are reported to the authorities on the one hand, and the freezing of assets of persons involved in supporting terrorism (sanctions) on the other hand. Among the challenges in the oversight is the fact that there exist many financial means used by terrorists, from cash and cultural artefacts to virtual currencies and anonymous pre-paid cards, and that unnecessary obstacles to the functioning of payments and financial markets for ordinary, law-abiding citizens is to be avoided.

The EU measures and national implementing measures regarding terrorist financing and sanctions, and their implementation in the Member States, were adopted in line with international FATF recommendations and Security Council decisions. Some EU member states and the Commission are members of the FATF. Where cooperation with third countries is concerned, the EU-US Terrorist Financing Tracking Programme (TFTP) can be mentioned (discussed further under theme B). In December 2005, the Council of Europe Convention on the Prevention of Terrorism was signed by the Union. Furthermore, the EU announced it will provide technical assistance to Middle East and North African countries to fight against the trafficking of cultural goods, support these countries and South East Asia regions to monitor, disrupt and deny the financing of terrorism, deepen work to exchange information with third countries to make/sustain listings under EU autonomous measures to combat terrorism and will strengthen support to third countries in complying with Security Council legal requirements and FATF recommendations.

Measuring the effectiveness of measures aimed at combatting terrorist financing is difficult, maybe because of the preventative nature of the measures. In the literature, a warning issued is that merely harvesting large amounts of data on transactions might form a disproportionate instrument, notably because of the costs it imposes on the private actors that are put in charge of identifying the transactions that might be linked to terrorist financing. The Commission concluded in its 2012 report on the application of the third Anti-Money Laundering Directive (AMLD) that all Member States have implemented a national sanctioning regime applicable in cases of non-compliance with the provisions of this Directive, and that such sanctions are applied in practice. However, the variety in national penalty regimes was very large. Furthermore, the levels of reporting of suspicious transactions by some nonfinancial professions (in particular lawyers) were low compared to those of financial institutions, and the issue of under-reporting in some jurisdictions remained a concern, the report noted. Still, the framework appeared to work relatively well, and no fundamental shortcomings were identified. At the same time, in line with FATF work, it was concluded that improving the effectiveness of the rules formed an important challenge for the future.

¹³⁹ See on the use of 'military evidence' in court cases, Van Ginkel B., and Paulussen C., "The Role of the Military in Securing Suspects and Evidence in the Prosecution of Terrorism Cases before Civilian Courts: Legal and Practical Challenges", *The International Centre for Counter-Terrorism, The Hague* 6, no. 4 (2015).; and van Ginkel B., "Prosecuting Foreign Terrorist Fighters: What Role for the Military?", *The International Centre for Counter-Terrorism – The Hague* 7, no. 1 (2016).

Although the formal deadline for the implementation of the fourth Anti-Money Laundering Directive (AMLD) has not passed yet, it was decided that the effectiveness of these measures needs further strengthening. To this end, a new proposal has been presented by the European Commission. It aims at better accessibility and exchange of data, broadening the scope of the measures (e.g. virtual currency lower thresholds), improving the information on ultimate beneficial ownership and transactions with high risk countries. Where the latter are concerned, the Commission adopted a list of such countries with strategic deficiencies in their Anti-Money Laundering (AML) and counter-terrorist financing measures that includes merely 11 states. In some Member States, it was discussed whether there exists a need to broaden the list.

The fact that terrorism is relatively inexpensive means that terrorist financing measures that rely on specific amounts of money, even when that amount is lowered to 10,000 Euro per transaction or when entering or leaving the EU, might not be an effective means of countering terrorist financing. In that respect, the use of risk profiling might form a more effective instrument. Since the institutions that carry out the transaction monitoring are private entities whose primary focus is not combating terrorist financing, the further development of clear guidelines per sector is to be encouraged, as is the exchange of best practices throughout the EU. The need for information and guidelines is all the more important when rules are changed often within a short period of time (like is the case with the AMLD).

4.3.5. Firearms and explosive weapons

The Firearms Directive is the main acquis instrument on regulating firearms, creating an internal market for the sale, acquisition and possession of firearms. Member States enjoy discretion in regulation its specific details differently or more stringently.

An increase is observed in the number of terror attacks involving the use of firearms. The EU regulation on firearms and explosives was driven by market regulation interests; it includes security concerns but does not sufficiently integrate the counter-terrorism paradigm. Available data on the size and scope of the illicit trade in and trafficking of firearms is not clear, the lack of which makes it difficult to assess the size and scope of the market and the impact and effectiveness of EU regulation. All Member States have implemented the Firearms Directive but details relating to administrative procedures concerning licenses, permits, background checks, age requirements, and also penal and administrative sanctions differ greatly. Amendments to the Firearms Directive is pending, the changes will introduce needed improvements, however the integration of a counter-terrorism paradigm is questionable as the amendments focus on the stricter regulation of the legal firearms market.

International cooperation does not fall within the ambit of the Firearms Directive. However, the EU does cooperate with third states on matters concerning this theme, most importantly in SEESAC to counter the proliferation of small arms in and from the Balkans. Best practices exchange relating to the Firearms Directive is unavailable; however, it is also questionable to what extent best practices could be suitably transposed under the current instrument. The EU firearms market and the policies on the export and transfer of firearms abroad are not aligned; this challenges both domestic regulation and foreign policy of the EU.

The introduction of guidelines on deactivation standards¹⁴⁰ is a welcoming and much needed improvement, but a late development. The pending amendment of the EU Firearms Directive¹⁴¹ aims at introducing stricter rules on the certain types of firearms, marking of firearms and the trade and acquisition of firearms. While these additional rules may strengthen the regulation of the legal firearms market, it is questionable if these rules are able to curb the illicit trade in and trafficking of firearms. At best, it may reduce the flow of legal firearms into the illicit trade and trafficking.

However, it remains a challenge to demonstrate the preventive effects of legislation. Furthermore there are already many unmarked and unregistered illegal firearms in circulation,¹⁴² which in practice may not be declared by their owners/possessors. The amendments reflect no measures on this matter. Hence it remains a question whether additional rules on the legal firearms market may reduce the illegal firearms that are already in circulation. Moreover it is unclear to what extent, if any, additional stricter rules would have a deterring effect on those involved in the illicit trade of firearms and the acquisition or possession of illicit and illegal firearms. Complicating the challenge of effective regulation is the fact that various data on the total number of registered firearms and licenses and estimations about the total number of firearms, including those unregistered and illicit, that are in circulation in EU Member States widely differ between reports¹⁴³ and this may be caused by the many differences in definitions and the difficulty of assessing the scope of the black market in firearms.

Furthermore, from the perspective of law enforcement on countering the illicit trade and trafficking of firearms, it may be the case that the EU internal market for firearms is mostly a legal assumption, but one failing in effect. The vast differences in definitions and procedural details¹⁴⁴ challenges law enforcement and may induce forum shopping by firearms proliferators and traffickers.¹⁴⁵ And underlined by one of the interviewed experts, legal acquisition of firearms is also a challenge as demonstrated by the fact that the firearm of one of the January 2015 Paris attackers and the magazines in the March 2016 Brussel attacked were acquired legally. Furthermore, the expert explained that culturally there is a divide between Western Europe and Eastern Europe that was formerly under communist control, as in the latter category countries firearm possession is seen as a form of freedom, in contrast to their rights under communist regimes when it was strictly prohibited.

While the amendments of the Firearms Directive got on track after terrorist attacks in France, the current process has been driven by orientation of market regulation. The counter-terrorism paradigm and the use of additional policy-oriented measures to reduce firearms and to increase and improve law enforcement on this matter is not sufficiently addressed. The proposed amendment of the Firearms Directive may strengthen firearms regulation of the EU's internal market for firearms, but it misses the opportunity, in the context of Better Regulation, to further standardise the definitions and details of the firearms regulation and to increase institutional cooperation between national agencies.

¹⁴⁰ Regulation 2015/2403.

¹⁴¹ Commission proposal to amend the Firearms Directive, <http://ec.europa.eu/DocsRoom/documents/13965/attachments/1/translations/en/renditions/native>.

¹⁴² See the tables in the factsheet concerning Theme E.

¹⁴³ See the tables in the factsheet concerning Theme E.

¹⁴⁴ See the tables in the factsheet concerning Theme E. Further difference are also highlighted in European Commission, European Commission, *Evaluation of the Firearms Directive: Annexes*, (2014).

¹⁴⁵ The Blacksea, "EU's freedom of goods policy opened door to Paris terror attacks" (2016).

Moreover policy-oriented measures aimed at improving law enforcement are lacking, while they are much needed. To illustrate, one source reveals that in France between 2009 and 2014 a reported number of 3910 firearms were seized by the state from a total number of 1,900,000 unregistered and registered firearms.¹⁴⁶ While this total number of firearms that are in circulation in France is not certain, it is improbable that the seized firearms cover a significant portion of the illicit and illegal firearms. In the same source figures collected from other Member States reveal similar low ratios, thereby indicating the challenges of law enforcement on this matter are endemic throughout the EU.

Furthermore the drive to further regulate the internal market for firearms is in stark contrast with developments relating to the EU's CFSP, as several EU Member States have started exporting/donating small arms and light weapons to non-state actors in the Middle East, most notably those in Syria and Iraq, thereby challenging, if not breaching, the EU Joint Action of 17 December 1998 on not transferring small arms to non-state actors.¹⁴⁷ The transfer of firearms to non-state actors in conflict zones may backfire as these arms may, in turn, feed the illicit trade and trafficking of firearms to and in Europe.¹⁴⁸ This concern was also recognised by one of the interviewed experts on this subject matter, who stressed that many Member States have an arms industry and that such companies are increasingly more reliant on markets outside the EU as the EU has seen defence budget cuts. Hence there is a need to not only enhance external border control within the physical dimension, but also within the domain of policy by means of increasing compliance with the current policies and to further align CFSP and the internal firearms market. The interviewed expert stressed that former conflict zones are fertile sources for illicit and illegal trade in and trafficking of firearms. Furthermore, in the EU, cuts in the resources of law enforcement, in terms of manpower, budgetary or otherwise, may also be a source of challenge in countering illicit and illegal firearms as the expert stressed that the dilemma is in essence one of law enforcement capacity. In addition several experts underlined that the nexus between organised crime and terrorism poses a serious challenge, both in terms of financing the terrorists and feeding them with firearms.

An increase is observed, as mentioned by one of the experts, in the use of firearms for terror attacks with Breivik in 2011, the Merah shooting in 2012, the Jewish Museum shooting in 2014, the failed Thalys train shooting in 2015, and the Paris attacks of 2015. At the immediate level it is necessary to integrate the counter-terrorism paradigm into the market governance orientation of the Firearms Directive. This can be achieved by seeking legislative amendments for the purpose of facilitating easier cooperation between law enforcement agencies. Such improvements may be achieved by further harmonising or standardising the procedural differences in licensing firearms possession and sales and in background checks, in improving legislation by means of more effective and less complex categorisation of firearms, and in exploring ways to harmonise or standardise criminal and administrative sanctions against violators. Use of policy-oriented measures, such as programmes calling for the registration of firearms, buying back unregistered firearms without criminal or administrative penalty, and other ways to reward illicit firearm

¹⁴⁶ European Commission, *Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union* (2014), p. 18.

¹⁴⁷ European Union's Joint Action of 17 December 1998 adopted by the Council on the basis of art. J.3 of the Treaty of the European Union on the European Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons, European Council, *Joint Action of 17 December 1998 adopted by the Council on the basis of art. J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP)* (L 9/1), art. 3(b).

¹⁴⁸ It is reported the weapons from former conflict zones may be the biggest source for illegal firearms. See for example Triebel, K., "Report: Impact Assessment on Firearms Directive", *Firearms United*, (2016).

possessors to register their firearms or to give them up, are warranted as only regulatory amendments would not suffice. Collaborative efforts with and internal checks by stakeholder groups, such as firearm manufacturers, shooting clubs, shooting sportsmen, hunters, collectors, museums, and other legal owners, may also facilitate the improvement of firearms control. Furthermore the internal market governance and the external CFSP need to be realigned to ensure that the EU policies are credible externally, effective internally, and to prevent blowbacks resulting from Member States small arms transfers to non-state actors. Finally, on the basis of the interviews, it is recommended that Member States analyse and register all incidents involving the use of firearms and explosives as such data is lacking, challenging thereby the ability for the Community to design tailored and measured risk mitigation measures. The crucial aspect of such measures would be to increase the procedural steps in the acquisition and possession of firearms, thereby increasing the opportunity and time for law enforcement agencies to detect, observe and intervene when (potential) terrorists seek to acquire firearms.

Ultimately, however, it may also be necessary to reconsider the added value of pursuing and maintaining an internal market for private firearms, which is the main aim of the Firearms Directive. Amending the Firearms Directive is a welcoming pursuit, but one which requires reflection on a more structural and fundamental basis than what is presently the case. To treat firearms trade and possession as another form of market freedom is challenging and would not fit the international environment where proliferation of small arms continues and the number of destabilising states is increasing. Organised and lone wolf terror attacks in Europe furthermore amplify the concern. These developments warrant the EU to question what the added value is of the internal market for private firearms, how large and valuable this market is, what impact it has on stakeholders such as firearms manufacturers, shooting clubs, shooting sportsmen, hunters, collectors and other firearms owners, to what extent it burdens and blurs law enforcement, what the impact would be if the EU were to abandon such market altogether, what the alternatives are, and whether an alternative approach could decrease the illicit trade and trafficking of firearms within the Member States and facilitate better cooperation between them in retrieving illegal firearms.

4.3.6. Criminal justice measures

Criminal justice measures are the main repressive tool of counter-terrorism policies. They are used to punish, and increasingly to prevent, the commission of terrorist acts. In the EU, two Framework Decisions (2002/475/JHA and 2008/919/JHA), recently replaced by the new Directive on combating terrorism,¹⁴⁹ require Member States to ensure that a number of behaviours in relation with terrorist activity are criminalised under national law. These include directing or participating in the activities of a terrorist group, inciting or aiding or abetting a terrorist offence, attempting to commit a terrorist offence, public provocation to commit a terrorist offence, recruitment for terrorism, and providing training for terrorism. Under the new Directive, further measures specifically address the phenomenon of foreign fighters by requiring Member States to criminalise travelling abroad for terrorism and

¹⁴⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combatting terrorism and replacing Council Framework Decision 2002/475/JHA on combatting terrorism* (COM/2015/0625 final). On 16 February 2017, after the finalisation of the current study, the European Parliament approved the text of the new directive, see European Parliament, 'Preventing terrorism: clampdown on foreign fighters and lone wolves', Press release, 16 February 2017, available at: <http://www.europarl.europa.eu/news/en/news-room/20170210IPR61803/preventing-terrorism-clampdown-on-foreign-fighters-and-lone-wolves>. The text of the approved text is available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0046+0+DOC+PDF+V0//EN>.

facilitating travelling abroad for terrorism. Other international instruments have also called for the adoption of similar measures (e.g. UNSC Resolution 2178, Riga Protocol), and as a result many states, in the EU and beyond, have adopted comprehensive sets of counter-terrorism laws criminalising terrorism-related acts.

Overall, EU measures on criminal justice are well implemented, and most Member States have criminalised terrorist behaviours in line with EU policy. Furthermore, many Member States have already implemented measures regarding travel as envisaged in the new EU Directive on Countering Terrorism and called for by other international instruments.

One of the aspect which has been less well implemented is the definition of terrorism, as some Member States have not fully transposed the definition as formulated in the Framework Decisions. Besides, some Member States have been reluctant to implement specific measures on (indirect) public provocation to terrorism in view notably of concerns regarding freedom of expression.

In terms of scope, criminal justice measures against terrorism include preparatory offences that are increasingly broad, so as to be able to intervene at an early stage and to apprehend new types of behaviours in relation to foreign fighters. While these measures could contribute to an effective repression of terrorism, the trend towards preventive uses of criminal law has also raised some concerns, as it can result in the overly broad criminalisation of acts that are far removed from actual terrorist attacks.

In addition to criminal justice measures, some Member States are increasingly relying on administrative measures such as travel bans, exclusion orders, or assigned residence. These measures are sometimes used as an alternative to criminal justice measures in situations where prosecution would be difficult, for instance with regards to evidence, and can raise concerns when used to circumvent procedural guarantees associated with criminal prosecution.

Cooperation regarding criminal justice is achieved within the EU through judicial and police cooperation (e.g. European Arrest Warrant, Joint Investigation Teams) and externally through bilateral agreements on mutual assistance and extradition. The EU entered such agreements with the United States, Japan, Iceland and Norway.

4.3.7. Prevention of radicalisation

Since one of the four pillars of the EU Counter-Terrorism Strategy is the prevent pillar, prevention of radicalisation is considered an important aspect of the general approach of the EU to combat terrorism and countering radicalisation and violent extremism. Several strategies and programmes have been developed, which include *inter alia* a special EU Strategy for Combating Radicalisation and Recruitment to Terrorism, a Media Communication Strategy, a Check-the-Web project, and an EU-wide Empowering Civil Society-programme. However, in terms of mandates, prevention of radicalisation is considered to be an area that falls under the sovereign authority of the Member States. At EU level, however, the various strategies and programmes, mechanisms, networks and platforms that are created are therefore merely to inspire and encourage Member States to develop policies and instruments on a national or local level. No mechanisms or reporting obligations are in place to monitor follow-up and implementation of the policy objectives that are formulated in the Strategy documents. In that sense it is impossible to measure the formal effectiveness in this policy field, let alone the material effectiveness. Introducing some form of a reporting system, would help increase transparency and enhance the exchange of good practices. Nevertheless, based on different overviews and compendia

laying out the various prevention programmes in place, one can in any case conclude that of the seven focus countries, only Slovakia does not have developed a dedicated comprehensive or specific counter-radicalisation strategy on state, regional or local level, and installed a specific task force or coordinating body concerned with these issues.

The Radicalisation Awareness Network (RAN) Centre of Excellence (CoE) can be considered to be the main actor in place to give follow-up to the objectives of the EU and functions as a network to exchange experiences, collect good practices and offer training to first-line responders. Due to the fact that the framework in which RAN CoE has to operate though, it misses the flexibility to draft its programmes and training workshops in a manner that can meet the latest trends in the threat developments, and the subsequent needs of first-line practitioners to respond to these changes in society. Although 90% of the participants that responded to an anonymous survey conducted by RAN itself indicated that they expected a positive impact of their participation in RAN on their daily work in countering radicalisation. Furthermore it indicated that RAN is lacking a structured instrument to monitor how participants disseminate the good practices they picked up during the workshops into their own organisations, or to report back on what has been done with the good practices shared in terms of improving existing procedures and approaches within their organisations.

5. GENERAL OBSERVATIONS ON RELEVANCE, POLICY COHERENCE AND EFFECTIVENESS

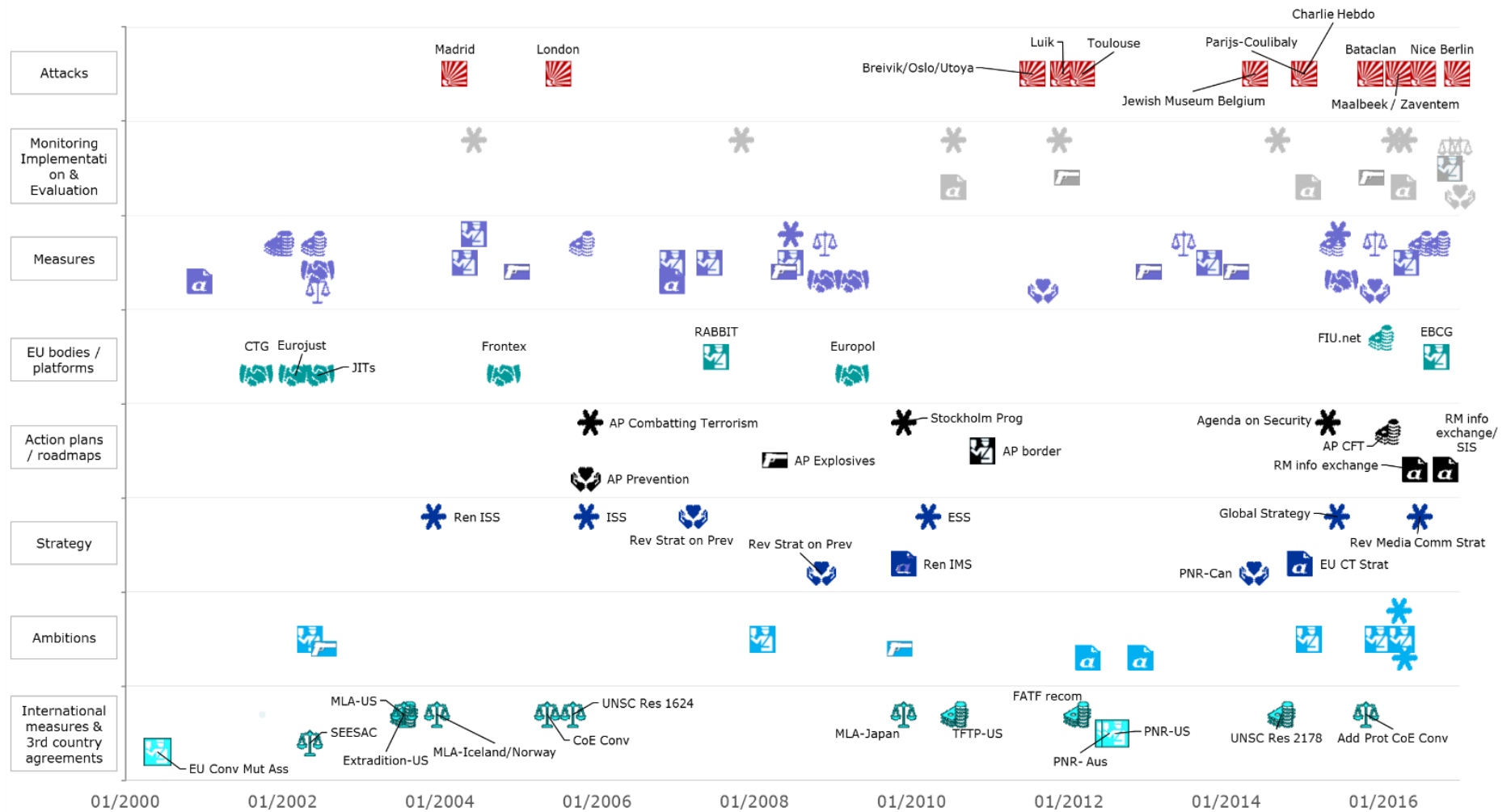
KEY FINDINGS

- The EU policy architecture in the way it is organised at the moment does not include a regular centralised update on the threats the EU and its Member States are dealing with, and the way threat assessments have implications for the various policies in place. Both Europol and INTCEN are dealing with threat assessments, but not in an integrated manner, and lacking the regularity needed to meet the constantly changing threats, and lacking the general public outreach to inform multiple stakeholders at the same time.
- The counter-terrorism agenda primarily reflects the security concerns of Western and Northern European Member States around jihadism. Threat perceptions and counter-terrorist 'legacies' in Central and Eastern European Member States might be different. Moreover, the potential for political violence does not solely rest with jihadists as the attack by Anders Behring Breivik in Norway in 2011 showed.
- The highly dynamic environment and asymmetric counter-terrorism strategy development require a policy architecture that allows policymakers to – collaboratively – respond fast to today's challenges, while taking sufficient time to prepare for the evolution that takes place in society to be able to meet tomorrow's challenges equally well. From the perspective of the latter, ensuring long-term counter-terrorism capacity and capabilities on all levels, and conducting strategically vital research on which measures are most effective, are some key elements the EU can contribute to.
- The EU's counter-terrorism policy architecture would benefit from making both its objectives and its underlying assumptions more explicit. In fact, the EU has been 'widening the net' of counter-terrorism, by criminalising preparatory acts in the context of the new EU Directive on Countering Terrorism. This is considered ineffective by the experts that have been consulted for this evaluative study.
- Counter-terrorism measures can have higher legitimacy - and therefore overall effectiveness - if critical human rights organisations are involved in the policy-making phase, rather than making measures vulnerable to their criticism after implementation. Because of the risk of harming human rights, better oversight is justified. This could be achieved for instance through a modified mandate of the Fundamental Rights Agency, the European Parliament ('s LIBE committee) or through an independent reviewer comparable to the one in the UK.
- One of the recurring issues amongst practitioners and experts alike is the apparent lack of trust between services within and between Member States, accompanied by complex legal boundaries that hinder effective sharing of information. Particularly, the Commission's upon the Member States to "facilitate an information exchange hub based on the interaction between the law enforcement community and the intelligence community, within the framework of the CTG and the ECTC, in accordance with relevant EU and national rules and arrangements" (COM(2016) 602 final) is one the findings of this study would support.

The analysis in the previous chapters brought to the front the tendency of the EU to mainly act in response to a specific crisis, as opposed to policy design that follows from careful analysis of trend developments, needs assessment to address a certain issue, evidence-gathering on the specifics of that issue, and the expected results of certain policies, etcetera. Figure 12 on the next page lays out the timeline and the various strategies, policies and measures that have been adopted on the general aspect of counter-terrorism, but also on the various specific themes, as well as the EU bodies and platforms that have been set up. The timeline depicts a tendency to a reversed policy cycle, showing that right after the occurrence of terrorist attacks there is an influx in the adoption of measures and the establishment of EU bodies and platforms (see also figure 2 in chapter 3). No time is taken to conduct a needs assessment or impact assessment of potential new measures. This is only later followed by the formulation of general policy ambitions, the adoption of strategies, and action plans. At best, the development of strategies and the adoption of measures take place simultaneously. Many of the interviewees acknowledge this phenomenon, but also point to the fact that often counter-terrorism measures and policies were already waiting on the shelf for the window of opportunity that would generate the political willingness to (finally) adopt certain measures due to a (renewed) sense of urgency right after serious incidents, where political support was lacking before.

This study's analysis does show that the field of counter-terrorism is a composite field that has grown in an incremental and -in times- ad hoc manner, which furthermore represents a very crowded market place of various actors and stakeholders without clear strategic guidance to manage policies with long-term implications. The constantly changing security environment meanwhile does call for both a long term vision, and a flexibility to respond quickly to new developments which poses difficult and – in times – opposing challenges particularly to an organisation as complex as the EU.

Figure 12: Timeline of terrorist attacks and counter-terrorism strategies and measures, 2000-2016



Source: PwC and ICCT.

Legend:

Attacks	Data Exchange	Financial
Border	Justice	General
Prevention	Cooperation	Weapons

In this chapter, various observations are made that followed from this study's research and were discussed during the interviews and the expert policy lab, and that relate to some of these particular challenges to stay relevant, coherent, legitimate, and henceforth effective as an actor in the field. First, the lack of an institutionalised practice to make regular trend analysis of specific threats in order to keep up with the changing security landscape will be touched upon (section 5.1). Furthermore, observations are made in relation to the focus of the EU with regard to the threat of terrorism, which seems to be biased to the priority threat perception of mostly Western European countries (section 5.2). Clearly, the dynamic of policy making in this constantly changing security environment brings along specific challenges, which are next touched upon in the section on fast versus slow track policy (section 5.3). In the following section, the importance of clear policy objective formulation and the need for evidence-based underlying assumptions when designing and adopting new policies and measures is elaborated upon, as one of the main outcomes of the expert policy lab which was part of the input used for the analysis of this study (section 5.4). This is followed by a section on the need to clear oversight on policies, which also came out as one of the main recommendations from the expert policy lab (section 5.5). Finally, and since this is considered a very important issue also in the eyes of the general public, there is a specific focus on the need for better information exchange (section 5.6).

5.1. Institutionalising long-term future foresight or connecting threat assessment to policy design

As mentioned in the chapter on the theoretical framework, this study intends to make policy recommendations to enhance the coherence and the relevance of the EU policy architecture with the aim to improve its effectiveness. In addition, and with an eye on improving the policy circle dynamic of policy design as well as of the current policy architecture, this study also takes into account the conclusions of chapter 4 that the EU counter-terrorism policy is mainly incident driven, and the fact that policy design is not automatically driven by regular and institutionalised threat assessment or future foresight studies.

However, assessing the threats and possible future developments is not something that should be ignored. In fact, according to article 222, paragraph 4 of the TFEU: "The European Council shall regularly assess the threats facing the Union in order to enable the Union and its Member States to take effective action." The terrorist threats that the EU is currently dealing with both have an internal and external origin, and both an internal and external impact. These threats, as well as the radicalisation processes to violent extremism of individuals, are very complex and constantly changing and changing even more rapidly nowadays than was the case some years ago. Furthermore, the (perceptions on the) threats differ among the different regions of the EU (see section 5.2). This makes it highly important to constantly check whether the assessment of the threats is up to date and the policies in place adequate to face those threats.

Furthermore, and in order to stay ahead of the curve, long-term foresight studies are needed, to analyse the long-term trends, and to assess the likelihood that a certain trend continues into the future, whether it increases or decreases, or whether strategic shocks can be expected to drastically change the course of a certain trend. Based on both quantitative data and qualitative expert assessments, an inventory of the main influencing factors on the insecurities of the future can also be made, which provides input for future scenario planning, and can inform the policy planners on the specific issues that need to be addressed in order to contain the future threats. This kind of analysis can be done for the overall threat, but can also be informed by analysis on more specific themes.

An example can be found in the area of weapons and explosives. Currently, many of the weapons and explosives used in terrorist attacks in the EU origin from the Balkan, and are clear remnants of the abundant availability during the Yugoslav war. Current policy-makers, aware of this problem, are currently concentrating on getting a better control over the trafficking of these weapons and explosives, but are not (yet) necessarily analysing what the next hub of this form of trafficking might be. One scenario that might be worth considering, in this respect, is the increasing tensions on the Eastern border of the EU, and the continued activities of militant forces in Ukraine, and what those developments might mean in relation to weapons and explosives trafficking. Another example follows from the fact that while the EU is still developing policies to stop foreign fighters from travelling to conflict zones, the next urgent problem the EU will be facing is the steep increase in returnees that might pose a serious security risk to the Member States of the EU. In his latest update on the implementation of the counter-terrorism agenda the EU CTC henceforth stated: "The EU should as soon as possible define a common approach with regard to foreign terrorist fighter returnees."¹⁵⁰ And that concluded all there could be said on the topic so far.

Looking at good practices in Member States, this study found that the Netherlands National Coordinator for Security and Counterterrorism (*Nationaal Coördinator Terrorismebestrijding en Veiligheid, NCTV*) issues a quarterly threat assessment report on terrorism, radicalisation and polarisation in society. This report consists of a (shorter) public part and a classified (longer) version, updating relevant stakeholders on the current threat level, and the current threats and policy concerns. In addition, the Netherlands Ministry of Security and Justice, the Netherlands Ministry of Defence and the Netherlands Ministry of Foreign Affairs commission future foresight studies of various risks and threats to society with several renowned think tanks on international relations and security studies.

The EU policy architecture in the way it is organised at the moment, however, does not foresee in a regular centralised update on the threats the EU and its Member States are dealing with, and the way threat assessments have implications for the various policies in place.

Currently, once year Europol issues a public report (EU Terrorism Situation and Trend Report (TE-SAT)) on the terrorist attacks that failed, foiled and actually took place in the EU, the number of casualties, the number of arrests etcetera. In addition, Europol identifies the key terrorist trends. These reports are considered "useful but (...) they are essentially compilations from state-provided data and there is no attempt to assess the threat posed by terrorism in them."¹⁵¹ On exceptional occasions, Europol also issues specific public reports, like the recent one on the changes in the modus operandi of IS.¹⁵² In addition, European Union Intelligence and Situation Centre (EU INTCEN), which functions as the exclusive civilian intelligence capability of the EU, provides non-public information to the EU High Representative/Vice-President, the European External Action Service (EEAS) and the Member States for the purpose of informing the EU decision-making bodies in the fields of Common Security and Foreign/Defence Policy (CSFP/CSDP) and counter-terrorism. The focus of this source of information is mainly on the external threat. As far as INTCEN informs policy makers, the focus of the information is very targeted and not to provide an overall threat assessment and appreciation of the policies already in place and their

¹⁵⁰ Council of the European Union, EU Counter-Terrorism Coordinator, *Implementation of the counter-terrorism agenda set by the European Council* (14260/16 EXT 1), 20 December 2016, paragraph 25.

¹⁵¹ Bures O., *EU Counterterrorism Policy; A paper tiger?*, Routledge: London (2011), p. 53.

adequacy to the problem. Since this kind of information is furthermore not publicly available, it can also not be used by other bodies or policy makers that are mandated to cover other policy areas.

In the April 2015 European Agenda on Security, it was pointed out that the Standing Committee on Operational Cooperation on Internal Security (COSI) plays a central role in the way Member States can coordinate the common priorities and operation actions through the 'EU Policy Cycle for serious and organised crime'.¹⁵³ The Policy Cycle should provide a "methodology for an intelligence-led approach to internal security, based on joint threat assessments coordinated within Europol."¹⁵⁴ However, so far, both Europol and INTCEN are dealing with threat assessments, but not in an integrated manner, and lacking the regularity needed to meet the constantly changing threats, and lacking the general public outreach to inform multiple stakeholders at the same time. In order to provide for this need and to cover this lacuna, the EU CTC, to the best of his capacities, tries to provide summaries of the changes in threat assessments and makes an effort to communicate these to relevant parties. These briefings, however, lack the analytical information to back up the assessments. They are moreover not made available for all relevant stakeholders, and they can certainly not provide the input for future foresight analysis that is relevant for future policy design in order to stay ahead of the curve.

One of this study's observations is therefore that a proper threat assessment system and an institutionalised system to conduct future foresight studies are lacking, that would help avoid policy design that is mainly crisis-driven, and would help improve the overall policy cycle dynamic. It would therefore be recommended that with the coming into being of the Security Union, this point of a more integrated threat assessment will be further developed.

5.2. EU counter-terrorism and differentiated Member State priorities

The counter-terrorism agenda primarily reflects the security concerns of Western and Northern European Member States around jihadism. The key moments after which counter-terrorist policies have been designed at the EU level have involved attacks linked to what is known as jihadism – the 2001 attacks in the United States, the 2004 attacks in Madrid and the 2005 attack in London. The recent policy output took place in response to the 2015 attacks in Paris and Brussels in 2016. These attacks have taken place in Western and Southern European Member States, but the threat perceptions and counter-terrorist 'legacies' in Central and Eastern European Member States might be different.¹⁵⁵ Moreover, the potential for political violence does not solely rest with jihadists as the attack by Anders Behring Breivik in Norway in 2011 showed.

The concern about foreign fighters, a prominent part of the EU's counter-terrorism agenda, offers a case in point. Numbers compiled by ICCT show a stark contrast between, on the one hand, Member States like France, the United Kingdom, Belgium, the Netherlands,

¹⁵² Europol, "Changes in modus operandi of Islamic State (IS) revisited", *Europol Press Release* (2 December 2016).

¹⁵³ European Commission, Communication from the Commission to the European Parliament, the Council, the European Council and social Committee and the Committee of the Regions, *The European Agenda on Security*, (COM (2015) 185 final), of 28 April 2015, p. 8.

¹⁵⁴ *Ibid.*

¹⁵⁵ Rekawek, K., "Referenced but Not Linear? Counterterrorism in Central-Eastern Europe in Theory and Practice", *East European Politics and Societies and Cultures*, DOI: 10.1177/0888325416678657 (2016); Monar, J., "Common Threat and Common Response? The European Union's Counter-Terrorism Strategy and Its Problem", *Government and Opposition* vol. 42, no. 3 (2007), p. 300.

Denmark, Austria, Sweden and Finland, and, on the other hand, the remaining Member States. The former group has, both in absolute and relative numbers, a substantially larger share of citizens fighting in Syria/Iraq.¹⁵⁶

Bulgaria and Slovakia report, in absolute numbers, respectively less than ten and six of its citizens travelling to Syria/Iraq. All the other focus countries have well above a hundred each. Only in relative numbers would Spain (three) get somewhere near Slovakia (one) and Bulgaria (zero).¹⁵⁷ But for Bulgaria and Slovakia, the numbers of citizens travelling to Syria/Iraq contrast strongly with the numbers of their citizens traveling to the conflict in Ukraine. For instance, around a hundred Slovakian citizens are reportedly fighting in Ukraine.¹⁵⁸

A similar dynamic is evident with regard to the theme of preventing radicalisation. For instance, with regard to Slovakia, concerns about radicalisation do not so much involve young Muslims, but individuals of far-right groups and involved in paramilitary groups. It was indicated that this was not limited to just Slovakia, but concern other Central and Eastern European Member States as well. This tends to be reflected in the set-up of RAN, including the experts invited, where the topic of jihadist radicalisation and Western European expertise tends to dominate. Approaches developed in Western European Member States such as community policing might not work well in Member States where, for historical reasons, there is no (strong) tradition of community policing.¹⁵⁹

5.3. Fast versus slow track policy

Considering both the analysis in chapter 3 and the sections 4.1 and 4.2, the EU's counter-terrorism policy architecture can be seen as a strategy that is formulated and adapted in a highly dynamic context and in response to competing strategies of terrorist groups and individuals that also continuously adapt. This latter aspect increases the challenge of developing an appropriate strategy tremendously. Counter-terrorism strategy development has also been called "asymmetric". On the day after a failed attempt on the life of Margaret Thatcher, the IRA claimed responsibility the next day, and said that it would try again. Its statement read:

*"Mrs. Thatcher will now realise that Britain cannot occupy our country and torture our prisoners and shoot our people in their own streets and get away with it. Today we were unlucky, but remember we only have to be lucky once. You will have to be lucky always. Give Ireland peace and there will be no more war."*¹⁶⁰

This statement also illustrates that while policy makers and executive powers can strive to deliver a comprehensive counter-terrorism strategy, terrorists and their networks will focus on the weakest spots of the strategy to inflict damage and will continually innovate their tactics to make the most impact. Monitoring and predicting what those weak spots will be is therefore crucial in "staying ahead in the game" and effectively delivering counter-terrorism. One area in which the effectiveness of EU-wide counter-terrorism policies is particularly sensitive is prevention of radicalisation and recruitment: if one EU Member

¹⁵⁶ Van Ginkel, B., and E. Entenmann (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague* 7, no. 2 (2016), pp. 50-51.

¹⁵⁷ Ibid.

¹⁵⁸ Interview with expert.

¹⁵⁹ Interview with expert.

¹⁶⁰ Taylor, P., *Brits: The War Against the IRA*, Bloomsbury Publishing, London 2001, p. 265.

State is effective in preventing radicalisation and reducing its inhabitants' vulnerability to terrorist recruitment, there is very little to prevent terrorist networks from changing their focus to another Member State, in which "social defences" are weaker or less-developed.

Although of a completely different order, a similar challenge occurs when a large, established corporation finds its business paradigm – and as a result, its market share – challenged by small start-up firms that are much more flexible and entrepreneurial and attempt to come up with so-called *disruptive innovations*. Disruptive innovations are so-called because they change not only the offering on the market, they change the market itself, or create a new one. Recent well-known examples of disruptive innovation are AirBnB and Uber, but many other examples have occurred in various industries in the past decades.

Research in the field of strategic management has found that, while it is certainly not easy for large corporations to defend their markets and adapt to competing innovative start-ups, firms that are long-term successful in highly dynamic and competitive environments have one trait in common: they are able to combine innovation strategies that optimise for both the short and the long term and run them in parallel. The strategic management literature refers to this combination of concurrent innovative strategies as *ambidexterity*.¹⁶¹

The lessons from strategic management literature also offer a relevant conceptual lens through which one can look at the field of counter-terrorism. In order to effectively deliver on a policy-making task in a fast-evolving and challenging environment, policymakers need to apply the logic of short and long-term strategies by designing a policy framework that allows them to – collaboratively – respond fast to today's challenges, while taking sufficient time to prepare for the evolution that takes place in society to be able to meet tomorrow's challenges equally well. Thus, ambidexterity in a policy-making context implies the ability to combine fast and slow policy-making. In the EU, the interaction between the centralised policy-making by the EU institutions and the decentralised policy-making by the EU Member States provides the opportunity for distribution of labour similar to that of a multinational cooperation: the headquarters ensure long-term effectiveness by conducting research on market developments and developing overarching and facilitating policies that apply globally, while the local branches optimise their effectiveness by responding swiftly to imminent local circumstances.

Applied to the context of counter-terrorism policy, ambidexterity requires the combination of being able to respond swiftly and effectively to new developments in society, while also pre-emptively investing in the insights that will allow continued effective responses in the future. This implies the challenge of investing in both broad prevention (long-term effectiveness) and targeted repression (short-term effectiveness) simultaneously, to call out an obvious one. While obvious, this may not be easy if political preferences are to respond with visible (repression) measures to attacks, at the expense of reduced attention and budgets for prevention or intelligence investments, which as a result create room for the next attack.

In light of the highly dynamic environment of counter-terrorism policy and evidence from the ambidexterity literature that strategic adaptability is necessary to retain responsiveness, it is remarkable to establish that the EU Counter-Terrorism Strategy has not changed since 2005 (cf. section 4.1.2 of this report). Multinational corporations revisit

¹⁶¹ For a literature review on ambidexterity, see e.g. O'Reilly III Charles A. and Tushman Michael L., *Organizational Ambidexterity: Past, Present and Future, Academy of Management Perspectives*, (2013).

their strategies annually, and for good reasons: megatrends,¹⁶² such as climate change and resource scarcity, technological breakthroughs and shifts in global economic power, and changes in the geo-political context bring about changes in the global environment in which these companies operate. Those changes affect the drivers and capabilities of (potential) terrorists and thus require a response.

The EU policymakers especially, given that they could and should have a strategic role in facilitating and empowering Member State competent authorities to ensure both short-term and long-term responsiveness to terrorist efforts and attacks, are in the best position to monitor the Union's ambidexterity in response to an extremely challenging environment. However, as discussed in chapter 4, it is debatable whether they have the mandate, tools and information to do so at this point in time. Chapter 6 contains this study's recommendations in the areas of improving the workings of the policy cycle, and specifically monitoring and evaluation.

From the perspective of ambidexterity, ensuring long-term counter-terrorism capacity and capabilities on all levels, and conducting strategically vital research on which measures are most effective, are some key elements the EU can contribute to.

5.4. Objectives and assumptions

To be able to measure the effectiveness of certain counter-terrorism strategies, laws and measures (see section 5.5), it is imperative that the goals/objectives and underlying assumptions are clear. Indeed, during the policy lab's brain-writing exercise (see annex III), which engendered no less than 120 ideas and observations on how to improve effectiveness and stay ahead of the curve in countering the financing of terrorism, the observation receiving most support from the experts was the question: "What is the objective of the measures?" One way of formulating a clear objective, whose effectiveness can subsequently be measured, is to make use of the already-mentioned SMART criteria. Admittedly, this is a difficult task in the context of countering terrorism. After all, what does counter-terrorism mean exactly? And can terrorism ever be fully countered? What are we trying to achieve? What is the EU's compass when countering terrorism? Are the objectives perhaps too broad and not specific enough to be effective? In this context, it should be noted that perhaps instead of narrowing down the net, making the objectives *smarter*, the EU is in fact widening the net. An example is the criminalisation of preparatory acts in the context of the new EU Directive on Combating Terrorism,¹⁶³ which moves away from the criminal act towards the 'pre-crime space' and which ensures that more and more people fall within the net of counter-terrorism. Also the experts of the policy lab did not consider this development to be beneficial for the effectiveness of counter-terrorism policies.

¹⁶² PwC has identified five megatrends, which significantly affect the socio-economic context in which businesses, governments and other organisations operate. Contextualised reports on the subject and other information are available at: <http://www.pwc.co.uk/issues/megatrends.html>.

¹⁶³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combatting terrorism and replacing Council Framework Decision 2002/475/JHA on combatting terrorism* (COM/2015/0625 final). On 16 February 2017, after the finalisation of the current study, the European Parliament approved the text of the new directive, see European Parliament, 'Preventing terrorism: clampdown on foreign fighters and lone wolves', Press release, 16 February 2017, available at: <http://www.europarl.europa.eu/news/en/news-room/20170210IPR61803/preventing-terrorism-clampdown-on-foreign-fighters-and-lone-wolves>. The text of the approved text is available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0046+0+DOC+PDF+V0//EN>.

Besides the objectives, the assumptions need to be clear. Clarity on the underlying assumptions was in fact the observation receiving most support from the experts during the policy lab's brain-writing exercise (after clarity on the objectives). Do the assumptions of EU policy makers reflect reality? Are they evidence-based or are policies sometimes engendered by emotions and political pressure? As one member of the research team wrote earlier and elsewhere:

"Sometimes, the necessity of these measures seems to be fully justified by the occurrence of terrorist incidents as such. For example, the first sentence of the explanatory statement to the LIBE's Report [on the new EU Directive on Countering Terrorism] states that "[r]ecent terrorist attacks on European soil and beyond, and most significantly the terrorist attacks in Paris on 13 November 2015, with more than 130 dead victims, have underscored the need to substantially boost our efforts to prevent and fight terrorism".¹⁶⁴ But is that really so? Does one need to substantially boost efforts because these horrible attacks happened? Or does one need to substantially boost efforts because the current measures have proven to be clearly inefficient? One gets the impression that various measures have been engendered as an almost automatic and emotional reaction to attacks, fuelled by the demand, from both the public and especially the right-wing political spectrum, for harder measures, without first conducting a proper assessment and evaluation of whether the old measures were really that inefficient, and if so, why."¹⁶⁵

To give another example, from the financial sector: is it possible at all to fight terrorism through banks when all that attackers need is a small line of credit? If there is a shift in terrorist financing (to various informal banking methods), should the countering of terrorist financing then not follow suit?

5.5. Effectiveness and oversight

As stated in the previous subsection, knowing what one's goals and underlying assumptions are is essential in measuring effectiveness. Effectiveness should also be distinguished from effects. That the EU has impact or effects does not mean it is also effective. Although definitely a number of (evaluative) studies have been carried out on very relevant issues, such as the crime-terror nexus¹⁶⁶, the policy cycle,¹⁶⁷ the financing of terrorism¹⁶⁸ and youth radicalisation,¹⁶⁹ fully-fledged assessments on effectiveness remain rare.

¹⁶⁴ European Parliament, "Report on the proposal for a directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism (COM(2015)0625 – C8-0386/2015 – 2015/0281(COD))", Committee on Civil Liberties, Justice and Home Affairs, Rapporteur: Monika Hohlmeier, A8-0228/2016, 12 July 2016.

¹⁶⁵ Paulussen, C., *Repressing the Foreign Fighters Phenomenon and Terrorism in Western Europe: Towards an Effective Response Based on Human Rights*, ICCT Research Paper, November 2016, p. 23.

¹⁶⁶ See European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Europe's Crime-Terror Nexus: Links between terrorist and organised crime groups in the European Union* Study for the LIBE Committee (2012).

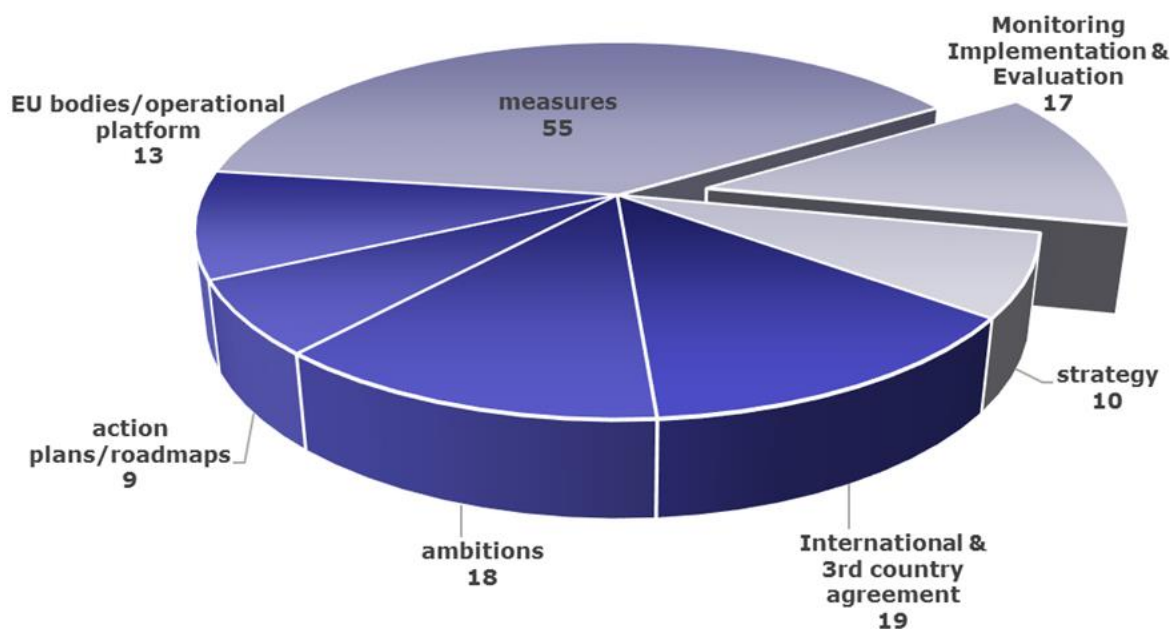
¹⁶⁷ See European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *The EU Internal Security Strategy, the EU Policy Cycle and The Role of (AFSJ) Agencies. Promise, Peril and Pre-requisites* Study for the LIBE Committee (2011).

¹⁶⁸ See European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Evaluation of EU measures to combat terrorism financing* In-depth analysis for the LIBE Committee (2014).

¹⁶⁹ See European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Preventing and Countering Youth Radicalisation in the EU* Study for the LIBE Committee (2014).

Figure 13 shows that the number of reports monitoring implementation and evaluations of policies are indeed very limited compared to the sheer number of strategies and measures that have been adopted. This is a pity, as such evaluations might also generate important information when assessing whether additional measures are needed to address a certain (aspect of a) threat.

Figure 13: Monitoring implementation and evaluations of policies compared to strategies and measures, 2001-2016



Source: PwC and ICCT.

How can effectiveness be measured? As explained in section 2.1 on the theoretical framework of this study, a simple and limited way of measuring the effectiveness of certain measures is by merely looking at formal effectiveness, i.e. whether Member States have implemented the measures in their national legislation. Measuring the material effectiveness of a measure is much more complicated. To give an example with regard to measures adopted in the criminal justice sector, one can measure the number of arrests a police makes, or the number of convictions a judge issues in counter-terrorism cases, and these data will surely say something about the effects of the measure, but not necessarily something about its material effectiveness. As stated before, the latter depends on the exact objective of the measure and how the measure contributes to the overarching goal of reducing the threat of terrorism. Since formal effectiveness also depends on the extent to which the mandate is followed, it is important that – as an intrinsic part of the mandate – the measures adopted are in line with the fundamental and human rights as laid down in the EU Treaty and the Charter of Fundamental Rights.¹⁷⁰ This would moreover contribute to the legitimacy of these measures. Also the LIBE Committee has a task to oversee whether EU measures are in compliance with these rights. Examples are procedural safeguards, the right to non-discrimination and the freedom of expression. The early involvement of critical human rights organisations in the design of new measures will more easily lead to a human rights stamp of approval.

¹⁷⁰ Since the Treaty of Lisbon in 2009, according to article 6 of the Treaty of the European Union, the Charter of Fundamental Rights are part and parcel of the mandate of the EU.

In addition, the issue of oversight, the idea receiving most of the support from the experts during the policy lab's brain-writing exercise (after clarity on the objective and the underlying assumptions), is relevant here. Indeed, adding up all the counter-terrorism legislation over time, one can see a huge potential for harming human rights, from freedom of movement to privacy rights, justifying better oversight. Although at the national level, there are various organisations looking into (human rights) compliance of certain measures, it was noted by the experts that EU oversight could also be strengthened, for instance through a modified mandate of the Fundamental Rights Agency, the European Parliament ('s LIBE committee) or through an independent reviewer comparable to the one in the UK.¹⁷¹ This should be more than an institution monitoring the developments, but one that actually has the power to influence change. Oversight, moreover, should not be limited to the public sector: it is also required in the private sector, for instance when it comes to commercial data.

Finally, the risk of mission creep, namely the expansion of a project or mission beyond its original goals, was stressed by the experts. This could influence the material effectiveness of a certain measure, not only because there is no clear objective/end goal, but also because there is less legitimacy, as powers/mandates have often been provided to serve a specific objective and not any other goal.

5.6. Information exchange (systems and people)

As the Commission wrote in September 2016,

"... in the face of the terrorist threat faced today, the efficiency of security checks is highly dependent on the exchange of information not only between law enforcement authorities, but also intelligence communities. Effective and timely information-sharing among relevant authorities is a prerequisite for successful counter-terrorism action. But there remains fragmentation at both national and EU levels which can lead to dangerous security gaps."¹⁷²

The Commission suggests that the EU level can add value by "helping to instil a culture of common responsibility, and the will and capacity to turn that into operational action."¹⁷³ One of the recurring issues amongst practitioners and experts alike is the apparent lack of trust between services within and between Member States, accompanied by complex legal boundaries that hinder effective sharing of information. And to add to that, experts also point to an oversight deficiency: which body will oversee the proper sharing and use of sensitive and in many cases classified information, in order to safeguard fundamental rights as well as the safety of sources of information? To underline these concerns, many point to the lack of willingness to share data and information via the existing EU-systems. Some Member States' services complain that some countries upload a lot of relevant data, whereas others behave as free riders.¹⁷⁴ One Member State agency mentioned that they upload loads of data into e.g. Europol systems, but when searching these systems they end

¹⁷¹ At this point, it is also important to note that already in earlier reports, the limited role of the European Parliament in terms of oversight and monitoring has been stressed, see e.g., European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Developing an EU Internal Security Strategy, fighting terrorism and organised crime*, (2011) pp. 119-120.

¹⁷² European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, *Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders* (COM(2016) 602 final).

¹⁷³ Ibid.

¹⁷⁴ The research team was not able to assess the volumes of data and information uploaded in the respective systems by the different Member States to substantiate these remarks.

up finding their own data. At the same time, some practitioners emphasise the fact that there is not a lack of data and information, and that sharing too much can produce a data overload. Moreover, data quality is also an issue: only data of good quality is helpful. After all, all the data and information have to be analysed and although big data and software can be helpful, a lot of manual processing and analysis has to be carried out. It can be helpful, but this is not always the case. Having the sufficient people with the right analytical skills can make a lot of difference.

On the EU level, some interesting developments have occurred in recent years. In parallel to the evolution of Europol's European Counter Terrorism Centre (ECTC), the Counter Terrorism Group (CTG) has been strengthened in 2016 by introducing a common platform for the exchange of information between Member States' security services,¹⁷⁵ accompanied by secure infrastructure for timely and safe communication. According to the Commission, it is now urgent to reinforce the two tracks of the ECTC and the CTG, keeping them separate but linking the two communities, which would add up to an effective counter-terrorism cooperation framework in Europe, without the need for new structures. The Commission therefore calls upon the Member States to "facilitate an information exchange hub based on the interaction between the law enforcement community and the intelligence community, within the framework of the CTG and the ECTC, in accordance with relevant EU and national rules and arrangements."¹⁷⁶ The geographical vicinity (less than 15 kilometres) of both the ECTC and the CTG-platform¹⁷⁷ might give rise to the attractiveness of such a practical solution: the physical nearness of the two platforms, populated with experts from the cooperating Member States, might facilitate an easy interaction between the two communities without the necessity to technically link the two platforms. However, it is a vast leap between interaction between the two communities and an 'information exchange hub'. Information *exchange* on a structured base in a hub between law enforcement and intelligence can only be envisaged after challenges have been overcome, such as the legal obstacles in sharing information between police and intelligence services, the use of intelligence in court cases with respect to the fair trial principles, and the legal guarantees that should therefore be built in the system which are different in every national jurisdiction.

Another challenge to overcome in linking the ECTC and the CTG-platform is that the difference between intelligence and police information is not evenly clear in all countries, and in several instances the different police and security services within one Member State have difficulties in cooperating with each other within the national boundaries. Practitioners and experts point to the fact that a seamless internal cooperation between the law enforcement agencies and security and intelligence services is key for achieving good international cooperation in a security union. Another point that has been raised is the fact that police and intelligence work are different in many respects and should remain different. Police work has a short cycle and is primarily focused on investigating a case, arresting suspects and bringing them to justice. A public and transparent criminal investigation which is founded on elements like the verifiability of sources and evidence is essential in the European legal order. Intelligence work on the other hand is not held to the same guarantees as a criminal investigation, is bound to the principles of secrecy and

¹⁷⁵ See Algemene Inlichtingen en Veiligheidsdienst, "Nieuw platform voor verdere intensivering samenwerking Europese inlichtingen- en veiligheidsdiensten", (25 January 2016).

¹⁷⁶ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, *Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders* (COM(2016) 602 final).

¹⁷⁷ The ECTC with Europol in The Hague, the CTG platform with the Dutch General Intelligence and Security Service (AIVD) in Zoetermeer, also in the Netherlands.

protection of sources and is focused more on the long-term developments, on identifying and countering evolving threats. So, a too close cooperation in a physical hub could lead – next to all kinds of legal complexities, given the different legal contexts under which information has been collected – to practical issues around how to prioritise the use of intelligence and information: solely for investigation, arrests and prosecution, or also for the analysis of the evolving threats.

What interviewees perceive as very positive in the current development of both the ECTC and the CTG-platform is the focus on bringing experts from different services in different Member States together to assess the intelligence and information that is available to both the platforms within the context of the service that has collected it. Jointly they can assess the need to share specific intelligence or information and under what circumstances. This helps to prevent an information overload: the need to know and the need to share is assessed upfront, rather than by default (and currently, it is not always clear what information is relevant to whom). Moreover, it helps to put data and information in perspective, rather than treat any data and information only in the context of the receiving party. And finally – as many practitioners mentioned – it helps to shift the focus from yet another system or database to a more needs-based approach. Another factor that might add value is that in the cooperation in these platforms, the differences in maturity between services becomes more apparent, and that it provides a peer-to-peer context to help improve the level of maturity of the less developed services. And with an equal level of maturity, knowledge and capabilities and with improved information exchange within the framework of the CTG and the ECTC, in accordance with relevant EU and national rules and arrangements, the EU creates a better back office with more equal levels of intelligence and data in all Member States and the capabilities to match those with data e.g. collected *inter alia* for counter-terrorism purposes in border management systems and financial tracking programmes.

6. CONCLUDING REMARKS, GENERAL RECOMMENDATIONS AND POLICY OPTIONS

The necessity for effective, legitimate and timely EU cooperation to face the constantly evolving threat of terrorism, was never felt more urgently. There is no doubt that the EU and its Member States are acting on many fields addressing various aspects of the threat, but the central question in this study was whether this is done in an effective, coherent and legitimate manner.

When assessing the developments with regard to the terrorism threats as well as the policy design and implementation over time, the question of whether we have truly moved ahead since the first steps were taken with the Trevi process that set up an informal and non-official network for cooperation, becomes prominent. Although the scope of the policy fields related to counter-terrorism, like AFSJ and CFSP, have been deepened and the mandate expanded for the EU (institutions), the subsidiarity principle still applies, as well as the exception clause related to issues concerning internal security, allowing Member States to call upon their national sovereignty and deviate from the EU policy line.

Whether the EU can set out a clear vision and provide guidance and leadership, and in its policy design is grounded on a thorough threat, trend and evidence-based analysis to assess policy needs and expected impact of policies, can be highly debated. Considering the plethora of sub-strategies, action plans, and overlapping policy fields with multiple measures, the question arises whether the EU counter-terrorism strategy indeed brings the strategic "conceptual guidance"¹⁷⁸ and the framework to tie all the sub policy fields together, meanwhile ensuring coherence and consistency and to serve both the short and long-term security concerns in an effective manner in order to stay relevant. Instead, the effect of the sub-strategies (as well as the action plans) is to break up counter-terrorism in a number of 'composite' parts and embedding them across a range of different policy fields, ranging from amongst others the social domain, the financial sector, law enforcement, critical infrastructure, and border security. Many interviewees furthermore lamented that the perpetual reflex to propose new measures was not what they felt they needed most to effectively operate in their field of expertise, and that rather this energy be used for better implementing of what is already there. The analysis of the various different policy fields have pointed to some overlap and gaps in policies, and although recommendations can be made to address those issues, it might be more important to go back to the drawing table and redesign the entire policy field, to start with a clean slate and reassess what works and what does not. Maybe it is advisable to include this in the European Agenda on Security, and make this one of the objectives of the Security Union.

Meanwhile, the overarching strategies have performed a similar function by linking counter-terrorism with the EU's CFSP and by stressing not only the linkages across international borders and thereby blurring the line between internal and external security as well as with other insecurities such as (organised) crime. This brings up questions of where the boundaries are of the counter-terrorism domain. Whether to address this through superimposing documents such as the 2015 'Internal Security Strategy' with its emphasis

¹⁷⁸ Argomaniz, J., *The EU and Counter-Terrorism: Politics, polity and policies after 9/11*. London: Abingdon and London (2011), p. 100.

on an “integrative and complementary approach” can be questioned as it only tends to shift the problem to a higher level and creating the same concerns anew.¹⁷⁹

However, the constantly evolving security environment, which requires a simultaneous short-term and long-term responsiveness, requires the EU to show qualities of ambidexterity. For that to work out, it would at least be necessary to know who is in the lead of the overall strategy and coordination of activities, but the current situation rather shows a very crowded market place with too many actors involved in the design and implementation of the various policies, and at times with even overlapping mandates. It is to be hoped that the newly appointed Commissioner on the Security Union can take up this role. But even then, due to the dynamic of the six months rotation of the EU Presidency, the European Council’s or the Council’s capabilities to design and follow-up on a long-term vision shaped and driven by the ambitions of one particular Presidency, will remain limited, unless this system is changed for the benefit of thematic Member State Presidencies that can last a longer term.

Furthermore, when looking at the effectiveness in terms of cooperation in the various policy fields, it became clear from the interviews that there is a formal channel to cooperate, as well as an informal channel and that the latter is extremely important and hence should be strengthened, rather than creating yet another framework for cooperation or data sharing.

In order to improve the current policy architecture, both the formal and material effectiveness of the policies and the overall coherence and relevance of the policies, this study suggests, based on its own research, the outcomes of the interviews and the results of the policy lab, a series of recommendations and policy options that should moreover contribute to the EU’s overall ambition formulated in the Better Regulation agenda. The first category of recommendations and policy options concerns the improvement of the policy cycle, ensuring that policies are designed in accordance with evidence-based underlying assumptions as to their effects, in a timely and ahead-of-the-curve response to threats that are not yet addressed otherwise, properly balanced with fundamental rights, and regularly evaluated as to their effectiveness vis-à-vis the underlying and explicitly formulated policy objectives. The second category of recommendations and policy options are more tailor-made to the selected seven sub-themes.

6.1. Improving the policy cycle and effectiveness of EU counter-terrorism policies: recommendations and policy options

1. In general, the EU is advised to explore its existing capabilities to the full. Instead of mainly adopting policies/measures in the wake of incidents that may be outdated the moment they are implemented, the EU should improve the use of the tools it already has in place and connect the different stakeholders and dots, such as the earlier-mentioned crime-terror nexus. The EU should prefer evidence-based policy and law-making, involvement of citizens and stakeholders and transparency throughout the process. This implies quality over quantity, meaning for example that it should improve data exchange (think of a better/easier/simplified use of the existing (but currently underused) databases), rather than support the collection of more data.

¹⁷⁹ Council of the European Union, “Draft Council Conclusions on the Renewed European Union Internal Security Strategy 2015-2020”, 9798/15, 10 June 2015, p. 8.

2. In order to ensure the relevance of its policy, the EU is recommended to commission annual future foresight studies (five to ten years ahead) that assess the possible development of certain risks and threats, as well as its underlying driving factors.
3. Since the potential for political violence and terrorist attacks does not rest exclusively with jihadists, the EU is advised to keep an open attitude to other forms of political violence and the differentiated manner in which this manifests across the Union.
4. In order to ensure that policy design or revision of policies is based on the right assumptions with regard to threat assessments and policy needs, and are up to date with the latest developments, the EU is recommended to organise a system that issues quarterly public threat assessments that combine the intel and information gathered by Europol and INTCEN.
5. The EU is advised to organise evidence-based needs assessments identifying the best and most effective manner in which newly developing threats can be met. Calls for new policy measures should be properly and thoroughly scrutinized to ensure that there is indeed a gap or lacuna in the existing policies that needs to be addressed.
6. The EU is well advised to properly reflect on its objectives and underlying assumptions before adopting new policies, legislation, or other kinds of measures. In this process the EU is recommended to make explicit what the specific counter-terrorism objectives are for the various policies, and to formulate them in a SMART manner, so that its effectiveness – and not just its effects – can be measured.
7. It is recommended that a multidisciplinary and geographically spread pool of experts and practitioners is consulted as part of the expert consultations that contribute to the qualitative part of the threat assessments and future foresight analysis, as well as the assessment of the relevance of certain policies.
8. European institutions, and especially the European Parliament ('s LIBE Committee), are recommended to actively involve – at the earliest stage possible – the earlier mentioned pool of experts and practitioners in the design of new counter-terrorism policies, legislation and measures. Rather than receiving criticism afterwards, European institutions could receive a stamp of approval from these expert groups prior to the instrument's adoption, hence increasing its legitimacy and overall effectiveness.
9. Furthermore, in an effort to increase legitimacy in the context of growing human rights concerns caused by EU legislation (think, e.g., of the widening pool of preparatory/inchoate offences moving further and further away from the principal terrorist act, combined with broad definitions), the EU needs to invest in its own oversight system. It is considered worthwhile to explore the possibility of modifying the mandate of the Fundamental Rights Agency, increase the role of the European Parliament ('s LIBE committee) in this or through the appointment of an independent reviewer comparable to the one in the UK.
10. It is paramount that the EU sets up an institutionalised system to regularly monitor and evaluate the policies and measures in place. For economic policies, a system for monitoring already exists in the form of the European Semester.¹⁸⁰ A similar approach could be applied to counter-terrorism policies.

¹⁸⁰ https://ec.europa.eu/info/strategy/european-semester_en.

6.2. Improving legitimacy, coherence and effectiveness on specific policy themes: recommendations and policy options

6.2.1. Recommendations concerning operational cooperation and intelligence/law enforcement and judicial information exchange

11. The EU is recommended to invest in informal channels of cooperation (personal contacts/networking) between practitioners in the criminal justice sector in a multi-disciplinary way. One could think of the setting up of a network comparable to the European Judicial Network specifically focused on countering terrorism, in which context prosecutors, judges, defence lawyers, prison wards and parole officers can organise, in an informal but structured manner, conferences, workshops and expert meetings on topical counter-terrorism issues and can share experiences and good (and bad) practices, for instance in the context of the gathering and use of (digital/cyber) evidence, or the assessment of rehabilitation needs. This will enhance intra-EU trust, and will lead to more cooperation and information exchange.
12. Europol should facilitate regular sessions allowing officials and practitioners from the Member States to develop additional insight concerning the limitations (e.g. due to data protection standards) the Member States face when engaging in cross-border information exchange and operational cooperation.

6.2.2. Recommendations on data collection and database access and interoperability

13. Set up the High Level Expert Group on Information Systems and Interoperability (HLEG) on a permanent basis with regular meetings with participants from diverse settings (e.g. politicians, high level senior officials, security practitioners as well as technical staff) to explore what can reasonably be expected of EU information systems in terms of prevention and/or investigation of terrorist crimes (effectiveness) given the practical, technical, and legal limitations involving information exchange and the political context in which these systems inevitably operate.

6.2.3. Recommendations on policies on countering the financing of terrorism

14. In the area of countering the financing of terrorism (CFT), the EU is recommended to engage in regular and constructive dialogue with the private sector, particularly (branch organisations of) financial institutions. Banks and other private institutions perform a key role with regard to tracking and detecting the financing of terrorism, yet private actors are often the missing link in debates on CFT. Information-sharing and open debate could help reduce mutual wariness and foster more effective cooperation, hence contributing to overcoming coordination issues in CFT policy.
15. The EU is furthermore recommended to concentrate its efforts on developing sector-specific guidelines and facilitating the exchange of best practices between Member States. Supplementary guidance is especially important keeping in mind that transaction monitoring is frequently implemented by private actors not specialised in CFT. Such guidelines would help clarify a regulatory framework that often evolves quickly and at short notice, as is exemplified by AMLD reforms, and thus reduce the complexity of implementation for the private entities involved.

16. The EU is recommended to formulate clear objectives in the area of CFT, making use of SMART criteria, and consistently provide clarity on the underlying assumptions of its policy choices. These assumptions need to be tested constantly in order to ensure that EU policy is evidence-based and in line with the latest developments. This observation, which is especially pertinent considering that the policy area in question is in constant flux, contributes to the agenda of improving effectiveness and staying ahead of the curve in CFT policy by improving evidence-based policies.
17. Considering that the financing of terrorism is relatively inexpensive, the EU is recommended to not rely overly on specific amounts of money when formulating its CFT policy. In this regard, risk profiling may present a more viable alternative to prevent terrorist financing. This recommendation could serve to reduce inefficiencies in EU counter-terrorism policy.

6.2.4. Recommendations on policies regarding firearms and explosive weapons

18. In order to address the security concerns arising from terrorist attacks involving the use of firearms, the EU needs to integrate the counter-terrorism paradigm into the internal market and recognise the limitations of market-oriented regulation on deterring the illicit trade and trafficking of firearms and on retrieving such firearms already in circulation. To achieve this integration, the EU is recommended to explore the opportuneness and suitability of policy-oriented measures, such as firearm disarmament programmes to incentivise the retrieval and/or registration of unregistered firearms and on improving intra-communal cooperation on this matter by law enforcement agencies.
19. Furthermore, in view of integrating the counter-terrorism paradigm, the EU is recommended to explore the possibilities to further harmonise and improve the categorisation of firearms under the Directive, and to harmonise or standardise the various regulatory details relating to firearms control (such as penal and administrative penalties and administrative requirements and procedures relating to permit and licence applications). This may strengthen the effectiveness of the internal market and generate a level playing field that is conducive for future data gathering on the scope of the EU firearms market and on measuring the effectiveness of its regulation. Ultimately, however, the EU is highly recommended to re-evaluate the necessity to pursue and maintain an internal market for firearms in its current form. For this purpose a study on how many EU citizens actually make use of their rights derived from the Firearms Directive would be most welcoming.
20. In order to ensure the relevance of the policy to the actual threats, it is recommended that the EU integrates the CFSP with its internal market for firearms. Former conflicts zones prove to be a fertile source for the illicit trade in and trafficking of firearms. Small arms and light weapons transferred by Member States to non-state actors outside the EU may feed the illicit market in the EU. Mitigating this risk is therefore a community concern.

6.2.5. Recommendation on criminal justice measures

21. Since most Member States have adopted comprehensive sets of criminal justice measures, new measures in the field of criminal justice do not appear necessary. Besides, the increasingly broad scope of criminal justice measures, which can encompass behaviours that are far removed from actual terrorist attacks, has raised a number of concerns regarding the proportionality, necessity, and efficacy of certain measures. It is recommended that the EU set up monitoring, evaluation and oversight mechanisms of existing measures before adopting new ones.

6.2.6. Recommendations on policies concerning prevention against radicalisation

22. This study echoes the recommendation made in the ICCT report on the Foreign Fighter Phenomenon in the EU, to initiate a reporting duty on the Member States to update the EU on the initiatives developed or policies implemented to prevent radicalisation.
23. In order to ensure that the RAN CoE can provide state of the art good practices training programmes and henceforth remains relevant to the issues at hand, the EU is recommended to offer more flexibility to its mandate, provide more funding and a long-term commitment to its objectives to execute these activities and to increase its outreach and circle of influence.

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ANNEX I: FACTSHEETS BY THEME

THEME A: FORA, MEASURES AND TOOLS FOR OPERATIONAL COOPERATION AND INTELLIGENCE/LAW ENFORCEMENT AND JUDICIAL INFORMATION EXCHANGE

Efforts to improve operational cooperation and the exchange of information have repeatedly been placed high on the EU agenda, especially following terrorist attacks. This Factsheet, which should be read in conjunction with Factsheet B on databases, covers the most relevant fora, measures and tools for operational cooperation and information exchange that are part of the EU's counter-terrorism initiatives. Most of these fora, measures and tools have not been developed specifically for counter-terrorism, but rather for law enforcement in the more general sense.

Since many bodies and entities are involved in this field, some selection criteria apply. Bodies (e.g. EU INTCEN) and Council working parties (e.g. the Standing Committee on Operational Cooperation on Internal Security (COSI) and the Coordinating Committee in the area of police and judicial cooperation in criminal matters (CATS)) that deal with operational cooperation from a strategic perspective are excluded here due to the focus on measures and tools. Fora (e.g. the CTG and Interpol) that are not part of the formal institutional EU framework, but that have a place in relation to operational cooperation and information exchange, are included as well. The fora, measures and tools are discussed in alphabetical order.

The EU has also developed strategies in order to stimulate operational cooperation and information exchange. Briefly revisiting these sheds some light on the broad contours of the issue. The Council adopted an 'Information Management Strategy' (IMS) that called for more coherence between and efficiency of different EU information systems concerning JHA; no specific systems were mentioned.¹⁸¹ Central was the implementation of existing initiatives rather than developing new ones. A renewed IMS appeared in 2014.¹⁸² Greater coherence was also the key word informing the Commission's overview from 2010 of EU measures for collection, storage or cross-border exchange of personal information for the purpose of law enforcement and migration.¹⁸³ It proposed several principles for future policy development, such as safeguarding fundamental rights, necessity, subsidiarity, bottom-up policy design, and review and sunset clauses.

Another Commission Communication from 2012 entitled the 'European Information Exchange Model' (EIXM) concluded that information exchange "generally works well", but requires better implementation.¹⁸⁴

¹⁸¹ Council of the European Union, *Draft Council Conclusions on an Information Management Strategy for EU internal security*, 16637/09, (25 November 2009).

¹⁸² European Council, *Draft Council Conclusions on an updated Information Management Strategy (IMS) for EU internal security* (15701/1/14), (24 November 2014).

¹⁸³ European Commission, Communication from the Commission to the European Parliament and the Council, *Overview of information management in the area of freedom, security and justice* (COM(2010) 385 final), (20 July 2010).

¹⁸⁴ European Commission, Communication from the Commission to the European Parliament and the Council, *Strengthening law enforcement cooperation in the EU: the European Information Exchange Model (EIXM)* (COM(2012) 735 final), 7 December 2012, p. 2. The implementation of measures under EIXM was evaluated by Deloitte and European Commission Directorate-General Migration and Home Affairs, *Study on the implementation of the European Information Exchange Model (EIXM) for strengthening law enforcement cooperation* (2015), (26 January 2015). For the positive judgment of information exchange, see International Centre for Migration Policy

A Commission Communication from April 2016 identified "shortcomings" in terms of the functionalities of the information systems and defined this as a "complex landscape of differently governed information systems".¹⁸⁵ In June 2016, following the attacks in Paris in 2015 and Brussels in 2016, the Council produced a 'Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area'.¹⁸⁶ It listed actions for improving information exchange in the short- and medium term and set up long-term orientations, among them privacy and data protection, interoperability of systems, sharing information on the basis of need-to-share instead of need-to-know, and a coherent approach for exchanging information with third countries. Interoperability of information systems and creating coherence have been high on the agenda.

Atlas Network

Legal basis: n/a (as concerns the Atlas Network); Council Decision 2008/617/JHA (assistance of special intervention units between Member States)

The Atlas Network is an association of special police units of the Member States with the aim of improving practical cooperation, training and performing joint exercises.¹⁸⁷ The network was created after the attacks on 11 September 2001 in the context of the Police Chiefs Task Force (PCTF), an informal forum of high-level police representatives aimed at facilitating operation activities that was active between 2000 and 2009.¹⁸⁸ Council Decision 2008/617/JHA provides general rules allowing special intervention units to come to the assistance of other Member States, in a supporting capacity, if requested in case of a crisis situation.

Eurojust

Legal basis: Council Decision 2002/187/JHA (establishing Eurojust); Council Decision 2003/659/JHA 2002 (amendment concerning budgetary arrangements); Council Decision 2009/426/JHA (amendment to enhance operational effectiveness)

Eurojust aims to stimulate and improve the coordination of judicial investigations and prosecutions for cases with links between two or more Member States. As such Eurojust sets up and participates in Joint Investigation Teams (discussed below), these are multinational and multiagency teams investigating criminal offences. Eurojust's annual report from 2015 noted that practitioners consider JITs an "efficient and effective tool to coordinate cross-border investigations and prosecutions", but the differences in timeframes of domestic proceedings is considered a challenge.¹⁸⁹

Eurojust also connects with the Member States through seconded national experts (national correspondents) who constitute its National Coordination System. Requests for assistance can be initiated through the national correspondents or via Eurojust's On-Call Coordination mechanism that is available on a 24/7 basis. Art. 13 of Decision 2009/426/JHA obliges

Development, *Study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments*, (December 2010).

¹⁸⁵ European Commission, Communication from the Commission to the European Parliament and the Council, *Stronger and Smarter Information Systems for Borders and Security* (COM(2016) 205 final), (6 April 2016), p. 3.

¹⁸⁶ Council of the European Union, *Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area*, 9368/1/16 Rev 1, (6 June 2016).

¹⁸⁷ Council of the European Union, *Atlas common challenge 2013: "All together to protect you!"*, 8570/13 (17 April 2013).

¹⁸⁸ Council of the European Union, *Discussion document on a normative framework for "ATLAS"*, 8434/05 (25 April 2005).

Member States to share information with Eurojust to streamline the coordination of cross-border cases, although this is not done in a timely and systematic manner.¹⁹⁰ The information is stored in Eurojust's Case Management System. The agency also maintains a – non-public – Terrorism Convictions Monitor (TCM) which contains an overview and analysis of terrorism-related developments, including concluded court proceedings as well as upcoming and ongoing trials.

The European Border and Coast Guard Agency (EBCG)

Legal basis: Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC

The EBCG was launched in October 2016 and replaces the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) that was in operation since May 2005. The EBCG is tasked with implementing 'European integrated border management' at the national and EU level to ensure freedom of movement within the EU as well as contribute to maintaining an area of freedom, security and justice.¹⁹¹ For this purpose, the EBCG is tasked with developing a 'technical and operational strategy'.¹⁹² The activities of the EBCG should be conducted with respect for fundamental rights.

The EBCG consists of the EBCG Agency *and* the national border and coast guard agencies. The tasks of the EBCG have been expanded to include the ability to carry out a 'vulnerability assessment' of Member State capacity and readiness (in terms of equipment, infrastructure, staff, budget and financial resources) to deal with potential crises at their external borders. In addition, the EBCG Agency can appoint a coordinating officer for each joint operation or rapid border intervention. The Member State on whose territory the operation or intervention takes place shall take the views of this officer 'into consideration and follow them to the extent possible'.¹⁹³

A new competence is the option to carry out operational activities at the external borders involving a Member State and a neighbouring third country. Such operations can even take place on the territory of the neighbouring third state on the basis of an agreement. The EBCG will also assist the Member States with the return of irregularly staying third country

¹⁸⁹ Eurojust, *Annual Report 2015*, (2016), pp. 18-19.

¹⁹⁰ Council of the European Union, *Systematic feeding and consistent use of European and international Databases - information sharing in the counter-terrorism context*, 7726/16 (14 April 2016), p. 4.

¹⁹¹ European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC* (L 251/1).

¹⁹² European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC* (L 251/2).

¹⁹³ European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC* (L 251/26).

nationals, including through the availability to Member States of 'European return intervention teams'.¹⁹⁴

A 'rapid reaction pool', a standing corps of at least 1500 border guards, should be available to assist the Member States in carrying out external border controls. The rapid reaction pool can be deployed at the request of a Member State or on the basis of a Council decision when 'urgent action' is required to maintain external border controls.¹⁹⁵ The pool shall consist of border guards from the Member States, including non-EU states Norway, Switzerland, Iceland, and with financial support from Liechtenstein.¹⁹⁶ The budget is scheduled to increase from €238 million in 2016 to €322 million in 2020. Staff will rise from 417 in 2016 to 1000 in 2020.¹⁹⁷ The ECBG Agency will have its headquarters in Warsaw, Poland.

European Union Agency for Law Enforcement Cooperation (Europol)

Legal basis: Regulation (EU) 2016/794; Council Decision 2009/936/JHA

Europol assists the Member States in dealing with a specific set of criminal offences, including terrorism. It collects, stores, processes, analyses and exchanges information. Europol also facilitates operational cooperation via JITs (discussed below) and provides law enforcement expertise to the Member States. The agency also produces threat assessments, strategic and operational analyses and general situation reports such as the annual and public TE-SAT.

For the purposes of operational cooperation and information exchange, Europol maintains the following mechanisms:

Europol Information System (EIS)

EIS is Europol's central reference system to verify the availability beyond national jurisdictions of data relating to suspected and convicted persons, criminal structures, offences and means to commit them. The system allows for cross-matching data by performing searches. EIS relies on Member States to enter the data. Although information sharing via Europol has increased, there is room for improvement according to a 2015 study. Some police officers hesitate to upload information to avoid compromising ongoing operations. Others are unaware that for certain information there is an obligation to share

¹⁹⁴ European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC* (L 251/5).

¹⁹⁵ European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC* (L 251/23).

¹⁹⁶ European Parliament and Council of the European Union, *Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC* (L 251/63).

¹⁹⁷ European Commission, "Questions & Answers: the new European Border and Coast Guard Agency", Commission Press Release (6 October 2016).

with Europol.¹⁹⁸ In April 2016, the EU CTC reported “significant gaps” with regard to data on foreign terrorist fighters entered in EIS.¹⁹⁹

Secure Information Exchange Network Application (SIENA)

SIENA allows for the exchange of operational and strategic information and intelligence relating to crime between Europol, the Member States and third parties that have a cooperation agreement with Europol. SIENA has not been fully rolled out in all Member States and action is undertaken to ensure this.²⁰⁰ In addition, a 2015 study found that SIENA is not used in a significant manner, one of the reasons being that no information is entered at night and there is no legal obligation to use it for communications.²⁰¹ However, Europol did note a substantial rise in counter-terrorism related messages exchanged through SIENA: from 2,245 in 2015 to 3,934 in 2016.²⁰² SIENA has been upgraded to the security classification level of Confidential to make possible the transmission of information of a higher sensitivity.²⁰³ In January 2016, with the creation of the ECTC (see below) as part of Europol, a separate space in SIENA is dedicated to exchange counter-terrorist-related information.

24/7 operational centre

This is the central Europol hub for processing incoming data. The data can subsequently be fed into the EIS or Analytical Working Files (AWFs). The operational centre processes information exchanged with third parties and coordinates support for policing major events. The AWFs set out the conditions under which Europol can undertake analytical activities. Only within the bounds of an AWF is analysis and support to the Member States permitted. Europol currently houses two AWFs, one on serious and organised crime and another on counter-terrorism.

Europol Analysis System (EAS)

EAS is the operational information system through which information can be centralised and managed as well as analysed by tools offered by the system.

European Counter Terrorism Centre (ECTC)

The ECTC is operational since January 2016. It is an enhanced central information hub to increase information exchange and operation cooperation as well as a centre for expertise. It focuses on foreign fighters, information exchange with regard to terrorist financing, online terrorist propaganda, illegal arms trafficking and international cooperation. Following the attacks in Brussels in March 2016, the ECTC acted as a support platform for counter-terrorism authorities in the Member States.²⁰⁴ FIU.net, the platform for exchanging

¹⁹⁸ Deloitte and European Commission Directorate-General Migration and Home Affairs, *Study on the implementation of the European Information Exchange Model (EIXM) for strengthening law enforcement cooperation* (2015), p. 32.

¹⁹⁹ Council of the European Union, *Systematic feeding and consistent use of European and international Databases - information sharing in the counter-terrorism context*, 7726/16 (14 April 2016), p. 2.

²⁰⁰ Council of the European Union, *Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area*, 9368/1/16 Rev 1, (6 June 2016), p. 42.

²⁰¹ Deloitte and European Commission Directorate-General Migration and Home Affairs, *Study on the implementation of the European Information Exchange Model (EIXM) for strengthening law enforcement cooperation* (2015), p. 57.

²⁰² Europol, “Information sharing on counter terrorism in the EU has reached an all-time high”, Press release (30 January 2017).

²⁰³ Council of the European Union, “Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area: - State of play of the implementation of its Actions 1 to 16 (Chapter 2)”, 13283/16, 14 October 2016, p. 15.

²⁰⁴ Council of the European Union, *Information sharing in the counter-terrorism context: Use of Europol and Eurojust*, 9201/16, (31 May 2016), p. 5.

information on money laundering and terrorist financing, is part of the ECTC (see below Factsheet D on CFT).²⁰⁵

Focal Points

Europol organises the analysis of information according to two AWFs (see above under 24/7 operational centre): serious and organised crime and counter-terrorism. Each AWF is subdivided into several so-called Focal Points which have a distinct thematic or regional focus. One is called Hydra which deals with Islamist terrorism in general, another Focal Point is TFTP or Terrorist Financing Tracking Programme (see also Factsheet B and Factsheet D). A third is the Focal Point Travellers which concerns individuals suspected of travelling across international borders to take part in terrorist activities and that present a (future) threat to the security of the Member States. In April 2016, the EU CTC reported "significant gaps" with regard to data on foreign terrorist fighters entered in Focal Points Travellers (FPTs).²⁰⁶

[Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union](#)

Legal basis: Framework Decision 2006/960/JHA

Framework Decision 2006/960/JHA, also known as the Swedish Decision because of the initiative by Sweden, lays down rules for Member States' law enforcement authorities to simplify the exchange of information more effectively and expeditiously in order to detect, prevent and investigate criminal offences or conduct criminal intelligence operations. Since there is no common legal framework for the exchange of information and intelligence for law enforcement purposes, a legal obligation for simplifying information exchange comes closest to any such a framework. Member States can refuse a request for information exchange if doing so would harm their own national security, compromise ongoing investigations, operations or the safety of individuals, or when the request is evidently disproportionate for the goal of the request. Attached to the Framework Decision is a form guiding the information requests. A 2015 study found that three Member States still had to implement Framework Decision 2006/960. Operational compliance was not achieved fully either, one of the reasons for this being that the form for information requests was considered not being helpful.²⁰⁷

[High Level Expert Group on Information Systems and Interoperability \(HLEG\)](#)

Legal basis: Commission Decision of 17.6.2016 setting up the High Level Expert Group on Information Systems and Interoperability C(2016) 3780 final

In order to address the "complex landscape of differently governed information systems" the Commission set up the HLEG.²⁰⁸ This group brings together EU agencies, national experts and relevant institutional stakeholders in order to examine the legal, technical and operational aspects of creating interoperable information systems. HLEG's aim is to "contribute to an overall strategic vision on how to make the management and use of data

²⁰⁵ Council of the European Union, *State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015*, 6785/16 (4 March 2016), p. 32.

²⁰⁶ Council of the European Union, *Systematic feeding and consistent use of European and international Databases - information sharing in the counter-terrorism context*, 7726/16 (14 April 2016), p. 2.

²⁰⁷ Deloitte and European Commission Directorate-General Migration and Home Affairs, *Study on the implementation of the European Information Exchange Model (EIXM) for strengthening law enforcement cooperation* (2015), pp. 27-28.

²⁰⁸ European Commission, *Communication from the Commission to the European Parliament and the Council, Stronger and Smarter Information Systems for Borders and Security* (COM(2016) 205 final), (6 April 2016), p. 3.

for border management and security more effective and efficient, and to identify solutions to implement improvements".²⁰⁹ HLEG is tasked with giving advice and assistance to the Commission to realise the interoperability of information systems as well as cooperate and coordinate between the Commission and Member States regarding legislation on interoperability. The expert group should bridge the technical and policy dimensions on information systems and interoperability.²¹⁰ Up until May 2017, five meetings are planned. HLEG's main findings will be reported to the European Parliament and the Council by the Commission.²¹¹

Joint Investigation Teams (JITs)

Legal basis: Council Framework Decision 2002/465/JHA

The notion of the JIT is contained in the Council of Europe's Convention on Mutual Assistance in Criminal Matters to which the EU became a party in 2000.²¹² Framework Decision 2002/465/JHA provides the legal basis. A JIT can be set up when criminal investigations lead to links with other Member States or when a criminal investigation requires coordination and concerted action by the Member States. For a JIT to carry out criminal investigations it should involve two or more Member States and concern a specific purpose and have a limited duration. Seconded JIT members – those from the Member States other than the Member State that has set up the JIT – may be entrusted with particular investigative tasks under the law of the Member State the JIT is operating in. Europol, Eurojust and OLAF (the EU's anti-fraud office) can participate in a JIT. Eurojust can also request the setting up of a JIT and Europol can support its functioning via SIENA and its analytical capabilities. JITs were formed following the shooting down of Malaysian Airlines flight MH17 over Ukraine and after the November 2015 Paris and March 2016 Brussels attacks.²¹³

Counter Terrorism Group (CTG)

Legal basis: n/a

The CTG, set up in 2001, is an informal intergovernmental structure for meetings between the heads of the intelligence and security services of the Member States, including Norway and Switzerland. It lies outside EU structures although it closely collaborates with Europol and the EU CTC. Since July 2016 the CTG operates an online database for improved information exchange on (suspected) terrorists. According to an interviewee, the cooperation is good, but a challenge remains how to cooperate with third states.

²⁰⁹ European Commission, *High-Level Expert Group on Information Systems and Interoperability: Scoping Paper*, (June 2016), p. 2.

²¹⁰ European Commission, *High-Level Expert Group on Information Systems and Interoperability: Scoping Paper*, (June 2016), p. 7.

²¹¹ *Ibid.*, p. 8.

²¹² Council Act of 29 May 2000 establishing in accordance with Art. 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (2000/C 197/01), p. 1.

²¹³ For the Paris and Brussels attacks, see Council of the European Union, *Systematic feeding and consistent use of European and international Databases - information sharing in the counter-terrorism context*, 7726/16 (14 April 2016), p. 6.

THEME B: DATA COLLECTION AND DATABASE ACCESS AND INTEROPERABILITY

This factsheet gives an overview of the most relevant databases in relation to the EU's counter-terrorism efforts. Most of the data collection tools discussed here were not specifically designed for the purposes of counter-terrorism. They were either set up to assist law enforcement in general, border control and/or migration. Some were later retooled for the aim of law enforcement, including counter-terrorism. The Terrorist Financing Tracking Program (TFTP) and the Passenger Name Records (PNR) system were specifically set up for counter-terrorism. The databases are discussed in alphabetical order.

Eurodac

Legal basis: Regulation (EC) No 2725/2000 (establishing Eurodac); Regulation (EU) No 603/2013 (amending Eurodac for law enforcement purposes)

Eurodac was established in 2000 to contribute to the identification of applicants for asylum and persons arrested for unlawful crossing of the external border of the EU. The Regulation from 2013 amended Eurodac to be used by law enforcement authorities for the prevention, detection, and investigation of terrorist offences or other serious criminal offences. Since Eurodac's primary role is not that of law enforcement, the Regulation stipulates certain conditions under which Eurodac can be accessed for law enforcement purposes. Other means (national fingerprint databases and the Prüm and VIS arrangements discussed below as well as in Factsheet C) need to be exhausted first before the use of Eurodac can be considered. In addition, several other cumulative conditions need to be met:

- There must be an overriding public security concern;
- Access is for a specific case instead of a systematic comparison;
- There are reasonable grounds access contributes substantially to preventing, detecting or investigating criminal offences.

Twelve Member States have indicated that they will grant law enforcement authorities access to Eurodac, two Member States had not taken a decision yet, three Member States cannot tell due to future political decisions in relation to the Prüm Treaty (see below), and four Member States indicated they would not apply the law enforcement provisions of Regulation 603/2013.²¹⁴

A Commission proposal that is now being developed intends, among other things, to strive for interoperability of Eurodac with SIS II and VIS.²¹⁵

²¹⁴ Eurodac SCG, *Report on the national preparation for the implementation of the Eurodac Recast*, (April 2016), p. 4.

²¹⁵ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person], for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)*, (COM(2016) 272 final), p. 5.

Since 2013 responsibility for the operational management of Eurodac is in the hands of EU-LISA, the EU agency dedicated to managing large-scale IT systems in the area of freedom, security and justice.

European Border Surveillance System (Eurosur)

Legal basis: Regulation (EU) No 1052/2013

Eurosur is the information-exchange framework for generating EU-wide situation awareness as well as a 'common pre-frontier intelligence picture' for detecting, preventing and combating illegal immigration and cross-border crime and saving migrant lives at the external borders of the Member States. It allows for the exchange of non-classified and classified information in a secure manner and in near-real-time with Member States' national coordination centres in order to improve the reaction capability at the external borders. Eurosur is maintained by Frontex (see also Factsheet A).

European Criminal Records Information System (ECRIS)

Legal basis: Council Framework Decision 2009/315/JHA (organisation and content of the exchange of information from criminal records); Council Decision 2009/316/JHA (establishment ECRIS)

ECRIS concerns the exchange of information between Member States' criminal records databases. It became operational in 2012 and is a decentralised arrangement, meaning that data remains stored in national databases and transmitted between these systems. The goal of ECRIS is to create a better understanding of the facts and types of penalties or measures between Member States. ECRIS should contribute to a fuller context in the sense that a suspect's previous convictions will not remain unknown, thereby making possible different considerations in handling a suspect. Among the categories of offences about which information is exchanged are five terrorist offences:

- Directing a terrorist group;
- Knowingly participating in the activities of a terrorist group;
- Financing of terrorism;
- Public provocation to commit a terrorist offence;
- Recruitment or training for terrorism.

Twenty-five Member States are interconnected through ECRIS while Malta, Portugal and Slovenia are currently not participating.²¹⁶ At the moment, the Commission is working on a proposal to replace Decision 2009/316/JHA with a Directive, amongst other things to reduce the administrative burden to increase the efficiency of information exchange with regard to so-called third country nationals and stateless persons. A Commission report on the implementation of Decision 2009/316/JHA will accompany the Directive amending ECRIS.²¹⁷

²¹⁶ European Commission, *Impact Assessment Accompanying the proposal for a Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA*, (SWD(2016) 4 final), (19 January 2016), p. 2.

²¹⁷ *Ibid.*, p. 2.

Implementation of the Prüm Treaty

Legal basis: Council Decision 2008/615/JHA; Council Decision 2008/616/JHA (administrative and technical implementation of the previous decision)

Council Decision 2008/615/JHA implements the so-called Prüm Treaty (signed in May 2005) aimed to step up cross-border cooperation in relation to countering terrorism, cross-border crime and illegal migration.²¹⁸ The Council Decision implementing this treaty creates the conditions for the exchange of several types of data: the automated transfer of DNA profiles, fingerprint data, certain data relating to national vehicle registration, and data in connection to events with a major cross-border dimension (e.g. sporting events, European Council meetings).

Data is stored in anonymous profiles and only after a hit between profiles has been established can personal data be requested, taking into consideration the limits imposed by national laws in terms of data protection. Also for the purposes of the prevention of terrorist offences, personal data can be exchanged. In addition, joint patrols and other joint operations can be organised for the maintenance of public order and security and the prevention of criminal offences.

The Prüm Treaty is not fully implemented yet and not applied consistently. Not all articles have been implemented by all Member States. Five Member States are still not operational with regard to either DNA, fingerprint data or vehicle registration data. Moreover, not all Member States are connected to each other in terms of interconnectivity for the automated data exchanges concerning the aforementioned three types of data.²¹⁹ A 2015 study reported that implementation was slow due to political unwillingness to implement the treaty as well as the actual purpose of the Treaty being unclear.²²⁰

Passenger Name Records (PNR)

Legal basis: Agreement from 2012 with the United States (OJ 2012 L 215/5); Agreement from 2006 with Canada (OJ 2006 L 82/15); Agreement from 2012 with Australia (OJ 2012 L 186/4); Directive (EU) 2016/681 (establishment EU PNR)

An initiative for a Council Directive requiring airlines to retain and share Passenger Name Records (PNR) data was listed as part of the EU's response to the attacks in Madrid in March 2004.²²¹ In 2008, the European Parliament refused to vote on a proposal put forward by the Commission the year before. The PNR proposal introduced by the Commission in 2011 was blocked by the European Parliament on the grounds of necessity and proportionality in 2013. Between 2011 and 2014, the Commission provided funds for setting up national PNR systems through the 'Prevention of and Fight against Crime (ISEC)' programme.²²² After the Paris attacks in January 2015 the European Parliament was willing

²¹⁸ Council of the European Union, *Prüm Convention*, 10900/05, (7 July 2005).

²¹⁹ Council of the European Union, 'Implementation of the provisions on information exchange of the Prüm Decisions', 5017/8/16 Rev 8, 16 December 2016.

²²⁰ Deloitte, European Commission Directorate-general Migration and Home Affairs, "Study on the implementation of the European Information Exchange Model (EIXM) for strengthening law enforcement cooperation", (26 January 2015), pp. 40-41.

²²¹ Council of the European Union, *Declaration on combating terrorism*, 7906/04, (29 March 2004), p. 9.

²²² Council of the European Union, "Directive (EU) 2016/681 on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime – Implementation of the PNR Directive", 13836/1/16 Rev 1, p. 9.

to negotiate an EU PNR regime and a Directive was adopted in April 2016. The PNR Directive (see also below) is considered "one of the most important new instruments in the identification, detection and countering of criminals, terrorists and their travel movements".²²³ However, one interviewee questioned the added value of PNR in terms of counter-terrorism and thought it might be more suitable for dealing with organised crime instead.

PNR data is collected by airlines. The data concerns reservation information on passenger itineraries exchanged by airlines when passengers use multiple airlines to reach their destination. Certain EU measures and international agreements have made possible access to PNR data by law enforcement authorities to prevent, detect, investigate and prosecute terrorist offences and serious crime.

The EU has two types of PNR arrangements in place. The first concerns international agreements with third countries. An agreement for the transfer of EU PNR data to the United States was concluded in 2004, but annulled by the European Court of Justice (ECJ) on the basis of an inadequate scope in 2006.²²⁴ A new agreement was signed in 2007 and after a review in 2010 a new agreement was reached in 2012. The agreement on the transfer of PNR data from 2006 with Canada expired in September 2009, and a new draft agreement was signed in June 2014. Before voting on the consent of this draft agreement, the European Parliament referred it in November 2014 to the ECJ to determine its compatibility with the EU Treaties. The Court has not yet decided on the issue. A provisional agreement on PNR transfers to Australia was concluded in 2008 and a renegotiated agreement appeared in 2012.

The agreements specify the periods of data retention and the conditions under which the data can be accessed and shared with third countries. PNR data can only be used and processed on a case-by-case basis. Any relevant information retrieved from the PNR data by the US, Canada and Australia shall be made available to the Member States, Europol or Eurojust. In addition, these institutions can request access to the PNR data shared with the US, Canada and Australia. PNR data from the EU may be transferred by the US, Canada and Australia with third countries when meeting specific conditions. At regular intervals, a Joint Review is conducted by the EU and the US to jointly evaluate data protection safeguards. The latest Joint Review from January 2017 noted general satisfaction with the implementation of the agreement in line with conditions of the agreement, although certain aspects such as the number of US personnel with access to PNR data and the masking out of data can be improved.²²⁵

The second PNR arrangement concerns an autonomous EU system. The already-mentioned Directive 2016/681 creates an obligation for Member States to require airlines operating from their territory to be able to access PNR data and transfer it to other Member States to prevent, detect, investigate and prosecute terrorist offences and serious crime. Each Member State is asked to set up a national Passenger Information Unit (PIU) that is exclusively tasked with collecting and processing PNR data. The obligation to collect data

²²³ Council of the European Union, "Directive (EU) 2016/681 on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime – State of affairs regarding the implementation of the PNR Directive and setting up of the passenger information units: Informal Working Group on PNR", 13323/1/16 Rev 1, p. 2.

²²⁴ Court of Justice of the European Union, *Joined Cases C-317/04 and C-318/04*, (30 May 2006).

²²⁵ European Commission, *Report from the Commission to the European Parliament and the Council on the joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of passenger name records to the United States Department of Homeland Security*, (COM(2017) 29 final), (19 January 2017), pp. 3-4.

concerns only flights to EU territory from third countries and vice versa. Data is retained for a period of five years maximum after which they are deleted permanently. The Directive does not cover PNR data retrieved from flights between the Member States. It is allowed for Member States to collect data on intra-EU flights, but only on selected ones. What 'selected' means is not specified in the Directive. Europol may request, upon a case-by-case basis, PNR data from the Member States. Transfer of PNR data with third countries is also possible only on a case-by-case basis. See also Factsheet C.

By November 2016, four Member States had functioning or almost functioning PNR systems, including a legal basis. Twelve Member States are at different stages in setting up the technical infrastructure and adopting legislation. Eleven Member States are at the beginning of the technical and legal process. The deadline for transposition of the Directive, considered to be on a 'tight' schedule, is May 2018.²²⁶

Schengen Information System II (SIS II)

Legal basis: Regulation (EC) No 1987/2006 (establishment SIS II, border control cooperation); Council Decision 2007/533/JHA (establishment SIS II, law enforcement cooperation); Regulation (EC) No 1986/2006 (cooperation on vehicle registration)

SIS II is in operation since 2013. It is the successor to SIS which was included as part of the Schengen Convention (1990) as a compensatory scheme for the removal of internal border controls between the Member States. SIS II allows for the creation of alerts with the aim of refusing entry or stay of third-country nationals. In addition, alerts can be issued for persons wanted for arrest for surrender or extradition procedures, for missing persons, for persons and objects requiring discrete checks, for objects for seizure or use as evidence in criminal proceedings, or for persons sought to assist with a judicial procedure. Foreign terrorist fighter alerts can be created in SIS II, but the EU CTC reported in April 2016 that the data is not systematically entered.²²⁷

SIS II has new functionalities. Biometrics can be used for confirming a person's identity, and different types of alerts can be linked, but practice reveals that there is no search possibility for fingerprints and that compatibility of issues hinder creating different alerts for the same person.²²⁸ Moreover, in certain circumstances a flag can be added to an alert, meaning that a Member State will not act on an alert. Europol and Eurojust can access and search SIS II data. Council Decision 2007/533/JHA includes the option to exchange passport data with Interpol's SLTD database (see below) although no such connection has been established yet.²²⁹ A 2016 Commission evaluation of SIS II concluded that not all Member States "query SIS II systematically when they query their national police or

²²⁶ European Commission, "Implementation Plan for Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime", SWD(2016) 426 final, p. 5. For the 'tight' schedule, see Council of the European Union, Directive (EU) 2016/681 on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime – Implementation of the PNR Directive", 13836/1/16 Rev 1, p. 2.

²²⁷ Council of the European Union, *Systematic feeding and consistent use of European and international Databases - information sharing in the counter-terrorism context*, 7726/16, (14 April 2016), p. 4.

²²⁸ Council of the European Union, *State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015*, 6785/16, (4 March 2016), p. 21.

²²⁹ European Commission, *Report from the Commission to the European Parliament and the Council on the evaluation of the second generation Schengen Information System (SIS II) in accordance with art. 24 (5), 43 (3) and 50 (5) of Regulation (EC) No 1987/2006 and art. 59 (3) and 66 (5) of Decision 2007/533/JHA*, (SWD(2016) 450 final), p. 50.

immigration databases"; the effective performance of SIS II depends on the systematicity of queries.²³⁰

The Commission is trying to boost SIS II as a counter-terrorism tool.²³¹ New amendments are under way to create an alert for terrorism-relating activities, to issue alerts for third-country nationals who are regarded as extremist speakers, and to allow the security services of the Member States access to SIS II.²³² The EU CTC referred to a classified document in which it was concluded that Member States use "different standards" when using SIS II for counter-terrorism purposes.²³³ The still classified status of the document does not allow to explicate what "different standards" means.²³⁴

Since 2013 the responsibility for the operational management of SIS II is in the hands of EU-LISA.

Terrorist Finance Tracking Program (TFTP)

Legal basis: Agreement from 2010 with the United States (OJ 2010 L 195/5)

The TFTP is also covered in Factsheet D concerning measures to counter terrorist financing. The TFTP is a US initiative that was set up shortly after the attacks on 11 September 2001. Its purpose was to mine global financial data traffic processed by the Belgian financial message services company SWIFT in order to identify terrorist finances. The program was disclosed to the general public in 2006 and led to concerns in several EU Member States about the privacy of their citizens. The EU negotiated an agreement with the US over the transfer of financial messaging data to the US in 2010. The initial agreement was rejected by the European Parliament and adopted after renegotiations resulted in stronger data protection provisions. Since 2010, there have been repeated calls by the Council and European Parliament to explore the establishment of an EU Terrorist Finance Tracking System (TFTS). In 2013, the Commission published a Communication on the topic, accompanied by an impact assessment, in which it argued that "a proposal for an EU TFTS is not clearly demonstrated".²³⁵

²³⁰ European Commission, *Report from the Commission to the European Parliament and the Council on the evaluation of the second generation Schengen Information System (SIS II) in accordance with art. 24 (5), 43 (3) and 50 (5) of Regulation (EC) No 1987/2006 and art. 59 (3) and 66 (5) of Decision 2007/533/JHA*, (COM(2016) 880 final), p. 10.

²³¹ European Commission, *Report from the Commission to the European Parliament and the Council on the evaluation of the second generation Schengen Information System (SIS II) in accordance with art. 24 (5), 43 (3) and 50 (5) of Regulation (EC) No 1987/2006 and art. 59 (3) and 66 (5) of Decision 2007/533/JHA*, (SWD(2016) 450 final), p. 41.

²³² Council of the European Union, *Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area: - State of play of the implementation of its Actions 17 to 40 (Chapter 3)*, 12286/1/16 Rev 1, (6 June 2016), Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU, 2016/0409 (COD).

²³³ Council of the European Union, *State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015*, (6785/16), (4 March 2016), p. 21.

²³⁴ Council of the European Union, *Lessons learnt and use of SIS in the fight against foreign terrorist fighters*, (5722/16 Rev 2), (18 April 2016).

²³⁵ European Commission, *Communication from the Commission to the European Parliament and the Council: A European terrorist finance tracking system*, (COM(2013) 842 final), p. 14. For the feasibility study, see European Commission, *Communication Staff Working Document - Impact Assessment*, (SWD(2013) 488 final).

TFTP concerns the transfer of financial payment messages from the EU to the US for the purpose of prevention, investigation, detection or prosecution of terrorism or terrorist financing while observing data protection norms. Relevant information obtained through the TFTP is then transmitted (back) to competent authorities in the Member States, Europol, Eurojust and/or third countries. Europol plays an important role by assessing whether the data requested is necessary and/or sufficiently narrow in scope to meet the relevant data protection standards. The Member States, Europol and/or Eurojust may also request, when detecting relevant signals, a search of TFTP data. This has happened 160 times between January 2015 and January 2016.²³⁶ The EU CTC observed that the TFTP "has proven to be a valuable tool in counter-terrorism investigations: it enhances the ability to map out terrorist networks, often filling in missing links in an investigative chain".²³⁷

Financial data transferred but not extracted for investigative purposes will be deleted ("as soon as technologically feasible") after annual evaluation.²³⁸ The US will carry out an annual evaluation to see that data retention periods are not longer than necessary. Independent overseers, including a person appointed by the European Commission, have the authority to review all searches of the extracted data. The EU and the US agreed to jointly evaluate data protection safeguards after six months of the agreement entering into force and then continue to do so, on a regular basis. Though the 2010 agreement sought to address data protection concerns, some uncertainties persist. The agreement has a duration of five years after which there is an automatic extension of one year unless one of the parties terminates the agreement.

Between 2010 and 2013, the Member States lodged 158 requests with US authorities for financial data, resulting in 924 so-called investigative leads.²³⁹ The Joint Review Report from the Commission and the US Treasury Department concluded the TFTP has "significant value (...) in preventing and combatting terrorism and its financing".²⁴⁰ The report provides numerous examples of the TFTP for investigative purposes and detection, but its added value in terms of prevention and prosecution is less well demonstrated; 45% of all TFTP data viewed were three years or older.²⁴¹ The latest Joint Review Report from January 2017 noted that the Commission was satisfied with the implementation of the controls and the safeguards of the agreement. Moreover, a strong increase of data sharing between the US and the EU and its Member States was noted: 8,998 leads during the review period compared to 3,929 leads during the previous review period.²⁴²

²³⁶ Council of the European Union, *State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015*, (6785/16), (4 March 2016), p. 31.

²³⁷ *Ibid.*, p. 31.

²³⁸ Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (2010), p. 9.

²³⁹ European Commission, *Annex: Joint Report from the Commission and the U.S. Treasury Department regarding the value of TFTP Provided Data pursuant to Art. 6 (6) of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program*, (COM(2013) 843 final), p. 8.

²⁴⁰ *Ibid.*, p. 15.

²⁴¹ *Ibid.*, p. 11.

²⁴² European Commission, *Joint Review Report of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purpose of the Terrorist Finance Tracking Program*, (SWD(2017) 17 final), (19 January 2017), pp. 7-8; European Commission, *Report from the Commission to the European Parliament and the Council on the joint review of the implementation of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program*, (COM(2017) 31 final), (19 January 2017).

Europol is tasked with assessing US requests for financial data stored in the EU in terms of specificity and substantiation. The Europol Joint Supervisory Body evaluates this role from time to time. The 2015 review noted that compared to earlier reviews that the “relevancy, accuracy, accountability and readability” of Europol procedures for handling US data requests “has been maintained”.²⁴³ The 2015 review did note a “clear tension between the idea of limiting the amount of data to be transmitted by tailoring and narrowing the requests and the nature of TFTP [as a scheme for mass and regular data exchange]”.²⁴⁴

Visa Information System (VIS)

Legal basis: Council Decision 2004/512/EC (establishing VIS); Council Decision 2008/633/JHA (access VIS for prevention, detection and investigation of terrorist offences and other serious criminal offences); Regulation (EC) No 767/2008 (exchange of data on short-stay visas)

VIS was established in 2004 by Council Decision 2004/512/EC. It involves the exchange of visa data between the Member States to conduct a common visa policy. VIS allows the processing of data and decisions concerning third country nationals applying for short stay visits or to travel through the Schengen Member States. Biometric data can be matched through VIS. Council Decision 2008/633/JHA allowed VIS to be used for the purposes of maintaining internal security and the combating of terrorism under certain specified circumstances. Regulation 767/2008 made available data on short-stay visas to the Member States for the prevention, detection and investigation of terrorist offences and serious criminal offences.

The data contained in VIS can only be searched by the designated authorities when there are reasonable grounds that such a search will provide them with data that has substantial added value in preventing, detecting or investigating terrorist offences and serious crime. Europol has access to VIS. An October 2016 evaluation by the Commission showed the Member States consider VIS an effective and efficient system in processing visa applications.²⁴⁵ With regard to the contribution of VIS to internal security, according to nineteen of “responding Member States (...) VIS had a positive impact on the prevention of threats to the Member States’ internal security, while only two Member States consider this impact as limited.” What exactly this positive impact entails is not specified. Moreover, the evaluation observes that “access to the VIS for law enforcement purposes on the basis of the VIS Decision remains quite fragmented across the Member States”.²⁴⁶

Since 2012 the responsibility for the operational management of VIS is in the hands of EU-LISA.

²⁴³ Council of the European Union, *Report on the Europol’s implementation of the TFTP agreement*, (12338/15), (28 September 2015), p. 3.

²⁴⁴ *Ibid.*, p. 4.

²⁴⁵ European Commission, *Report from the Commission to the European Parliament and the Council on the implementation of Regulation (EC) No 767/2008 of the European Parliament and of the Council establishing the Visa Information System (VIS), the use of fingerprints at external borders and the use of biometrics in the visa application procedure/REFIT*, (COM(2016) 655 final), (14 October 2016), p. 8.

²⁴⁶ *Ibid.*

International Criminal Police Organisation (Interpol)

Interpol is an intergovernmental organisation concerned with improving worldwide police cooperation by providing technical and operational support. The organisation has 190 member countries and its origins date back to 1923. Interpol maintains databases, accessible to members via National Central Bureaus (NCBs), on a variety of topics: child abusers and victims, fingerprints, DNA profiles, stolen and lost travel documents, stolen administrative documents, counterfeit documents, motor vehicles, vessels, works of art, ballistics data, illicit arms, radiological and nuclear materials, and maritime piracy. All databases, with the exception of the ballistics database, are accessible in real-time through Interpol's I-24/7 network. This network allows sharing, searching and cross-checking of data. On several of the aforementioned topics Interpol offers analytical tools as well.

In addition to databases, Interpol also operates a system of Notices. A Notice is an international request for cooperation or an alert to share critical information. The Notices serve to identifying and locating persons or objects. Topics subject to Notices are: to seek the location and arrest of wanted persons for extradition or similar lawful action (Red), to help locate missing persons or to help identify those unable to identify themselves (Yellow), to collect additional information about a person's identity, location or activities concerning a crime (Blue), to seek information about unidentified bodies (Black), to provide warnings and intelligence about persons having committed criminal offences and likely to do so again in other countries (Green), to warn of an event, person, object or process representing a serious and imminent threat to public safety (Orange), to seek or provide information on criminal modus operandi, objects, devices and concealment methods (Purple), and a Notice for persons or groups subject to United Nations Security Council sanctions.

The Council, via Common Position 2005/69/JHA, has sought to encourage Member States to increase their sharing of data on stolen or lost travel documents with Interpol's Stolen and Lost Travel Documents (SLTD) database. In April 2016, the EU CTC reported that supply of data is uneven and not all Member States upload their data automatically.²⁴⁷ The Council is undertaking actions to enhance the interoperability between SIS II and the SLTD database.²⁴⁸ A 2010 study found that when Member States share information and a third country is involved, they tend to favour Interpol over Europol.²⁴⁹

Since 2009 Interpol opened the Office of the Special Representative of INTERPOL to the European Union (SRIEU) to enhance the visibility of Interpol to EU institutions and agencies, promote collaboration and act as a privileged partner in law enforcement activities.

²⁴⁷ Council of the European Union, *Systematic feeding and consistent use of European and international Databases – information sharing in the counter-terrorism context*, (7726/16), (14 April 2016), p. 4.

²⁴⁸ Council of the European Union, *Roadmap to enhance information exchange and information management including interoperability solutions in the Justice and Home Affairs area*, (9368/1/16 Rev 1), 6 June 2016.

²⁴⁹ International Centre for Migration Policy Development, *Study on the status of information exchange amongst law enforcement authorities in the context of existing EU instruments*, (December 2010), p. 71.

THEME C: MEASURES TO ENHANCE EXTERNAL BORDER SECURITY

This factsheet provides an overview of measures to enhance external border security²⁵⁰, including the (proposals on) systematic checks on EU citizens entering EU territory against relevant databases, the European Border and Coast Guard and on a new Entry-Exit System and measures regarding security risk management on goods bound for the EU. Some of these measures have a clear link with the measures described in the previous factsheet on data collection and database access and interoperability, notably the new PNR Directive and other measures to enable the collection of and matching with data for border control purposes.

Legal framework

EU instruments

Persons

In 2002 the Commission presented the Communication entitled 'Towards integrated management of the external borders of the Member States of the European Union',²⁵¹ that called on Member States to take into consideration at external borders the magnitude of crime, terrorism, crimes against children, arms trafficking, corruption and fraud. The Communication proposed the development of a common policy on management of the external borders of the Member States of the European Union, which should include at least a common corpus of legislation, a common co-ordination and operational co-operation mechanism, common integrated risk analysis, staff trained in the European dimension and inter-operational equipment and burden-sharing between Member States in the run-up to a European Corps of Border Guards. Countering terrorism has always been one of the objectives of EU measures to enhance external border security, though never the sole objective.

The Council Directive on the obligation of carriers to communicate passenger data from 2004²⁵² requires air carriers to collect and transmit passenger data (API data: number and type of travel document used, nationality, name and date of birth of the passenger, border crossing point of entry into the EU, departure and arrival time of the transportation, total number of passengers carried) to the authorities of the Member State of destination responsible for control. Non-compliance may lead to fines being imposed and even, in the case of serious infringement, confiscation of the means of transport or withdrawal of the operating licence. This Directive was adopted following a request by the European Council of 25 and 26 March 2004, which convened following the terrorist attacks in Madrid.

The Schengen Borders Code of 2006²⁵³ improved the legislative part of the EU integrated border management policy by setting out the rules on the border control of persons crossing EU external borders and on the temporary reintroduction of border control at

²⁵⁰ This analysis refers only to *external* borders: the Schengen Area for people and the borders of the European Customs Union for goods. The internal borders are out of scope of this analysis, however the debate on internal border security sometimes is sparked by events like the attacks on the Berlin Christmas Market.

²⁵¹ European Commission, Communication from the Commission to the Council and the European Parliament, *towards integrated management of the external borders of the member states of the European Union* (COM(2002) 233 final).

²⁵² Council of the European Union, *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data* (L 261/24).

European Parliament and Council of the European Union, 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) (L 105/1).

internal borders. EU Member States assist each other with the effective application of border controls. Operational cooperation was coordinated by Frontex, since 2016 the EBCG, see also Theme A. Where in the Schengen area serious deficiencies are identified in the carrying out of external border controls by an EU Member State, the Commission may issue recommendations. For the Member State concerned, this may include submitting to the EBCG strategic plans based on a risk assessment to deal with the situation or initiating the deployment of European border guard teams or, as a last resort, triggering the closure of a specific border crossing point.

In its Communication on reinforcing the management of the EU's maritime borders of 2006,²⁵⁴ the Commission set out operational measures designed to combat illegal immigration, protect refugees and set up controls at, and surveillance of, the EU's external maritime borders. It proposed maximising the capacity of Frontex (EBCG), establishing a Coastal Patrol Network, developing a European surveillance system, setting up expert teams to carry out an initial assessment of each person intercepted and maximising the use of Community financial resources.

The 2007 Regulation on Rapid Border Intervention Teams (RABIT)²⁵⁵ set up a system providing enhanced technical and operational assistance for a limited period, in the form of rapid-reaction intervention teams including guards from other Member States. The teams will intervene at the request of any Member State faced with urgent and exceptional situations resulting from a mass influx of illegal immigrants.

In the 2008 framework of the European strategy for integrated border management,²⁵⁶ the Commission floated the idea of new tools: measures benefiting bona fide travellers from Non-EU Member States, an EU entry/exit registration system, automated gates for checking travellers based on biometric identifiers, and an electronic system of travel authorisation for Non-EU Member State nationals not requiring visas before travelling to a Member State.

At its meeting of 25-26 March 2010, the European Council endorsed the EU Internal Security Strategy (ISS).²⁵⁷ The strategy sets out the challenges, principles and guidelines for dealing with security threats relating to organised crime, terrorism and natural and man-made disasters. It has five strategic objectives, with specific actions for each objective, for overcoming the most urgent challenges in order to make the EU more secure. One objective was to strengthen security through border management. In relation to the movement of persons, the EU could treat migration management and the fight against crime as twin objectives of the integrated border management strategy. The instruments improving security in relation to the movement of goods are also complementary, and are constantly being developed to tackle the increasingly sophisticated criminal organisations.

²⁵⁴ European Commission, Communication from the Commission to the Council, *reinforcing the management of the European Union's southern maritime borders* (COM(2006) 733 final).

²⁵⁵ European Parliament and Council of the European Union, Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers (L 199/30).

²⁵⁶ European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Preparing the next steps in border management in the European Union* (COM(2008) 69 final)

²⁵⁷ Council of the European Union, Draft Internal Security Strategy for the European Union: "Towards a European Security Model, 5842/2/10 Rev 2 (23 February 2010).

In line with this, the actions proposed consist of:

- exploiting the full potential of Eurosur (see below);
- enhancing the contribution of Frontex at external borders;
- developing common risk management for movement of goods across external borders (see below);
- improving interagency cooperation at national level.

Management of external borders must both enhance security and facilitate travel. With these objectives in mind, in 2011 the Commission presented proposals for an improved Schengen evaluation and monitoring system, and an analysis of the potential establishment of Entry/Exit and Registered Traveller systems as called for by the European Council.²⁵⁸ Furthermore, the Commission proposed EU legislation on the collection of PNR (cf. Theme B) on flights entering or leaving the territory of the EU.²⁵⁹

The Arab spring revolutions in 2011 resulted in a large influx of immigrants from the Southern Mediterranean who entered the EU illegally. These events have demonstrated the limited resources of the EU in immigration matters. Therefore, the Commission presented initiatives²⁶⁰ aimed at establishing a comprehensive European migration policy which is better able to meet the challenges presented by migration. This policy must respect the European tradition of asylum and protection, while preventing illegal border crossings. The Commission in particular announced creating a European system of border guards and the strengthening of the operational capacities of Frontex.

To improve integrated border management and to prevent cross-border crime and illegal immigration, the EU in 2013 created the European border surveillance system (Eurosur).²⁶¹ Eurosur is a multi-purpose system to prevent illegal immigration and cross-border crime at the external borders. It will also contribute to ensuring the protection and saving the lives of migrants trying to reach European shores. It provides a mechanism allowing border surveillance agencies to rapidly exchange information and work together. By means of national coordination centres, all EU Member States' national authorities responsible for border surveillance (e.g. border guards, police, coastguard, navy, and etcetera) must coordinate their activities with those of other Member States and Frontex (EBCG). As of December 2013, Eurosur was operational in the 19 EU Member States that have signed the Schengen Agreement and that have southern and eastern external borders. The remaining 11 Schengen countries joined Eurosur on 1 December 2014.

In the interest of the entire Schengen Area EU Member States must invest in the protection of the EU's external borders. For some countries, notably those situated at the external frontiers of the Union, these investments can be very large. The External Borders Fund (EBF)²⁶² provided financial support to assist EU Member States in responding to such

²⁵⁸ European Commission, Communication from the Commission to the European Parliament and the Council, *First Annual Report on the implementation of the EU Internal Security Strategy* (COM(2011) 790 final).

²⁵⁹ Ibid.

²⁶⁰ European Commission, Communication from the Commission to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, Communication on migration (COM(2011) 248 final) – Not published in the Official Journal.

²⁶¹ European Parliament and Council of the European Union, Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur) (L 295/11).

²⁶² European Parliament and Council of the European Union, Regulation (EU) No 515/2014 of the European Parliament and of the Council of 16 April 2014 establishing, as part of the Internal Security Fund, the instrument for financial support for external borders and visa and repealing Decision No 574/2007/EC (L 150/143).

situations. Overall, EUR 1 820 million was allocated for these objectives over the period 2007–13, to promote the implementation of the ISS and to ensure that it becomes an operational reality. The Fund has led to significant improvements, such as to the shortening of the duration of passenger checks, modernisation of surveillance systems and development of IT systems for external border controls.

Following the introduction of risk management in the EU legal framework in 2005 and its roll-out between 2009 and 2011, the European Commission evaluated the situation and on 21 August 2014 adopted a Communication on the EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade (COM/2014/527). The Strategy and Action Plan annexed to the Communication proposes a set of step-by-step actions to reach more coherent, effective and cost-efficient EU customs risk management at the external borders.

Following the terrorist attacks in Paris in January 2015, JHA ministers issued a joint statement. This served as an input for the 12 February statement by EU leaders, which called for several internal measures, including:

- adopting an EU PNR framework;
- making full use of the existing Schengen framework, including for systematic checks of EU citizens at external borders.

At their meeting in March 2015, ministers discussed the implementation of the measures agreed in the recent statements. They focused in particular on:

- the reinforced application of the Schengen framework: ministers agreed to implement systematic checks based on risk assessment no later than June 2015;
- EU PNR Directive: ministers agreed to actively engage with the European Parliament in order to make decisive progress in the coming months.

In June 2015, the Commission finalised a first set of common risk indicators, concerning foreign terrorist fighters, to detect terrorist travel. These risk indicators were developed in close cooperation with national experts, the EEAS, EU Agencies and Interpol. Common risk indicators and guidance from the EBCG now support the work of national border authorities when conducting checks on individuals.²⁶³

Also in 2015, some terrorists tried to exploit the large irregular flows of persons occurring at the EU external borders. The so-called 'hotspot approach' was introduced to identify any individuals posing a threat to EU security and separate them from those who need protection. The hotspot workflow and the relocation process included integrated and systematic security checks, with support provided by the EBCG and Europol in the registration and fingerprinting of arrivals.²⁶⁴

On 15 December 2015, the European Commission adopted an important set of measures to manage the EU's external borders and protect the Schengen area without internal borders. The objective of these measures is inter alia to improve the internal security in the EU. In September 2016, the Commission proposed a European Border and Coast Guard to ensure

²⁶³ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, *Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union* (COM(2016) 230 final).

²⁶⁴ Ibid.

strong and shared management of the external borders.²⁶⁵ The EBCG replaces Frontex that was in operation since May 2005 (see Theme A). The Commission also proposed to amend the Schengen Border Code in order to introduce, at the external borders of the EU, systematic checks against relevant databases for all people entering or exiting the Schengen area.²⁶⁶ This proposal was amended by the European Parliament (see hereafter) A uniform European travel document for return will facilitate effective return of illegally residing third-country nationals.²⁶⁷

Following the terrorist attacks in Brussels on 22 March 2016, EU ministers responsible for justice and home affairs and representatives of EU institutions met on 24 March 2016. They adopted a joint statement, calling for:

- urgent adoption of the PNR Directive by the European Parliament in April 2016;²⁶⁸
- increasing the feeding and use of European and international databases in the fields of security, travel and migration.

On 6 April 2016, the Commission adopted a revised legislative proposal for Smart Borders.²⁶⁹ The revised legislative proposal for Smart Borders includes a Regulation for the establishment of an Entry/Exit System and a proposed amendment to the Schengen Borders Code to integrate the technical changes needed for the Entry/Exit System. It also announced the assessment of a new EU tool, the EU Travel Information and Authorisation System (ETIAS), where visa-exempt travellers would register relevant information regarding their intended journey. The automatic processing of this information could help border guards in their assessment of third-country visitors arriving for a short stay.

The proposed EU Entry/Exit System will improve the management of the external borders and reduce irregular migration into the EU (by tackling visa overstaying), while also contributing to the fight against terrorism and serious crime and ensuring a high level of internal security. The system will collect data including identity, travel documents and biometrics as well as registering entry and exit records at the point of crossing. It will apply to all non-EU citizens who are admitted for a short stay in the Schengen area (maximum 90 days in any 180-day period). Negotiations with the co-legislators on the two proposals are currently ongoing, and the Commission called for final adoption of the proposals by the end of 2016 with a view to the System becoming operational in early 2020 after three years of development.²⁷⁰

²⁶⁵ European Parliament and Council of the European Union, Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (L 251/1).

²⁶⁶ European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders* (COM/2015/0670 final).

²⁶⁷ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on a European travel document for the return of illegally staying third-country nationals*, (COM/2015/668 final).

²⁶⁸ See also Factsheet B.

²⁶⁹ European Commission, *Communication from the Commission to the European Parliament and the Council, Stronger and Smarter Information Systems for Borders and Security* (COM(2016) 205 final).

²⁷⁰ European Commission, "State of the Union 2016: Commission Targets Stronger External Borders", *Commission Press Release* (14 September 2016).

In the Communication "Enhancing security in a world of mobility"²⁷¹, the Commission sets out the key workstreams to further implement the European Agendas on Migration and Security and the Security Union. The Commission points in this Communication to the fact that gaps in border control bring gaps in security:

"The emergence of foreign terrorist fighters as a major security risk has underlined the cross-border threat and the particular importance of comprehensive and effective border checks, including on EU citizens. This adds to broader concerns that counter-terrorism has been hampered by the ability of terrorists to operate across borders, putting the spotlight on gaps in the sharing of key intelligence.

The EU can use the opportunities for a common approach to build a powerful system harnessing its scale to bring citizens more security. If the EU uses its law enforcement and border control tools to the full, exploits the potential of inter-operability between information sources to identify any security concerns from a common pool of information, and uses the stage of entry into the EU as a key point for security checks to take place, the result will negate the ability of terrorist networks to exploit gaps."²⁷²

The Commission's Communication puts the focus on entry procedures and external border management, by strengthening the EBCG, stronger controls through the Entry-Exit System, enhancing identity management and strengthening the fight against document fraud²⁷³ and checking of visa-free travellers in advance in and European Travel Information and Authorisation System.

The idea of establishing a European System for Travel Authorisation for visa-exempted third-country nationals, with similar objectives to the well-known US 'ESTA' system, was discarded by the Commission in 2011 as the potential contribution to enhancing the security of the Member States would neither justify the collection of personal data at such a scale nor the financial cost and the impact on international relations. In 2016, the Commission launched a feasibility study on a European Travel Information and Authorisation System (ETIAS) that must provide an additional layer of control over visa-exempt travellers. ETIAS would – like the US ESTA and the previous idea of an EU ESTA - determine the eligibility of all visa-exempt third-country nationals to travel to the Schengen Area, and whether such travel poses a security or migration risk. Information on travellers would be gathered prior to their trip. The Commission presented a feasibility study on ETIAS and based on the results of the study as well as consultations, the Commission presented a legislative proposal in November 2016 for the establishment of ETIAS.²⁷⁴

On 15 December 2015, the Commission put forward a proposal for a Regulation amending the Schengen Borders Code (Regulation (EC) No 562/2006)²⁷⁵. Under the current rules,

²⁷¹ Communication from the Commission to the European Parliament, the European Council and the Council, Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders COM(2016) 602 final.

²⁷² Ibidem.

²⁷³ See also: Communication from the Commission to the European Parliament and the Council, Action plan to strengthen the European response to travel document fraud, COM(2016) 790 final.

²⁷⁴ European Commission, "State of the Union 2016: Commission Targets Stronger External Borders", *Commission Press Release* (14 September 2016).

²⁷⁵ European Commission, *Proposal for a Regulation of the European Parliament and of the Council amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders* (COM/2015/0670 final).

identity checks carried out on EU nationals at the EU external borders are not systematic. The revision requested by Council would aim at enabling systematic and permanent checks at all points of entry at the external borders of the EU, including the verification of biometric information against the relevant databases, making full use of available technical solutions in order not to hamper the fluidity of the movement. After negotiations between the European Parliament and the Council, an amended Regulation was drafted²⁷⁶, under which Member States are obliged to check systematically third country nationals against all databases on entry as well as on exit. Border guards should also systematically check persons enjoying the right of free movement under Union law against the Schengen Information System and other relevant Union databases. Member States should also, in their own interest and in the interests of other Member States, enter data into the European databases. Equally, they should ensure that the data are accurate and up-to-date and obtained and entered lawfully.

Goods (Customs)

The EU has the responsibility of supervising the Union's international trade and upholding minimum standards of customs risk management and controls. The common strategic objectives are the protection of the security of the supply chain and the safety of citizens and the financial interests of the EU and its Member States, as well as the facilitation and acceleration of legitimate trade to promote competitiveness. To this end, and in the context of the EU Customs Security Programme, in 2005, the European Parliament and the Council adopted the 'security amendment' to the Community Customs Code.²⁷⁷ This amendment introduced a common Customs Risk Management Framework (CRMF), specifying detailed common risk criteria and standards and risk information and analysis sharing. These standards and rules contribute to border management for security and safety purposes if applied equally along the length of the border. A gap in the application of these border standards and rules presents a risk for the whole EU. Effective implementation of CRMF depends on operators submitting advance information to Customs electronically and for Customs screening this information in an 'equivalent' manner on the basis of common standards and criteria. In 2010, the Commission proposed an EU action plan to strengthen air cargo security, with new rules and a definition of criteria for identifying high risk cargo, and has now progressed to the final stage of the development of an EU aviation security risk assessment. These initiatives are aimed to prevent terrorist access to materials and improve transport security, which is deemed critical in the fight against terrorism.

The October 2010 (Yemen) incident²⁷⁸ demonstrated weaknesses in the security standards and procedures applying to air cargo in the EU and worldwide. The debate ensued

²⁷⁶ And approved after the finalization of this report, on 16 February 2017.

²⁷⁷ European Parliament and Council of the European Union, Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (L 117/13).

²⁷⁸ On October 29, 2010, two packages, each containing a bomb consisting of 300 to 400 grams of plastic explosives and a detonating mechanism, were found on separate cargo planes. The bombs were discovered as a result of intelligence received from Saudi Arabia's security organisation. They were bound from Yemen to the United States, and were discovered at en route stop-overs, one at East Midlands Airport in the UK and one in Dubai in the United Arab Emirates. According to the USA and the UK, the bombs were probably designed to detonate mid-air, with the intention of destroying both planes over Chicago or another city in the US. Key in this case was the sharing of intelligence with the customs offices in Germany and the UK by US, Dubai and Saudi Arabia. This was all the more relevant since scanners, x-ray machines, chemical swabs and sniffer dogs were not able to detect the explosives – 100% scanning with current systems did not help (would not have helped) in this case. Another important element was that the quality of pre-loading data, including elements like consigner/consignee data, proved essential for analysis and detection. In this case, thanks to good bilateral cooperation and some luck, the bombs did not detonate.

underlined the need to review security procedures and requirements more broadly for all transport modes. The Yemen incident illustrated very clearly several key points to be considered in formulating EU customs supply chain security policy. These include the time-sensitive nature of risk mitigation measures, the simultaneous involvement of several Member States in a single transaction and their interdependence, the multi-agency and international dimension to the issue and the core interest of industry and stakeholders in the international trading and supply chain system. These interlinked elements underline the need for a proactive, interconnected approach to risk management involving multiple actors. The Commission to that end presented in 2013 a Communication²⁷⁹ with the objective to review the implementation of customs risk management policy, to put forward a strategic approach for the years ahead and to make recommendations for action with a focus on efficient deployment of resources.

Following the introduction of risk management in the EU legal framework in 2005 and its roll-out between 2009 and 2011, the European Commission evaluated the situation and on 21 August 2014 adopted a Communication on the EU Strategy and Action Plan for customs risk management: Tackling risks, strengthening supply chain security and facilitating trade²⁸⁰. The Strategy and Action Plan annexed to the Communication proposes a set of step-by-step actions to reach more coherent, effective and cost-efficient EU customs risk management at the external borders. An explicit reference to terrorism is absent in this Strategy.

International agreements

PNR

The EU has signed bilateral PNR Agreements with the US, Canada and Australia.²⁸¹ PNR data is information provided by passengers during the reservation and booking of tickets and when checking in on flights, as well as collected by air carriers for their own commercial purposes. PNR data can be used by law enforcement authorities to fight serious crime and terrorism.

Customs/container security

The Agreement between the European Community and the US on customs cooperation and mutual assistance in customs matters of 1997 was extended on 22 April 2004 and its scope broadened to cover cooperation on securing the international trade supply chain.²⁸² Later in 2004, the EU-US Joint Customs Cooperation Committee adopted ten recommendations on the implementation of the extended agreement, with a view to strengthening the security of maritime container transport while facilitating legitimate trade through reciprocal security standards and industry partnership programmes.

²⁷⁹ European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk Management and Security of the Supply Chain (COM(2012) 793 final).

²⁸⁰ European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on the EU Strategy and Action Plan for customs risk management: *Tackling risks, strengthening supply chain security and facilitating trade* (COM(2014) 527 final).

²⁸¹ See also Factsheet B.

²⁸² Council of the European Union, Council Decision of 30 March 2004 concerning the conclusion of the Agreement between the European Community and the United States of America on intensifying and broadening the Agreement on customs cooperation and mutual assistance in customs matters to include cooperation on container security and related matters, 2004/634/EC (L 304/32).

Assessment of added value of measures to enhance external border security

Measures to enhance external border security serve many purposes, including counterterrorism

Although some of the measures to enhance external border security were announced in the wake of terrorist events (like PNR and ETIAS), these measures serve in almost all instances more objectives than only counter-terrorism. The impact assessment for the PNR Directive²⁸³ for instance presents this measure as being relevant against the threat of terrorism and serious crime: "Terrorism and other serious crime are the biggest threats to security. By making PNR data available for the prevention, detection, investigation and prosecution of such crimes, law enforcement authorities will be provided with a necessary tool for the efficient performance of their tasks." For the EES, the objective to contribute to the fight against terrorism and serious crime and ensure a high level of internal security is named as one of three objectives, next to improve the management of external borders and to reduce irregular migration, by addressing the phenomenon of overstaying.²⁸⁴ The objectives of ETIAS are to perform a security risk assessment, next to perform a migration risk assessment, to reduce the number of refusals at the border by pre-assessing part of the Schengen Borders Code entry conditions, thus creating benefits for both travellers and carriers and support border guards in their decision-making. Moreover, the objective for ETIAS is to obtain advance information for *all* border types, as opposed to the current situation where API/PNR cover only air borders. The security risks that should be addressed by ETIAS are terrorism and serious and cross-border organised crime, the latter including document and identity fraud, trafficking in human beings, drug trafficking and illicit firearms trafficking.²⁸⁵ The measures to enhance external border security listed in this section are not solely developed for counter-terrorism purposes, and the fight against terrorism is not even the main objective of these measures.

Since '9/11' and other terrorist attacks in Europe and elsewhere, security has become a top priority for European customs. The security of the EU, of the Member States and of citizens depends on each and every single point of entry of goods into the EU. If customs failed to act to tackle risks consistently along the EU's external borders, the customs union and the EU single market would become unsustainable. According to the Commission, effective risk management of the movement of goods through the international supply chain is critical for security and safety and essential to facilitating legitimate trade and protecting the financial and economic interest of the EU and its Member States. The Commission therefore initiated several policies to strengthen customs risk management.²⁸⁶ Many of these policies refer to terrorist attacks or incidents. These policies were however never solely aimed at fighting

²⁸³ European Commission, *Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime* (COM/2011/0032 final).

²⁸⁴ Commission staff working document: Executive summary of the impact assessment accompanying the document proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending regulation (ec) no 767/2008 and regulation (eu) no 1077/2011 and proposal for a Regulation of the European Parliament and of the Council amending Regulation (eu) 2016/xxx as regards the use of the Entry/Exit System (EES) (COM(2016) 194 final) and (COM (2016) 196 final).(Impact assessment EES).

²⁸⁵ PwC, *Feasibility Study for a European Travel Information and Authorisation System (ETIAS): Final Report*, (16 November 2016).

²⁸⁶ See e.g. European Commission, Communication from the Commission to the Council, European Parliament and the European Economic and Social Committee on the role of customs in the integrated management of external borders (COM(2003) 452 final), and European Commission, *Action Plan for strengthening the fight against terrorist financing*, Annex 1 to the Communication from the Commission to the European Parliament and the Council (COM(2014) 527 final).

terrorism; the term risk is here used in the widest sense here: it covers not only risks to public security in the movement of goods (criminal, terrorist or other trafficking or illegal trade in firearms, biological products or explosives, for example), but also the threats to society's security from trade in goods which pose a risk to public health, the environment and consumers.²⁸⁷ It is difficult to assess from Commission documents to what extent measures strengthening customs risk management were developed for fighting terrorism, or whether the other objectives were equally or even more relevant.

The added value of measures to enhance external border security for counter-terrorism

To what extent the measures to enhance external border security described in this section contribute to the fight against terrorism is hard to assess, in many instances mainly also because the measures are not yet implemented or have been implemented only recently. The Commission has assessed for many of the then proposed measures their impact, and provided assessments of the added value or significance of each measure – and for each measure assessments of different possible options – for the counter-terrorism objective.

In the impact assessment for the PNR Directive, it is stated that “because of the dramatic effects of a plane crash, and because of the destruction caused by such a crash, terrorists appear to have a preference for using aircraft to perform an act of terror. In addition, criminals who traffic people and goods also tend to use air travel because it is faster than other modes of transport.” This leads to the preferred option to limit the use of PNR data to travel by air. However, under this option not all controlled border crossings to the EU would be covered, and there would therefore continue to be a high possibility of terrorists and criminals entering its territory via other border crossings/land or sea borders. Furthermore, there remains a risk that those wishing to enter EU territory use alternative means of transport, for example ship, ferry, train, bus, thus making the instrument less effective.²⁸⁸

According to the impact assessment, overall, this option could sufficiently achieve the goal of increasing security in the EU. An extension of the scope of the PNR measure to cover sea and rail travel could be considered in the future, once authorities have learned from the experiences with PNR collection from air travel.

The added value of the Entry/Exit System for the fight against terrorism is less obvious and the general policy objectives of the Entry-Exit System are therefore, “in order of priority:

- To counteract irregular immigration;
- To contribute to the fight against terrorism and serious crime and ensure a high level of internal security.”

However, the impact assessment for the EES clearly concludes that the preferred policy option assessed has no impact (no added value) for the fight against terrorism and serious crime.²⁸⁹

²⁸⁷ “Risk’ means the likelihood and the impact of an event occurring, with regard to the entry, exit, transit, movement or end-use of goods moved between the customs territory of the Union and countries or territories outside that territory and to the presence within the customs territory of the Union of non-Union goods, which would pose a threat to the security and safety of the Union and its residents, to human, animal or plant health, to the environment or to consumers”. See also: European Parliament and Council of the European Union, Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (L 269/1).

²⁸⁸ Impact assessment on PNR Regulation, p. 33.

²⁸⁹ European Commission, Commission Staff Working Document, *Executive Summary of the impact assessment Accompanying the document Proposal for a regulation of the European Parliament and of the Council establishing*

ETIAS would be an additional requirement for a population of travellers arriving using very different means at the Schengen border: by train, bus or in a private vehicle. In the EU, although land travel currently represents around 5% of the visa-exempted third country nationals (VE-TCNs) arriving at the Schengen borders, this number is likely to increase dramatically given the current visa liberalisation discussions. The situation at land differs greatly from that at air and sea. Contrary to air travel, no advance passenger information (like API) is sent for travellers arriving by land. One of the main objectives of ETIAS is filling an information gap on VE-TCNs, which is greatest at land borders. However, the practice of verifying TCNs' travel documents before they board a train or bus is still not widespread amongst carriers and such verifications prior to the boarding are complex to implement. The heterogeneity of the carriers' situations at land (small companies, different types of vessels, multiple stops before arriving at the Schengen Area, not all land carriers stop at the border, etc.) makes it very unlikely for now, and unrealistic for the EU, to require all carriers to verify their passengers' travel documents, visas and authorisations before embarking.

In addition, more people travel privately by land than by air and sea. This heterogeneity makes it difficult to inform all VE-TCNs of the new requirement. This also means that more VE-TCNs would try to make an application close to the border, or even once they arrive at the border. Indeed, travellers could try to apply on the spot using their own mobile devices, for instance, and would stand a good chance of receiving quickly a positive answer. This situation would probably lead to queues and people waiting at the border to receive the authorisation. In order to better manage the crowds and avoid potentially tense situations, computers with Internet access (which could be limited to the ETIAS website) or Internet hotspots could be made available at the border in order to let travellers apply on the spot from their mobile devices. However, if ETIAS was to fill the information gap of visa-exempted third country nationals arriving at the border, and one of the shortcomings of the PNR Directive is that PNR data is sent at check-in, which leaves authorities limited time to conduct assessments, it is not clear how this is overcome at land borders with ETIAS.

In the feasibility study for a ETIAS, the significance of the fight against terrorism is characterised as a risk that has recently been highlighted as a priority for the EU and with a limited link to VE-TCNs, whereas serious and cross-border organised crime has recently been clearly highlighted as a top priority for the EU and with an established link to VE-TCNs. In this sense, terrorism is a risk less significant for ETIAS to assess and help address than serious and cross-border organised crime.²⁹⁰

The impact assessments and feasibility studies on PNR, EES and ETIAS build to a certain extent on the assumption that Member States will use the data that is collected and/or generated in these border management systems to match with their own data, and on the assumption that Member States enter relevant data in EU systems (such as SIS II) so that an automated match can be made with data that is collected and/or generated in these border management systems.²⁹¹ Under the first assumption is perhaps another assumption

an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011 and Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/xxx as regards the use of the Entry/Exit System (EES) (SWD(2016) 116 final), p. 34.

²⁹⁰ PwC, "Feasibility Study for a European Travel Information and Authorisation System (ETIAS): Final Report", (16 November 2016), pp. 127-128.

²⁹¹ Or, as the Commission more explicitly stated: "The performance of a system is of course also conditioned by the quality of data it contains, hence the need for Member States to fully implement and use existing rules and systems – such as the Schengen Information System, the Visa Information System, the Interpol Stolen and Lost

that Member States, by sharing, possess more or less the same data and information, so that a match with systems in one Member State would lead to a similar outcome as a match in any other Member State. In most of the impact assessments, however, these assumptions remain implicit, and the consequences if these assumptions prove not to be correct are not made explicit either.

In the aftermath of the Yemen incident,²⁹² the Commission concluded in 2012²⁹³ on the basis of a study that the current customs risk management framework was not sufficient to address security and safety risks uniformly at the external border. Exchanges of information between customs and other authorities varied significantly at national level and are sometimes lacking at EU level. On this subject, a PwC study concluded "...there is room for improvement in the exchange of intelligence and information at all levels (between organisations at the national level, between the national and the EU level and between organisations at the EU level)."²⁹⁴ The conclusions of the Commission dated 2003 seemed still valid:

*"At Community level, there is no uniformity or harmonisation of security controls, which are sometimes slow to respond to new threats. This results in varying levels of performance in these areas at different points in the customs territory. In some places ... controls are less effective owing to a lack of investment and modern systems. In security terms, this means that the chances of seizing explosive devices, biological weapons or dangerous goods in time depend upon where at the Community's external border these goods enter."*²⁹⁵

This situation was assessed unsatisfactory and in need of remedial action to fill in the existing gaps and for a new approach to EU risk management.

In the EU Strategy and Action Plan for customs risk management of 2014,²⁹⁶ promoting interagency cooperation and information sharing between customs and other authorities at the Member States and EU level to ensure effective risk management, i.a. via development of further cross-sectoral co-operation arrangements, improvement of sharing and accessibility of (risk) information, and customs involvement in risk and threat assessments, was listed as one of the objectives. This objective has to be developed between 2015 and 2020 according to the indicative timetable. The effectiveness of all initiatives in the area of customs risk management thus still depend on interagency cooperation and information sharing between customs and other authorities at the Member States and EU level, and that has still to be developed. The Progress Report of July 2016 on the implementation of

Travel Documents database, EURODAC and Europol databases." – see: Communication from the Commission to the European Parliament, the European Council and the Council, Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders COM(2016) 602 final.

²⁹² Ibid.

²⁹³ European Commission, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on Customs Risk Management and Security of the Supply Chain (COM(2012) 793 final).

²⁹⁴ PwC, "Study on possible ways to enhance EU-level capabilities for customs risk analysis and targeting" (31 May 2012).

²⁹⁵ European Commission, Communication from the Commission to the Council, European Parliament and the European Economic and Social Committee on the role of customs in the integrated management of external borders (COM(2003) 452 final).

²⁹⁶ Annex to European Commission, *Action Plan for strengthening the fight against terrorist financing*, Annex 1 to the Communication from the Commission to the European Parliament and the Council (COM(2014) 527 final)

the EU Strategy and Action Plan for customs risk management²⁹⁷ gives an overall qualitative assessment of the implementation of the Strategy and draws some preliminary conclusions. The Report states that reform of customs risk management is a resource-intensive exercise, that achieving results takes time and although a large number of actions have been launched, progress has been uneven: "Progress is most noticeable on actions which fall within the remit of customs, while it has been slower for those actions requiring increased cooperation between customs and other authorities, in particular cooperation with law enforcement and security authorities."²⁹⁸

Implementation in Member States

Implementation in seven focus Member States

Table 1: Overview of implementation of Council Directive 2004/82/ EC on the obligation of carriers to communicate passenger data in seven focus Member States

Belgium	Bulgaria	France	Germany	The Netherlands	Slovakia	Spain
Act of May 15, 2006 on various measures relating to transport (Official publication: Staatsblad; Publication date: 2006-06-08; Page: 29388-29393)	Foreigners in the Republic of Bulgaria (Official publication: Official Gazette; Number: 63; Publication date: 2007-08-03)	Law No. 2006-64 of 23 January 2006 on the fight against terrorism and other provisions relating to security and border controls (1) Official publication of the French Republic (JORF); Number: 2006-64; Publication date: 2006-01-24	3. Act amending the Federal Police Act (Official publication: Bundesgesetzblatt Teil 1 (BGB 1); Number: 70; Publication date: 2007-12-31; Page: 03214-03215)	Act of July 9, 2007 to amend the Aliens Act 2000 Directive no. 2004/82 / EC of 29 April 2004 on the obligation of carriers to communicate passenger data (PbEU L 261) (Official publication: Staatsblad (Bulletin des Lois et des Décrets royaux); Number: 252; Publication date: 2007-07-12; Page: 00001-00002)	Law no. 48/2002 Coll. on Stay of Aliens and on amendment of certain laws (Official publication: Zbierka zákonov SR; Publication date: 2002-02-02)	Organic Law 2/2009, of 11 December, on the amendment of Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration (Official publication: Boletín Oficial del Estado (B.O.E); Number: 299/2009; Publication date: 2009-12-12; Page: 04986-05031)

²⁹⁷ European Commission, *Report from the Commission to the Council and the European Parliament: Progress Report on the implementation of the EU Strategy and Action Plan for customs risk management* (COM(2016) 476 final). In view of the short time elapsed since the launch of the actions, this Report does not seek to assess their impact.

²⁹⁸ Ibid.

Many of the measures in the area of border management are implemented via Regulations. One important exception is the API Directive, another one will be the PNR Directive. Interestingly, some Member States (UK, the Netherlands) implemented the API Directive in their immigration law, whereas others (Germany, France) implemented the API Directive in laws related to law enforcement. When implemented in immigration law, Member States might face difficulties in using the potential of API data for law enforcement purposes.

In 2012, an evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82²⁹⁹ has been conducted. Member States have transposed some or all the provisions of the Directive.³⁰⁰ However, the vast majority of Member States' legislation is not in full conformity with the Directive. While one Member State³⁰¹ is in full conformity, eight Member States³⁰² are not due to gaps in transposition, two Member States³⁰³ have incorrectly transposed some of its provisions and the remaining 18 Member States³⁰⁴ have incorrectly and not fully transposed all of the provisions of the Directive. The main issues of non-conformity relate to data protection legislation, late transposition, gaps in the definitions, absence of cross referencing (no referencing is made to the Schengen Convention) and absence of minimum and or maximum levels of sanctions. On a positive note, the evaluation concluded that 18 Member States used API data for law enforcement purposes (as allowed for by the last paragraph of Article 6.1).³⁰⁵

Effectiveness of measures to enhance external border security

In 2010, the Commission concluded³⁰⁶ that significant steps forward have been taken to enhance border security over the past five years. New technologies are being used in the development of a modern, integrated border management system. Biometric passports were introduced in 2006. The second generation of the Schengen Information System is operational and second generation of the Visa Information System is under development, and their legal framework has been established. However, a thorough evaluation of EU counter-terrorism policies to assess to what degree EU counter-terrorism policies - including measures to enhance external border security - have achieved the stated objectives has not been produced by the Commission (despite repeated calls by the European Parliament).³⁰⁷

²⁹⁹ ICF GHK, Evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82. See ICF GHK, *Evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82. Final Report for Directorate-General for Home Affairs*, (17 September 2012), p. 3.

³⁰⁰ The above-mentioned assessment is not applicable to Denmark, since Denmark is not bound to transpose the Directive under EU law. In addition, Liechtenstein has not been considered in the analysis of the transposition of the Directive since it does not have an airport or any external land or maritime borders.

³⁰¹ Slovenia.

³⁰² Bulgaria, Cyprus, France, Spain, Ireland, Norway, Romania and Sweden.

³⁰³ Greece and Latvia.

³⁰⁴ Austria, Belgium, Switzerland, Czech Republic, Estonia, Finland, Germany, Hungary, Iceland, Italy, Lithuania, Luxembourg, Latvia, Malta, Poland, Portugal, Slovakia and the UK.

³⁰⁵ Austria, Bulgaria, Cyprus, Czech Republic, Estonia, Spain, Finland, France, Germany, Hungary, Iceland, Lithuania, Luxembourg, Latvia, Malta, Portugal, Romania and the UK.

³⁰⁶ European Commission, Communication from the Commission to the European Parliament and the Council, *The EU Counter-Terrorism Policy: main achievements and future challenges* (COM/2010/0386 final), (20 July 2010).

³⁰⁷ European Commission, Communication from the Commission to the European Parliament and the Council, *The EU Counter-Terrorism Policy: main achievements and future challenges* (COM/2010/0386 final), (14 December 2011), and Hayes, B. and Jones, C., "Report on how the EU assesses the impact, legitimacy and effectiveness of its counterterrorism laws", *Statewatch* (2013), pp. 26-27.

Since most measures to enhance external border security developed since 2001 are only just implemented or still to be implemented, it is difficult if not impossible to say anything about their effectiveness. However, some data is available with regard to the effectiveness of the API Directive.

The Commission evaluation on the implementation and functioning of the obligation of carriers to communicate passenger data set up by Directive 2004/82 concluded that in terms of relevance of the Directive to the needs for intervention, 55% of the stakeholders viewed combating illegal immigration and 41% improving border control as the most important objectives. Member States competent authorities with a longstanding tradition of fighting against terrorism also identified law enforcement as a perceived need at the time of transposing the Directive. According to the evaluation, in the context of law enforcement, API systems have helped identifying persons posing security risks and other persons including victims of human trafficking and smugglers. However: competent authorities surveyed were substantially less positive about the (perceived or potential) effectiveness of API systems in enhancing border security and public order.³⁰⁸

The Netherlands evaluated the use of API data in 2014³⁰⁹ and concluded that the effectiveness and added value of the use of API data for the fight against serious crime and terrorism – outside the framework of border management and fighting illegal migration – was legally not possible, since the Alien Act (*Vreemdelingenwet*) in which the API Directive was implemented did not provide a sufficient legal basis for these objectives. There is however a legal basis in the Netherlands, for the General Intelligence and Security Service (*Algemene Inlichtingen- en Veiligheidsdienst, AIVD*), to use the API data for national security purposes, and the assessment of the effectiveness and added value by the AIVD was positive (not clear is whether use for counter-terrorism was included in this assessment).

³⁰⁸ Council of the European Union, *Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data* (L 261/24), p. 6 and section 7.2.1.

³⁰⁹ Evaluatierapport inzake het gebruik van Advanced Passenger Information (API) in Nederland, (2014).

THEME D: COMBATING TERRORIST FINANCING

The EU has adopted a variety of measures aimed at combatting the financing of terrorism. EU responses generally fall into two broad categories, namely 1) anti-money laundering (AML) and measures aimed at preventing financing terrorism, and 2) the implementation of asset freezes, including those required by the United Nations (UN) "smart sanctions" regime.³¹⁰ These measures are complemented by additional legislation, for instance relating to information requirements. This Factsheet provides an overview of EU instruments related to terrorist financing, and international cooperation of the EU with third countries and international organisations. It also discusses the (effectiveness of) implementation at the Member State level (concentrating particularly on the seven focus countries).

Legal Framework

EU instruments

Several key general counter-terrorism instruments with relevance to the combatting of terrorist financing can be identified. First of all, there is Council Framework Decision 2002/475/JHA on combatting terrorism as amended in 2008.³¹¹ In art. 2(2)(b) it sets out that intentionally funding activities of terrorist groups is to be made punishable.

The instrument has been discussed in several implementation reports,³¹² and in an external study accompanying the last report that assessed the implementation of the legal framework adopted by EU Member States to combat terrorism in practice.

At the end of 2015, a proposal for a Directive on combating terrorism was put forward that is to replace the Framework Decision.³¹³ It aims at implementing new international standards and obligations taken by the EU and tackling the evolving terrorist threat in a more effective way. While Member States are already committed to comply with Financial Action Task Force (FATF) Recommendations³¹⁴ and have to a large extent adopted the necessary implementing measures, the extension of the offence of terrorist financing as currently included in art. 2 Framework Decision 2002/475/JHA at EU level "ensures that Member States are not subject to different legal obligations and that the differences in the scope of criminal offences do not affect cross border information exchange and operational cooperation." The proposal is presented without an impact assessment.³¹⁵ Denmark does not take part in the adoption of this proposal and will not be bound by it. Framework Decision 2002/475/JHA,³¹⁶ as amended by Framework Decision 2008/919/JHA,³¹⁷ shall continue to be binding upon and applicable to Denmark.

³¹⁰ Bures, O., "Ten Years of EU's Fight against Terrorist Financing: A Critical Assessment", *Intelligence and National Security* 30 2-3 (2015), p. 210.

³¹¹ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (2002/475/JHA), p. 1, as amended by Framework Decision 2008/919/JHA, Council Framework Decision 2008/919/JHA of 28 November 2008, p. 21. The preamble to the 2002 decision refers to the UN Convention for the suppression of financing terrorism of 9 December 1999, and to the Council Recommendation of the same date on cooperation in combating the financing of terrorist groups. The Framework Decision is discussed more extensively in Factsheet F.

³¹² European Commission, Commission reports of 13 June 2002 on combating terrorism (COM(2004)409, COM(2007) 681) and COM(2014) 554).

³¹³ *Council Framework Decision 2002/475/JHA on combating terrorism* (COM(2015)0625).

³¹⁴ The FATF recommendations set an international standard for AML and terrorist financing. They require states to take such actions as implementation of international conventions, and setting up Financial Intelligence Units. Available at: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

³¹⁵ See also section 4.2 on the lack of preparing Impact Assessments for counter terrorism legislative proposals.

³¹⁶ OJ L 164, 22.6.2002, pp. 3-7.

The EU primarily responds to terrorist financing through the Anti-Money Laundering Directive (AMLD),³¹⁸ and the enforcement of UN sanction regimes. The AMLD, which implements FATF recommendations, aims to prevent the use of the financial system for money laundering or terrorist financing. UN sanctions are enforced through asset freezing regulations. The EU also maintains an autonomous blacklist of persons and entities whose assets should be frozen pursuant to Common Position 2001/931/CFSP,³¹⁹ which is modified every six months by the Council under Regulation (EC) No 2580/2001.³²⁰ This list differs from lists which simply implement UN Security Council (UNSC) Resolutions, such as in Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations.³²¹ In July 2016, the Commission adopted a list of high risk third countries with strategic deficiencies in their AML and Countering Terrorist Financing regimes, which is to be reviewed three times a year.³²² Banks are to subject financial flows emanating from the 11 listed countries to enhanced due diligence measures.

Other relevant legislation includes Regulation (EC) No 1781/2006 on information on the payer accompanying the transfer of funds,³²³ Regulation (EC) No 1889/2005, which puts certain controls on people carrying cash in excess of 10,000 EUR when entering or leaving the EU,³²⁴ as well as the Payment Services Directive 2015/2366.³²⁵

Given the importance of a Union-level response to issues surrounding money laundering, financing of terrorism, and organised crime, new rules have been established in Regulation (EU) 2015/847 relating to information on payers and beneficiaries that must accompany money transfers when at least one of the payment service providers involved in the transfer is settled in the EU.³²⁶ Furthermore, a fourth AMLD (Directive (EU) 2015/849) was adopted.³²⁷ This legal instrument contains further preventive measures to tackle the manipulation of funds received through severe criminality, and the acquisition of money or property for terrorist purposes. The new rules incorporate, *inter alia*, recommendations of the FATF. Cash payments of 10,000 EUR or more will be included under the Directive (as opposed to 15,000 EUR under the third AMLD).

³¹⁷ OJ L 330, 9.12.2008, pp. 21-23.

³¹⁸ Currently, the 3rd AMLD is being applied (2005/60/EC, OJ L 309, 25.11.2005, p. 15), but it will be replaced by the 4th AMLD 2015/849 (OJ L 141, 5.6.2015, p. 73) by 2017. The Commission has urged the Member States to actually implement the 4th AMLD by the end of 2016, ahead of the formal deadline of 26 June 2017. Additionally, work on the proposed 5th AMLD (COM(2016(450))) is currently in progress.

³¹⁹ OJ L 344, 28.12.2001, pp. 93-96.

³²⁰ *Ibid.*, p. 70.

³²¹ Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations, OJ L 139, 29.5.2002, p. 9 as amended by Council Regulation (EU) 2016/363, OJ L 68, 15.3.2016, p. 1.

³²² See Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies (OJ L 254/1) p. 1.

³²³ OJ L 345, 8.12.2006, pp. 1-9. Now being replaced by Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (OJ L 141), 5.6.2015, p. 1.

³²⁴ Art. 3 Regulation 1889/2005, (OJ L 309/09), 25.11.2005, Regulation (EC) No 1889/2005 Of The European Parliament And Of The Council of 26 October 2005 on controls of cash entering or leaving the Community, p. 9. See also Bures, O., "Ten Years of EU's Fight against Terrorist Financing: A Critical Assessment", *Intelligence and National Security*, 30(2-3) (2015), p. 210.

³²⁵ OJ L 337, 23.12.2015, pp. 35-127.

³²⁶ Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (1), (OJ L 141/1), 5.6.2015, p. 1.

³²⁷ *Ibid.*, p. 73.

In February 2016, the Commission also presented its Action Plan against terrorist financing,³²⁸ which is set to shape the future development of EU policy in this field. The plan envisages a number of actions that can be taken to improve the EU efforts aimed at combatting terrorist financing. Among other things, the Commission urges Member States to enact a speedy transposition of the new (fourth) AMLD, bringing the proposed date of transposition forward to 1 January 2017, and enhance cooperation through Financial Intelligence Units (FIUs). FIUs are national bodies that receive and analyse suspicious transaction reports and other information relevant to *inter alia* financing of terrorism. European FIUs exchange information through FIU.net, a decentralised computer network funded by the European Commission.³²⁹

The proposal for further amendments to the AML Directive³³⁰ - making it the fifth AMLD - seeks to improve the effectiveness of EU strategy on high-risk third countries, suspicious virtual currency transactions, and FIU information access, as well as address transparency concerns, and reduce the misuse of anonymous prepaid. The proposed fifth AMLD was discussed in the Council in July 2016 and forms an important pillar of the EU's response to recent terrorist attacks and the Panama Papers.³³¹

A further proposal for a Directive on countering money laundering by criminal law was published in December 2016. The proposal refers to "recent terrorist attacks in the European Union and beyond" as part of its rationale in the explanatory memorandum.³³² The proposed Directive aims to implement international obligations emanating from the Warsaw Convention³³³ and the FATF Recommendations.

In relation to asset freezes, the Commission also published a proposal for a Regulation on the mutual recognition of freezing and confiscation orders in December 2016. The explanatory memorandum states that "the terrorist attacks in 2015 and 2016 in the European Union and beyond underlined the urgent need to prevent and fight terrorism."³³⁴ The proposed Regulation builds on existing EU legislation such as Directive 2014/42/EU,³³⁵ which sets minimum standards for freezing and confiscation orders, and is designed to improve cross-border enforcement of such orders.

³²⁸ European Commission, Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing (COM(2016) 050 final).

³²⁹ See <https://www.europol.europa.eu/content/fiunet-financial-intelligence-units>.

³³⁰ European Commission, Commission Staff Working Document *Accompanying the document: Report from the Commission to the European Parliament and the Council on the evaluation of the second generation Schengen Information System (SIS II) in accordance with art. 24 (5), 43 (3) and 50 (5) of Regulation (EC) No 1987/2006 and art. 59 (3) and 66 (5) of Decision 2007/533/JHA*, (SWD(2016) 450 final).

³³¹ See European Commission, Fact Sheet, Questions and Answers: Anti-money Laundering Directive, Strasbourg, 5 July 2016.

³³² European Commission, *Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law* (COM/2016/826 final).

³³³ Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of (2005), CETS No 198.

³³⁴ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders* (COM/2016/819 final).

³³⁵ European Parliament and Council of the European Union, Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (L 127/39), p. 39.

International agreements with international organisations and third countries

Internationally, the EU works through and cooperates with various international organisations, including the UN, the FATF, the International Monetary Fund (IMF), and the Cooperation Council for the Arab States of the Gulf (GCC),³³⁶ as well as third countries, particularly the United States. Indeed, as noted above, the 'smart sanctions'³³⁷ regime to combat terrorist financing was developed in the UN framework, and UNSC Resolution 1373³³⁸ provided the impetus for the adoption of Common Position 2001/931/CFSP³³⁹ on combatting terrorism at an EU level, as well as subsequent legislation. European FIUs also cooperate at the international level in the Egmont Group, an informal network through which FIUs exchange information, training, and best practices.³⁴⁰ Of key interest in EU-third country cooperation is the EU-US Agreement on the Terrorist Finance Tracking Programme³⁴¹ that is discussed in detail in Factsheet B.

In the proposal for a Directive on combating terrorism³⁴² that is to replace the Framework Decision 2002/475/JHA on combating terrorism,³⁴³ UNSC Resolution 2178(2014)³⁴⁴ is quoted in which criminalising the funding of foreign terrorist fighters is required. Additional references are made to UNSC Resolution 2249(2015),³⁴⁵ which urges Member States to prevent and suppress the financing of terrorism. The proposal also refers to UNSC Resolution 2199(2015),³⁴⁶ which calls on States to ensure that any person who participates in the financing of terrorist acts is brought to justice, and emphasises that support to terrorism may be provided through trade in oil and refined oil products etc. In the Additional Protocol to the 2015 Council of Europe (CoE) Convention on the prevention of terrorism,³⁴⁷ certain criminal law provisions of the UNSC Resolution 2178(2014) are implemented, notably providing or collecting funds for such travels (art. 5). The EU signed the Additional Protocol as well as the Convention on 22 October 2015.³⁴⁸

Recommendation No. 5 of the 2012 FATF Recommendations provides that "countries should criminalise terrorist financing on the basis of the Terrorist Financing Convention, and should

See for instance Co-Chairs' Statement – Council of the European Union, *25th EU-GCC Joint Council and Ministerial Meeting, Press Release 467/16*, Foreign Affairs & international relations, (18 July 2016).

³³⁷ The term 'smart sanctions' refers to the targeted instead of generic sanctions that are implemented, targeting in particular specific actors or entities that are allegedly involved in illegal activities that jeopardise international peace and security. This method of sanctioning is considered to be more effective than the method that could potentially also target the general population of a particular country/regime that is sanctioned.

³³⁸ Security Council Resolution S/RES/1373 28 September 2011.

³³⁹ Council common position 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP), p. 93.

³⁴⁰ See <http://www.egmontgroup.org>.

³⁴¹ Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, OJ 2010 (L 195/5), p. 5.

³⁴² European Commission, *Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism* (COM/2015/0625 final).

³⁴³ Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (2002/475/JHA), p. 1, Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (2008/919/JHA), p. 21.

³⁴⁴ Security Council Resolution S/RES/2178, 24 September 2014.

³⁴⁵ Security Council Resolution S/RES/2249, 20 November 2015.

³⁴⁶ Security Council Resolution S/RES/2199, 12 February 2015.

³⁴⁷ Council of Europe Convention on the prevention of terrorism and its Additional Protocol (Riga Protocol), Council of Europe Treaty Series (CETS) – No. 217. The Convention itself is CETS No. 196. See also Council Decision (EU) 2015/1913 of 18 September 2015 on the signing, on behalf of the European Union, of the Council of Europe Convention on the Prevention of Terrorism (CETS No 196) (OJ L 280), p. 22, and Council Decision (EU) 2015/1914 of 18 September 2015 on the signing, on behalf of the European Union, of the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (CETS No 196), p. 24.

³⁴⁸ See https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151022_2_en.

criminalise not only the financing of terrorist acts but also the financing of terrorist organisations and individual terrorists, even in the absence of a link to a specific terrorist act or acts".³⁴⁹ In light of the urgent need to address the threat posed by foreign terrorist fighters, the FATF revised the Interpretive Note to Recommendation 5 on the criminal offence of terrorist financing to incorporate the relevant element of UNSC Resolution 2178(2014). This clarifies that Recommendation 5 requires countries to criminalise financing the travel of individuals who meet the definition of foreign terrorist fighters in UNSCR 2178(2014) by travelling to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in terrorist acts, or the providing or receiving of terrorist training, including in connection with armed conflict.

Implementation by Member States

Overview of implementation in all Member States

Although most Member States have implemented criminal justice measures as called for by EU policies, this is also owing to other instruments from the UN and the CoE.³⁵⁰ In any case, most EU measures regarding criminal justice have been well implemented in Member States (see also Factsheet F).³⁵¹

Implementation in the seven focus Member States

The focus countries have all criminalised financing terrorism in their criminal codes. An overview of these provisions can be found in the table below, which also lists other relevant laws. A few remarks below set out some more details. Nevertheless, the FATF did find some shortcomings in the manner in which some of these countries complied with the FATF recommendations on terrorism financing.

³⁴⁹ For the FATF Recommendations as well as the accompanying interpretative note, please consult: http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf. The Convention that is referred to is the UN International Convention for the Suppression of the Financing of Terrorism, 2178 UNTS 197. The European Union itself is not a party to this convention, but has called upon its Member States to become parties (Council Common Position 2001/931/CFSP of 27 December 2001 on combating terrorism (2001/931/CFSP), p. 90).

³⁵⁰ United Nations Security Council Resolution 2178 (2014); Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (2015).

³⁵¹ Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague* 7, no. 2 (2016).

Table 2: Overview of implementation of legislation to fight terrorism financing in seven focus Member States

	Financing of terrorism, criminal codes	Other relevant legislation
Belgium	Arts. 140 para 1 and 141 Criminal Code	Anti-money laundering and terrorist financing law ³⁵²
Bulgaria	Art. 108a(2) Criminal Code	Measures against the Financing of Terrorism Act ³⁵³
France	Art. 421-2-2 Criminal Code	Law n°2016-731 on organised crime, terrorism and the financing thereof; ³⁵⁴ Article D561-15 of the Monetary and Financial Code ³⁵⁵
Germany	Section 89c Criminal Code	Money laundering and terrorist financing law ³⁵⁶
The Netherlands	Art. 421 Criminal Code	Money laundering and terrorist financing prevention act ³⁵⁷
Slovakia	Section 419(2)(a) Act 300/2005 (Criminal Code)	Act No. 297/2008 Coll. on the Prevention of Proceeds of Criminal Activity and Terrorist Financing; ³⁵⁸ Act No. 126/2011 Coll. on the implementation of international sanctions ³⁵⁹
Spain	Article 576 Criminal Code	Law 102/201003 on preventing money laundering and terrorist financing; ³⁶⁰ Royal decree 413/2015 on the monitoring committee for terrorist financing (Comisión de Vigilancia de Actividades de la Financiación del Terrorismo, CVATF) ³⁶¹

In Belgium, the financing of terrorism is criminalised in arts. 140 para 1 and 141 of the Criminal Code. In art. 140, terrorist financing is considered as participation in an activity of a terrorist group (referred to in art. 139); and art. 141 criminalises acts committed by a person who, outside the circumstances provided in art. 140, provides material resources with a view to committing a terrorist offence (referred to in art. 137). Terrorist financing is

³⁵² Wet tot voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld en de financiering van terrorisme, B.S. (9 February, 1993), p. 2828.

³⁵³ Закон за мерките срещу финансирането на тероризма, State Gazette No. 16/18.02.2003.

³⁵⁴ Loi no 2016-731 renforçant la lutte contre le crime organisé, le terrorisme et leur financement, et améliorant l'efficacité et les garanties de la procédure pénale, JO 4.6.2016.

³⁵⁵ Code monétaire et financier No. 2001-420, JO 16.5.2001.

³⁵⁶ Gesetz zur Ergänzung der Bekämpfung der Geldwäsche und der Terrorismusfinanzierung (Gw-Be-kErgG), BGBl 2008, Teil I, Nr. 37, (20 August 2008).

³⁵⁷ Wet ter voorkoming van witwassen en financieren van terrorisme (WWTF), Stb. 2008, 303., (Dutch law on AML/terrorist financing).

³⁵⁸ Zákon č. 297/2008 Z. z. o ochrane pred legalizáciou príjmov z trestnej cinnosti a o ochrane pred financovaním terorizmu a o zmene a doplnení niektorých zákonov, Čiastka 113/2008, 01.08.2008.

³⁵⁹ Zákon č. 126/2011 Z. z. o vykonávaní medzinárodných sankcií, Čiastka 40/2011, (21 April 2011).

³⁶⁰ Ley 10/2010 de prevención del blanqueo de capitales y de la financiación del terrorismo, BOE núm. 103 of (29 April 2010), p. 37458.

³⁶¹ Real Decreto 413/2015 por el que se aprueba el Reglamento de la Comisión de Vigilancia de Actividades de Financiación del Terrorismo, BOE núm. 129 of (30 May 2015), p. 46255.

also specifically addressed in the Belgian anti-money laundering and terrorist financing law (WG/FT).³⁶²

The FATF noted in 2015 that Belgium has the basic core elements needed to develop a solid AML/Countering the Financing of Terrorism (CFT) regime, and that the legal framework technically complies in broad terms but still needs to be adapted to the revised FATF requirements of 2012.³⁶³ More specifically, while the criminalisation of terrorist financing in Belgium responds largely to the requirements in the UN Convention for the Suppression of the Financing of Terrorism and Recommendation 5, there are some technical shortcomings. "Financing one or two terrorists with no proven link to one or more specific terrorist acts is not covered by the current definition. The financial penalty of EUR 30 000 is low and its dissuasiveness is in doubt."³⁶⁴

In Bulgaria, financing of terrorism is criminalised in art. 108a(2) of the Criminal Code. Additionally, Bulgaria has a specific law dealing with terrorist financing, namely the Measures against the Financing of Terrorism Act, which was adopted in 2003, and also incorporates an autonomous regime for restrictive measures against those people, organisations, etc. with suspected links to terrorism.³⁶⁵

In France, art. 421-2-2 of the Criminal Code addresses terrorist financing, as does law n°2016-731 on organised crime, terrorism and the financing thereof. Terrorist financing is also addressed in art. D561-51 of the Monetary and Financial Code, which sets up an advisory board for anti-money laundering and terrorist financing (COLP).

In Germany, the financing of terrorism is included in Section 89c of the Criminal Code, as well as the Money laundering and terrorist financing law.³⁶⁶ The FATF had noted in 2014 that, though Germany had made sufficient progress with regard to all core recommendations, insufficient progress was demonstrated for two key recommendations. Specifically, it was found that the definition of serious violent act endangering the state did not wholly comply with the Terrorist Financing Convention, and that technical deficiencies persist in the regime for freezing of terrorist assets, which interprets legal privileges too broadly and does not include provisions for 'EU internals'.³⁶⁷

In the Netherlands, measures regarding the financing of terrorism are implemented through art. 421 of the Criminal Code, the Money laundering and terrorist financing prevention act (*Wet ter voorkoming van witwassen en financieren van terrorisme*)³⁶⁸ and the Sanctions Act 1977 (*Sanctiewet 1977*).³⁶⁹ Notably, the prevention act has been described as effective in filtering out suspicious transactions that could be linked to financing terrorism. As for nationally imposed sanctions, affected persons can and have addressed Dutch courts to fight such decisions but so far that remained unsuccessful. Since the 2011 FATF mutual evaluation, the Netherlands amended its preventive AML/CFT

³⁶² *Wet tot voorkoming van het gebruik van het financiële stelsel voor het witwassen van geld en de financiering van terrorisme*, B.S. (9 February 1993), p. 2828. http://economie.fgov.be/nl/modules/regulation/loi/19930111_l_prevention_blanchiment_financement_terrorisme.jsp.

³⁶³ FATF, *Mutual Evaluation Report Belgium* (2015).

³⁶⁴ *Ibid.*, p. 72.

³⁶⁵ Закон за мерките срещу финансирането на тероризма, State Gazette No. 16, 18 February 2003. See also Committee of Experts on Counter-terrorism (CODEXTER) Profile on Counter-Terrorist Capacity of Bulgaria (2013) p. 4.

³⁶⁶ *Gesetz zur Ergänzung der Bekämpfung der Geldwäsche und der Terrorismusfinanzierung (Gw-Be-kErgG)*. BGBl 2008, Teil I, Nr. 37, (20 August 2008).

³⁶⁷ FATF, *Mutual Evaluation of Germany: 3rd Follow-up Report* (2014). pp. 13 and 16 respectively.

³⁶⁸ *Wet ter voorkoming van witwassen en financieren van terrorisme (WWTF)*, Stb. 2008, 303.

³⁶⁹ *Ibid.* Stb. 1980, 93.

legislation and issued and further updated guidance documents with the aim to address shortcomings identified. By February 2014, it was found that the majority of the shortcomings, including those on beneficial ownership requirements, had been (largely) addressed, and that the Netherlands' level of compliance with FATF Recommendation 5 was therefore assessed to have reached a level of compliance essentially equivalent to Largely Compliant (LC).³⁷⁰

The Slovak Criminal Code criminalises terrorist financing in Section 419, which should be read in conjunction with Sections 129, and 297. Since Section 419 does not cover all terrorist financing, it is notable that Section 129 jo. Section 297 may be interpreted as criminalising financing terrorist activities beyond those in Section 419.^{371 372} Further laws relating to terrorist financing are Act No. 297/2008 Coll. on the Prevention of Proceeds of Criminal Activity and Terrorist Financing, and Act No. 126/2011 Coll. on the implementation of international sanctions.

Terrorist financing is included in art. 576 of Spain's penal code, and also dealt with in law 10/2010 on preventing money laundering and terrorist financing, as amended in 2012 and royal decree 413/2015 on the monitoring committee for terrorist financing (CVATF).

Effectiveness of these measures and cooperation (in practice) among different organisations and between Member States

Many consider the effectiveness of the EU CFT policy to be unclear or even insufficient. In the Netherlands, the Court of Auditors found that the results of the AML/CFT legislation in this country have been disappointing, as it "insufficiently prevents against terrorist financing" and because "the chances of terrorism financing being discovered and punished are small".³⁷³ In 2016, the Minister of Security and Justice explained to the Dutch parliament that it is difficult to measure the effectiveness of measures against terrorist financing because they are primarily aimed at preventing that financial institutions and others are abused for the purpose of terrorist financing; because of the preventive nature of the measures their effectiveness is hard to assess.³⁷⁴

A point of contention is the effectiveness of national lists, for which two significant issues were identified, namely the diverging standards in various Member States³⁷⁵ and the need to consider individuals who intend to de-radicalise. In his 2015 assessment of EU CFT policy, Bures considered that effectiveness was unclear, listing EU-specific obstacles such as differing threat perception across Member States and weak cross-Pillar cooperation.³⁷⁶ The Dutch Central Bank (DNB) is currently working on a thematic examination of transaction monitoring. Ideally, transaction monitoring enables the timely identification of

³⁷⁰ FATF, *Mutual Evaluation of the Netherlands: 2nd Follow-up Report* (2014). Largely compliant (LC) means that there are only minor shortcomings, see FATF, *Methodology for Assessing Compliance with the FATF Recommendations and the Effectiveness of AML/CFT Systems*, (2016), p. 13.

³⁷¹ Moneyval, *Report on Fourth Assessment Visit Anti Money Laundering and Combating the Financing of Terrorism: Slovak Republic* (2011), pp. 38-41.

³⁷² One interviewee indicated that concerns exist that Slovakian legislation may not sufficiently distinguish between different levels of support for terrorism, i.e. setting up a terrorist group, participating in it or financing it.

³⁷³ Algemene Rekenkamer, *Bestrijding Witwassen en Terrorisme Financiering* (2008) (Dutch Court of Audit Evaluation of AML/terrorist financing policy).

³⁷⁴ Beantwoording Kamervragen over BNC-fiche inzake Actieplan Europese Commissie terrorismefinanciering, (25 April 2016).

³⁷⁵ One interviewee remarked that listed persons in the Netherlands can simply cross the border and open an account in Belgium.

³⁷⁶ Bures, O., "Ten Years of EU's Fight against Terrorist Financing: A Critical Assessment", *Intelligence and National Security* 30 2-3 (2015), p. 232.

unusual transactions and transaction patterns. Interim findings of the examination indicated that an improvement of the transaction monitoring process is needed. For instance, it was found that the risk profile and classification of clients is insufficiently used in investigations into unusual transactions.³⁷⁷ The DNB stressed that better information on how to structure and carry out transaction monitoring for the private actors concerned is needed. In the Policy Lab Workshop on EU counter-terrorism policy performed within this evaluative study, it was underscored that the private sector is often the missing link. This finding is especially pertinent in the field of CFT, where the cooperation of financial institutions and other private actors is key.³⁷⁸ One other issue raised in the interviews was that banks become risk-averse due to the costly and burdensome risk assessment rules that they must comply with. This kind of 'de-risking' may result in ethnic profiling and reluctance to operate in certain (particularly African) countries.³⁷⁹ Bures has also noted that the EU's CFT efforts are hampered in particular by the tension between profit and security that arises in relation to private financial institutions. These actors have responded to legal AML and blacklist requirements by reporting too large a number of suspicious transactions for authorities to handle.³⁸⁰ These observations apparently also hold true for France. Though the role of banks in CFT has increased significantly there, public-private partnership on terrorist financing in France has been characterised by mutual wariness. For example, the staff members of Tracfin (the French FIU) were found to be wary of bankers, who they perceived as simply covering themselves rather than submitting a "real report".³⁸¹ It was also noted that, of the persons interviewed for this study, only Tracfin officials spoke of "partnership", making it seem that the term had been imposed.³⁸²

Finally, the lowering of thresholds is judged to not be very relevant for the prevention of terrorist financing³⁸³ (but rather for AML), notably since terrorism usually involves small amounts of money.³⁸⁴ Moreover, even with CFT measures becoming more advanced, terrorists are likely to adopt different methods, such as human couriers, for the exchange and acquisition of money.³⁸⁵

³⁷⁷ See <https://www.dnb.nl/nieuws/dnb-nieuwsbrieven/nieuwsbrief-betaalinstellingen/kopie-van-nieuwsbrief-betaalinstellingen-mei-2016/dnb345523.jsp> See also: Ministerie van Financiën, *Kamerbrief "Bestrijden witwassen en terrorismefinanciering"* (Kamerstuk 31477, nr. 17) (5 oktober 2016) (letter Dutch Minister of Finance of 5 October 2016 reacting to newspaper article claiming that DNB is worried about supervision money laundering).

³⁷⁸ A 2013 article on the global counter-terrorism financing regime also incorporates dialogue with financial services providers as its first recommendation, see Dean, A., Thompson, E., & Keatinge, T., *Draining the Ocean to Catch one Type of Fish: Evaluating the Effectiveness of the Global Counter-Terrorism Financing Regime, Perspectives on Terrorism*, 7(4), (2013) pp. 71-72.

³⁷⁹ In a 2013 PhD thesis, M. Wesseling also noted that risk assessments performed by banks were subjective rather than objective and warned that the flexibility of the risk-based approach could cause legal uncertainty, lack of transparency and even discrimination, see Wesseling, M., *The European fight against terrorism financing: Professional fields and new governing practices*, (2013), p. 211.

³⁸⁰ Bures, O., "Ten Years of EU's Fight against Terrorist Financing: A Critical Assessment", *Intelligence and National Security* 30 2-3 (2015), p. 232.

³⁸¹ Favarel-Garrigues, G., Godefroy, T., & Lascoumes, P. *Reluctant partners? Banks in the fight against money laundering and terrorism financing in France*, *Security Dialogue*, 42(2), (2011), pp. 186-188.

³⁸² *Ibid.*, p. 192.

³⁸³ According to several persons interviewed for this project. It was further suggested that, though banks may engage in suspicious transaction tracking and flagging of high cash payments, more specific information from FIUs would make it easier to signal certain trends.

³⁸⁴ Wesseling, M., *Evaluation of EU measures to combat terrorist financing, In-depth analysis for the LIBE Committee*, European Parliament, (2014), p. 22.

³⁸⁵ Dean, A., Thompson, E., & Keatinge, T., *Draining the Ocean to Catch one Type of Fish: Evaluating the Effectiveness of the Global Counter-Terrorism Financing Regime, Perspectives on Terrorism*, 7(4), (2013) p. 71.

THEME E: FIREARMS AND EXPLOSIVE WEAPONS

The EU has introduced several instruments on regulating firearms and explosive weapons, both in the context of governing the trade of and possession in such items; and in relation to implementing obligations arising from international treaties. The *raison d'être* of these instruments varies and is not per se for the sole purpose of countering terrorism. Various instruments govern the arms procurements and trade between or with States,³⁸⁶ while others regulate domestic markets on the said products. For the purposes of assessing the counter-terrorism paradigm of the arms regulation by the EU, the selection below covers those EU instruments which regulate the trade in and possession of firearms and explosive weapons by natural or legal persons as these instruments have an inherent overlap with counter-terrorism interests. Universal arms restrictions based on international law and custom, such as those under international humanitarian law, and interstate arms regulation under categorical arms reduction and prohibition conventions are outside the ambit of this study.

EU instruments

The key EU instrument on regulating the possession and trade of firearms by natural and legal persons is Directive 91/477/EEC³⁸⁷ and its amendment under Directive 2008/51/EC³⁸⁸ (hereinafter the consolidated version is referred to as the 'Firearms Directive'). The Firearms Directive provides the definition of firearms, its parts, essential components and ammunition. Its main aim is to regulate the EU market on the trade of firearms, both for the purposes of creating and maintaining an internal firearms market in which legal possessors can freely travel with their firearm from one Member State to another as well as serving the security interests of its Member States in countering illicit trade in and trafficking of firearms and illegal use of firearms. Any firearm or its part that is manufactured or assembled in the EU, or that enters the EU, needs to be marked and registered or, otherwise, must have been deactivated.³⁸⁹ Furthermore, serving the security interests, the Firearms Directive provides authorisation restrictions for the possession of and trade in firearms. The underlying idea is that every usable firearm that is in circulation in the EU market must be traceable.

The Firearms Directive establishes four categories of firearms: prohibited firearms under Category A; firearms subject to authorisation under Category B; firearms subject to declaration under Category C; and other firearms under Category D.³⁹⁰ The Firearms Directive provides that Member States must adopt rules to restrict the possession of and trade in these firearms, which include: permit requirements for the acquisition and possession of firearms;³⁹¹ registration requirements for each firearm that is placed on the

³⁸⁶ The term used in the international context is *small arms and light weapons* (SALW), as opposed to the term *firearms* used in the EU's internal context.

³⁸⁷ European Parliament and European Council, *Directive 2008/51/EC of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons* (21 May 2008) (179/5).

³⁸⁸ European Parliament and European Council, *Directive 2008/51/EC of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons* (21 May 2008) (179/5).

³⁸⁹ Certain categories are exempted from the *Firearms Directive*, European Parliament and European Council *Directive 2008/51/EC of 18 November 2015 amending Council Directive 91/477/EEC of 21 May 2008 on control of the acquisition and possession of weapons* or are subject to national discretion, which follows later.

³⁹⁰ *Ibid.*, Annex I.

³⁹¹ *Ibid.*, art. 5.

market;³⁹² establishing and maintaining a registration data-filing system to record firearms and their suppliers, buyers and possessors;³⁹³ making the pursuit of dealership conditional upon mandatory background checks;³⁹⁴ requirements for dealers to register the records of firearms and the details of their buyers throughout their period of activity;³⁹⁵ the introduction of the European Firearms Pass (EFP) to allow legal firearm possessors to travel between Member States with their firearms without the need for prior authorisation by the Member State of destination, thereby serving the internal market;³⁹⁶ and certain minimum criteria on what qualifies as the deactivation of firearms.³⁹⁷

The Firearms Directive exempts certain categories of firearms and Member States enjoy national discretion on certain details, allowing differentiation in various aspects of the regulation (such as penal sanctions for violations of the firearms legislation)³⁹⁸ and derogation for more stringent regulation under national law.³⁹⁹ The following exemptions and discretions are noted: While the four categories of firearms are proscribed by the Firearms Directive, the simplified system of two categories (firearms that are illegal; and firearms that are subject to authorisation) is used by several Member States and is recommended by the European Commission. Nevertheless Member States have discretion on this matter and, in view of the subsidiarity principle, may maintain the system of four categories if that is already in use. In art. 17 of the Firearms Directive the EC committed itself to exploring the effectiveness of the two-category system. This materialised in the 2015 report.⁴⁰⁰ The report recognised the important role of the Firearms Directive in introducing tracing and marking requirements for firearms and in minimum standards for the acquisition of firearms.⁴⁰¹ It also evaluated the cost-effectiveness of the Firearms Directive, concluding that its results were achieved at a reasonable cost.⁴⁰² Most importantly, however, the report states that there is a lack of clear data on security related issues and that the data relating to the legal firearms market is of poor quality.⁴⁰³ This was also mentioned by one of the interviewed experts, noting that most of the available data comes from the United States and relates to their domestic market and regulation whereas the situation is different in the EU. Even the scope of the illicit firearms market in the EU is unclear, with figures ranging between as low as 80,000 and 80,000,000.

The carrying of firearms, and the use of firearms for hunting or target shooting purposes, fall under the scope of national law. Member States enjoy discretion on the regulation of firearms possessed by public authorities and by collectors or bodies concerned with the cultural and historical aspects of weapons (for example, museums and historical battle enactment groups). Furthermore, in accordance with the use of EFPs, Member States may not prohibit persons resident within their territory from possessing a firearm legally acquired in another Member State unless they prohibit the acquisition of the same firearm within their own territory.

³⁹² Ibid., art. 4(2).

³⁹³ Ibid., art. 4(4).

³⁹⁴ Ibid., art. 4(3).

³⁹⁵ Ibid., art. 4(4).

³⁹⁶ Ibid., art. 12.

³⁹⁷ Ibid., Annex I, part II.

³⁹⁸ While Member States enjoy discretion, the penalties must nevertheless be effective as they must be sufficient to promote compliance with its firearm regulation; Firearms Directive, art. 16.

³⁹⁹ Firearms Directive, arts. 3 and 15(4).

⁴⁰⁰ Firearms Directive, art. 17, age 10.

⁴⁰¹ European Commission, *Report from the Commission to the European Parliament and the Council, Evaluation of Council Directive 91/477/EC of 18 June 1991, as amended by Directive 2008/51/EC of 21 May 2008, on control of the acquisition and possession of weapons* (18 November 2015), p. 8.

⁴⁰² Ibid., p. 9.

⁴⁰³ Ibid., p. 14.

Firearms in government stocks are exempted from the marking requirements unless they are transferred to permanent civilian use. Standards concerning the deactivation of firearms are not specified in the Firearms Directive. With the adoption of the amendment in 2008 the EC committed itself to provide guidelines on this matter, but it was not until December 2015 that it actually introduced such guidelines under Regulation 2015/2403. Furthermore, while ammunition falls within the scope of the Firearms Directive, Member States have discretion whether to include authorisation requirements for ammunition components; and on this matter they enjoy discretion on whether to apply the marking standards under the 1969 Convention on Reciprocal Recognition of Proofmarks on Small Arms.⁴⁰⁴

Additionally, in 2005 the European Commission adopted Recommendation 2005/11/EC⁴⁰⁵ to introduce the EFP model, as provided under the Firearms Directive.⁴⁰⁶ In 2012 the Commission adopted Regulation No 258/2012 as a measure to implement art. 10 of the 2001 Firearms Protocol.⁴⁰⁷ This provision requires the establishment of general requirements for export, import and transit licensing or authorisation systems. And following the EC's review of the Firearms Directive,⁴⁰⁸ and in the aftermath of the Paris attacks of November 2015, the Commission also adopted Regulation 2015/2403 to establish common guidelines on deactivation standards and techniques to ensure that deactivated firearms are rendered irreversibly inoperable.⁴⁰⁹

In addition to Regulation 2015/2403 introducing common guidelines on standards for the deactivation of firearms, the EU is preparing the amendment of the Firearms Directive by means of introducing stricter rules on online sale and acquisition of firearms, stricter control on semi-automatic firearms which resemble automatic rifles, the inclusion of blank-firing weapons (alarm and signal weapons, salute and acoustic weapons and replicas) within the scope of the Firearms Directive, and additional rules on the marking of firearms to improve traceability of firearms. All of which are aimed at serving the security interests of its Member States after the Paris attacks. The vote on the amendment was postponed after the reasoned opinion of the Swedish Parliament on questions concerning the principle of subsidiarity.⁴¹⁰ The assemblies of Austria, Croatia, Cyprus, the Czech Republic, Finland, Greece, Ireland, Italy, Poland, Portugal, Romania, Slovenia, and the United Kingdom also contributed opinions. From the selected Member States the assemblies of France, Germany and Slovakia also contributed opinions and statements, all of which were of a political or a procedural nature without reasoned legal opinion.⁴¹¹ The European Parliament's Internal Market and Consumer Protection Committee (IMCO) adopted its report with

⁴⁰⁴ Convention for the reciprocal recognition of proof marks on small arms (with regulations and annexes) (1969), 795 UNTS 249.

⁴⁰⁵ European Commission, *Commission Recommendation complementary to Recommendation 96/129/EC on the European firearms pass* (Text with EEA relevance) (2005/11/EC) (28 December 2004).

⁴⁰⁶ European Parliament and European Council *Directive 2008/51/EC* of 18 November 2015 *amending Council Directive 91/477/EEC of 21 May 2008 on control of the acquisition and possession of weapons*, art. 1(4) and Annex II.

⁴⁰⁷ 2001 UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, annexed to the Convention against transnational organised crime.

⁴⁰⁸ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0751&from=EN>.

⁴⁰⁹ European Parliament and European Council *Directive 2008/51/EC* of 18 November 2015 *amending Council Directive 91/477/EEC of 21 May 2008 on control of the acquisition and possession of weapons*, paragraph 18.

⁴¹⁰ Reasoned opinion of the Swedish Parliament on COM(2015), transmitted to the Commission, the Council and the European Parliament on 28 January 2016.

⁴¹¹ For France, see <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20150269/frass.do>; for Germany, see <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20150269/debra.do>; and for Slovakia, see <http://www.ipex.eu/IPEXL-WEB/scrutiny/COD20150269/skrad.do>.

recommendations concerning the definitions, inter alia, the need for clarification of the term "firearm", to enhance the control of essential components by including definitions on that matter, the need to define further "alarm and signal weapons", "salute and acoustic weapons", "museum" and "collector".⁴¹² The European Commission and European Parliament reached a political agreement about the adoption of the amendments in December 2016.⁴¹³

Finally, on countering the proliferation of explosive weapons, the EU adopted the 2008 Action Plan on Enhancing the Security of Explosives,⁴¹⁴ and the 2013 Regulation (EU) No 98/2013 on the marketing and use of explosives precursors (Regulation on Explosive Precursors – REP).⁴¹⁵ This Regulation aims to restrict private access to scheduled explosive precursors (such as ammonium nitrate fertilizers) above certain limit values⁴¹⁶ and introduces rules on licensing,⁴¹⁷ labelling,⁴¹⁸ reporting duties,⁴¹⁹ and registration of transactions.⁴²⁰ It furthermore provides that the Commission must review the instrument by September 2017 in view of, inter alia, terrorism concerns.⁴²¹ Furthermore Directive 2014/28/EU was adopted to harmonise the laws of Member States relating to the making available on the market and supervision of explosives for civil uses (MSECU).⁴²² The Directive prohibits the use and possession of and trade in restricted explosives⁴²³ by general members of the public and allows Member States to establish a licensing system to justify access to such items.⁴²⁴

Cooperation/agreements with international organisations/third countries

While bilateral agreements by the selected Member States on small arms and light weapons (SALW) are limited, there are numerous international instruments concerning SALW that address illicit trade and proliferation concerns, some of which may include counter-terrorism concerns. While often only the Member States are party to such instruments, occasionally the EU as such may also have signed an instrument.⁴²⁵ The EU has several instruments concerning third countries and aimed at countering illicit trade in SALW, both at a global scale and for certain regions. To these ends the Council adopted the 1997 Programme for preventing and combatting illicit trafficking in conventional arms. Of further importance for third countries is the Council's 1998 Joint Action on the EU's contribution to combatting the destabilising accumulation and spread of small arms and light weapons

⁴¹² IMCO, "Report on the proposal for a directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons", A8-0251/2016 (2016).

⁴¹³ European Commission, "Firearms: Agreement on Commission proposal to increase citizens' security", *Commission Press Release* (20 December 2016).

⁴¹⁴ European Commission, *Progress Report on the Implementation of the EU Action Plan on Enhancing the Security of Explosives* (2012).

⁴¹⁵ European Parliament and Council of the European Union, Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors (L 39/1).

⁴¹⁶ Arts. 4(1) and 6, REP.

⁴¹⁷ Art. 7, REP.

⁴¹⁸ Art. 5, REP.

⁴¹⁹ art. 9, REP.

⁴²⁰ art. 8, REP.

⁴²¹ art. 18(1)(b), REP.

⁴²² European Parliament and Council of the European Union, Directive 2014/28/EU of The European Parliament and of the Council of 26 February 2014 on the harmonisation of the laws of the Member States relating to the making available on the market and supervision of explosives for civil uses (recast) (L 96/1) (MSECU).

⁴²³ As defined in art. 2, MSECU.

⁴²⁴ art. 4, MSECU.

⁴²⁵ For example, the 2001 UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, annexed to the Convention against transnational organised crime.

(amended in 2002 to include also ammunition).⁴²⁶ The EU is engaged in several programmes for such purposes. The most important of which that has direct relevance to EU counter-terrorism concerns is the programme on countering illicit SALW trade and registering firearms in Albania, Moldova and the countries of the former Yugoslavia – the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC).⁴²⁷

Implementation in selected Member States

Overview

The aftermath of the Paris attacks and the investigation into the origins of the weapons used revealed that there are large differences between Member States on how they govern the deactivation of firearms.⁴²⁸ Reports that the Kalashnikovs used were of Bulgarian origin also exposed the challenges arising from firearms that entered the illegal circuit prior to the introduction of the Firearms Directive.⁴²⁹ What little data is available indicates that there are around 81 million licit and illicit firearms in the EU, of which an estimated 67 million are unregistered firearms and (not necessarily excluding one another) an estimated 19 million are illicit firearms (extrapolated from the data that was retrieved from seven Member States).⁴³⁰ An earlier survey of experts also indicates that when questioned which groups are involved in illicit firearms trafficking, 4.4% of the answers identified terrorists while 74.4% of the answers did not identify any specific group.⁴³¹ The implementation of the EU Action Plan on Enhancing the Security of Explosives has been reviewed in 2012.⁴³²

Belgium, Bulgaria, France, Germany, the Netherlands, Slovakia and Spain adopted national legislation implementing the firearms directive, often by means of amending existing legislation.

⁴²⁶ European Council, *Joint Action of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP)* (L 9/1), European Council, *Council Joint Action of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP (2002/589/CFSP)* (L 191/1).

Of relevance are also the yet broader (i.e. covering also arms) 1998 EU Code of Conduct on Arms Export, 2008 EU Common Position, and the 2009 Joint Action on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries.

⁴²⁷ South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC).

⁴²⁸ Gawron, Tomas, "How the proposed EU gun directive amendment might backfire", *EUobserver* (3 December 2015).

⁴²⁹ Guineva, M., "Kalashnikovs Used in Paris Terror Attacks 'Were Made in Bulgaria'", (19 November 2015).

⁴³⁰ European Commission, *Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union* (2014), pp. 16-18.

⁴³¹ *Ibid.*, p. 30.

⁴³² European Commission, *Progress Report on the Implementation of the EU Action Plan on Enhancing the Security of Explosives* (2012).

Table 3: National implementation of the Firearms Directive

BEL	BGR	DEU	ESP	FRA	NLD	SVK
▼ domestic legislation						
Law on the import, export, transit and the fight against the trafficking of arms, ammunition and equipment intended specifically for military use or law enforcement and related technology & The 2008 amendment is at the level of sub-entities. ⁴³³	Law amending the Law on weapons, ammunition, explosives and pyrotechnic articles ⁴³⁴	Act amending the Weapons Act and other regulations ⁴³⁵	Royal Decree 976/2011, Dated 8 July, Amending The Regulation Of Weapons, Approved By Royal Decree 137/1993 Of 29 January ⁴³⁶	Art. 76 of the 2010-1657 Act, Art. 118 of the 2011-267 Act, Decree 2011-618, and Decree 2011-1253. ⁴³⁷	Amendment of the Weapons and Ammunition Act ⁴³⁸	Act No. 190/2003 Coll. on firearms and ammunition and on amending and supplementing certain acts & Act No. 92/2010 Coll. amending and supplementing Act No. 190/2003 Coll. on Firearms and Ammunition and on amending and supplementing certain acts as amended and amending Act of the National Council of the Slovak Republic No. 145/1995 Coll. On Administrative Fees as amended ⁴³⁹

⁴³³ Ministère Des Affaires Étrangères, Commerce Extérieur, Coopération au Développement - 5 Aout 1991 - Loi relative à l'importation, à l'exportation, au transit et à la lutte contre le trafic d'armes, de munitions et de matériel devant servir spécialement à un usage militaire ou de maintien de l'ordre et de la technologie y afférente.

⁴³⁴ Закон за изменение и допълнение на Закона за оръжията, боеприпасите, взривните вещества и пиротехническите изделия.

⁴³⁵ Gesetz zur Änderung des Waffengesetzes und weiterer Vorschriften.

⁴³⁶ Real Decreto 976/2011, de 8 de julio, por el que se modifica el Reglamento de Armas, aprobado por el Real Decreto 137/1993, de 29 de enero.

⁴³⁷ Art. 76 de la loi n° 2010-1657 du 29 décembre 2010 de finances pour 2011; art. 118 de la LOI n° 2011-267 du 14 mars 2011 d'orientation et de programmation pour la performance de la sécurité intérieure; décret n° 2011-618 du 31 mai 2011 modifiant le régime des matériels de guerre, armes et munitions; and décret no 2011-1253 du 7 octobre 2011 modifiant le régime des matériels de guerre, armes et munitions.

⁴³⁸ Wet van 26 januari 2012 tot wijziging van de Wet wapens en munitie in verband met de implementatie van richtlijn 2008/51/EG van het Europees Parlement en de Raad van de Europese Unie van 21 mei 2008 tot wijziging van de richtlijn 91/477/EEG van de Raad inzake de controle op de verwerving en het voorhanden hebben van wapens (PbEU L179) (Implementatiewet EG-richtlijn 2008/51 inzake de controle op de verwerving en het voorhanden hebben van wapens).

⁴³⁹ Zákon č. 440/2009 Z. z., ktorým sa mení a dopĺňa zákon č. 190/2003 Z. z. o strelných zbraniach a strelive a o zmene a doplnení niektorých zákonov v znení neskorších predpisov & Zákon č. 92/2010 Z. z., ktorým sa mení a dopĺňa zákon č. 190/2003 Z. z. o strelných zbraniach a strelive a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a ktorým sa mení zákon Národnej rady Slovenskej republiky č. 145/1995 Z. z. o správnych poplatkoch v znení neskorších predpisov.

▼ minimum age						
18	18	18	18 (with exceptions)	18 (12-18 for sports shooters)	18	21 (18 for hunting)
▼ private ownership of automatic assault rifles						
Prohibited	Licensed possession permitted	Prohibited	Prohibited	Prohibited	Prohibited	Prohibited
▼ private ownership of semi-automatic assault rifles						
Special authorisation	Licensed possession permitted	Special authorisation	Special authorisation	Licensed possession permitted	Prohibited	Special authorisation
▼ private ownership of rifles and shotguns						
Regulated by law	Regulated by law	Regulated by law	Regulated by law	Regulated by law	Regulated by law	Regulated by law
▼ private ownership of handguns (pistols and revolvers)						
Special authorisation	Licensed possession permitted	Special authorisation	Special authorisation	Prohibited with exceptions	Licensed possession permitted	Special authorisation
▼ max penalty for illicit firearm possession						
five years imprisonment and/or 25,000 EUR fine	six years imprisonment and/or a fine	ten years imprisonment	two years imprisonment	three years imprisonment and a fine	nine months imprisonment and a fine	eight years imprisonment
▼ background check for authorisation/licencing						
background check includes criminal and other records	background check includes criminal, mental health, and substance abuse records (not applicable for sales between privates or by dealers)	background check includes criminal, mental health, and addiction records	background check includes criminal, mental health, physical and domestic violence records	background check includes criminal, mental health, and health records	background check includes criminal records	background check includes criminal and mental health records
▼ denying/revoking authorisation or license in case of records of violence						
no specific provision	no specific provision	no specific provision	licence should be denied or revoked in case of (an history of) domestic violence	no specific provision	no specific provision	unknown

▼ authorisation or licence requirements for sale and/or transfer of firearms						
dealing in firearms by way of business is unlawful without a dealer's licence	dealing in firearms by way of business is unlawful without a dealer's licence	dealing in firearms by way of business is unlawful without a dealer's licence	dealing in firearms by way of business is unlawful without a dealer's licence	dealing in firearms by way of business is unlawful without a dealer's licence	dealing in firearms by way of business is unlawful without a dealer's licence	dealing in firearms by way of business is unlawful without a dealer's licence
prohibition on private sale of firearms	no prohibition on private sale of firearms	unknown	unknown	no prohibition on private sale of firearms	prohibition on private sale of firearms	unknown
▼ firearms marking and tracing requirements						
for certain firearms	on each firearm	on each firearm	on each firearm	on each firearm	on each firearm	on each firearm
State authorities carry out arms tracing and tracking procedures	State authorities carry out arms tracing and tracking procedures	State authorities carry out arms tracing and tracking procedures	State authorities carry out arms tracing and tracking procedures	State authorities carry out arms tracing and tracking procedures	State authorities carry out arms tracing and tracking procedures	State authorities carry out arms tracing and tracking procedures
▼ data 1 on (registered) firearms ⁴⁴⁰						
estimated total of privately owned firearms 740,000	estimated total of privately owned firearms 350,000	estimated total of privately owned firearms 5,500,000	estimated total of privately owned firearms 3,350,000	estimated total of privately owned firearms 3,000,000	estimated total of privately owned firearms 205,000	estimated total of privately owned firearms 280,000
estimated number of licences 409,000	estimated number of licences 250,000	estimated number of licences 1,400,000	estimated number of licences 2,000,000	estimated number of licences 1,890,000	estimated number of licences 72,000	estimated number of licences 150,000
▼ data 2 on (registered) firearms ⁴⁴¹						
estimated total of privately owned firearms 1,800,000	estimated total of privately owned firearms 480,000	estimated total of privately owned firearms 25,000,000	estimated total of privately owned firearms 4,500,000	estimated total of privately owned firearms 19,000,000	estimated total of privately owned firearms 510,000	estimated total of privately owned firearms 270,000
estimated number of licences 458,000	estimated number of licences n.a.	estimated number of licences 2,000,000	estimated number of licences 2,500,000	estimated number of licences n.a.	estimated number of licences n.a.	estimated number of licences n.a.
estimated number of registered firearms 870,000	estimated number of registered firearms 275,960	estimated number of registered firearms n.a.	estimated number of registered firearms 3,051,000	estimated number of registered firearms 2,802,000	estimated number of registered firearms 330,000	estimated number of registered firearms 102,700

⁴⁴⁰ Katja Triebel, Report: Impact Assessment on Firearms Directive (2016), Firearms United, Attachment 4, <https://firearms-united.com/wp-content/uploads/2016/06/Impact-Assessment.pdf>.

⁴⁴¹ European Commission, *Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union* (2014).

estimated number of illicit firearms n.a.	estimated number of illicit firearms 93,200	estimated number of illicit firearms 17,000,000	estimated number of illicit firearms n.a.	estimated number of illicit firearms n.a.	estimated number of illicit firearms n.a.	estimated number of illicit firearms n.a.
estimated number of unregistered firearms 930,000	estimated number of unregistered firearms 204,310	estimated number of unregistered firearms n.a.	estimated number of unregistered firearms 1,449,000	estimated number of unregistered firearms 16,198,000	estimated number of unregistered firearms 180,000	estimated number of unregistered firearms 167,300

THEME F: CRIMINAL JUSTICE MEASURES

In the area of criminal justice, the EU counter-terrorism policy consists of measures which require Member States to criminalise certain offences in relation with terrorist activity. Besides, a number of tools (not specific to counter-terrorism) are available at the EU and international levels with regards to cooperation in the field of criminal justice. The measures have overall been rather well implemented by Member States, as most have criminalised terrorist offences in line with EU policy, although with various nuances, and not necessarily in implementation of EU measures. Furthermore, a number of Member States have already adopted measures envisaged by the new Directive on combatting terrorism (e.g. travel and training). Regarding cooperation, the European Arrest Warrant (EAW) has proved effective.

Legal framework

EU instruments

The key instruments of the EU counter-terrorism policy in the field of criminal justice are Council Framework Decision 2002/475/JHA,⁴⁴² which defines the notion of terrorist offence, and requires Member States to enact a number of new terrorism-related offences, and Council Framework Decision 2008/919/JHA,⁴⁴³ which amends the previous decision by adding further offences. Other relevant EU instruments (not specific to counter-terrorism) include Council Framework Decision 2002/584/JHA⁴⁴⁴ which established the EAW, the EU Convention on Mutual Assistance in Criminal Matters,⁴⁴⁵ and Council Framework Decision 2008/909/JHA on the mutual recognition of judgments in criminal matters.⁴⁴⁶ Framework Decisions have a legal effect similar to Directives, meaning that Member States are obliged to implement the recommended measures but have a certain discretion in the means employed.

Framework Decision 2002/475/JHA on combatting terrorism provides a definition of "terrorist offences", which are certain offences under national law, such as attacks upon a person's life which may cause death, or kidnapping, "which, given their nature or context, may seriously damage a country or an international organisation", and are "committed with the aim of: seriously intimidating a population, or unduly compelling a Government or international organisation to perform or abstain from performing any act, or seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation"⁴⁴⁷ (terrorist intent).

⁴⁴² Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (2002/475/JHA).

⁴⁴³ Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (2008/919/JHA).

Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA).

⁴⁴⁵ Council of the European Union, *Council Act of 29 May 2000 establishing in accordance with art. 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, C 197/1, (29 May 2000).

⁴⁴⁶ Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (2008/909/JHA).

⁴⁴⁷ Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (2008/919/JHA), art 1.

Furthermore, EU measures require Member States to criminalise a number of designated terrorist offences, and to punish them by "effective, proportionate and dissuasive criminal penalties".⁴⁴⁸ Pursuant to Framework Decision 2002/475/JHA, Member States must criminalise the following designated offences: directing a terrorist group; participating in the activities of a terrorist group; inciting or aiding or abetting a terrorist offence; attempting to commit a terrorist offence. Framework Decision 2008/919/JHA provides for the following additional offences: direct or indirect public provocation to commit a terrorist offence; recruitment for terrorism; training for terrorism.

The new Directive on combating terrorism replacing Framework Decision 2002/475/JHA, which is recently adopted⁴⁴⁹ and which seeks to provide for "EU-wide minimum rules, and in particular additional common definitions of criminal offences",⁴⁵⁰ would furthermore add the following designated offences: receiving training for terrorism; travelling abroad for terrorism; organising or otherwise facilitating travelling abroad for terrorism.

In order to facilitate cooperation at the EU level when applying criminal justice measures, the EAW established under Framework Decision 2002/584/JHA allows a Member State to request another to arrest and surrender a person suspected or convicted of terrorism for the purposes of conducting a criminal prosecution or executing a sentence.⁴⁵¹ Besides, the 2000 Convention on Mutual Assistance in Criminal Matters between the EU Member States⁴⁵² provides a number of cooperation tools such as the possibility to set up joint investigation teams (see also Factsheet A).⁴⁵³ Finally, pursuant to Framework Decision 2008/909/JHA, criminal convictions with regards to terrorism must be recognised and enforced across Member States without verification of the double criminality of the act.⁴⁵⁴

International agreements

Since 2015, the EU is party to the Council of Europe 2005 Convention on the prevention of terrorism and its 2015 Additional Protocol (Riga Protocol),⁴⁵⁵ which, similarly to EU

⁴⁴⁸ Ibid., art. 5.

⁴⁴⁹ European Commission, *Proposal for a Directive of the European Parliament and of the Council on combatting terrorism and replacing Council Framework Decision 2002/475/JHA on combatting terrorism* (COM/2015/0625 final). On 16 February 2017, after the finalisation of the current study, the European Parliament approved the text of the new directive, see European Parliament, 'Preventing terrorism: clampdown on foreign fighters and lone wolves', Press release, 16 February 2017, available at: <http://www.europarl.europa.eu/news/en/news-room/20170210IPR61803/preventing-terrorism-clampdown-on-foreign-fighters-and-lone-wolves>. The text of the approved text is available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2017-0046+0+DOC+PDF+V0//EN>.

⁴⁵⁰ Proposal for a Directive on combatting terrorism, Explanatory memorandum, Sect. 2.

⁴⁵¹ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), art. 2.

⁴⁵² Council of the European Union, *Council Act of 29 May 2000 establishing in accordance with Art. 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, C 197/1, (29 May 2000). This EU instrument supplemented the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.

⁴⁵³ Council of the European Union, *Council Act of 29 May 2000 establishing in accordance with Art. 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union*, C 197/1, (29 May 2000), art. 13. See also Factsheet Theme A.

⁴⁵⁴ European Commission, Commission Staff Working Document, *Tables 'State of play' and 'Declarations' accompanying the document: report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention* (SWD(2014) 34 final of 5.2.2014), art. 7.

⁴⁵⁵ EU signs Convention on prevention of terrorism, 22 October 2015; Council of Europe Convention on the prevention of terrorism and its Additional Protocol (Riga Protocol).

instruments, require its parties to ensure that certain terrorism-related offences are criminalised.

Regarding mutual legal assistance at the international level, the EU entered into bilateral agreements on mutual assistance and extradition with the United States, Japan, Iceland and Norway.⁴⁵⁶

Implementation in Member States

Overview

Although most Member States have implemented criminal justice measures called for by EU policies, this is also owing to other instruments requiring the adoption of similar measures (UNSC Resolutions 1624 and 2178, Council of Europe Convention on the Prevention of Terrorism and its Additional Protocol).⁴⁵⁷ In any case, most EU counter-terrorism measures regarding criminal justice have overall been rather well implemented in Member States.⁴⁵⁸

Some Member States have implemented the measures by enacting new specific provisions outlining offences as formulated by the Framework Decisions (eg. Belgium, Bulgaria), while others have expanded existing provisions on preparatory terrorist acts, which can allow the prosecution of offences such as participation, recruitment, training, and travel (eg. France, Germany). Besides, some measures (eg. aiding and abetting, attempting to commit a terrorist offence) did not require specific implementation in most Member States, as existing general provisions on complicity and attempts to commit offences already comply with the measures.⁴⁵⁹

Two main issues can be identified from the Commission's reports on the implementation of the Framework Decisions on terrorist offences. First, regarding the definition of terrorist offences, not all Member States have fully transposed the definition as formulated in the Framework Decisions (eg. Germany). In the view of the Commission, "[t]his provision is of crucial importance", as "[a] common definition of terrorism constitutes the basis on which all other provisions in the Framework Decision are built and allows for the use of law enforcement co-operation instruments".⁴⁶⁰ Second, regarding public provocation to commit a terrorist offence, some Member States have been reluctant to adopt specific provisions in

⁴⁵⁶ Agreement on extradition between the European Union and the United States of America (2003); Agreement on mutual legal assistance between the European Union and the United States of America (2003); Agreement between the European Union and Japan on mutual legal assistance in criminal matters (2009); Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union (2003).

⁴⁵⁷ United Nations Security Council Resolution 1624 (2005); United Nations Security Council Resolution 2178 (2014); Council of Europe Convention on the prevention of terrorism and its Additional Protocol (Riga Protocol).

⁴⁵⁸ Report from the Commission based on art. 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2007)681); Report from the Commission to the European Parliament and the Council on the implementation of Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (COM(2014) 554), NCTV FF report, pp. 60-61.

⁴⁵⁹ Ibid., p. 6; European Parliamentary Research Service (EPRS), *Foreign fighters – Member State responses and EU action* (2016), p. 7.

⁴⁶⁰ Report from the commission based on art. 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2004)409), Report from the Commission based on art. 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2007)681), p. 17.

view of concerns with regards to freedom of expression,⁴⁶¹ and have preferred to rely on provisions criminalising incitement or provocation in more general terms.⁴⁶²

A number of Member States have already criminalised training and travel related offences (suggested in the recently adopted Directive), while others are in the process of adopting legislation. The offence of "facilitating travelling abroad for terrorism" (suggested in the new Directive) appears already criminalised in most Member States as it is covered by more general provisions on aiding and abetting (required under Framework Decision 2002/475/JHA).

Finally, a trend can be observed of Member States adopting administrative measures, such as travel bans, exclusion orders, assigned residence orders, in addition or alternative to criminal justice measures (e.g. France, Germany, the Netherlands, and the United Kingdom).⁴⁶³ The use of administrative measures in situations where prosecution would be difficult for instance with regards to evidence collection or secrecy has raised concerns for the protection of human rights.⁴⁶⁴

Implementation in seven focus Member States

Table 4: Overview of implementation of existing and envisaged criminal justice measures in seven focus MS

	BE	BG	FR	DE	NL	SK	ES
directing group	✓	✓	✓	✓	✓	✓	✓
participating in group	✓	✓	✓	✓	✓	✓	✓
incitement or provocation	✓	✓	✓	✓	✓	✓	✓
aiding or abetting	✓	✓	✓	✓	✓	✓	✓
attempting	✓	✓	✓	✓	✓	✓	✓
recruitment	✓	✓	✓	✓	✓	✓	✓
providing training	✓	✓	✓	✓	✓	✓	✓

⁴⁶¹ Alegre, Susie, "Human Rights Concerns Relevant to Legislating on Provocation or Incitement to Terrorism and Related Offences", *Briefing Paper European Parliament's committee on Civil Liberties, Justice and Home Affairs* (March 2008).

⁴⁶² Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism (2008/919/JHA), p. 5.

⁴⁶³ European Parliamentary Research Service (EPRS), *Foreign fighters – Member State responses and EU action* (2016), p. 8.

⁴⁶⁴ Bérénice, Boutin, *Administrative measures against foreign fighters: in search of limits and safeguards*, ICCT Research Paper, (December 2016), See also Paulussen, *Christophe, Repressing the Foreign Fighters Phenomenon and Terrorism in Western Europe: Towards an Effective Response Based on Human Rights*, ICCT Research Paper, (November 2016).

receiving training*	✓	✓	✓	✓	✓	✓	✓
travelling*	✓	✓	✓	✓	✓	✓	✓
facilitating travel*	✓	✓	✓	✓	✓	✓	✓

In all seven focus Member States, all designated and envisaged offences are criminalised, although with various nuances, and not necessarily as a result of specific legislation or in implementation of EU measures. The following non-exhaustive remarks can be made regarding implementation in these Member States.

Belgium has diligently implemented all EU measures in its legislation, often using language close to the one used in the Framework Decisions, for instance with regards to the definition.⁴⁶⁵ The latest amendments were brought in July 2015 and August 2016 with laws respectively criminalising travel abroad for terrorist purposes (as envisaged by the new Directive) and indirect provocation to commit terrorist offences (as required by Framework Decision 2008/919/JHA).⁴⁶⁶

Bulgaria implemented EU measures requiring the criminalisation of terrorist offences in 2011.⁴⁶⁷ In 2015, it adopted a law criminalising travel and training.⁴⁶⁸ This law also introduced art. 108a(7), which seems to address the transit of foreign fighters by criminalising the entry into Bulgaria of foreigners for the purpose of committing terrorism-related acts including training in another country.

Rather than introducing new very specific terrorist offences, France has made use of more general terrorist offences which allow to globally address preparatory acts, namely the participation in an individual or collective terrorist enterprise. The offence of participation in a "collective terrorist enterprise" (art. 421-2-1 Criminal Code, also referred to as "criminal association in relation to a terrorist enterprise") exists since 1996 and has allowed France to prosecute a number of designated offences without necessarily enacting new legislation. In November 2014, it introduced the offence of participation in an "individual terrorist enterprise" (art. 421-2-6 Criminal Code), which criminalises various preparatory acts when committed alone, including training.⁴⁶⁹

As of June 2015, Germany has a specific provision criminalising travel for terrorist purposes (Section 89a subsection 2a).⁴⁷⁰ Previously, travel could be addressed under more general provisions on preparatory terrorist acts.⁴⁷¹

* EU instruments do not yet require to criminalise these offences, but it is envisaged in the proposed Directive, and required by other instruments (UNSC Resolution 2178, Riga Protocol).

⁴⁶⁵ Loi relative aux infractions terroristes, 19 December 2003, Loi modifiant le livre II, titre Ier du Code pénal, 18 February 2013, no 2013009097, [in French].

⁴⁶⁶ Loi visant à renforcer la lutte contre le terrorisme, 20 July 2015, no 2015009385; Loi portant des dispositions diverses en matière de lutte contre le terrorisme (III), 3 August 2016, no 2016009405, [in French].

⁴⁶⁷ Committee of Experts on Counter-terrorism (CODEXTER), *Profile on Counter-Terrorist Capacity of Bulgaria* (2013), art.s 108 to 110, [in Bulgarian].

⁴⁶⁸ 'Bulgaria to Amend Criminal Code to Counter Threat of Terrorism' (1 April 2015); Criminal Code, Bulgaria, art.s 108 to 110, [in Bulgarian].

⁴⁶⁹ Loi n° 2014-1353 du 13 novembre 2014 renforçant les dispositions relatives à la lutte contre le terrorisme, [in French].

⁴⁷⁰ Criminal Code, Germany, Section 89a, [in German].

The Netherlands is envisaging to draft legislation criminalising the fact of spending time in an area controlled by terrorist groups,⁴⁷² which goes further than what is called for by EU existing or envisaged measures and other international instruments.

Slovakia implemented EU measures in 2005.⁴⁷³ In November 2015, it introduced a provision criminalising the participation in combat activities of organised armed groups in the territory of another State.⁴⁷⁴

Spain implemented EU measures in 2010.⁴⁷⁵ In March 2015, it adopted a law criminalising training and travel.⁴⁷⁶

Effectiveness of the measures and cooperation in practice

Criminal justice measures are relatively effective, in the sense that they allow to intervene at an early stage and to apprehend new types of behaviours in relation to foreign fighters. For instance, the criminalisation of travel and various preparatory acts can be useful counter-terrorism tools. At the same time, these measures have raised a number of concerns in practice. Indeed, some interviewees find that the increasingly broad criminalisation of preparatory terrorist acts is problematic when acts far removed from the principal act are criminalised. Furthermore, interviewees expressed concerns about the adoption of an excessively broad definition of terrorism in the new Directive, which would not only raise serious concerns for human rights and fundamental freedoms, but also possibly have a counterproductive effect, as it could lead to unfocused prosecutions.

Cooperation within the EU in the field of criminal justice matters is facilitated by EU-based tools. According to a Commission Report, the EAW provides an "efficient and effective surrender system", and "is a very useful tool for Member States in the fight against crime". It however noted that there was "room for improvement", and that "[p]rotection of fundamental rights in particular must be central to the operation of the EAW system".⁴⁷⁷ Regarding mutual recognition and enforcement of criminal judgments, there seems to be more difficulties, as it appears that a number of Member States have not fully implemented Framework Decision 2008/909/JHA.⁴⁷⁸ Furthermore, interviewees noted that cooperation

⁴⁷¹ Paulussen, C. and Entenmann, E., "National Responses in Select Western European Countries to the Foreign Fighter Phenomenon", in A. de Guttery, F. Capone, and C. Paulussen (eds.), *Foreign Fighters under International Law and Beyond* (Springer: New York 2016), pp. 405-406.

⁴⁷² 'Spending time in terrorist controlled areas to become a criminal offence', DutchNews.nl (25 October 2016). A similar provision exists in Australia, see 'Declared area offence'.

⁴⁷³ Report from the commission based on art. 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2004)409), Report from the Commission based on art. 11 of the Council Framework Decision of 13 June 2002 on combating terrorism (COM(2007)681); CODEXTER profile on Slovakia, (April 2007).

⁴⁷⁴ Criminal Code, Slovakia, art. 419a, [in Slovak].

⁴⁷⁵ Ley Orgánica 5/2010, de 22 de junio, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, [in Spanish]; CODEXTER profile on Spain, May 2013.

⁴⁷⁶ Ley Orgánica 2/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, en materia de delitos de terrorismo, [in Spanish].

⁴⁷⁷ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), p. 8.

⁴⁷⁸ European Commission, *Report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention* (COM(2014) 57 final); European Commission, Commission Staff Working Document, *Tables 'State of play' and 'Declarations' accompanying the document: report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on*

can be problematic not only across EU Member States, but also amongst various agencies within one country.

THEME G: PREVENTION AGAINST RADICALISATION

One of the four pillars of the EU Counter-Terrorism Strategy is the Prevent pillar. Policies in relation to 'Prevention of radicalisation' fall under that strand of the EU Counter-Terrorism Strategy. This theme comprises of a plethora of issues, varying from understanding and addressing underlying factors of radicalisation, developing de-radicalisation and rehabilitation programmes, disrupting violent extremist propaganda on the internet, and developing strategic counter-narratives. No binding decisions or regulations have been adopted with regard to this theme, meaning that it depends on the voluntary cooperation of Member States whether any of the policies or initiatives are implemented, or can work effectively as intended.

Policy framework

EU Strategy and measures

Preventing radicalisation has since 2005 been part and parcel of the EU Counter-Terrorism Strategy and the EU Action Plan on Combatting Terrorism.⁴⁷⁹ A special EU Strategy for Combatting Radicalisation and Recruitment to Terrorism (hereafter Prevention Strategy) has been adopted in 2005,⁴⁸⁰ as well as a related EU Action Plan on Combatting Radicalisation and Recruitment to Terrorism (hereafter R&R Action Plan),⁴⁸¹ and has been updated in 2008⁴⁸² and 2014.⁴⁸³

The focus of the Prevention Strategy of 2005 was on combatting radicalisation and recruitment of terrorism, with regard to the forms of terrorism inspired by Al-Qaida. The objective of the strategy was to reduce the threat

"[b]y disrupting existing terrorist networks and by preventing new recruits to terrorism; [by] ensur[ing] that voices of mainstream opinion prevail over those of extremism; [by] promot[ing] more vigorously security, justice, democracy and opportunity for all; [and by] reduc[ing] vulnerability to attack by better protecting potential targets and improving consequence management capabilities."

The 2008 Strategy is more or less the same as the 2005 Strategy, except that it uses more neutral language, and refrains from any specific references to Muslim groups. The 2014 Revised Strategy, first of all, takes into account the changing nature of the threat and the fact that radicalisation means and patterns are constantly evolving, and secondly stresses the importance of a "balanced approach between security-related measures and efforts to tackle those factors that may create an environment conducive to radicalisation and recruitment to terrorism." The strategy also stresses the important role of communities, civil society, non-governmental organisations and the private sector. As the main objectives it highlights that they should resolve inter alia to:

⁴⁷⁹ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 14469/4/05 Rev 4, (30 November 2005).

⁴⁸⁰ European Council, *The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism* (14781/1/05 REV 1), hereafter referred to as the Prevention Strategy.

⁴⁸¹ European Council, *EU Action Plan on combating terrorism* (15358/05); 4/5 December 2006, the Council took note of a report on the implementation of the R&R Action Plan revised at 12 February 2007),

⁴⁸² European Council, *Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism* (15178/08) (14 November 2008).

⁴⁸³ European Council, *Revised EU Strategy for Combating Radicalisation and Recruitment to Terrorism* (9956/14) (19 May 2014).

"[p]romote security, justice, and equal opportunities for all; ensure that voices of mainstream opinion prevail over those of extremism; enhance government communications; support messages countering terrorism; counter online radicalisation and recruitment to terrorism; train, build capacity and engage first line practitioners across relevant sectors; support individuals and civil society to build resilience; support disengagement initiatives; support further research into the trends and challenges of radicalisation and recruitment to terrorism; [and] align internal and external counter-radicalisation work."

The Commission in its communication to the European Parliament and the Council, entitled 'The EU Internal Security Strategy in Action: Five steps towards a more secure Europe',⁴⁸⁴ announced the creation of the EU Radicalisation Awareness Network (RAN), which was subsequently launched in September 2011 as an umbrella network connecting first line practitioners from the various EU Member States. In October 2015 the RAN Centre of Excellence (RAN CoE) was launched, following the ambition formulated in the Commission's European Agenda on Security.⁴⁸⁵ The Commission has earmarked EUR 25 million for the period of 2014-2017 for its activities. Of the objectives in the latest Prevention Strategy mentioned above, RAN CoE's objectives are particularly targeted towards training, building capacity and engaging with first line practitioners across relevant sectors, and supporting individuals and civil society to build resilience.

Related to the Prevention Strategy is the Media Communication Strategy, which followed the adoption of the EU Counter-Terrorism Strategy in 2005 and was later revised in 2007.⁴⁸⁶ Objective of the Media Communication Strategy is inter alia a more effective delivery of the EU's own message. Among those key messages are the underlying messages of the EU Counter-Terrorism Strategy, its four pillars and its guiding principle that the EU counter-terrorism policy is just, fair and inclusive, the objective of the EU's integration and non-discrimination policies to be guided by the principle of equality before the law, the prohibition of non-discrimination, respect for cultural, linguistic and religious diversity and equality between men and women.

In close relation to the Media Communication Strategy are the Check-the-Web project,⁴⁸⁷ which the Council agreed to build, the EU Internet Referral Unit (IRU) at Europol⁴⁸⁸ as part of the European Counter-Terrorism Centre (ECTC, see Factsheet A), the EU Internet Forum launched in December 2015 in close cooperation with the industry,⁴⁸⁹ and the Syria Strategic Communications Advisory Team (SSCAT with two components: Countering Violent Extremism (CVE) and Counter-Terrorism (CT) communication campaigns to be delivered to Member States, and network for Member States to exchange best practices of CVE and

⁴⁸⁴ European Commission, Communication from the Commission to the European Parliament and the Council, *The EU Internal Security Strategy in Action: Five steps towards a more secure Europe* (COM (2010) 673).

⁴⁸⁵ European Council, *State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015* (6785/16), p. 34; European Commission, "European Commission Boosts Efforts To Counter Violent Extremism" (2011), *Commission Press Release*.

⁴⁸⁶ European Council, *Revised Media Communication Strategy* (5469/3/07 REV 3), (28 March 2007).

⁴⁸⁷ European Council, *Council Conclusions on cooperation to combat terrorist use of the Internet ("Check the Web")* (8457/3/07 REV 3).

⁴⁸⁸ European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, *Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union* (COM(2016) 230 final), paragraph 2.2.

⁴⁸⁹ *Ibid.*

counter-terrorism communications. SSCAT is now renamed the Strategic Communication Network).⁴⁹⁰ After the Paris attacks, a counter-terrorism communication hub was opened on the Integrated Political Crisis Response arrangements (IPCR) web platform⁴⁹¹, with the aim to contribute to preparedness and to facilitate the political response in the event of terrorist attacks in the future. And finally, an initiative is developed to set up an EU-wide 'Empowering Civil Society-programme'⁴⁹² to maximise the effectiveness of alternative narrative campaigns.

Since prisons are considered to be hotspots for radicalisation,⁴⁹³ the Commission has also made funds available for the development of rehabilitation and de-radicalisation programmes inside and outside prisons, risk assessment tools and training for professionals.⁴⁹⁴ In order to prevent radicalisation through education and youth outreach, the Erasmus+ funds particularly give priority to projects fostering inclusion and promoting fundamental values.⁴⁹⁵

Cooperation with international organisations

The EU works with the UN, Council of Europe, Organization for Security and Co-operation in Europe (OSCE), and the Global Counterterrorism Forum (GCTF) on issues of countering and prevention of violent extremism. In the latter case, the EU provides support to the GCTF inspired institutions of Hedayah Center of Excellence for Countering Violent Extremism, the International Institute for Justice and the Rule of Law and the Global Community Engagement Resilience Fund (GCERF).

Cooperation with third countries

Various programmes are used to cooperate with third countries on issues of support to law enforcement and human rights compliant responses to prevent radicalisation, and on addressing root causes of radicalisation to violent extremism. The EU mainly uses its European Neighbourhood Policy and Instrument to Stability and Peace (ICSP). The EU-funded package of Strengthening Resilience to Violence and Extremism (STRIVE)⁴⁹⁶ is particularly worth mentioning for its initiatives aimed at identifying drivers for youth extremism, empowering women, promoting community dialogue, strengthening local actors or improving the media and education capacities to counter radical ideologies. The EU further develops various regional Strategies with action plans that also address issues of radicalisation to violent extremism, such as for instance the Sahel Strategy (adopted in March 2011). In addition, several more counter-terrorism/CVE focused strategies, action plans or activities have been adopted and are being implemented, such as in Tunisia, Libya, Syria and Iraq, Lebanon, Jordan, Sahel, Horn of Africa/Yemen, Pakistan, and South East Asia.

⁴⁹⁰ European Parliament, *Answer given by Mr Avramopoulos on behalf of the Commission*, EP Parliamentary questions (2011).

⁴⁹¹ European Commission, *The EU Integrated Political Crisis Response Arrangements in brief, 2014*, <http://www.consilium.europa.eu/en/documents-publications/publications/2014/eu-ipcr/>.

⁴⁹² European Commission, Communication from the Commission to the European Parliament, the European Council and the Council, *Delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union* (COM(2016) 230 final), paragraph 2.2.

⁴⁹³ See on this topic for instance European Parliament, Directorate-General for Internal Policies, Policy Department C, Citizens' Rights and Constitutional Affairs, *Preventing and Countering Youth Radicalisation in the EU*, Study for the LIBE Committee (2014), p. 14.

⁴⁹⁴ Ibid.

⁴⁹⁵ Ibid.

⁴⁹⁶ European Commission, Communication from the Commission to the European Parliament, the Council, The European Economic and Social Committee and the Committee of the Regions, *Supporting the prevention of radicalisation leading to violent extremism* (COM (2016) 379 final), (14 June 2016), paragraph 7.

Lastly, the Commission is exploring possibilities to involve RAN in activities in key third countries, in particular in the MENA region, Western Balkans and Turkey.

Implementation of these measures within the policies of the Member States

Implementation of these policies within all Member States

Implementation of the strategies on combatting radicalisation and recruitment to terrorism is mostly left to the EU Member States, as the general strategy is merely providing some guidance and encouragement. In that sense it is impossible to measure the 'formal effectiveness' of the objectives as formulated in the Prevention Strategy. The EU also does not have a reporting system in place that demands from Member States to send regular updates to the Commission on what actions they have taken to contribute to prevention of radicalisation. Instead, one would have to revert to projects like TerRa (Terrorism and Radicalisation, a European Network-based prevention and learning programme supported by the European Commission DG Home Affairs) and RAN itself who have respectively made an inventory of the best practices on de-radicalisation in the EU Member States, and an overview of prevention against radicalisation initiatives in the Member States.⁴⁹⁷

RAN has been set up to assist Member States on the level of first-line practitioners, through its work in the RAN Working Groups. RAN Working Groups consist of: communication and narratives; education, EXIT (de-radicalisation and disengagement); youth, families and communities; local authorities, prison and probation, police and law enforcement, remembrance of victims of terrorism, and health and social care.

The EU CTC regularly brings out 'State of play' reports. According to the report from March 2016, 498 national authorities can apply for tailor-made RAN support (training, workshops and advice) in Member States, funded by the Commission. The Commission also offers funding to Member States for the development of rehabilitation programmes.

Since the establishment of the EU IRU 26 Member States have made a total of 144 contributions. According to the 'State of Play' report of the EU CTC the EU IRU "has identified 3,351 items of potentially violent/extremis content, triggering 2,037 referrals and 1,793 removals". Four Member States have yet to appoint an IRU national contact person.⁴⁹⁹

According to the EU CTC report experts from 20 Member States participated in the first training session organised by SSCAT.⁵⁰⁰

⁴⁹⁷ TerRa, "Inventory of the best practices on de-radicalisation from the different Member States of the EU"; RAN, "Preventing Radicalisation to Terrorism and Violent Extremism", *Approaches and Practices*, (2016).

⁴⁹⁸ Council of the European Union, EU Counter-terrorism Coordinator, *State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December (6785/16)*.

⁴⁹⁹ Ibid.

⁵⁰⁰ Ibid.

Effectiveness of these policies and cooperation (in practice) among different organisations and between Member States

Effectiveness of these measures and cooperation (in practice) among different organisations and between Member States - all Member States

There is no clear procedure to monitor the implementation of the objectives as formulated in the Prevention Strategy. RAN offers good practices, but on a voluntary base. According to an anonymous survey conducted by RAN itself in August 2016 among 175 participants of the total of 2100 participants that had participated so far in events, 90% expected a positive impact of their participation to the event on their daily work in combating radicalisation in order to measure the impact of RAN events.⁵⁰¹ In the same survey, approximately 75% indicated that they disseminated the lessons learned during the events within their own organisations. There is however not a structured instrument that monitors how participants disseminate the lessons learned during the events and workshops in their organisation, or that keeps count of what is done with what has been learned after participants return to their organisations.

EU CTC took the initiative⁵⁰² to implement particular projects mentioned in the Prevention Strategy and EU Action Plan on R&R by putting the lead for implementation for concrete work streams with certain Member States. These are: handbook on prevention of radicalisation in prisons (AU, DE, FR), media and strategic communication (UK), training of Imams (ES), community policing (BE, SE), working with local authorities (NL), de-radicalisation (DK) and terrorism and the internet (DE). However, it seems that this remained a plan, and was never given any follow-up as such.

In the 2010 Commission's communication to the Parliament and the Council, entitled: 'The EU Counter-Terrorism Policy: main achievement and future challenges', it mentions that under the Prevent strand of the EU Counter-Terrorism Strategy there is need for reinforcing prevent activities related to the way terrorists use the internet. Also the Stockholm Programme⁵⁰³ calls for reinforcement in the next five years. A more recent official evaluation of the implementation status and the effectiveness of the strategy and action plan does not exist. The newly appointed Commissioner for the Security Union, Sir Julian King,⁵⁰⁴ has, however, commissioned the Court of Auditors to conduct a performance audit on the Commission's policy on prevention of radicalisation.

The Commission is also investing in public-private partnerships in countering terrorist use of the internet.

Effectiveness of these measures and cooperation (in practice) among different organisations and between Member States - seven focus Member States

As mentioned above, it is not really possible to measure the 'formal effectiveness' of the EU's objectives on prevention of radicalisation. Yet, this study has mapped the national strategies on countering radicalisation and the various specific prevention programmes in the seven focus Member States.

⁵⁰¹ RAN, "Survey Results", (August 2016).

⁵⁰² European Commission, Communication from the Commission to the European Parliament and the Council, *The EU Counter-Terrorism Policy: main achievements and future challenges* (COM/2010/0386 final), pp. 4-5.

⁵⁰³ Official Journal of the European Union, (C 115), (4 May 2010), p. 24.

⁵⁰⁴ European Commission, "President Juncker consults the European Parliament on Sir Julian King as Commissioner for the Security Union", *Commission Press Release* (2 August 2016).

Of the focus Member States only the following countries have developed dedicated comprehensive or specific counter-radicalisation strategies on state, regional level and/or local level, and/or installed specific task forces or coordinating bodies: Belgium,⁵⁰⁵ Bulgaria,⁵⁰⁶ France,⁵⁰⁷ Germany,⁵⁰⁸ the Netherlands,⁵⁰⁹ and Spain.⁵¹⁰

What the research team knows in terms of prevention programmes in addition to the national policies in the seven focus countries is based on RAN Collection of approaches and practices and is in no way meant to be comprehensive (see table 5). These programmes have different objectives and focus themes: awareness raising on the process of radicalisation, understanding and research of radicalisation, community policing, citizen participation in community policing, training, train the trainer programmes, education, addressing issues of pluralism, citizenship and democracy, addressing issues related to identity and religion, gender issues, de-radicalisation, rehabilitation and reintegration, inter-religious dialogue, and skills training. The programmes furthermore target different audiences: law enforcement professionals, first-line responders, educators, students, youth, parents and families, and victims.

⁵⁰⁵ On a national level the plan in Belgium is called: National counter-radicalism plan, developed in 2005. In addition, many plans are also developed on regional and local level. In 2015, Belgium established a task force to create a national counterterrorism and counter-extremism strategy. See also the factsheet on Belgium of the Counter-Extremism Project.

⁵⁰⁶ A Strategy for Countering Radicalisation and Terrorism was drafted in 2015 to update the outdated National Plan for Combatting Terrorism of 2008. See Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague 7*, no. 2 (2016), ANNEX, p. 11; see also Centre for the Study of Democracy, "Radicalisation in Bulgaria; Threats and Trends", (2015), pp. 13-14.

⁵⁰⁷ France adopted a National Action Plan against Violent Radicalisation and Jihadi Networks in 2014. See Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague 7*, no. 2 (2016).

⁵⁰⁸ Germany adopted a comprehensive counter-terrorism Strategy and also adopted a Framework on Prevention Regarding Salafism in 2014. See Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague 7*, no. 2 (2016).

⁵⁰⁹ In 2016, the Netherlands adopted an updated National Counter-Terrorism Strategy 2016-2020, https://english.nctv.nl/binaries/nationale-ct-strategie-2011-2015-uk_tcm92-369807_tcm32-90349.pdf; In 2014, the Netherlands also adopted the Netherlands comprehensive action programme to combat jihadism, https://english.nctv.nl/binaries/def-a5-nctvjihadismuk-03-lr_tcm32-83910.pdf. See further: Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague 7*, no. 2 (2016).

⁵¹⁰ In 2015, Spain adopted a Strategic National Action Plan against Violent Radicalisation within the framework of the 2012 Comprehensive strategy. See Van Ginkel, B. and Entenmann, E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague 7*, no. 2 (2016).

Table 5: Overview of prevention programmes for each of the seven Member States

Country	Main focus areas and target audiences	Prevention programmes or events/ activities
Belgium	Community policing, awareness raising, training of frontline workers, education programmes, promoting democracy, counter-narratives	CoPPRa – ISDEP – BOUNCE – Athena Syntax – Identity and communication training programme for school – Democracy Factory – P2P Challenging Extremism
Bulgaria	Community policing, awareness raising, training of frontline workers	CoPPRa – ISDEP
France	Community policing, counter-narratives, support for victims, promoting democracy	CoCoRa – C4C – Democracy Factory – P2P Challenging Extremism – Terrorism: How about listening to what victims have to say?
Germany	Awareness raising, training of frontline workers, gender issues, role of families, hotlines, exit programmes, rehabilitation, inter-religious dialogue, counter-narratives, youth, education, empowerment and skills training	ISDEP – How do we want to live? – Maxime Berlin – WomEx – Praefix R – Nationwide institute for right wing extremism and family – HAYAT – Family counseling – CoCoRa – Acceptance-based youth work with right wing youth groups – Denkzeit – Taking Responsibility – Advice Centre Hesse – EXIT Germany – Jump – Fair Skills – Teachers empowered – Expert Center on Gender and Right-Wing Extremism – P2P Challenging Extremism – Donate the Hate – Nazis against Nazis – Muslim Jewish Dialogue – No-Nazi.net – What’s up? – AVE
The Netherlands	Community policing, train the trainer, awareness raising, training, family, hotlines, counter-narratives, citizen participation in community policing	CoPPRa – Training at Police Academy – RAN Train the Trainer – ReCoRa Institute – ISDEP – ALLIES – Second Wave “My city Real World” – INSPEC2T – The Peaceable School and Neighbourhood – To prevent is better than to cure – Expedition Friend & Foe – Democracy Factory – SMN Family hotline – P2P Challenging Extremism
Slovakia	Awareness raising, research, training	De-radicalisation by mapping of regions and strengthen the local institutions – Teachers empowered – CENAA
Spain	Train the trainer, teachers, counter-narratives	RAN Train the Trainer – P2P Challenging Extremism – Teachers empowered – INSPEC2T – The Map of Terror

ANNEX II: MAPPING OF MEASURES

This Annex contains an overview of measures that have been referred to in the context of counter-terrorism. A more detailed description of the methodology informing the mapping can be found in Annex III.

Table 6: Overview of measures that have been referred to in the context of counter-terrorism

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
2001				
Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions (2001/792/EC, Euratom) ⁵¹¹	Council Decision 2001/792/EC, Euratom	OJ 2001 L 297/7	Adopted	23 October 2001
Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering	Directive 2001/97/EC	OJ 2001 L 344/76	Adopted	4 December 2001
Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism ⁵¹²	Regulation 2580/2001	OJ 2001 L 344/70	Adopted	27 December 2001
2002				
Council Regulation (EC) No 334/2002 of 18 February 2002 amending Regulation (EC) No 1683/95 laying down a uniform format for visas	Regulation (EC) No 334/2002	OJ 2002 L 53/7	Adopted	18 February 2002
Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (2002/187/JHA) ⁵¹³	Council Decision 2002/187/JHA	OJ 2002 L 63/1	Adopted	28 February 2002
Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan ⁵¹⁴	Regulation (EC) 881/2002	OJ 2002 L 139/9	Adopted	27 May 2002
Council Framework Decision of 13 June 2002 on combating terrorism	Framework Decision 2002/475/JHA	OJ 2002 L 164/3	Adopted	13 June 2002

⁵¹¹ Recast by 2007/779/EC, Euratom.

⁵¹² Updated numerous times, see <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32001R2580&qid=1481717140314>.

⁵¹³ Amended by Council Decision 2003/659/JHA, Council Decision 2009/426/JHA.

⁵¹⁴ Updated numerous times, see <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32002R0881&qid=1481716541281>.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States	Framework Decision 2002/584/JHA	OJ 2002 L 190/1	Adopted	13 June 2002
Council Framework Decision of 13 June 2002 on joint investigation teams (2002/465/JHA)	Framework Decision 2002/465/JHA	OJ 2002 L 162/1	Adopted	13 June 2002
Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals⁵¹⁵	Regulation (EC) No 1030/2002	OJ 2002 L 157/1	Adopted	13 June 2002
Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications)	Directive 2002/58/EC	OJ 2002 L 201/37	Adopted	12 July 2002
Council Decision of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism (2002/996/JHA)	Council Decision 2002/996/JHA	OJ 2002 L 349/1	Adopted	28 November 2002
Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security⁵¹⁶	Regulation (EC) No 2320/2002	OJ 2002 L 355/1	Adopted	16 December 2002
Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP	Council Decision 2003/48/JHA	OJ 2003 L 16/18	Adopted	19 December 2002
2003				
Commission Regulation (EC) No 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security	Regulation (EC) No 622/2003	OJ 2003 L 89/9	Adopted	4 April 2003
Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime	Council Decision 2003/659/JHA	OJ 2003 L 245/44	Adopted	18 June 2003
Council Framework Decision 2003/577/JHA of 22 July 2003 on the Execution in the European Union of orders freezing property or evidence	Framework Decision 2003/577/JHA	OJ 2003 L 196/45	Adopted	22 July 2003
Regulation (EC) No 2003/2003 of the European Parliament and of the Council of 13 October 2003 relating to fertilisers	Regulation (EC) No 2003/2003	OJ 2003 L 304/1	Adopted	13 October 2003
2004				

⁵¹⁵ Amended by Council Regulation (EC) No 380/2008.

⁵¹⁶ Repealed by Regulation (EC) No 300/2008.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Regulation (EC) No 725/2004 of the European Parliament and of the Council of 31 March 2004 on enhancing ship and port facility security	Regulation (EC) No 725/2004	OJ 2004 L 129/6	Adopted	31 March 2004
Regulation (EC) No 724/2004 of the European Parliament and of the Council of 31 March 2004 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency⁵¹⁷	Regulation (EC) No 724/2004	OJ 2004 L 129/1	Adopted	31 March 2004
Commission Decision of 15 April 2004 on an Intra-Community transfer of explosives document (notified under document number C(2004) 1332) (2004/388/EC)	Commission Decision 2004/388/EC	OJ 2004 L 120/43	Adopted	14 April 2004
Council Regulation (EC) No 871/2004 of 29 April 2004 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism	Regulation (EC) No 871/2004	OJ 2004 L 162/29	Adopted	29 April 2004
Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims	Directive 2004/80/EC	OJ 2004 L 261/15	Adopted	29 April 2004
Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data	Directive 2004/82/EC	OJ 2004 L 261/24	Adopted	29 April 2004
Council Regulation (EC) No 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 Union⁵¹⁸	Regulation (EC) No 2007/2004	OJ 2004 L 349/1	Adopted	26 October 2004
Council Regulation (EC) No 2252/2004 of 13 December 2004 on standards for security features and biometrics in passports and travel documents issued by Member States⁵¹⁹	Regulation (EC) No 2252/2004	OJ 2004 L 385/1	Adopted	13 December 2004
2005				
Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism⁵²⁰	Council Decision 2005/211/JHA	OJ 2005 L 68/44	Adopted	24 February 2005
Council Framework Decision 2005/212/JHA of 24 February 2005 of Confiscation of Crime-Related Proceeds, Instrumentalities and Property	Framework Decision 2005/212/JHA	OJ 2005 L 68/49	Adopted	24 February 2005
Council Framework Decision 2005/222/JHA of 24 February 2005 on attacks against information systems⁵²¹	Framework Decision 2005/222/JHA	OJ 2005 L 69/67	Adopted	24 February 2005
Proposal for a Regulation of the European Parliament and of the Council establishing the European Union Solidarity Fund	COM(2005) 108 final	OJ 2002 C 156/10	Withdrawn	6 April 2005

⁵¹⁷ Amended by Regulation (EC) No 100/2013.

⁵¹⁸ Amended by Regulation (EC) No 863/2007, Regulation (EU) No 1168/2011; Being repealed by COM(2015) 671 final.

⁵¹⁹ Amended by Regulation (EC) No 444/2009.

⁵²⁰ Amended by 2006/758/EC.

⁵²¹ Repealed by Directive (EU) 2013/40.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Regulation (EC) No 648/2005 of the European Parliament and of the Council of 13 April 2005 amending Council Regulation (EEC) No 2913/92 establishing the Community Customs Code	Regulation (EC) No 648/2005	OJ 2005 L 117/13	Adopted	13 April 2005
Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences	Council Decision 2005/671/JHA	OJ 2005 L 253/22	Adopted	20 September 2005
Agreement between the European Union and the Government of Canada on the processing of Advance Passenger Information and Passenger Name Record data	n/a	OJ 2006 L 82/15	Adopted	3 October 2005
Directive 2005/65/EC of the European Parliament and of the Council of 26 October 2005 on enhancing port security	Directive 2005/65/EC	OJ 2005 L 310/28	Adopted	26 October 2005
Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁵²²	Directive 2005/60/EC	OJ 2005 L 309/15	Adopted	26 October 2005
Commission Decision of 23 December 2005 amending its internal Rules of Procedure (2006/25/EC, Euratom)	Commission Decision 2006/25/EC	OJ 2006 L 19/20	Adopted	23 December 2005
2006				
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/EC⁵²³	Directive 2006/24/EC	OJ 2006 L 105/54	Invalidated	15 March 2006
Commission Decision of 19 April 2006 setting up a group of experts to provide policy advice to the Commission on fighting violent radicalisation (2006/299/EC)	Commission Decision 2006/299/EC	OJ 2006 L 111/9	Adopted	19 April 2006
Commission Decision of 19 April 2006 establishing standard forms for the transmission of applications and decisions pursuant to Council Directive 2004/80/EC relating to compensation to crime victims	Decision 2006/337/EC	OJ 2006 L 125/25	Adopted	19 April 2006
Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis⁵²⁴	Commission Directive 2006/70/EC	OJ 2006 L 214/29	Adopted	1 August 2006

⁵²² Repealed by Directive (EU) 2015/849.

⁵²³ Invalidated by Court Decision on 8 April 2014, see <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0293>.

⁵²⁴ Repealed by Directive (EU) 2015/849.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Commission Decision of 22 September 2006 on amending the Sirene Manual (2006/758/EC)	Commission Decision 2006/758/EC	OJ 2006 L 317/41	Adopted	22 September 2006
Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders	Framework Decision 2006/783/JHA	OJ 2006 L 328/59	Adopted	6 October 2006
Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds	Regulation (EC) No 1781/2006	OJ 2006 L 345/1	Adopted	15 November 2006
Council Decision of 18 December 2006 Concerning the Seventh Framework Programme of the European Atomic Energy Community (Euratom) for nuclear research and training activities (2007 to 2011) (2006/970/Euratom)	Commission Decision 2006/970/Euratom	OJ 2006 L 400/60	Adopted	18 December 2006
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	Framework Decision 2006/960/JHA	OJ 2006 L 386/89	Adopted	18 December 2006
Commission Regulation (EC) No 1875/2006 of 18 December 2006 amending Regulation (EEC) No 2454/93 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code	Regulation (EC) No 1875/2006	OJ 2006 L 360/64	Adopted	18 December 2006
Council Decision of 19 December 2006 concerning the specific programme to be carried out by means of direct actions by the Joint Research Centre under the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) (2006/975/EC)⁵²⁵	Council Decision 2006/975/EC	OJ 2007 L 54/126	Adopted	19 December 2006
Council Decision of 19 December 2006 concerning the Specific Programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) (Text with EEA relevance) (2006/971/EC)	Council Decision 2006/971/EC	OJ 2006 L 400/86	Adopted	19 December 2006
Council Decision of 19 December 2006 concerning the specific programme 'Cooperation' implementing the Seventh Framework Programme of the European Community for research, technological development and demonstration activities (2007 to 2013) (Text with EEA relevance) (2006/971/EC)⁵²⁶	Council Decision 2006/971/EC	OJ 2007 L 54/30	Adopted	19 December 2006

⁵²⁵ Corrigendum to Council Decision 2006/975/EC.

⁵²⁶ Corrigendum to Council Decision 2006/971/EC.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Regulation (EC) No 1987/2006 of the European Parliament and the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)⁵²⁷	Regulation (EC) No 1987/2006	OJ 2006 L 381/4	Adopted	20 December 2006
2007				
Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention, Preparedness and Consequence Management of Terrorism and other Security related risks' (2007/124/EC, Euratom)	Council Decision 2007/124/EC, Euratom	OJ 2007 L 58/1	Adopted	12 February 2007
Council Decision of 12 February 2007 establishing for the period 2007 to 2013, as part of General Programme on Security and Safeguarding Liberties, the Specific Programme 'Prevention of and Fight against crime' (2007/125/JHA)	Council Decision 2007/125/JHA)	OJ 2007 L 58/7	Adopted	12 February 2007
Council Decision of 5 March 2007 establishing a Civil Protection Financial Instrument (Text with EEA relevance) (2007/162/EC, Euratom)	Council Decision 2007/162/EC, Euratom	OJ 2007 L 71/9	Adopted	5 March 2007
Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)	Council Decision 2007/533/JHA	OJ 2007 L 205/63	Adopted	12 June 2007
Regulation (EC) No 863/2007 of the European Parliament and of the Council of 11 July 2007 establishing a mechanism for the creation of Rapid Border Intervention Teams and amending Council Regulation (EC) No 2007/2004 as regards that mechanism and regulating the tasks and powers of guest officers⁵²⁸	Regulation (EC) No 863/2007	OJ 2007 L 199/30	Adopted	11 July 2007
Council Decision of 8 November 2007 establishing a Community Civil Protection Mechanism (recast) (Text with EEA relevance) (2007/779/EC, Euratom)	Council Decision 2007/779/EC, Euratom	OJ 2007 L 314/9	Adopted	8 November 2007
Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC	Directive 2007/64/EC	OJ 2007 L 319/1	Adopted	13 November 2007
Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime	Council Decision 2007/845/JHA	OJ 2007 L 332/103	Adopted	6 December 2007

⁵²⁷ Being repealed by COM(2016) 882 final.

⁵²⁸ Being repealed by COM(2015) 671 final.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Commission Decision of 20 December 2007 amending Decision 2004/277/EC, Euratom as regards rules for the implementation of Council Decision 2007/799/EC, Euratom establishing a Community civil protection mechanism (notified under document number C(2007) 6464) (Text with EEA relevance) (2008/73/EC, Euratom)	Commission Decision 2008/73/EC, Euratom	OJ 2008 L 20/23	Adopted	20 December 2007
2008				
Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008 on common rules in the field of civil aviation security and repealing Regulation (EC) No 2320/2002	Regulation (EC) No 300/2008	OJ 2008 L 97/72	Adopted	11 March 2008
Directive 2008/20/EC of the European Parliament and of the Council of 11 March 2008 amending Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, as regards the implementing powers conferred on the Commission	Directive 2008/20/EC	OJ 2008 L 76/46	Adopted	11 March 2008
Commission Directive 2008/43/EC of 4 April 2008 setting up, pursuant to Council Directive 93/15/EEC, a system for the identification and traceability of explosives for civil uses	Directive 2008/43/EC	OJ 2008 L 94/8	Adopted	4 April 2008
Commission Regulation (EC) No 324/2008 of 9 April 2008 laying down revised procedures for conducting Commission inspections in the field of maritime security	Regulation (EC) No 324/2008	OJ 2008 L 98/5	Adopted	9 April 2008
Council Regulation (EC) No 380/2008 of 18 April 2008 amending Regulation (EC) No 1030/2002 laying down a uniform format for residence permits for third-country nationals	Regulation (EC) No 380/2008	OJ 2008 L 115/1	Adopted	18 April 2008
Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons	Directive 2008/51/EC	OJ 2008 L 179/5	Adopted	21 May 2008
Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime	Council Decision 2008/615/JHA	OJ 2008 L 210/1	Adopted	23 June 2008
Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime	Council Decision 2008/616/JHA	OJ 2008 L 210/12	Adopted	23 June 2008
Council Decision 2008/617/JHA of 23 June 2008 on the improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations	Council Decision 2008/617/JHA	OJ 2008 L 210/73	Adopted	23 June 2008
Council Decision 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences	Council Decision 2008/633/JHA	OJ 2008 L 218/129	Adopted	23 June 2008

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)	Regulation (EC) No 767/2008	OJ 2008 L 218/60	Adopted	9 July 2008
Commission Regulation (EC) No 820/2008 of 8 August 2008 laying down measures for the implementation of the common basic standards on aviation security	Regulation (EC) No 820/2008	OJ 2008 L 221/8	Adopted	8 August 2008
Proposal for a Council Decision on a Critical Infrastructure Warning Information Network (CIWIN)	COM(2008) 676 final	OJ 2012 C 156/10	Withdrawn	27 October 2008
Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism	Framework Decision 2008/919/JHA	OJ 2008 L 330/21	Adopted	28 November 2008
Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection	Directive 2008/114/EC	OJ 2008 L 345/75	Adopted	8 December 2008
Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime	Council Decision 2009/426/JHA	OJ 2009 L 138/14	Adopted	16 December 2008
2009				
Commission Decision of 23 January 2009 amending Regulation (EC) No 725/2004 of the European Parliament and of the Council as far as the IMO Unique Company and Registered Owner Identification Number Scheme is concerned (notified under document number C(2009) 148) (Text with EEA relevance) (2009/83/EC)	Commission Decision 2009/83/EC	OJ 2009 L 29/53	Adopted	23 January 2009
Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States	Framework Decision 2009/315/JHA	OJ 2009 L 93/23	Adopted	26 February 2009
Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny – Part Two	Regulation (EC) No 219/2009	OJ 2009 L 87/109	Adopted	11 March 2009
Regulation (EC) No 219/2009 of the European Parliament and of the Council of 11 March 2009 adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny Adaptation to the regulatory procedure with scrutiny – Part Two	Regulation (EC) No 219/2009	OJ 2009 L 87/109	Adopted	11 March 2009

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Commission Regulation (EC) No 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council	Commission Regulation (EC) No 272/2009	OJ 2009 L 91/7	Adopted	2 April 2009
Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA)⁵²⁹	Council Decision 2009/371/JHA	OJ 2009 L 121/37	Adopted	6 April 2009
Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA⁵³⁰	Council Decision 2009/316/JHA	OJ 2009 L 93/33	Adopted	6 April 2009
Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control	Directive 2009/16/EC	OJ 2009 L 131/57	Adopted	23 April 2009
Regulation (EC) No 444/2009 of the European Parliament and of the Council of 28 May 2009 amending Council Regulation (EC) No 2252/2004 on standards for security features and biometrics in passports and travel documents issued by Member States	Regulation (EC) 444/2009	OJ 2009 L 142/1	Adopted	28 May 2009
Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)	Regulation (EC) No 810/2009	OJ 2009 L 243/1	Adopted	13 July 2009
Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC	Directive 2009/110/EC	OJ 2009 L 267/7	Adopted	16 September 2009
Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban⁵³¹	Regulation (EU) No 1286/2009	OJ 2009 L 346/42	Adopted	22 December 2009
2010				
Agreement between the European Union and the United States of America on the processing and transfer of Financial Message Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program	n/a	OJ 2010 L 195/5	Adopted	13 July 2010

⁵²⁹ Repealed by Regulation (EU) 2016/794.

⁵³⁰ Being amended by COM(2016) 7 final.

⁵³¹ Regulation following the Kadi decision at the ECJ.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Commission Decision of 29 July 2010 amending Decision 2004/277/EC, Euratom as regards rules for the implementation of Council Decision 2007/779/EC, Euratom establishing a Community civil protection mechanism (notified under document C(2010) 5090) (Text with EEA relevance) (2010/481/EU, Euratom)	Commission Decision 2010/481/EU, Euratom)	OJ 2010 L 236/5	Adopted	29 July 2010
Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings	Directive 2010/64/EU	OJ 2010 L 280/1	Adopted	20 October 2010
Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)	Directive 2010/78/EU	OJ 2010 L 331/120	Adopted	24 November 2010
2011				
Agreement between the European Union and Australia on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the Australian Customs and Border Protection Service	n/a	OJ 2012 L 186/4	Adopted	29 September 2011
Regulation (EU) No 1168/2011 of the European Parliament and of the Council of 25 October 2011 amending Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union	Regulation (EU) No 1168/2011	OJ 2011 L 304/1	Adopted	25 October 2011
Regulation (EU) No 1077/2011 of the European Parliament and of the Council of 25 October 2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice	Regulation (EU) No 1077/2011	OJ 2011 L 286/1	Adopted	25 October 2011
Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted	Directive 2011/95/EU	OJ 2011 L 337/9	Adopted	13 December 2011
Agreement between the United States and the European Union on the use and transfer of passenger name records to the United States Department of Homeland Security	n/a	OJ 2012 L 215/5	Adopted	14 December 2011
2012				

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings	Directive 2012/13/EU	OJ 2012 L 142/1	Adopted	22 May 2012
Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA	Directive 2012/29/EU	OJ 2012 L 315/57	Adopted	25 October 2012
2013				
Regulation (EU) No 98/2013 of the European Parliament and of the Council of 15 January 2013 on the marketing and use of explosives precursors	Regulation (EC) No 98/2013	OJ 2013 L 39/1	Adopted	15 January 2013
Regulation (EU) No 100/2013 of the European Parliament and of the Council of 15 January 2013 amending Regulation (EC) No 1406/2002 establishing a European Maritime Safety Agency	Regulation (EC) No 100/2013	OJ 2013 L 39/30	Adopted	15 January 2013
Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data of third country nationals crossing the external borders of the Member States of the European Union⁵³²	COM(2013) 95 final	n/a (<i>procedure reference: 2013/0057/COD</i>)	Proposal	28 February 2013
Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 562/2006 as regards the use of the Entry/Exit System (EES) and the Registered Traveller Programme (RTP)⁵³³	COM(2013) 96 final	n/a (<i>procedure reference: 2013/0060/COD</i>)	Proposal	28 February 2013
Proposal for a Regulation of the European Parliament and of the Council establishing a Registered Traveller Programme⁵³⁴	COM(2013) 97 final	n/a (<i>procedure reference: 2013/0059/COD</i>)	Proposal	28 February 2013
Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011	Regulation (EU) No 389/2013	OJ 2013 L 122/1	Adopted	2 May 2013
Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features	Directive 2014/92/EU	OJ 2014 L 257/214	Adopted	23 July 2014

⁵³² Withdrawn and replaced by COM(2016) 194 final and COM(2016) 196 final.

⁵³³ Withdrawn and replaced by COM(2016) 194 final and COM(2016) 196 final.

⁵³⁴ Withdrawn and replaced by COM(2016) 194 final and COM(2016) 196 final.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Network and Information Security Agency (ENISA) and repealing Regulation (EC) No 460/2004	Regulation (EU) No 526/2013	OJ 2013 L 165/41	Adopted	21 May 2013
Council Decision 2013/269/CFSP of 27 May 2013 authorising Member States to sign, in the interests of the European Union, the Arms Trade Treaty	Council Decision 2013/269/CFSP	OJ 2013 L 155/9	Adopted	27 May 2013
Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (Recast version)	Regulation (EU) No 603/2013	OJ 2013 L 180/1	Adopted	26 June 2013
Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office	COM(2013) 534 final	n/a (<i>procedure reference: 2013/0255/APP</i>)	Proposal	17 July 2013
Directive 2013/40/EU of the European Parliament and the Council of 12 August 2013 on attacks against information systems and repealing Council Framework Decision 2005/222/JHA	Directive 2013/40/EU	OJ 2013 L 218/8	Adopted	12 August 2013
Decision No 1082/2013/EU of the European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC	Decision No 1082/2013/EU	OJ 2013 L 293/1	Adopted	22 October 2013
Regulation (EU) No 1052/2013 of the European Parliament and of the Council of 22 October 2013 establishing the European Border Surveillance System (Eurosur)	Regulation (EU) No 1052/2013	OJ 2013 L 295/11	Adopted	22 October 2013
Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in the European arrest warrant proceedings, and the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty	Directive 2013/48/EU	OJ 2013 L 294/1	Adopted	22 October 2013
Regulation (EU) No 1291/2013 of the European Parliament and of the Council of 11 December 2013 establishing Horizon 2020 – the Framework Programme for Research and Innovation (2014-2020) and repealing Decision No 1982/2006/EC	Regulation (EU) No 1291/2013	OJ 2013 L 347/104	Adopted	11 December 2013
2014				

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Regulation (EU) No 377/2014 of the European Parliament and of the Council of 3 April 2014 establishing the Copernicus Programme and repealing Regulation (EU) No 911/2010	Regulation (EU) No 377/2014	OJ 2014 L 122/44	Adopted	3 April 2014
Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union	Directive (EU) 2014/42	OJ 2014 L 127/39	Adopted	3 April 2014
Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters	Directive 2014/41/EU	OJ 2014 L 130/1	Adopted	3 April 2014
Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April establishing, as part of the Internal Security Fund, the instrument for financial support for police cooperation, preventing and combating crime, and crisis management and repealing Council Decision 2007/125/JHA	Regulation (EU) No 513/2014	OJ 2014 L 150/143	Adopted	16 April 2014
Council Decision of 24 June 2014 on the arrangements for the implementation by the Union of the solidarity clause	Council Decision 2014/415/EU	OJ 2014 L 192/53	Adopted	24 June 2014
2015				
Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)	Regulation (EU) 2016/399	OJ 2016 L 77/1	Adopted	9 March 2016
Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and Repealing (EC) No 1781/2006	Regulation (EU) No 2015/847	OJ 2015 L 141/1	Adopted	20 May 2015
Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC⁵³⁵	Directive 2015/849/EU	OJ 2015 L 141/73	Adopted	20 May 2015
Proposal for a Directive of the European Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons	COM(2015) 750 final	n/a (<i>procedure reference: 2015/0269/COD</i>)	Proposal	18 November 2015
Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism	COM(2015) 625 final	n/a (<i>procedure reference: 2015/0281/COD</i>)	Proposal	2 December 2015
2016				

⁵³⁵ Amended by COM(2016) 450 final.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Proposal for a Directive of the European Parliament and of the Council amending Council Framework Decision 2009/315/JHA, as regards the exchange of information on third country nationals and as regards the European Criminal Records Information System (ECRIS), and replacing Council Decision 2009/316/JHA	COM(2016) 7 final	n/a (<i>procedure reference: 2016/0002/COD</i>)	Proposal	19 January 2016
Regulation (EU) 2016/429 of the European Parliament and the Council of 9 March 2016 on transmissible animal diseases and amending and repealing certain acts in the area of animal health ('Animal Health Law')	Regulation (EU) 2016/429	OJ 2016 L 84/1	Adopted	9 March 2016
Proposal for a Regulation of the European Parliament and of the Council establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third country nationals crossing the external borders of the Member States of the European Union and determining the conditions for access to the EES for law enforcement purposes and amending Regulation (EC) No 767/2008 and Regulation (EU) No 1077/2011	COM(2016) 194 final	n/a (<i>procedure reference: 2016/0106/COD</i>)	Proposal	6 April 2016
Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2016/399 as regards the use of the Entry/Exit System	COM(2016) 196 final	n/a (<i>procedure reference: 2016/0105/COD</i>)	Proposal	6 April 2016
Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime	Directive 2016/681/EU	OJ 2016 L 119/132	Adopted	27 April 2016
Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, and repealing Council Framework Decision 2008/977/JHA	Directive (EU) 2016/680	OJ 2016 L 119/89	Adopted	27 April 2016
Proposal for a Regulation of the European Parliament and of the Council on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member States by a third-country national or a stateless person] , for identifying an illegally staying third-country national or stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes (recast)	COM(2016) 272 final	n/a (<i>procedure reference: 2016/0132/COD</i>)	Proposal	4 May 2016
Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA	Regulation (EU) No 2016/794	OJ 2016 L 135/53	Adopted	11 May 2016

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Agreement between the United States of America and the European Union on the protection of personal information relating to the prevention, investigation, detection, and prosecution of criminal offenses	n/a	n/a	Signed	2 July 2016
Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and amending Directive 2009/101/EC	COM(2016) 450 final	n/a (<i>procedure reference: 2016/0208/COD</i>)	Proposal	5 July 2016
Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union	Directive (EU) 2016/1148	OJ 2016 L 194/1	Adopted	6 July 2016
Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC	Regulation (EU) 2016/1624	OJ 2016 L 251/1	Adopted	14 September 2016
Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them⁵³⁶	Regulation 2016/1686	OJ 2016 L 255/1	Adopted	20 September 2016
Council Decision (CFSP) of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP	Council Decision (CFSP) 2016/1693	OJ 2016 L 255/25	Adopted	20 September 2016
Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings	Directive (EU) 2016/1919	OJ 2016 L 297/1	Adopted	26 October 2016
Proposal for a Regulation of the European Parliament and of the Council establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 515/2014, (EU) 2016/399, (EU) 2016/794 and (EU) 2016/1624	COM(2016) 731 final	n/a (<i>procedure reference: 2016/0357/COD</i>)	Proposal	16 November 2016
Proposal for a Regulation of the European Parliament and of the Council on the use of the Schengen Information System for the return of illegally staying third-country nationals	COM(2016) 881 final	n/a (<i>procedure reference: 2016/0407/COD</i>)	Proposal	21 December 2016

⁵³⁶ Not updated yet, but can be expected.

Full title	Document reference	OJ reference	Status	Date of adoption / proposal
Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1987/2006	COM(2016) 882 final	n/a (<i>procedure reference: 2016/0408/COD</i>)	Proposal	21 December 2016
Proposal for a Regulation of the European Parliament and of the Council on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending Regulation (EU) No 515/2014 and repealing Regulation (EC) No 1986/2006, Council Decision 2007/533/JHA and Commission Decision 2010/261/EU	COM(2016) 883 final	n/a (<i>procedure reference: 2016/0409/COD</i>)	Proposal	21 December 2016
Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders	COM(2016) 819 final	n/a (<i>procedure reference: 2016/0412/COD</i>)	Proposal	21 December 2016
Proposal for a Regulation of the European Parliament and of the Council on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005	COM(2016) 825 final	n/a (<i>procedure reference: 2016/0413/COD</i>)	Proposal	21 December 2016
Proposal for a Directive of the European Parliament and of the Council on countering money laundering by criminal law	COM(2016) 826 final	n/a (<i>procedure reference: 2016/0414/COD</i>)	Proposal	21 December 2016
2017				
Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism⁵³⁷	COM(2015) 625	n/a (<i>procedure reference: 2015/0281/COD</i>)	Adopted	16 February 2017
Regulation of the European Parliament and of the Council amending Regulation No 562/2006 (EC) as regards the reinforcement of checks against relevant databases at external borders⁵³⁸	COM(2015) 670 final	n/a (<i>procedure reference: 2015/0307/COD</i>)	Adopted	16 February 2017

⁵³⁷ Adopted but not yet officially published at the close of this research.

⁵³⁸ Adopted but not yet officially published at the close of this research.

ANNEX III: METHODOLOGY

Phasing of the study and practical approach

The study has four main phases:

1. Inception phase, in which the methodology was finalised and subsequently discussed and agreed with the EP, based on the research team's Inception Report
2. Data collection phase, meaning document analysis and interviews to collect data in four steps, as presented in the below.
3. Analysis phase: analysis and validation of findings and development of future policy options
4. Reporting phase

For this project, the research team has made use of desk research of EU documents, national legislation and policy documents, and literature, and semi-structured interviews to provide a comprehensive assessment of the EU's counter-terrorism policy architecture, identifying gaps and overlaps and pinpointing good practices. The outcome of this assessment has been combined with the outcomes of a 'Policy Lab' Workshop to provide input for suggesting future policy options.

The focus of this assessment and evaluation is on a) the degree of implementation of the EU's counter-terrorism framework, b) the effectiveness of cooperation and information sharing, and c) on the cooperation with third countries. The overall question is whether the current EU counter-terrorism architecture, the degree of implementation and the various ways of cooperation and information sharing do provide an adequate response to the way in which the terrorist threat has developed over the years. To this end, this question has taken central stage in the interviews to be conducted. Focussing more specifically on the issues of cooperation and information sharing, the level of trust in the institutions and measures at hand, and in the Member States or third countries with whom cooperation is intended is of vital importance to the success and effectiveness of these measures. The interviewers have therefore paid specific attention to this element.

Regarding implementation, this study has assessed the formal (legal-institutional) implementation of the EU's counter-terrorism framework at national level, mainly based on document analysis, as well as the practical policy implementation at national level. The latter has been assessed based on perception interviews, i.e. key policy makers have been asked their perception of the national level policy uptake of the EU's counter-terrorism framework.

Overall, the research team has aimed to keep a balance between in-depth study and concise comprehensive overviews of the policies at hand. Through triangulation of the data collected through document analysis and interviews, the team has ensured a high level of validity in the assessments.

Selection of Member States

Part of this evaluation has concentrated on the manner in which EU Member States have implemented policies and measures in their national legislation or translated these into national policies. Taking into account the EP's terms of reference and comments on the initial proposal, the research team has selected seven Member States as case studies.

Subsequently, the approach to each of these case studies will be outlined, aimed at collecting robust, comprehensive and comparable data for each of the seven cases.

There are quite significant differences between EU Member States in the way they have been hit by terrorism, are dealing with radicalisation to violent extremism (VE), tackle financing of terrorism, regulate access to weapons and explosives, or are coping with Foreign (terrorist) Fighters.⁵³⁹ As to the latter topic: although this report has looked at terrorism more generally, it should be explained that there are clear links between the general counter-terrorism debate and the recent phenomenon of FTFs. An example is the new EU Directive on Countering Terrorism, which came into being because of the FTFs phenomenon.⁵⁴⁰ This is why the FTFs topic is of the utmost importance to understanding the current counter-terrorism debate in Europe and why it is frequently referred to in this report. A preliminary scan also shows that there are differences between the EU Member States in the way they feel the urgency to implement the EU Counter-Terrorism Strategy and policies.⁵⁴¹ Some countries have adopted comprehensive approaches, whereas others have not. With regard to the implementation of certain measures, it is also clear that there are differences in interpretation of the EU legislation. This is presumably the case for criminalising money laundering⁵⁴² and the restrictions on firearms trafficking.⁵⁴³

For the purpose of this project a selection of seven EU Member States has been made to assess the implementation of the EU Counter-Terrorism Strategy and the various policies. The criteria that have been taken into consideration for making a selection include:

- Geographical spread
- Countries with high number of FTFs and serious issues of VE
- Countries where terrorist attacks have taken place
- Countries used as transit route of FTFs
- Different levels of implementation of EU measures and EU Counter-Terrorism Strategy with its four pillars of Prevent, Protect, Pursue and Respond, as translated in comprehensive strategies.⁵⁴⁴

Taking into account these criteria, the project team has selected the following seven Member States: Belgium, Bulgaria, France, Germany, the Netherlands, Slovakia, and Spain.

⁵³⁹ See also <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/foreign-fighters>.

⁵⁴⁰ See European Commission, 'Proposal for a Directive of the European Parliament and of the Council on combatting terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism', Brussels, 2 December 2015, COM(2015) 625 final 2015/0281 (COD), Explanatory Memorandum, available at: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-security/legislative-documents/docs/20151202_directive_on_combatting_terrorism_en.pdf, p. 2. See for the interlinkage between the issue of terrorism and FTFs also European Council and the Council of the EU, 'Response to foreign terrorist fighters and recent terrorist attacks in Europe', available at: <http://www.consilium.europa.eu/en/policies/fight-against-terrorism/foreign-fighters/>.

⁵⁴¹ Van Ginkel, B. and Entenmann. E. (Eds.), "The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies", *The International Centre for Counter-Terrorism – The Hague* 7, no. 2 (2016), http://icct.nl/wp-content/uploads/2016/03/ICCT-Report_Foreign-Fighters-Phenomenon-in-the-EU_1-April-2016_including-AnnexesLinks.pdf, hereafter 'ICCT FF report'.

⁵⁴² Communication from the commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing, COM(2016)50/2.

⁵⁴³ Report: State of play on implementation of the statement of the Members of the European Council of 12 February 2015 on counter-terrorism, 14734/15, 30 November 2015.

⁵⁴⁴ See also the Riga Joint Statement, 29 and 30 January 2015, in which the Justice and Home Affairs Ministers of the EU Member States underlined the 'need for a comprehensive cross-sectorial approach guaranteeing the involvement of all policies concerned'.

Figure 14: Selected Member States



Source: PwC and ICCT.

Below follows a short narrative per country to explain the reason for their selection:

- **Belgium:** Belgium has been hit by several terrorist attacks recently, and there were also linkages between the perpetrators of the Paris terrorist attack and people residing in Belgium. According to analysts, the (now defunct) organisation Sharia4Belgium has been a breeding ground for radicalisation of extremists. Despite the serious threat, Belgium does not have a single national strategy to deal with the problem, but has instead developed a patchwork of various plans and policies in relation to security, legislative and preventive measures.⁵⁴⁵ Belgium is one of the EU Member States with the highest absolute numbers of FTFs, and even has the highest percentage of FTFs per capita of the population.⁵⁴⁶
- **Bulgaria:** the estimates on the number of FTFs that left from Bulgaria vary between zero-ten.⁵⁴⁷ The country assesses the threat of terrorism to be moderate, although Bulgaria did suffer from a suicide attack in 2012 on a bus with Israeli tourists. The authorities claim that "potentially vulnerable communities are relatively indifferent to the terrorist propaganda".⁵⁴⁸ Bulgaria is, however, due to its geographical position, aware of

⁵⁴⁵ Ibid., Annex 3, pp. 5-9.

⁵⁴⁶ ICCT FF report, pp. 50-51, Annex 3, pp. 4-5.

⁵⁴⁷ Ibid., pp. 9-11.

⁵⁴⁸ Ibid., pp. 10-11

the risk of becoming an easy transit country for returning FTFs. Yet, no specific security measures have been adopted to stem the flow of FTFs traveling to and from Syria/Iraq.

- **France:** France has recently suffered multiple serious terrorist attacks, and as a result of the continued threat has declared a state of emergency. Since 2012, France adopted numerous counter-terrorism measures and policies, including a National Action Plan against Violent Radicalisation and Jihadi Networks in 2014, updated in 2016 by an Action Plan against Radicalisation and Terrorism.⁵⁴⁹ France, like Belgium, belongs to the EU Member States with the highest absolute numbers of FTFs, and ranks number five in the list of countries with the highest per capita number of FTFs.⁵⁵⁰ Moreover, the authorities estimate that approximately 2,000 French nationals or residents are radicalised or involved in jihadist networks.⁵⁵¹
- **Germany:** in terms of absolute numbers of FTFs, Germany ranks second among the EU Member States.⁵⁵² A number of failed, foiled and succeeded terrorist attacks have taken place in Germany.⁵⁵³ Germany has adopted a comprehensive counter-terrorism strategy, which includes security, legislative and preventive measures.⁵⁵⁴ As part of the preventive measures, Germany adopted, in 2014, a Framework on Prevention Regarding Salafism. Several of the federal states of Germany, moreover, have developed rehabilitation programmes for returnees, and de-radicalisation programmes in prisons.⁵⁵⁵
- **The Netherlands:** the Netherlands belong to the intermediate category when it comes to numbers of FTFs.⁵⁵⁶ Although the Netherlands has not recently suffered any terrorist attacks, the threat level is kept on level four, out of a five-level scale, and considered to be "substantial".⁵⁵⁷ A new counter-terrorism strategy has been adopted in 2016, which replaces the comprehensive strategy of 2011. The strategy comprises of five strands, namely, Procure, Prevent, Protect, Prepare, and Prosecute.
- **Slovakia:** Slovakia belongs to the category of countries with hardly any FTFs.⁵⁵⁸ The country's threat assessment has been raised in the aftermath of the Paris attack, mainly due to the lack of confidence in the Schengen border control system.⁵⁵⁹ In 2015, Slovakia adopted a National Action Plan on Combating Terrorism and a Strategy on Countering Extremism (both documents are only available online in the Slovak language).⁵⁶⁰ With respect to arms control and measures against arms trafficking, there is some controversy regarding the interpretation of Slovakia of EU regulations, which allegedly explains the many linkages of arms trafficking routes also used by terrorist networks to Slovakia. Slovakia, together with France and Germany (the Netherlands will also join) is involved a big research project to analyse these trafficking and trade practices.⁵⁶¹

⁵⁴⁹ Plan d'action contre la radicalisation et le terrorisme (9 May 2016) <http://www.gouvernement.fr/partage/7050-plan-d-action-contre-la-radicalisation-et-le-terrorisme>.

⁵⁵⁰ ICCT FF Report, pp. 50-51, Annex 3, pp. 21-22.

⁵⁵¹ ICCT FF Report, Annex 3, pp. 21-22.

⁵⁵² ICCT FF Report, pp. 50-51.

⁵⁵³ ICCT FF Report, Annex 3, pp. 26-27.

⁵⁵⁴ Ibid., p. 27.

⁵⁵⁵ Ibid., p. 28.

⁵⁵⁶ Ibid., pp. 50-51.

⁵⁵⁷ Ibid., Annex 3, pp. 36-37.

⁵⁵⁸ Ibid., pp. 50-51.

⁵⁵⁹ Ibid., Annex III, p. 42.

⁵⁶⁰ Ibid., p. 43.

⁵⁶¹ Candea, Stefan, Dahlkamp, Jurgen, Schmitt, Jorg, Ulrich, Andreas and Wiedmann-Schmidt, Wolf, 'Following the path of the Paris terror weapons', *Der Spiegel*, 24 March 2016.

- **Spain:** Spain falls in the category with (relatively) very low numbers of FTFs.⁵⁶² Spanish analysts have pointed to the mostly first generation immigrant population to explain the difference in radicalisation numbers compared to Northern European countries, which hold a larger population of second and third generation immigrants. Nevertheless, Spain keeps its threat level on four ("high") on a scale of five.⁵⁶³ In 2012, Spain adopted a comprehensive counter-terrorism strategy. In 2015, a new Strategic National Action Plan against Violent Radicalisation was adopted as part of the comprehensive counter-terrorism strategy.⁵⁶⁴

Methodology for the mapping of measures

Orientation

The mapping of measures is based on the 2013 study by Hayes and Jones. This study has inventoried the following types of measures: Action plans and strategy documents, Regulations, Directives, Framework Decisions, Decisions, Joint Actions, Common Positions, Recommendations, Resolutions, Conclusions, and International agreements.⁵⁶⁵ In the mapping of the current study, the research team has tried to be exhaustive in terms of including the hard law measures as possible, although it cannot be ensured that all measures are present. Although the research team has aimed to be as complete as possible, it cannot ensure that all measures adopted in the EU context relating to counter-terrorism have been covered.

Inclusion and exclusion

On the basis of the decision to inventory only hard law, this annex contains only the following types of measures: Framework Decisions, Decisions, Directives, Regulations, and International agreements. As part of a particular measure, the study by Hayes and Jones only includes several other types of supplementary documents. Associated documents such as Commission proposals and staff working documents, implementation reports, reports on transposition, European Parliament reports and studies, evaluations, and impact assessments have not been included since they are not hard law.

The following supplementary documents have been included, the criterion being their hard law character: Council Decisions, Commission Regulations, implementing measures, corrigenda, and measures that have been recast. Amendments to the measures are included with two exceptions. First, Regulation (EC) No 1406/2002 (establishing Maritime Safety Agency) has been omitted because it did not bear any direct connection to counter-terrorism at the time. Second, Regulations 2580/2001 (EC), 881/2002 (EC), and 2016/1686 (EU) concern asset freezing and the first two have been updated many times since their adoption and mostly concern the addition or removal of individuals or groups to/from the list. As a result, only the initial measures have been included – with the exception of Regulation (EU) No 1286/2009 amending Regulation 881/2002 (EC) which introduced a review procedure for the de/listing following the influential ECJ decision in the Kadi case.

Extension beyond 2013

⁵⁶² ICCT FF Report, pp. 50-51.

⁵⁶³ Ibid., Annex III, pp. 44-45.

⁵⁶⁴ Ibid., pp. 45-46.

⁵⁶⁵ Hayes, B. and Jones, C., "Report on how the EU assesses the impact, legitimacy and effectiveness of its counterterrorism laws", *Statewatch* (2013).

The Hayes and Jones study runs until 2013 and includes proposed measures as well. The state of these proposals has been checked and they have been included according to their status at the time of writing in January 2017.

In order to map the counter-terrorism agenda beyond 2013, the study has drawn on several documents. These are reports by the EU CTC and Council Conclusions.⁵⁶⁶

⁵⁶⁶ For reports by the EU Counter-Terrorism Coordinator and the Council, see 15799/14; 6891/15; 9418/1/15 REV1; 9422/1/15; 12318/15; 12551/15; 14734/15; 6785/16; 8128/16; For the Council Conclusions, see the Riga Joint Statement of January 2015 at: https://eu2015.lv/images/Kalendars/IeM/2015_01_29_joint_statement_JHA.pdf, 6048/15, 14406/15.

ANNEX IV: INTERVIEWS AND POLICY LAB WORKSHOP

Experts interviewed for this report

Interviews with, and the consultation of experts from EU and Member State-level organisations represent an important part of this research. In total, the research team has conducted 27 (telephone) interviews with 32 representatives/experts of EU-level and Member State-level organisations. In addition, the team has organised a workshop in which a total of 12 international experts have taken part, and shared their views on the EU counter-terrorism policy architecture with the research team (see Annex III and V for more information about the workshop). Taking into account the fact that two of the experts that attended the workshop have also provided the research team with an interview, the total number of individuals that have been consulted for the purpose of this research amounts to 42.

At the EU level, the research team has interviewed representatives from the EU Counter-Terrorism Coordinator's office, Europol, Eurojust, the European Commission, and Frontex. It has also interviewed scholars of the EUI and SciencePo, and a representative of the human rights organisation Amnesty International. At Member State level, it has conducted interviews with representatives of organisations from the Netherlands, Belgium, Germany, Slovakia and Bulgaria. These experts include public prosecutors and staff from other governmental institutions that deal with counter-terrorism.

The experts that have attended the workshop include counter-terrorism experts from the EU Counter-Terrorism Coordinator's office, the Permanent Representation of Estonia at the EU, the Radicalisation Awareness Network, and academic institutions from France, the Netherlands, Norway and the United Kingdom. The list of interviewees is included below and the participants list can be found in Annex E.

Although the research team managed to interview/consult 42 experts on the subject of this evaluative study, the process of arranging these interviews has turned out to be lengthy and – admittedly – quite discouraging. Especially when it came to experts within the Member States of the focus countries- other than the Netherlands – it proved difficult, in times even impossible to arrange for interviews with staff from police, security services or counter-terrorism policy bodies. As a result, and despite numerous attempts, no interviews were conducted with French and Spanish experts. In addition, in the other Member States only some of the organisations that have been contacted have granted the research team their cooperation.

In order to provide an impression of the efforts that has been put into this part of the research, as compared to the output, some numbers are presented. When it comes to the interviews that have indeed been arranged, a total of 355 e-mails have been exchanged between the team and the interviewees, which is an average of 13 e-mails per arranged interview. With regards to the interviews that the research team has not been able to realise, it has reached out (directly and indirectly) to 46 organisations at Member State level, amounting to approximately 75 outgoing e-mails and 55 outgoing calls to the targeted organisations and the research team's network. The research team only received replies from 17 organisations and contacts within the team's network. These replies have not led to any interviews.

What is interesting is that some organisations, even after sending formal letters at their request, still refused to grant the research team an interview. Other organisations insisted on a face-to-face-interview in their national language, which was unfortunately not possible within the constraints of the assignment. Although it was not made explicit, the research team got the impression that (1) many of the organisations and individuals contacted were already overcharged with requests for interviews and (2) there was some reluctance since the study was introduced as an evaluation. These concerns were also mentioned in the interviews with practitioners that did take place, and thus might have caused the general reluctance to cooperate as observed by the research team. The table below includes the names and organisations of the experts interviewed.

Table 7: Experts interviewed for this study

Interviews conducted		
EU-level organisations		
Organisation	Representative	Date
EU Counterterrorism Coordinator	Mr. Gilles de Kerchove	19-10-2016
Europol	Mr. Peter Kusters and Mr. Manual Navarrete	19-10-2016
Eurojust	Ms. Michele Coninx	20-10-2016
European Commission - DG Home	Ms. Alexandra Antoniadis and Mr. Hans Das	28-10-2016
Frontex	Mr. Jean-Pierre Berens	15-11-2016
Human Rights Organisations		
Organisation	Representative	Date
Amnesty International	Ms. Doutje Lettinga	7-10-2016
Member state level organizations / experts		
Netherlands		
Organisation	Representative	Date
Ministry of Finance	Mr. J.C. Glimmerveen	26-10-2016
National Public Prosecutor's Office	Mr. Simon Minks	1-11-2016
Openbaar Ministerie (Public prosecution service)	Mr. Bart den Hartigh	10-11-2016
AIVD	Mr. Rob Bertholee	20-10-2016
NCTV	Mr. Lodder and Mr. H.P. Schreinemacher	4-11-2016
Radicalisation Awareness Network (RAN)	Ms. Marije Meines	24-11-2016
The Dutch National Bank (DNB)	Mr. R.J. Hoff	16-11-2016
Germany		
Organisation	Representative	Date
GBA Generalbundesanwalt (Federal Public Prosecutor General)	Mr. Lars Otte	28-10-2016
Higher Regional Court Bayern (OLG)	Mr. Manfred Dauster	11-10-2016
Bundeskriminalamt (BKA)		28-11-2016
Belgium		
Organisation	Representative	Date
Openbaar Ministerie (Public prosecution service)	Ms. Wenke Roggen Mr. Jan Kerkhoffs	6-12-2016
Flemish Peace Institute	Mr. Nils Duquet	7-11-2016
FOD Binnenlandse Zaken	Mr. Waut Es	16-12-2016
Ufungu (RAN)	Mr. Christophe Bush	16-12-2016
CTIF	Mr. Hans van Hemelrijck	16-12-2016
Bulgaria		
Organisation	Representative	Date
Center for the Study of Democracy	Ms. Rositsa Dzhekova	12-10-2016
Deputy Minister of the Interior	Mr. Philip Gounev	23-12-2016
Slovakia		
Organisation	Representative	Date
Globsec (Thinktank)	Mr. Daniel Milo	17-10-2016
Public Prosecutor's office	Dr. Juraj Novocky	7-12-2016
Other Experts		
Organisation	Representative	Date
EUI	Mr. Martin Scheinin Dean of EUI, Professor of International Law and Human Rights	14-10-2016
SciencesPo Paris	Dr. Mara Wesseling	5-9-2016

Policy Lab workshop

The following pages contain the results of the policy lab workshop, which took place on 9 November 2016 in The Hague, the Netherlands. The results as communicated to the participants have been included in the original format.

Location

*Leiden University
Schouwburgstraat 2
2511 VA The Hague
The Netherlands*

Participants:

- Prof. Tore Bjørgo Center for Research on Extremism (C-REX) - University of Oslo
- Dr. Oldřich Bureš Dep. of International Relations and European Studies - Metropolitan University Prague
- Prof. dr. Monica den Boer Dep. of Political Science and Public Administration - Vrije Universiteit (VU)
- Anonymous Independent researcher/consultant
- Mr. Guenther Sablatting EU Counter-Terrorism Coordinator's office - European Council
- Mr. Tom Keatinge Centre for Financial Crime & Security Studies (CFCS) - RUSI
- Ms. Lia van Broekhoven Human Security Collective
- Dr. Mara Wesseling Centre de Sociologie des Organisations - SciencesPo Paris
- Prof. dr. Marieke de Goede Department of Politics - University of Amsterdam
- Ms. Marije Meines RadarAdvies - Radicalisation Awareness Network (RAN)
- Ms. Annika Talmar Permanent Representation of Estonia to the EU
- Ms. Willemijn Aerdt Institute of Security and Global Affairs - Leiden University
- Dr. Bibi van Ginkel ICCT & Clingendael
- Mr. Stef Wittendorp ICCT & Leiden University
- Dr. Christophe Paulussen ICCT & Asser Institute
- Mr. Wim Wensink PwC Advisory
- Ms. Roos Haasnoot PwC Advisory
- Mr. Thomas Rijken ICCT & Clingendael

Summary of the round-table discussion

Facilitator: Dr. Bibi van Ginkel, ICCT & Clingendael

Pre-set discussion topics

- Can we speak of an EU policy architecture on countering terrorism?
- How do you assess the current EU counter-terrorism policy architecture?
- What are the strengths and deficiencies of the current EU counter-terrorism policy architecture?

- Which specific areas need improvement?
- How do you assess the policy cycle dynamic (problem assessment, needs assessment, policy design, policy implementation, impact assessment, monitoring & evaluation, adjustment of policy)?
- What (out-of-the-box) suggestions can be made to change and improve the current mechanisms?

Overall summary of points discussed during the round table discussion with regards to the EU counter-terrorism policy architecture

During the round table discussion, experts especially pointed out the challenges that rise because of the many actors involved in the design and implementation of policies and measures. They recommended that an evaluation of the policy architecture should therefore first of all focus on an analysis of the role of the various actors in this architecture. Furthermore, they emphasized there is a distinction between measuring effect and effectiveness, and that it might be debated which one should be evaluated. Overall, they lamented the lack of clear frameworks for impact assessments and policy evaluations on the EU level.

General topics that have been discussed in relation to the EU counter-terrorism policy architecture

- Coherence;
- Competencies and role of the EU;
 - *Mandate;*
 - *Legitimacy, actor vs actorness;*
 - *International vs. local perspective;*
- Impact and Effectiveness;
 - *Formal effectiveness vs. material effectiveness;*
 - *Scope of EU counter-terrorism policy;*
 - *Cooperation.*
- Future of EU counter-terrorism policy

Summary of the main points discussed

Can we speak of an EU counter-terrorism policy architecture?

- Counter-terrorism is a '*dribbling area*'. Counter-terrorism becomes the umbrella under which many other initiatives are pushed through
- The term "*architecture*" is not defined. Is it about coherence, competencies, implementation, and effectiveness?
- There are *too many counter-terrorism actors*. There is no clarity as to who is in charge of what. The mandates of the different actors should be better defined (looking at the problem from a multi-level governance perspective).

- Is the *interaction* between the different actors streamlined? Are there any rules on the distribution of power? Think of interaction between the CTC and Mogherini, the difference between formal and informal power/arrangements.
- In the end the EU and EU counter-terrorism actors have very limited power; power lies with EU Member States. This is the central problem of EU-level counter-terrorism policies; there is an implementation issue.
- The EU seems to fail when it comes to impact, legitimacy and effectiveness.

How can we measure the impact the EU counter-terrorism policy architecture? It is clear that in any case a distinction should be made between measuring 'effect' and 'effectiveness'?

Does the EU counter-terrorism policy actually counter terrorism? Does it do what it promises to do?

- There isn't a clear formalised framework that automatically will evaluate policies. Let alone an external actor to perform that job.
- Currently it seems the EU is doing this job occasionally, and –if so- only partially, not using a set frame of factors to be evaluated. This means that on the occasion evaluations have been run, they have been criticized for not looking at for instance aspect of human rights compliance.
- Think e.g. of the PNR, privacy issues etc. Also the EU Directive. This is where LIBE can make the difference. The idea of the UK Independent Reviewer is also an interesting one. Perhaps the CTC could follow the example of this model.
- Ultimately, the biggest problem is the lack of proper threat assessment prior to EU counter-terrorism policy design. It is purely reactive.
- In assessments of EU counter-terrorism architecture, the *private sector* is often the missing link. Cf. the field of financing (banks etc.).
- There is a difference between effectiveness and effects. That the EU has impact does not mean it is effective. There have been evaluations of certain measures and effects but not on the effectiveness of certain policies. Does it actually work?
- A policy architecture is something that comes together as a house. What is done in counter-terrorism at the EU level does not seem to come together in such a way; there are bits and pieces here and there but there is no coherence.
- We currently only have a roof and a few building blocks. A proper plan or foundation for that matter, seems to be missing.
- One should start with the *foundations*. On the other hand, it was also stated that the EU cannot build this house, as this is the prerogative of the Member States.
- This is *frustrating* for the EU, which may explain the plethora of different plans it has initiated. So you either change the treaties, or you stick with what you have, with the possible death of Schengen as a result.
- Terrorism is an area where *states* can show their power to act. Policy makers have been speaking about terrorism for fifteen years, telling citizens that many problems are caused by terrorists.

Is it feasible to aim for an architecture? Or should the role of the EU be different?

- So far, the policies seem to have been driven mainly as a *reaction* to terrorist events. This does not contribute to the development of a long-term strategy. Also, the fact that every six months there is a *new EU Presidency* does not help: every country has its own policy priorities so there is short-term thinking.
- There is a lack of public trust: People do not feel represented by the EU. There is not enough common ground within societies for EU counter-terrorism. First, the gap between regions on visions of counter-terrorism policy should be bridged, before it will be possible to consider a reshuffle of mandates between the EU and Member States with regard to dealing with the problem of terrorism and radicalisation to violent extremism.
- The EU is well positioned to play a role in facilitating a system of information sharing, but for that to work to its full potential, Member States should also trust each other, as well as trust the EU.

What is terrorism? What is EU counter-terrorism policy?

- The *effectiveness* and *effects* of the policy or measure are not always in line with the original objective of the policy or measure. There is a risk of 'mission creep'. In addition, the policy objective is not always very well-articulated when a policy/measure is adopted, making it impossible to measure its effectiveness (with regard to its objective), and only making it possible to assess certain effects.
- The *evolution* of counter-terrorism policy: The *net* of counter-terrorism has become wider over the years since 9/11. The EU started with a common definition of counterterrorism and criminal laws to pursue terrorists; then they went after supporters of terrorism, financing, ideologies. This raises the question on whether it has become *too big to succeed*.
- There is a huge *growth area* of measures that are to some extent connected to, but not limited to, terrorism, such as the criminalization of suspect travel.
- The EU moves away further from the criminal act towards the '*pre-crime space*'. More and more people fall within the net of counter-terrorism. The experts do not consider this development beneficial for the overall effectiveness of counter-terrorism policies. The question put to the table is: *how do we narrow the net?*
- The EU is moving further away from the 'core' of counter-terrorism, i.e. the security services. Instead of gathering more data, we should focus on enhancing data *exchange*.
- On many recent occasions, it appeared that perpetrators of recent terrorist attacks were known to *security services*. So instead of doing more big data analyses to identify unknown terrorists, something is going wrong with the core of data exchange within countries and between countries. There is a lack of *security service cooperation*.
- An issue that has been missing in many discussion is the *root causes of terrorism*. There is still a lack of understanding of what motivates people. There are many theories, but much more attention should be paid to this issue.

Currently there only seems to be counter-terrorism oversight on a national level. There is a lot of incrementalism in counter-terrorism policies, but oversight falls short of dealing with these new policies. Should there be an EU oversight body?

- Adding up all the legislation on counter-terrorism over time, we see a huge *infringement of privacy* and potential for harming human rights, justifying EU oversight.

Future of EU counter-terrorism policy?

- The EU does not have the *power* to draw a 'model house'.
- We need a new *language*; we need architects, builders and visionaries.

What is still missing?

- We seem to be looking for the *unknown*, but we already know so much.
- *Cooperation* between security services/data exchange is key.
- MS *unwillingness vs inability* to implement measures.

Summary of the Brain-writing exercise

Facilitator: Dr. Bibi van Ginkel, ICCT

As a second part of the policy lab workshop, a brain-writing exercise was held, with specific focus on financing of terrorism. Groups of 6 participants were invited to write down three ideas in 5 minutes, then pass this form to a group member and reflect on/ add to the three ideas of another group member.

During this exercise approximately 120 ideas and thoughts were shared among the experts on the general question: *How to improve (real) effectiveness and stay ahead of the curve in countering the financing of terrorism?* These ideas were scored by the experts and this resulted in a top 5 of ideas and suggestions on *How to improve (real) effectiveness and stay ahead of the curve in countering the financing of terrorism?*

Top 5 ideas/suggestions:

Idea	Number of votes
1. What is the objective of the measures?	12
2. Be clear on the underlying assumptions	9
3. Oversight	8
4. Take into account crime-terror nexus	8
5. Sharing good practises > increase among MS and within	4

In this Annex, all forms from all groups are included, so over 100 raw ideas and reflections of all experts are made available.

Form 1:

<p>Idea: Address the profit vs. security dilemma (bank's over-reporting and de-risking) + feedback to private sector (fusion centres?)</p>	<p>Idea: Adjust the global UN "smart sanctions" and FATF anti-money laundering models to EU circumstances (how terrorism is financed in the EU)</p>	<p>Idea: Acknowledge /Address the impact/assessment issue: - 100% prevention impossible; - impact on well-being of certain groups in EU and beyond; - possible push to informal banking problematic.</p>
<p>Yes, but engage at the policy level sectors that are affected, in particular non-profits that are the only sector that are "at risk" as a sector of being abused for TF</p>	<p>The EU tries hard to be the best student of the FATF so indeed the EU should be based on their more autonomous "sanctions", e.g. terrorist list > remedies to get off the list etc.</p>	<p>Good point: there is no zero risk. This is acknowledged in the typology papers of the FATF which is not part of "the core of their standard". Ensure that zero risk becomes part of the standard, its preamble a free FATF evaluation methodology outcome</p>
	<p>Let alone that people end up at the "lists" with no apparent reason</p>	<p>Very good point + turn it around. Would there not be any attacks if there was no large amount of money. Focus on low budget terrorism.</p>
	<p>I always opt for more security. So if you get on one of these lists, you probably did something wrong. You can always get off the list.</p>	

Form 2:

<p>Idea: Systematic evaluations of the impact (including negative side effects) and effectiveness of CT policies</p>		
<p>Critical assessment of underlying assumptions on which policies are based.</p>		

Form 3:

Idea: Improve police and customs cooperation. Information exchange needs to improve in a lot of areas connected to terrorism financing.	Idea: Illegal firearms trafficking as a major impact to terrorism financing needs to be taken under control	Idea: Zero tolerance towards drugs trafficking as a means for terrorist financing
Agree	Agree, illegal firearms trafficking is probably more directly related to preparing terrorist attacks than moving money across borders	Most terrorist attacks seem to be funded by petty crime rather than by large-scale donations
Targeted (not dragnet) exchange of police data on actual suspects is needed	Agree – shift focus to weapons trafficking	It is not clear from research that drugs trafficking and terrorist financing are linked on a meaningful scale
Agree, too many databases are not interoperable and not all actors have access. But also keep in mind private sector!	Not sure how close are links between firearms trafficking and terrorist financing, but the former deserves attention on its own merits.	Crime-terror nexus exists but differs from one terrorist cell to another. Many have been abusing legal banking as well.
Oversight is required of private sector that provides commercial data from open source to banks, government, NGO's, that have to do "due diligence" on their clients & partners		

Form 4:

Idea: Review effectiveness of international CTFS standards (FATF & EU following FATF (does it work?)) & UNSCR, e.g. /373, /276, etc.	Idea: Assess effectiveness of CTF standards by an independent body comprising public and private representations	Idea: Improve current CFT measures, implement actions through focusing on risk based assessment (proportionate, context-specific measures)
Look into info sharing & expertise sharing before reviewing effectiveness (you'll need that first)	No more independent EU bodies. Fund research of uni's	Risk based assessment will make sure focus & means is invested where it is needed! It will get support/can be explained.
Probably not a bad idea [Review effectiveness of international CTFS standards]. Might be almost impossible to do, but in the end might give good results.	Thumbs up for this [No more independent EU bodies. Fund research of uni's]	Hmm...but how?
Critical evaluation of underlying assumptions and outcomes (desired as well as undesired) are needed	Agree that independent research is needed, not another independent body	

Form 5:

Idea: Independent monitor of CTF in EU to assess effectiveness, consequences	Idea: Central reporting function for CTF-related negative disrupting (ep. for NGO's for monitoring purpose remittances)	Idea: Propose definition of "suspicion" for reporting financial transactions. > Genuine suspicion, evidenced suspicion
<p>Great idea – maybe also give fundamental rights agency a mandate to address C-T!</p>	<p>Great idea - should be linked to financial inclusion agenda and national financial ombudsperson office</p>	<p>But sanctions for banks mean that they will also take the most suspicious, risk averse approach. – So how? Raise threshold?</p>
<p>Make difference between effect and impact (goals or measures) > Oversight, not only monitor</p>		<p>- Starting point should be to be pro-active and try to think like your adversary (what will they do next to reach goals) - should be starting point for discussion</p>
<p>Effectiveness of implementation is one side of the coin: what about legitimacy? I endorse the suggestion to expand FRA's mandate, but also ombudsman, EP, etc.</p>	<p>Financial ombudsman: did we have one at EU level? (and should we have one?)</p>	<p>Currently very low levels of suspicion apply already due to AML directive and FATF-recommendations</p>
<p>Monitoring sounds again like producing paper - if monitoring then it needs to lead to change</p>	<p>See <</p>	<p>Yes</p>

Form 6:

Idea: Clarify the problem. - terrorist masterminds funding: actions in EU member states? Evidence? - people in EU funding terrorism abroad? Evidence? Significance?	Idea: Acknowledge the impacts - mass surveillance - de-risking (bank account closure, etc.) - discrimination (certain groups /sectors / countries affected)	Idea: Provide redress / accountability - lots of people unjustifiably impacted but no possibility for them to receive help/advice/assistance
<p>Be pro-active and think from your adversaries perspective > How will they fund in the future? > How will they counter certain measures?</p>	<p>> says something about trust in institutions > don't be afraid of specific groups/reactions/etc. > but make sure not to ignore them > public communication on measures</p>	<p>- Be as open as you can be (why do you take certain measures), still acknowledge some secrecy > and again communication on measures + stakeholder debate (more broadly than usual)</p>
<p>The problem is that the EU apparently means to define a common enemy / adversary to articulate its own identity: be mindful of language</p>	<p>Very concerned about the impact of surveillance (data-mining) technology which is introduced into every segment of our lives under the banner of CT</p>	<p>Judicial redress: yes!</p>

Do we really want to criminalise remittances to developing states?	Mass surveillance is a reality, needs (and has!) control > What we need, is tolerance towards things that are surveyed.	No
Indeed we have to be aware that the cure can be worse than the pain. Not to underestimate terrorist financing, but impact goes beyond the "bad guys"	Yes	Yes

Form 7:

Idea: Stop being reactive, and really put yourselves into the minds of your adversaries	Idea: Think of a way to stay ahead of the development of the "merging"/collaboration of organised crime / terrorists	Idea: Adequate oversight mechanisms
Shared ownership! (= my translation). The EU is mismanaged, hence we should find a way to involve professionals, citizens and companies	Agree, but with all the proactively oriented EU-instruments like PNR, we are already anticipating (in)security	Absolutely agree However: at what level (national, EU?), with what mandate (sanctions?) and with whom? (European Parliament?)
Today, politics is governed by fear, therefore visionaries are rather unlikely: proactive approaches are an ideal scenario but unrealistic	See < Generally, I agree	Oversight yes but it should also have the actual power to influence change
Yes. Considering terrorism as being produced by society rather than a threat infringed upon society	See <	Yes, oversight with power
	OC / TF connection is under-recognised; distinction may have been correct but is now false & dangerously naive, ct. trade in illicit firearms	Again: need independent reviewer as in UK

Form 8:

Idea: Increase effectiveness - first evaluate current impact and limitations	Idea: To stay ahead of curve: take into account root causes to address the issue of lone wolves	Idea: Take into account qualitative analysis to measure effectiveness
- This argues for an independent EU reviewer (UK example); we need to understand effectiveness of status quo before making changes (e.g. why were limits on pre-paid cards reduced?)	- Finance + lone wolves is challenge - we need to learn from new financing sources: benefits, payday loans? Should these be brought into CTF architecture?	- Repeat idea 1 - Big issue: does CTF actually work? - should focus be on using financial info to identify terrorists rather than trying to stop TF?

Agree with this. We need to understand impact as well (i.e. negative impacts – de-risking etc.) + how to measure effectiveness of suspicious transactions, accounts closed, etc. tells us nothing	Understand threat, it is impossible to mitigate all risks and maintain open societies + fundamental rights	Agree with above – How does qualitative analysis help? – Of what, by whom etc.?
	- Be proactive > try to think from your adversaries point of view > what will be next to reach their goals	Helps to be more inclusive and not to take into account only quantitative point of view Will help you to prevent classic analysis pitfalls
Where is the impact (assessment) of EMPACT? We need to look at what we have before starting a new mechanism or policy circle If it aren't broke; don't fix it!	Root causes are an emphasis on engagement, diplomacy, capacity building. Radicalisation happens rapidly.	

Form 9:

Idea: Low budget terrorism is the future > Focus on root causes & mini financing of crime	Idea: Each member state sends 2-3 financial terrorist experts to Brussels for 2 days a week, to let them solve the issue by drafting sound advice & sharing expertise	Idea: Right wing terrorism financing has more "history", conduct research to boil down towards key ways of financing > use this to look at financing jihadist acts
Probably quite difficult to do. But in the case of low budget terrorism, finding the root causes is maybe the only way to go + criminal records information exchange	Good idea to get a working group going. Probably already done in some format	Interesting
Most European terrorists are not dirt poor but clearly socioeconomically relatively marginalised. High proportion have a criminal record. General policies to reduce marginalisation may have an impact but only in a very long term.	Do financial experts have the expertise on how terrorist projects are really financed? They are likely to recommend financial measures that do not fit reality.	Most right-wing violence does not need any financing beyond the cost of buying a bottle and fill it with petrol. Even the large scale attacks in Norway in 2011 were funded by selling fake university diplomas.
Focusing on ever smaller amounts require ever more detailed attention to financial transactions. Are we prepared to go this far?	Who would these be? Police, intel, finance ministry, national FCU or private sector?	We know that jihadist financing also needs very little in terms of budgets

<p>Structural costs of running a terrorist group are still substantial, despite low cost of individual attacks.</p>		<ul style="list-style-type: none"> - Listing / delisting - Impact assessments - Banks: over reporting, de-risking - Targeted police / customs data change - Support for EU doings? What & Why should be done by EU?
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Form 10:

<p>Idea: Fully recognise the Kadi direction + fundamentally reform and scale back blacklisting</p>	<p>Idea: Recognise and deal with the major policy clash at the core of CTF and take responsibility for financial inclusion</p>	<p>Idea: Evaluate 4th Directive on effects and effectiveness before discussion of 5th direction</p>
<p>In addition, some issues with the OPMI case impact > both EU and UN sanctions listing procedures (Impact of September 2016 changes?)</p>	<p>Indeed, private sector shares the bulk of burden in CTF and their current practices are problematic = profit vs. security dilemma</p>	<p>Where is the focus? And does it really prevent new attacks, or disrupt existing networks, or is the move just a deterrence function? But using what criteria? > Account of frozen \$? > Account of reported suspicious transactions? > People arrested?</p>
<p>Yes > and revive the effectiveness of the UN ombudspersons for UN sanctions related to 1276 (blacklists)</p>	<p>Indeed > EU should address the de-risking "hot potato" > the bulk of burden is with the private sector, including non-profits and civil society, leading to humanitarian disasters, financial exclusion of poor ... & countries.</p>	<p>Focus is important, but also evaluate the incoherent, fast-forward process whereby more and new measures (unthoughtful) are being suggested without evidence-base</p>
<p>If blacklisting, be more transparent. Why/How people and organisations end up on it. Scale down the reasons to be on the list.</p>	<p>Ask private sector first what they think their added value could be in CT (and financing it) Ask again</p>	<p>Not only look at focus but also towards what goal you are working with 4th and 5th directive with what means (balance?)</p>
	<p>Good idea. The private sector needs to take responsibility.</p>	

Form 11:

Idea: Systematic evaluations of this impact (including negative side effects) and effectiveness (desired outcomes) of CT policies.	Idea: Critical assessment of underlying assumptions on which policies are based (e.g. terrorist financing)	Idea: Develop policies on how to deal with disillusioned, returning Foreign Fighters. Prosecution or rehabilitation?
Excellent idea – impact should be broadly defined to involve civil liberties + human rights effects	Excellent idea – is EU CFT fighting the “last battle” in the face of a changing threat? Is it possible at all to fight terrorism through banks when all attackers need is a small line of credit	Broader questions concerning Foreign Fighters can be reviewed + critical study of how we deal with the broader Syria issue if necessary
Agree, but what criteria are we going to use to ensure impact? Number of prevented attacks? Number of suspicious transactions? And measuring impact in civil liberties?	Indeed > shifts in terrorist financing, move to various informal banking methods > adjust to EU circumstances!	Larger issue > of who is a foreign fighter and thus subject to CTF (and other CT measures)?
Good point: assemble a group of M&E specialists that think differently to provide advice on which criteria & what to measure? Acknowledge there is no zero risk.	De-risking by banks has reached boiling point. The WTO and ACAMS are organising roundtables to arrive at possible solutions Is the EU (and who) part of this process?	Approach could be FTF & his/her immediate context, so prevention & risk assessment Be careful not to affect financial context of FTF family
Great! Look into goal (the why) + the means and their side effects		

Summary of the points put forward during the brain-writing exercise

	Topics	Number of Votes
1	Oversight	8
	<i>Fundamental Rights Agency? (mandate)</i>	
	<i>EP?</i>	
	<i>independent review > power to improve = important</i>	
	<i>listing & delisting procedures</i>	
	<i>“do not blindly follow UN NATO directives”</i>	
2	Take into account crime-terror nexus	8
	<i>overlap, take into account design policies</i>	
	<i>firearms directive</i>	
	<i>improve data exchange & align databases interoperability</i>	
	<i>connect the dot</i>	
3	Sharing good practises > increase among MS and within	4
	<i>reverse of policy uptake</i>	
4	“Hot potato”	1
	<i>who is responsible of de-risking financial institutions? EU?</i>	
	<i>fall out of de-risking?</i>	

5	Cooperation 3rd countries, Middle East	3
	<i>encourage them to get their house in order</i>	
	<i>as a block we do not know what money is coming into the EU</i>	
	<i>lack willingness</i>	
6	Be clear on the underlying assumptions	9
	<i>do they reflect reality?</i>	
	<i>evidence-based policies?</i>	
7	Reporting on implementation instead of impact of measure	0
	<i>this should be changed</i>	
8	Returning Foreign Fighters	0
	<i>how to deal with them</i>	
	<i>negative side-effects</i>	
	<i>risk assessments + policies on the table</i>	
9	Define subsidiarity / mandate of EU	0
	<i>what can and should the EU do?</i>	
10	What is the objective of the measures?	12
	<i>strategy and mission</i>	
	<i>what are we trying to achieve with CTF?</i>	

ANNEX V: DATA FOR GRAPHS

In this Annex, we present the data used to compile the graphs in the figures 2, 12 and 13. This data consists of a selection of most impact-full attacks in Europe and of counter terrorism measures, categorised by theme. To develop the graphs and make sure (a) we selected measures of a comparable relevance and (b) this resulted in graphs that are readable and self-explanatory, it was impossible to use all measures as presented in Annex II. The selection of measures is based on professional judgement and contains those measures referred to in the study that can be considered as most important, with the most impact or as exemplary for a specific theme.

Table 8: Data used for compiling graphs

Full name	Short title	Exact date	Type of document	Theme
Commission Recommendation of 12 January 1996 supplementing recommendation 93/216/EEC on the European firearms pass (96/129/EC)	Supplement to EFP Recommendation	12 January 1996	measures	weapons
Commission Recommendation of 25 February 1993 on the European firearms pass	EFP Recommendation	25 February 1996	measures	weapons
EU Programme for preventing and combatting illicit trafficking in conventional arms	Programme against illicit conventional arms trafficking	17 December 1997	measures	weapons
EU Code of Conduct on Arms Export		5 June 1998	ambitions	weapons
Joint Action of 17 December 1998 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP)	Joint Action restricting small arms exports	17 December 1998	ambitions	weapons
EU Convention on Mutual Assistance in Criminal Matters	EU Conv Mut Ass	29 May 2000	International & 3rd country agreement	cooperation
Establishing Eurodac (Regulation 2725/2000)	Eurodac	11 December 2000	measures	data exchange
2001 UN Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, annexed to the Convention against transnational organised crime	UN prot illicit manufacturing/trafficking FA	31 May 2001	International & 3rd country agreement	weapons
Counter Terrorism Group	CTG	1 September 2001	EU bodies/operational platform	cooperation
UN SC res 1373: criminalising financing of terrorism	UNSC Res 1373	28 September 2001	International & 3rd country agreement	financial
Directive 2001/97/EC amending Council Directive 91/308/EEC on preventing of the use of the financial system for the purpose of money laundering	2nd AML	4 December 2001	measures	financial
Council Common Position (2001/931/CFSP) (EU blacklist)	Asset freezing (EU blacklist) - general	27 December 2001	measures	financial
Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism	Reg Asset freezing (EU blacklist) - general	27 December 2001	measures	financial
Eurojust (Council decision 2002/187/JHA)	Eurojust	28 February 2002	EU bodies/operational platform	cooperation

Full name	Short title	Exact date	Type of document	Theme
Communication "Towards integrated management of the external borders"	Integrated management External border	7 May 2002	ambitions	border
South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC)	SEESAC	8 May 2002	International & 3rd country agreement	weapons
Council Common Position (2002/402/CFSP) concerning restrictive measures against Usama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them	CP Asset freezing - specific UBL & AQ	27 May 2002	measures	financial
Regulation (881/2002) imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban	Reg Asset freezing - specific UBL & AQ	27 May 2002	measures	financial
Establishing joint investigation teams (Framework Decision 2002/465/JHA)	JITs	13 June 2002	EU bodies/operational platform	cooperation
Establishing the EAW (Council Framework Decision 2002/584/JHA)	EAW	13 June 2002	measures	cooperation
Council Framework Decision 2002/475/JHA on combatting terrorism, criminalising terrorist offences	FD Combating terrorism 2002	13 June 2002	measures	justice
COUNCIL JOINT ACTION of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP	Council Joint Action restricting small arms exports	12 July 2002	ambitions	weapons
Council decision 2003/659/JHA, amendment concerning budgetary arrangements Eurojust		18 June 2003	EU bodies/operational platform	cooperation
Agreement on extradition between the European Union and the United States of America (2003)	Extradition-US	19 July 2003	International & 3rd country agreement	justice
Agreement on mutual legal assistance between the European Union and the United States of America (2003)	MLA-US	19 July 2003	International & 3rd country agreement	justice
European Security Strategy	ESS	5 December 2003	strategy	general
Agreement between the EU and Iceland and Norway on Mutual Assistance in Criminal Matters (2003)	MLA-Iceland/Norway	19 December 2003	International & 3rd country agreement	justice
Madrid	Madrid	11 March 2004	attack	attack
API-Directive/Council Directive on the obligation of carriers to communicate passenger data (2004/82/EC)	API	29 April 2004	measures	border
Establishing Visa Information System (VIS) (Council Decision 2004/512/EC)	VIS	8 June 2004	measures	border
Implementation report on Council Framework Decision 2002/475/JHA on combating terrorism (COM(2004)409)	Impl monitor-FD Comb Terr	8 June 2004	Monitoring Implementation & Evaluation	general
Frontex (Regulation EC 2007/2004)	Frontex	26 October 2004	EU bodies/operational platform	cooperation
Commission Recommendation of 28 December 2004 complementary to Recommendation 96/129/EC on the European firearms pass	Complementary EFP Recommendation	28 December 2004	measures	weapons
Common Position 2005/69/JHA on increasing sharing of data with SLTD Interpol database		24 January 2005	measures	data exchange

Full name	Short title	Exact date	Type of document	Theme
Council of Europe 2005 Convention on the prevention of terrorism	CoE Conv	16 May 2005	International & 3rd country agreement	justice
London	London	7 July 2005	attack	attack
UNSC Res 1624 (incitement to terrorism)	UNSC Res 1624	14 September 2005	International & 3rd country agreement	justice
3rd AMLD-Directive (2005/60/EC)	3rd AML/CTF	26 October 2005	measures	financial
Regulation on controls of cash entering or leaving the Community (1889/2005)		26 October 2005	measures	financial
EU Action Plan on Combatting Radicalisation and Recruitment to Terrorism 2005	AP Prevention	11 November 2005	action plans/roadmaps	prevention
EU Counter-terrorism Strategy 2005	EU CT Strat	15 November 2005	strategy	general
EU Action Plan on Combatting Terrorism 2005	AP Combatting Terrorism	2 December 2005	action plans/roadmaps	general
Schengen Borders Code (Regulation 562/2006)	SBC	15 March 2006	measures	border
Agreement from 2012 with Canada (OJ 2006 L 82/15) on exchanging PNR data	PNR-Can	22 March 2006	International & 3rd country agreement	border
Regulation on information on the payer accompanying transfers of funds (1781/2006)		15 November 2006	measures	financial
Communication on reinforcing the management of the EU's maritime borders		30 November 2006	ambitions	border
Swedish decision/Framework decision on simplifying the exchange of information and intelligence (2006/960/JHA)	Simplifying Intel exchange	18 December 2006	measures	data exchange
Establishing SIS II, border control cooperation (Regulation 1987/2006)	SIS II - Border control cooperation	20 December 2006	measures	border
Cooperation on vehicle registration (Regulation 1986/2006)		20 December 2006	measures	border
Revised Media Communication Strategy 2007	Rev Media Comm Strat	28 March 2007	strategy	prevention
Council Conclusions on cooperation to combat terrorist use of the Internet, introducing Check-the-Web project		29 May 2007	ambitions	prevention
Establishing SIS II, law enforcement cooperation (Council Decision 2007/533/JHA)	SIS II - Law enforcement	12 June 2007	measures	border
Rapid Border Intervention Teams (Regulation EC 863/2007)	RABBIT	11 July 2007	EU bodies/operational platform	border
Implementation report on Council Framework Decision 2002/475/JHA on combating terrorism (COM(2007) 681)	Impl monitor-FD Comb Terr	6 November 2007	Monitoring Implementation & Evaluation	general
Communication "Preparing the next steps in border management in the European Union"	Next steps border management	13 February 2008	ambitions	border
Action Plan on Enhancing the Security of Explosives	AP Explosives	11 April 2008	action plans/roadmaps	weapons
Directive 2008/51/EC of the European Parliament and the Council of 21 May 2008	(Consolidated) Firearms Directive	21 May 2008	measures	weapons
Council decision on the improvement of cooperation between the special intervention units of the Member States		23 June 2008	EU bodies/operational platform	cooperation

Full name	Short title	Exact date	Type of document	Theme
Implementation of the Prüm Treaty (2008/615/JHA)	Impl Prüm	23 June 2008	measures	general
Council Decision 2008/633/JHA on access VIS for prevention, detection and investigation of terrorist offences and other serious criminal offences	VIS - Law enforcement access	23 June 2008	measures	border
Regulation (EC) No 767/2008 on exchange of data on short-stay visas		9 July 2008	measures	border
Revised EU Strategy for Combatting Radicalisation and Recruitment to Terrorism 2008	Rev Strat on Prev	14 November 2008	strategy	prevention
Council Framework Decision 2008/909/JHA on the mutual recognition of judgments in criminal matters	Mut rec crim mat	27 November 2008	measures	cooperation
Council Framework Decision 2008/919/JHA on combatting terrorism, criminalising additional offences	FD Combating terrorism 2008	28 November 2008	measures	justice
Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment		8 December 2008	ambitions	weapons
Council decision 2009/426/JHA, amendment to enhance operational effectiveness Eurojust		16 December 2008	EU bodies/operational platform	cooperation
Council Framework Decision 2009/315/JHA on organisation and content of the exchange of information from criminal records		26 February 2009	measures	data exchange
Establishing Europol (Council Decision 2009/371/JHA)	Europol	6 April 2009	EU bodies/operational platform	cooperation
Establishing ECRIS (Council Decision 2009/316/JHA)	ECRIS	6 April 2009	measures	cooperation
Opening of Office of the Special Representative of INTERPOL to the European Union (SRIEU)		25 September 2009	measures	cooperation
Joint Action on support for EU activities in order to promote the control of arms exports and the principles and criteria of Common Position 2008/944/CFSP among third countries	Join Action to promote control of arms control exports	12 November 2009	ambitions	weapons
Agreement between the European Union and Japan on mutual legal assistance in criminal matters (2009)	MLA-Japan	30 November 2009	International & 3rd country agreement	justice
Information Management Strategy (IMS)	IMS	30 November 2009	strategy	data exchange
Stockholm Programme, framework for EU action for the period 2010–2014	Stockholm Prog	2 December 2009	action plans/roadmaps	general
EU Internal Security Strategy (ISS) (European Council March 2010)	ISS	25 March 2010	strategy	general
Communication 'The EU Counter-Terrorism Policy: main achievements and future challenges' (COM/2010/0386 final)	Evaluation general CT	20 July 2010	Monitoring Implementation & Evaluation	general
Overview of information management in the area of freedom, security and justice	Impl monitor-data exchange	20 July 2010	Monitoring Implementation & Evaluation	data exchange
EU-US Agreement on the Terrorist Finance Tracking Programme (TFTP)	TFTP-US	27 July 2010	International & 3rd country agreement	financial
Communication "The EU Internal Security Strategy in Action", announcing RAN (COM (2010)673)	RAN	22 November 2010	ambitions	prevention

Full name	Short title	Exact date	Type of document	Theme
EU action plan to strengthen air cargo security	AP border	2 December 2010	action plans/roadmaps	border
Implementation report on Council Framework Decision on the European arrest warrant and the surrender procedures between Member States	Impl monitor-EAW	11 April 2011	Monitoring Implementation & Evaluation	justice
Breivik/Oslo/Utoya	Breivik/Oslo/Utoya	22 July 2011	attack	attack
EU Radicalisation Awareness Network (RAN)	RAN	11 September 2011	measures	prevention
Amendment Frontex Regulation		25 October 2011	EU bodies/operational platform	border
Communication "First Annual Report on the implementation of the EU Internal Security Strategy"	Impl monitor-ISS	25 November 2011	Monitoring Implementation & Evaluation	general
Luik	Luik	13 December 2011	attack	attack
Progress Report on the Implementation of the EU Action Plan on Enhancing the Security of Explosives	Evaluation explosives	1 January 2012	Monitoring Implementation & Evaluation	weapons
FATF recommendations	FATF recom	16 February 2012	International & 3rd country agreement	financial
Toulouse	Toulouse	11 March 2012	attack	attack
Council Regulation to implement Article 10 of the 2001 Firearms Protocol (No 258/2012)		14 March 2012	measures	weapons
Communication on Stronger and Smarter Information Systems for Borders and Security	Improving Info systems	6 April 2012	ambitions	data exchange
Agreement from 2012 with Australia (OJ 2012 L 186/4) on exchanging PNR data	PNR- Aus	14 July 2012	International & 3rd country agreement	border
Agreement from 2012 with the United States (OJ 2012 L 215/5) on exchanging PNR data	PNR-US	11 August 2012	International & 3rd country agreement	border
Communication on implementing European Information Exchange Model (EIXM)	EIXM	7 December 2012	ambitions	data exchange
Council Regulation on the marketing and use of explosives precursors (REP) (98/2013)	Reg on marketing and use explosives	15 January 2013	measures	weapons
Amending Eurodac for law enforcement purposes (Regulation 603/2013)	Eurodac - Law enforcement	26 June 2013	measures	justice
Establishing European Border Surveillance System (Eurosur) (Regulation 1052/2013)	EUROSUR	22 October 2013	measures	border
Implementation report on Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions	Impl monitor Mutual recog judicial decisions	5 February 2014	Monitoring Implementation & Evaluation	justice
Directive 2014/28/EU of the European Parliament and of the Council of 26 February 2014	Directive harmonisation MS laws explosives for civil use	26 February 2014	measures	weapons
External Borders Fund (EBF) (Regulation (EU) No 515/2014)	EBF	16 April 2014	measures	border
Revised EU Strategy for Combatting Radicalisation and Recruitment to Terrorism 2014	Rev Strat on Prev	19 May 2014	strategy	prevention

Full name	Short title	Exact date	Type of document	Theme
Jewish Museum Belgium	Jewish Museum Belgium	24 May 2014	attack	attack
European Commission, Study to Support an Impact Assessment on Options for Combatting Illicit Firearms Trafficking in the European Union		1 July 2014	Monitoring Implementation & Evaluation	weapons
Implementation report on Council Framework Decision 2008/919/JHA on combating terrorism (COM(2014) 554 final)	Impl monitor-FD Comb Terr	5 September 2014	Monitoring Implementation & Evaluation	general
UNSC Res 2178 (FTFs), requiring criminalising the funding of foreign fighters	UNSC Res 2178	24 September 2014	International & 3rd country agreement	financial
Renewed IMS	Ren IMS	18 December 2014	strategy	data exchange
Syria Strategic Communications Advisory Team (SSCAT)		1 January 2015	measures	prevention
Charlie Hebdo	Charlie Hebdo	7 January 2015	attack	attack
Parijs-Coulibaly	Parijs-Coulibaly	8 January 2015	attack	attack
Deloitte report on the implementation of the European Information Exchange Model (EIXM) for strengthening law enforcement cooperation	Impl monitor-EIXM	26 January 2015	Monitoring Implementation & Evaluation	data exchange
Riga joint statement of Ministers of Home Affairs and Justice urging for PNR directive	Urge PNR	29 January 2015	ambitions	border
UNSC Res 2199, urging Member States to call to justice any person who participates in the financing of terrorist acts		12 February 2015	International & 3rd country agreement	financial
Counter-terrorism communication hub on IPCR web platform		1 April 2015	measures	prevention
European Agenda on Security	Agenda on Security	28 April 2015	action plans/roadmaps	general
4th AMLD-Directive (2015/849), replaces 3rd AMLD in 2017	4rd AML/CTF	20 May 2015	measures	financial
Regulation on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 (2015/847)		20 May 2015	measures	financial
EU Internal Security Strategy (ISS) (2015)	Ren ISS	10 June 2015	strategy	general
First set of common risk indicators concerning foreign terrorist fighters	Common risk indicators FF	15 June 2015	measures	general
EU Internet Referral Unit (IRU) at Europol	IRU	1 July 2015	measures	cooperation
Additional Protocol to the 2015 CoE Convention on the prevention of terrorism	Add Prot CoE Conv	22 October 2015	International & 3rd country agreement	justice
Bataclan	Bataclan	13 November 2015	attack	attack
Commission Evaluation of Firearms Directive 2008/51/EC (COM(2015) 751 final)	Evaluation weapons	18 November 2015	Monitoring Implementation & Evaluation	weapons
UNSC Res 2249, urging Member States to prevent and suppress the financing of terrorism		20 November 2015	International & 3rd country agreement	financial

Full name	Short title	Exact date	Type of document	Theme
Payment Services Directive (2015/2366)		25 November 2015	measures	financial
Commission proposal for Directive on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism	Directive Combating terrorism	2 December 2015	measures	justice
RAN Centre of Excellence	RAN CoE	2 December 2015	measures	prevention
EU Internet Forum		3 December 2015	measures	prevention
Communication proposing amendment of Schengen Border Code and the reinforcement of checks against relevant databases at external borders	Amendment Schengen external border check	15 December 2015	ambitions	border
Communication proposing a European travel document for the return of illegally staying third-country nationals		15 December 2015	ambitions	border
Commission Implementing Regulation to establish common guidelines on deactivation standards and techniques		15 December 2015	measures	general
FIU.net, new platform within ECTC for exchanging information on money laundering and terrorist financing	FIU.net	1 January 2016	EU bodies/operational platform	financial
Commission Action Plan to strengthen the fight against terrorist financing	AP CFT	2 February 2016	action plans/roadmaps	financial
EU CTC Report on progress of the measures on counter-terrorism set out in Council Conclusions of 12 February 2015, 20 November 2015 & 18 December 2015	Evaluation general CT	1 March 2016	Monitoring Implementation & Evaluation	general
Maalbeek/Zaventem	Maalbeek/Zaventem	22 March 2016	attack	attack
Joint statement of Ministers of Home Affairs and Justice following Brussels attacks	Next steps combating terrorism	24 March 2016	ambitions	general
Communication on Stronger and Smarter Information Systems for Borders and Security: proposal for entry/exit system	EES	6 April 2016	ambitions	border
EU CTC report on systematic feeding and consistent use of European and international Databases (7726/16)	Evaluation data exchange	14 April 2016	Monitoring Implementation & Evaluation	data exchange
Communication "delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union"	Next steps combating terrorism and Security Union	20 April 2016	ambitions	general
Communication "delivering on the European Agenda on Security to fight against terrorism and pave the way towards an effective and genuine Security Union"	Evaluation general CT	20 April 2016	Monitoring Implementation & Evaluation	general
Establishing EU Passenger Name Records (Directive (EU) 2016/681)	EU PNR	27 April 2016	measures	border
Amendment of Council decision on Europol		11 May 2016	EU bodies/operational platform	cooperation
Roadmap to enhance information exchange and information management in the Justice and Home Affairs area (9368/1/16)	RM info exchange	6 June 2016	action plans/roadmaps	data exchange
Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union's Foreign And Security Policy	Global Strategy	28 June 2016	strategy	general
Proposal on 5th AMLD-directive (COM(2016)450)	5th AML/CTF	5 July 2016	measures	financial

Full name	Short title	Exact date	Type of document	Theme
Nice	Nice	14 July 2016	attack	attack
Commission Delegated Regulation (EU) 2016/1675, identifying high-risk third countries with strategic deficiencies		14 July 2016	measures	general
European Border and Coast Guard (Regulation (EU) 2016/1624)	EBCG	14 September 2016	EU bodies/operational platform	border
Decision (CFSP) 2016/1693 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP	Sanctions ISIL/Al Qaeda	20 September 2016	measures	financial
Regulation (EU) 2016/1686 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them	Asset freezing - specific ISIL	20 September 2016	measures	financial
Roadmap to enhance information exchange - state of play and proposals for future SIS amendments	RM info exchange/SIS	26 October 2016	action plans/roadmaps	data exchange
Study on a European Travel Information and Authorisation System (ETIAS)	Needs assessment ETIAS	16 November 2016	Monitoring Implementation & Evaluation	travel
Berlin	Berlin	19 December 2016	attack	attack
Upcoming performance audit on the Commission's policy on prevention of radicalisation	Evaluation prevention	1 January 2017	Monitoring Implementation & Evaluation	prevention

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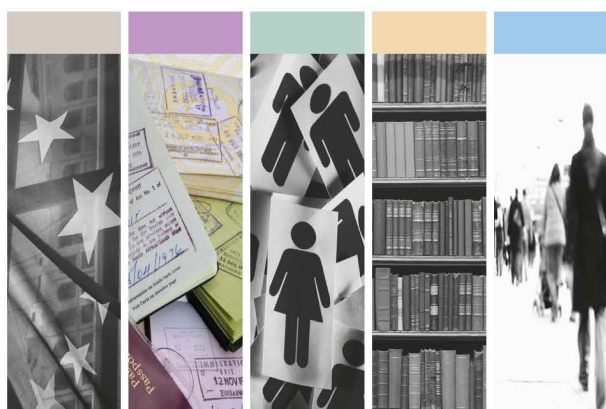
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ISBN 978-92-846-0672-6 (paper)
ISBN 978-92-846-0671-9 (pdf)

doi:10.2861/663827 (paper)
doi:10.2861/955368 (pdf)