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The return of foreign fighters to EU soil: Ex-post evaluation

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Citation

Scherrer, A., Isaksson, C., Ragazzi, F. P. S. M., & Walmsley, J. M. (2018). *The return of foreign fighters to EU soil: Ex-post evaluation*. Bruxelles: European Parliament Research Service. doi:10.2861/205

Version: Not Applicable (or Unknown)

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Note: To cite this publication please use the final published version (if applicable).



The return of foreign fighters to EU soil

Ex-post evaluation

STUDY

EPRS | European Parliamentary Research Service

Editor: Amandine Scherrer
Ex-Post Evaluation Unit
PE 621.811 – May 2018

EN

The return of foreign fighters to EU soil

On 30 November 2017, the European Parliament's Special Committee on Terrorism (TERR) requested that the Ex-Post Evaluation Unit (EVAL) of the Directorate for Impact Assessment and European Added Value, Directorate-General for Parliamentary Research Services (EPRS) prepare a study on Member States' approaches to the return of foreign fighters to EU soil. This study is divided in two parts. The first part was prepared in-house by the Ex-Post Evaluation Unit (EVAL) and provides background information to understanding the EU context in which the issue of foreign fighters is being discussed. The second part is an outsourced study that focuses on the following six Member States: Belgium, Denmark, France, Germany, the Netherlands and the United Kingdom (UK). This study will feed into the committee's work.

Abstract

Since the Syrian conflict began in 2011, thousands of EU nationals have travelled or attempted to travel in conflict zones in Iraq and Syria to join insurgent terrorist groups, such as ISIL/Da'esh ('Islamic State'). Of those, it has been estimated that around 30 % have already returned to their home countries.

The issue of foreign fighters has been high on the political agenda at both Member State and EU level for the last five years and touches upon a wide range of policies: policies related to the prevention of radicalisation; to information exchange at EU level; to criminal justice responses to returnees; to disengagement/deradicalisation inside and outside prisons.

This study aims at outlining the EU response to the issue of returning foreign fighters and their families. It furthermore examines how six Member States have responded to this phenomenon so far (Belgium, Denmark, Germany, France, the Netherlands and the UK). These Member States are confronted with significant challenges in dealing with foreign fighters that combine legal, ethical and practical questions regarding their obligations and capabilities as regards the handling of the foreign fighters still abroad and the returnees already on EU soil. Meanwhile, Member States' existing programmes aiming at tackling radicalisation are difficult to evaluate, leading to uncertainties as regards the efficiency of current practices.

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The opening analysis was drawn up by the Ex-Post Evaluation Unit of the Directorate for Impact Assessment and European Added Value, within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament.

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ACKNOWLEDGMENTS

The authors would like to thank the officials of the European Commission and of the Member States consulted for this study for their useful input.

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LANGUAGE VERSIONS

Original: EN

This document is available on the internet at: www.europarl.europa.eu/thinktank

Manuscripts completed in May 2018.

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PE 621.811

ISBN: 978-92-846-2794-3

DOI:10.2861/205

CAT: QA-01-18-473-EN-N

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<http://www.eprs.ep.parl.union.eu> (intranet)

<http://www.europarl.europa.eu/thinktank> (internet)

<http://epthinktank.eu> (blog)

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List of abbreviations and acronyms

AFSJ	Area of freedom, security and justice
AIVD	General Intelligence and Security Service (The Netherlands)
BND	Federal Intelligence Service (Germany)
CIPDR	Interministerial Committee for the Prevention of Delinquency and Radicalisation (France)
CUTA	Coordination Unit for Threat Analysis (Belgium)
CTC	Counterterrorism Coordinator of the European Union
CVE	Countering Violent Extremism
ECHR	European Court of Human Rights
CJEU	European Court of Justice
EJN	European Judicial Network
EJTN	European Judicial Training Network
EPRS	European Parliamentary Research Service
EVAL	Ex-Post Evaluation Unit (EPRS)
FE	Defence and Intelligence Service (Denmark)
FF	Foreign Fighter
FIJIAT	Judiciary Database of Terrorist Offenders (France)
FRA	Fundamental Rights Agency
FTF	Foreign Terrorist Fighter
IS	ISIL/Da'esh ('Islamic State')
JHA	Justice and home affairs
LIBE	European Parliament Committee on Civil Liberties, Justice and Home Affairs
NCTV	National Coordinator for Security and Counterterrorism (Netherlands)
PET	Central Security and Intelligence Service (Denmark)
PVE	Preventing Violent Extremism
QER	Radicalisation Evaluation Quarter (France)
QPR	Radicalisation Tackling Quarter (France)
RAN	Radicalisation Awareness Network
RAN CoE	Radicalisation Awareness Network – Centre of Excellence
SIS	Schengen Information System
SSP	Schools, Social Services, Police Collaboration System (Denmark)
TER	Terrorists, Extremists, and Radicals Programme (Netherlands)
TERR	European Parliament Special Committee on Terrorism
TPIM	Terrorism Prevention and Investigation Measure (UK)
UNSCR	United Nations Security Council Resolution
VPN	Violence Prevention Network

Part I. The issue of foreign fighters: the EU framework

1. Background

Since the Syrian conflict began in 2011, thousands of EU nationals have travelled or attempted to travel in conflict zones in Iraq and Syria to join insurgent terrorist groups, such as ISIL/Da'esh ('Islamic State') (IS).¹

Research led in 2016 estimated that the contingent of foreign fighters originating from EU Member States (and mostly from Belgium, France, Germany and the United Kingdom) was between 3 922-4 294 individuals. Of those, it has been estimated that around 30 % had already returned to their home countries.²

In its 2017 annual [report](#) on terrorism, Europol estimated that the number of returning foreign fighters ('returnees') was expected to rise, with the collapse of IS. However, in reality the number of returnees has declined significantly in the last two years, and some argue that it is probable that most of the remaining foreign fighters have been killed in the conflict zone or imprisoned there.³ Nonetheless, the issue of returnees raises many challenges:

- First, they are perceived as a **security threat**. During their stay in conflict zones, they acquire combat experience, which prompts fears that they may perpetuate the terrorist threat to the EU through radicalising, fundraising and facilitation activities.⁴
- Second, the issue of returnees does not only concern single individuals: in many instances, fighters have brought their family to conflict zones with them, or have started a family once there. The issue of the so-called '**jihadi wives**' and their exact involvement in terrorist-related activities has become increasingly salient in recent months.⁵ Spouses and children are more likely to return in the short term and their number remains unclear. The issue of dealing with the return of the **children** of foreign fighters raises particularly difficult challenges at several levels. These children need to be identified, and possibly repatriated to the Member States with which they have links.⁶ Furthermore, some of these children (aged above 9 years) have undergone military training in conflict zones, prompting questions about the impacts this might have upon their return on EU soil, the 'threat' this might pose, and the possible social/criminal response.
- Third, the question of returnees touches upon a wide range of policies: policies related to the **prevention of radicalisation** (to tackle the motivations leading to some individuals travelling to conflict zones to join terrorist groups); to **information exchange at EU level**;

¹ See P. Bakowski, L. Puccio, [Foreign fighters: Member State responses and EU action](#), EPRS, European Parliament, March 2016.

² B. Van Ginkel and E. Entenmann (Eds.), '[The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies](#)', The International Centre for Counter-Terrorism, The Hague, 2016.

³ The second part of the study outlines the consecutive 'waves' of returnees: see section 1 of Part II: 'Returnee profiles'.

⁴ [2017 TE-SAT Report](#), Europol, p.14.

⁵ See in particular a recent study led by the French *Direction des Affaires criminelles et des grâces* (DACG). The main findings of the study are outlined in: [Qui sont les femmes djihadistes? Une étude inédite sur leur profil et motivations](#), Le Monde, 5 May 2018.

⁶ Testimonies from grandmothers of children born in Syria were given in a [meeting](#) dedicated to the issue of child returnees organised by the Alliance of Liberals and Democrats for Europe (ALDE) group in January 2018.

to **criminal justice responses** to returnees; to **disengagement/deradicalisation and rehabilitation** inside and outside prisons for convicted individuals.

The issue of foreign fighters has been high on the political agenda at both Member State and EU level for the last five years.⁷ The [EU Counter-Terrorism Coordinator](#) has played a key role in the development of EU-wide strategies and policies in this field.⁸ In June 2013, the Council [agreed](#) on a series of EU measures to support Member States' efforts to tackle foreign fighters, based on a [report](#) prepared by the Coordinator. The report proposed a series of orientations in the following **four areas where EU action could support Member States**:

- prevention of radicalisation,
- information exchange on identification and detection of suspicious travel,
- criminal justice response applied to returnees,
- cooperation with third countries.

This report was updated in 2016⁹ and endorsed in the European Council's June 2017 [conclusions](#) on security and defence, stressing the 'need to accelerate our collective efforts to share knowledge on foreign terrorist fighters as well as home-grown radicalised individuals and take forward policy and legal measures to manage the threat'.

The external dimension of EU action in this field mainly includes project-based cooperation with countries where foreign fighters are found and countries likely to be crossed by returnees to reach EU soil. This comprises projects with the Iraqi authorities aiming inter alia at enhancing data collection on foreign fighters, or projects with Turkey aiming at raising Turkish border authorities' awareness of the challenge posed by returning foreign fighters, including European citizens.¹⁰

In terms of internal security, the impetus given by the Council is reflected in the [European agenda on security](#) adopted in 2015, which called for 'a strong EU response to terrorism and foreign terrorist fighters' and by a [communication](#) released in 2016 on preventing radicalisation to terrorism. In its early 2018 [progress report](#) towards the security union,¹¹ the phenomenon of foreign fighters returning from conflict zones is once more recognised as a key priority.

Despite its limited field of competence in terrorism-related issues,¹² the EU has essentially played a supporting and coordinating role, in particular by means of adoption of legal instruments (section 2 of this opening analysis), increasing use of EU police/justice cooperation and training capabilities (section 3) and the fostering of an EU-wide expertise (section 4). The European Parliament position and areas of action are outlined in section 5.

⁷ See I. Kiendl Krišto, [Implementation Appraisal of Framework Decision 2002/475/JHA on combating terrorism](#), EPRS, European Parliament, May 2016.

⁸ The position of the EU Coordinator was called for in the European Council declaration on combating terrorism following the terrorist attacks in Madrid on 11 March 2004, and Gilles de Kerchove was appointed to this role in 2007 by the Council of the EU. See [Javier Solana, EU High Representative for the CFSP, appoints Gilles de Kerchove as EU Counter-Terrorism Coordinator](#), press release S256/07, European Council, September 2007.

⁹ [Foreign terrorist fighter returnees: policy options for the criminal justice response](#), Council of the European Union Presidency, March 2017.

¹⁰ See [Implementation of the counter-terrorism agenda, 20 December 2016](#), Counter-Terrorism Coordinator; [State of play of implementation of agreed measures](#), Counter-Terrorism Coordinator, 4 March 2016.

¹¹ [Thirteenth progress report towards an effective and genuine Security Union](#), COM(2018) 46 final, European Commission, January 2018.

¹² Article 4 (2) of the TFEU states that 'national security remains the sole responsibility of each Member State'.

2. Overview of relevant EU legal texts and instruments

The fight against terrorism at EU level has led to various legislative initiatives in recent years. Those directly relevant to the issue of returnees are:

- criminalisation of terrorism-related travel with the adoption of Directive 2017/541 on combating terrorism;
- strengthening of existing EU instruments to facilitate checks at external borders and detection of suspicious travel (with the adoption of the Passenger Name Record (PNR) Directive and the revision of the Schengen Border Code);
- reinforcement of the existing framework for information exchange for counter-terrorism purposes (with the revision of the Schengen Information System (SIS) at EU level and a new proposal on the interoperability of information systems).

This legislative work reflects the priorities set out above. Some of these initiatives have raised concerns and criticism, both in terms of efficiency as regards the stated objectives and of compliance with fundamental rights, as outlined hereafter. On the other hand, the prevention of radicalisation and the 'deradicalisation' process in and outside prisons have mainly been addressed through the development of EU-wide expertise and exchange of best practices, detailed in section 4.

2.1. Criminalisation of terrorism-related travel: 2017 Directive

In 2002, Framework Decision 2002/475 on combating terrorism was adopted, with the aim of harmonising the EU definition of terrorist offences. The text was amended once in 2008. In April 2015, the [European agenda on security](#) mentioned above planned to further update the decision. The terrorist attacks in Paris on 13 November 2015 prompted the European Commission to submit its proposal in December of this year. The justification for this new piece of legislation came mainly from the 'changing security situation in the EU' (in particular with regard to the phenomenon of foreign fighters) and recent adoption of international norms in this domain.¹³ [Directive 2017/541](#) on combating terrorism was subsequently adopted in March 2017.

The directive implemented key international laws and standards at EU level.¹⁴ These include United Nations (UN) Security Council Resolution 2178 ([UNSCR 2178](#), adopted in 2014) and the Council of Europe's [Additional Protocol](#) to its Convention on the Prevention of Terrorism (adopted in 2015). In doing so, the directive updated the current EU framework and extended the list of preparatory acts to be criminalised. This now includes the fact of **travelling abroad to join a terrorist group and/or returning to the EU with the aim of carrying out a terrorist attack**. This provision is included in Article 9 of the directive, whereby the act of travelling to another country is criminalised if the intended purpose of that travel is to commit, contribute to or participate in terrorist offences, or to provide or receive training for terrorism.

Originally, the Commission's proposal covered travelling to third countries and intra-EU travel, as well as travelling into the EU to the territory of a Member State for terrorism purposes, whether the offender was a Member State national or resident or a third-country national. While this position was supported by the Parliament, the Council had reservations and wanted to limit the provision to

¹³ See I. Kiendl Krišto, [Implementation Appraisal of Framework Decision 2002/475/JHA on combating terrorism](#), EPRS, European Parliament, May 2016.

¹⁴ See S. Voronova, [Combating terrorism](#), EPRS, European Parliament, September 2017.

outbound travel (i.e. outside the territory of the EU).¹⁵ In the Council's view, three distinctions were to be defined: (1) outbound travel outside EU territory; (2) travel by a national to the territory of their Member State (concerning intra-EU travel and inbound travel from third countries); and (3) travel by non-nationals (concerning intra-EU travel and inbound travel from third countries). The second scenario raised the most concerns, in relation to the need to **respect Article 3 of the Fourth Protocol** to the **European Convention on Human Rights** (ECHR) stipulating that '**No one shall be deprived of the right to enter the territory of the State of which he is a national**'. The text adopted reflects the compromise reached by the co-legislators: Member States can criminalise inbound travel to the EU either as the act of travelling for terrorism or as a preparatory act. Article 10, on the other hand, requires Member States to criminalise conduct enabling travel with a terrorist purpose, including the organisation or facilitation of such travel. In line with Article 28 of the text, Member States have to bring the laws, regulations and administrative provisions necessary to comply with the directive into force by 8 September 2018.¹⁶

The criminalisation of travel for terrorism purposes raises some concerns that have not been entirely dealt with in the final text. In March 2016, the European Economic and Social Committee (EESC) adopted its opinion on the proposed directive as part of its [opinion](#) on the European agenda on security. The Committee found the definition of 'travel for terrorism' in the proposal to be 'extremely unclear'. The Committee warned against using vague terminology – together with the difficulty of establishing 'terrorist intent', which bears the risk of creating a conflict between security and human rights.

As noted in the external study in part II of this publication that focuses on six Member States' approaches to the issue of returnees (Belgium, Denmark, France, Germany, the Netherlands and the UK), Member States under review already had the provisions of the directive in place prior to its adoption, in compliance with the UN resolutions. However, the study emphasises that their application varies considerably across the sample. While these Member States share common features in their first-line response and administrative, investigative and prosecuting approaches towards returnees, significant variations appear, for instance as regards prosecution *in absentia*, pre-charge and pre-trial detentions, deprivation of citizenship in cases of dual citizenship, as well as regarding the age of criminal liability.¹⁷ This latter is key in cases of child returnees. Furthermore, the above-mentioned difficulties related to proving 'terrorist intent' and the related issue of collecting evidence in battlefields are echoed. Among other related challenges, the authors of the study examine a significant point of controversy: should foreign fighters arrested in Iraq and Syria be prosecuted in those countries, or should they be repatriated to the Member State of their citizenship instead to be prosecuted there? At the time of writing, few Member States have adopted clear approaches in this area. However, the study notes that international pressure is mounting to repatriate such individuals, for both fundamental rights concerns (i.e., concerns related to the capacity of both Iraqi and Syrian judiciaries to afford individuals the right to a fair trial, in addition to death penalties that are contrary to EU principles and international norms), and security reasons (lack of resources of the judiciary systems in conflict zones that can lead to ineffective prosecution, supplemented by insecurity of jails that could lead to escape).

Therefore, if the adoption of the 2017 Directive on combating terrorism has updated the list of preparatory acts to be criminalised, Member States face significant challenges that combine legal, ethical and practical questions regarding their obligations and capabilities as regards the treatment of the returnees. These questions are currently the subject of vivid discussion at EU level.

¹⁵ [Follow up of the second trilogue of 8 September 2016](#), 12051/16, Council of the European Union, 2016.

¹⁶ See [Directive \(EU\) 2017/541](#) of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, 2017.

¹⁷ See Summary table of Member State approaches in the study in Part II (table 5, section 2).

2.2. Checks at external borders and detection of suspicious travel

As mentioned above, the Council has identified reinforced checks at external borders of the EU and better monitoring of travel information in order to identify individuals presenting a risk before their departure and upon their return as key to tackling the issue of returning foreign fighters. Ensuring that checks on persons at external borders – including for EU nationals¹⁸ – become more systematic or harmonised was considered a priority by the Ministers of Interior.¹⁹

Concerning travel information, Member States currently have access to **Advance Passenger Information (API)**, regulated by the 2004 [API Directive](#), which consists of biographic information taken from the machine-readable part of a passport containing the name, place of birth and nationality of the person, the passport number and expiry date. The API data related to the passenger is usually collected at check-in. There is currently no central EU system to record API data. The application of the recently adopted [Passenger Name Record \(PNR\) Directive](#) will provide the authorities with much more information on passengers than that available through API. This directive was adopted in April 2016 after five years of tense negotiations.

Earlier proposals on PNR were rejected by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) over data privacy concerns. The **European Data Protection Supervisor (EDPS)** also regularly took part in the debates on PNR, issuing an [opinion](#) underlining a lack of information to justify the necessity of such a scheme; the fact that the measures proposed were not proportionate to the objective stated; and the lack of full transparency of the conditions of collection, access and use. These concerns were also echoed in a European Economic and Social Committee [opinion](#).

Nonetheless, in the context of new terrorist attacks on EU soil and growing concerns over foreign fighter returnees, the European Council again voiced its call on Parliament for swift adoption of its position on the issue of PNR and to finalise work with the Council. The co-legislators eventually agreed on a compromise text in December 2015.

The agreed text provides for air carriers to bear the responsibility of transferring the PNR data they have collected in the normal course of their business to Member States. Member States must establish specific entities responsible for the storage and processing of PNR data, called 'Passenger Information Units'. These units must compare PNR data against relevant law enforcement databases and process them against pre-determined criteria, in order to identify persons that may be involved in a terrorist offence or serious crime. The directive applies primarily to extra-EU flights. Member States can however decide to also apply it to intra-EU flights, or to selected intra-EU flights, subject to notifying the Commission.²⁰ The Member States have to transpose the PNR Directive **by 25 May 2018**, and were urged to speed up national implementation to be able to comply with the directive as soon as possible.²¹ In any case, the above-mentioned **concerns over PNR have not disappeared, and the Commission is required to conduct a review of the directive by 25 May 2020**.

¹⁸ Even if not directly relevant to the issue of the returnees on EU soil (who are EU nationals or residents), it is worth mentioning that these checks at external borders have been also reinforced for non-EU nationals travelling to the EU. These include the adoption of the [Entry/Exit System](#) (EES) adopted in November 2017, which aim is to speed up and reinforce border check procedures for non-EU nationals, and the [proposal](#) currently [under negotiations](#) to set up an automated system that would gather information on visa-exempt travellers prior to their arrival (ETIAS).

¹⁹ See [Factsheet](#) on foreign fighters, Council of the European Union, October 2014.

²⁰ See [Passenger Name Record \(PNR\)](#), European Commission.

²¹ [State of play](#), Counter terrorism coordinator, March 2016.

In addition to the adoption of the PNR scheme and in response to the [Council conclusions](#) of November 2015, a [Regulation amending the Schengen borders code](#) was adopted in March 2017, to reinforce checks against relevant databases at the external borders. This was notably aimed at responding to the phenomenon of returnees, who are EU nationals or residents. Prior to the adoption of the amendment, persons enjoying the right of free movement across the EU (i.e. EU citizens and members of their families) were subjected to minimum checks by Member States on entry, while third country nationals were systematically checked against all databases for reasons of public order and internal security. The adoption to the amendment now obliges Member States to carry out **systematic checks against relevant databases on all persons, including EU nationals** when they cross the external borders. This obligation applies at all external borders (air, sea and land borders), at both entry and exit. In parallel, the [Handbook](#) for border guards (the 'Schengen Handbook') was amended in 2015 and now includes common risk indicators established by the Commission to be used by Member States' competent authorities to better identify returning foreign fighters.²²

2.3. Information exchange on foreign fighters at EU level

Existing information systems for border management and law enforcement include the above-mentioned Advance Passenger Information (API) system. They also include the Schengen Information System (SIS),²³ the Visa Information System (VIS),²⁴ EURODAC,²⁵ the Europol information systems (EIS),²⁶ the Prüm framework,²⁷ and the European Criminal Records Information System (ECRIS). They also include information systems supervised by international organisations, such as Interpol's Stolen and Lost Travel Documents (SLTD).²⁸

In relation to the returnees issue, the above information systems are deemed critical to detecting suspicious travel movements of known individuals (notably via the use of the SIS and Interpol's SLTD), and unknown individuals (notably with the use of API/PNR data).²⁹ Member States are encouraged to use the SIS and the EIS to the maximum extent, both with regard to feeding information into and checking the database.³⁰

In his presentation of the [state of play](#) of March 2016, the Counter-Terrorism Coordinator argued that while progress was being made in information sharing in this domain, further improvements to information sharing were necessary. According to the report, at the end of January 2016, a total of 1 473 foreign fighters had been entered into the EIS by EU Member States, while the EIS held

²² This first set of common risk indicators was finalised in June 2015, in close cooperation with national experts, the EU External Action Service (EEAS), EU Agencies and Interpol, and are used to support the work of national border authorities when conducting checks on persons.

²³ SIS is a centralised system containing records (alphanumeric data) on third-country nationals prohibited to enter or stay in the Schengen area as well as on EU and third country nationals who are wanted or missing (including children) and on wanted objects (firearms, vehicles, identity documents, industrial equipment, etc.).

²⁴ VIS is a central IT system that allows Schengen states to exchange visa data. It connects consulates in non-EU countries and all external border crossing points in Schengen states.

²⁵ Identification of applications (EURODAC) makes it easier for EU states to determine responsibility for examining an asylum application by comparing fingerprint datasets.

²⁶ EIS is a centralised criminal information database intended for investigative purposes. It can be used by Member States and Europol to store and query data on serious crime and terrorism.

²⁷ The Prüm framework lays down provisions under which EU Member States grant each other access to their automated DNA analysis files, automated fingerprint identification systems and vehicle registration data.

²⁸ SLTD is Interpol's central database on passports and other travel documents that have been reported stolen or lost by the issuing authorities to Interpol. It includes information about stolen blank passports.

²⁹ See Council Factsheet, [The challenge of foreign fighters and the EU's response](#), October 2014.

³⁰ [Follow up](#) to the statement of EU leaders on counter terrorism: state of play on implementation of measures, Counter-terrorism coordinator, 5 October 2015.

information concerning over 3 800 foreign fighters and related associates, including data contributed by third parties (mainly Interpol). The report thus pointed to **insufficient Member State contribution to the system**. The report underlined that not all foreign fighters were systematically entered into the SIS and the EIS and that further improvements were needed in relation to the quality of data (common definitions and formats) and a uniform use of systems (in particular in entering SIS alerts). On that aspect, the report notes specific challenges, including different use of the alerts by Member States regarding foreign fighters; possible lack of legal basis for arrest in case of a discrete check for foreign fighters based on Article 36(3), whereby an alert may be issued in order to prevent a serious threat to internal or external national security; lack of information surrounding the alert, which creates difficulties in distinguishing between foreign fighters and other crimes; lack of coherence between the SIS and the EIS, which explains the difference between figures related to foreign fighters (see above).

As regards the SIS, in December 2016 the Commission presented **legislative proposals to reinforce the system**.³¹ These include better security and accessibility through uniform data processing requirements for officers on the ground through SIS; further data collection/processing; a new 'unknown wanted persons' alert category to facilitate information sharing and cooperation between Member States; full access rights for Europol; an obligation to create a SIS alert for terrorist offences; better use of facial imaging and palm print data to identify persons entering the Schengen area. Trilogue negotiations between the co-legislators on these legislative proposals are ongoing at the time of writing, and the Commission recently urged the co-legislators to reach agreement on the proposals by the end of May 2018.³²

Furthermore, the fact that the various systems for border checks at the disposal of law enforcement authorities are operated separately, with their own technicalities and modalities has been increasingly perceived as contributing to a fragmented architecture of data management for borders and security, leading to 'blind spots' where persons, including those possibly involved in terrorist activities, can be recorded in different, unconnected databases under different aliases. Working towards the **interoperability of relevant EU databases** for the purpose of security checks is a European Council priority. In April 2016, in its [communication](#) on stronger and smarter information systems for borders and security, the Commission echoed the need to initiate a process leading to the interoperability of existing information systems and set up a dedicated Expert Group. The group published its [final report](#) in May 2017, which was followed by a Commission [proposal](#) for a regulation submitted in December 2017. The proposal includes the establishment of a European search portal capable of simultaneously querying all relevant EU systems in the areas of security, border and migration management (i.e., SIS, EURODAC, VIS, the future EES, and the proposed ETIAS and ECRIS systems, as well as the relevant Interpol systems and Europol data), possibly with more streamlined rules for law enforcement access, and to develop a shared biometric matching service for these systems (possibly with a hit-flagging functionality).

A review of the impact assessment accompanying the proposal has shown some significant weaknesses in the justifications for the proposal on interoperability, including a lack of a clear problem definition and evidence regarding the scale of the problems described.³³ This was echoed

³¹ See: C.Dumbrava, [Revision of the Schengen Information System for law enforcement](#), EPRS, European Parliament, February 2018; C.Dumbrava, [Revision of the Schengen Information System for border checks](#), EPRS, European Parliament, February 2018.

³² [Fourteenth progress report](#) towards an effective and genuine Security Union, COM(2018) 211 final, European Commission, 17 April 2018.

³³ See: K.Eisele, [Interoperability between EU information systems for security, border and migration management](#), Initial Appraisal of the Impact Assessment accompanying the proposal, EPRS, European Parliament, February 2018.

in an [opinion](#) of the Article 29 Working Party,³⁴ which also underlined a lack of detailed assessment of the impact on fundamental rights. This aspect is also emphasised in an [opinion](#) released by the European Data Protection Supervisor (EDPS) in April 2018 related to the interoperability proposal. The EDPS notes that some of the six EU information systems the proposal seeks to interconnect are not currently in place (EES, ETIAS),³⁵ two are currently under revision (the SIS and Eurodac) and one is to be revised later this year (the VIS). As a result, 'assessing the precise implications for privacy and data protection of a system with so many 'moving parts' is all but impossible'. Overall, the EDPS emphasises that interoperability is not primarily a 'technical choice', but 'a political choice'. The EDPS argues that 'against the backdrop of the clear trend to mix distinct EU law and policy objectives (i.e. border checks, asylum and immigration, police cooperation and now also judicial cooperation in criminal matters), as well as granting law enforcement routine access to non-law enforcement databases, the decision of the EU legislator to make large-scale IT systems interoperable would not only permanently and profoundly affect their structure and their way of operating, but would also change the way legal principles have been interpreted in this area so far and would as such mark a 'point of no return'. For these reasons, the EDPS calls for a **wider debate on the future of EU information exchange, its governance and safeguarding fundamental rights** in this context. Furthermore, experts have raised doubts regarding the effectiveness of interoperability – which aims at maximising data – in contrast to more targeted forms of data analysis and ensuring better quality of data.³⁶

These shortcomings and **lack of clear evidence-based proposals** are frequent in files related to Justice and Home Affairs (JHA), and it has been noted that policy and law making in the field of counter-terrorism do not take due account of the [principles of better regulation](#).³⁷

The EU Fundamental Rights Agency (FRA) regularly calls on EU actors to [better embed](#) fundamental rights in the EU security agenda. In its latest [annual report](#) released in May 2017, the FRA recalled various **initiatives taken at EU level in the field of counter-terrorism that raise concerns as regards the safeguarding of fundamental rights and data protection**. These include the adoption of the PNR Directive, the interoperability of EU information systems and increased powers for law enforcement agencies, including EU agencies. The FRA however notes some progress in the EU framework in addressing these concerns, in particular in the context of the adoption of the General Data Protection Regulation (GDPR) and the [Data Protection Directive for the police and criminal justice sector](#), which constitutes a crucial step towards a modernised and more effective data protection regime. As most counter-terrorism measures entail limitations of the [EU Charter](#), they need to be reviewed against these norms, as shown in the Court of Justice of the European Union's (CJEU) jurisprudence.³⁸ While not specific to the issue of foreign fighters, CJEU rulings (such as the invalidation of the Data Retention Directive) show **to what extent security measures pass the necessity and proportionality tests**.³⁹

³⁴ The Article 29 Working Party is the independent European Union Advisory Body on Data Protection and Privacy, composed of representatives from each of the EU Member States, the European Data Protection Supervisor, and the representative of the European Commission.

³⁵ The Entry/Exit System (EES) will be operational in 2020 and current negotiations include the automated system that would gather information on visa-exempt travellers prior to their arrival (ETIAS).

³⁶ See W. van Ballegooij, *The Cost of Non-Europe in the fight against Terrorism*, EPRS, European Parliament, forthcoming in May 2018; R. Kreissl, 'Will more data bring more security? Remarks on the Security Union approach to interoperability', in S. Carrera and V. Mitsilegas (eds.), [Constitutionalising the Security Union, Effectiveness, rule of law and rights in countering terrorism and crime](#), CEPS, 2017.

³⁷ See: *The Cost of Non-Europe in the fight against Terrorism*, op.cit.: the report notes in particular that only three out of 88 counter-terrorism legislative initiatives since 2001 have been subjected to public consultation and that only one quarter of the legally binding measures in the area adopted since 2001 had been subject to impact assessments. **No impact assessment was carried out for the preparation of the 2017 Directive on Combating Terrorism.**

³⁸ See W. van Ballegooij, *The Cost of Non-Europe in the fight against Terrorism*, op.cit.

³⁹ As concerns data retention, in 2015, in the [Digital Rights Ireland](#) case, the CJEU invalidated [Directive 2006/24/EC](#) (the Data Retention Directive), which aimed at harmonising continued storage of data by telecommunication companies to ensure

3. EU JHA agencies' contributing role

In addition to these legislative texts, EU Justice and Home Affairs agencies such as Eurojust, Europol, Frontex and Cefpol, have played a key role in supporting strategic and operational approaches towards returning foreign fighters.

3.1. Eurojust

Eurojust has organised multiple exchanges of view on the way forward to building an effective judicial response to the phenomenon of foreign terrorist fighters. Participants at these meetings include specialised counter-terrorism prosecutors from the Member States and third countries, the EU Counter-Terrorism Coordinator, the Head of the European Counter Terrorism Centre (ECTC) at Europol, and the Director of the EU Intelligence and Situation Centre (INTCEN). In addition, since 2013, Eurojust has adopted annual reports (which are however not publicly available) on the issue of foreign fighters from a criminal justice perspective. The reports analyse the approaches taken by Member States in this field.⁴⁰

The main challenges related to these approaches are explored and analysed in-depth in part II of this publication (see section 3 in particular). It notes that Member States face numerous legal, ethical and practical challenges as regards the judicial treatment, not only of returnees on EU soil, but also of foreign fighters detained in Iraq and Syria.

At operational level, Eurojust supports counter-terrorism investigations and prosecution and facilitates Mutual Legal Agreement (MLA) requests. According to its 2016 report on foreign fighters, Eurojust successfully coordinated coercive measures executed in several countries across Europe, which resulted in the arrest of 13 suspected leaders and members of a terrorist organisation. Eurojust's main coordination tools are coordination meetings and coordination centres, as well as Joint Investigation Teams (JITs), all of which ensure swift exchange of information and evidence. However, as underlined hereafter, operational support offered by Eurojust, as well as by Europol, are clearly underused.

3.2. Europol

Eurojust and Europol are working closely together on the issue of foreign fighters. Eurojust is associated with several of Europol's [analysis projects](#) (AP, previously known as focal points). These APs help Europol specialists to prioritise resources and support EU law enforcement authorities and other partner organisations. These APs include AP HYDRA (on the prevention and combating of terrorism-related crime) and AP Travellers (targeting foreign fighters), with which Eurojust has been associated since April 2015. This association allows Eurojust to provide judicial follow-up on the

that these data are available for law enforcement purposes. In this case, the CJEU took the view that, by requiring the retention of such data and by allowing the competent national authorities to access the data, the directive interfered in a particularly serious manner with the fundamental rights to respect for private life and to the protection of personal data (set out respectively in Articles 7 and 8 of the EU Charter). While recognising that the retention of data genuinely satisfies an objective of general interest (namely, the fight against serious crime), the CJEU underlined that the provisions of the directive exceed the limits imposed by compliance with the principle of proportionality, whereby the content and form of EU action must be in keeping with the aim pursued (Article 5 TEU).

⁴⁰ The 2016 report was presented in the LIBE Committee in June 2017. See: Press release, [Eurojust's fourth Foreign Terrorist Fighters report presented at LIBE Committee](#), Eurojust, June 2017

basis of Europol's analysis and creates further opportunities for both agencies to build synergies in supporting the competent national authorities.⁴¹

AP Travellers provides the platform for Member States to share information on suspects and on ongoing investigations, in which Europol analysts can identify and report on connections, patterns, or *modus operandi*.⁴² The flow of information into AP Travellers has increased steadily since its inception. According to data provided in an April 2016 [report](#) from Europol to the Council's Standing Committee on Operational Cooperation on Internal Security (COSI), AP Travellers contained: 21 700 person entities, among whom 5 353 were verified foreign travelling fighters, which included 2 956 fighters reported individually by Member States.

Furthermore, following a decision from the EU Justice and Home Affairs Ministers in November 2015, a [European Counter Terrorism Centre](#) (ECTC) was established within Europol in January 2016. Designed as a 'central hub in the EU in the fight against terrorism', the ECTC can support Member States in their investigations; facilitate the sharing of intelligence and expertise on terrorism financing, online terrorist propaganda and extremism; as well as promote international cooperation among counter terrorism authorities.⁴³ As of January 2018, the ECTC had 81 staff members and 14 seconded national experts.

Parallel to the emphasis on the disappointing contribution of Member States to the information systems for border management and law enforcement (notably data related to SIS and EIS) mentioned above, the EU Counter-Terrorism Coordinator has underlined on many occasions that **the use of AP Travellers was sub-optimal**. As an illustration, he noted in 2016⁴⁴ that 'while there are now five times more person entities in Europol's Focal Point [now AP] Travellers database compared with last year, the analysis file still contains only 2 786 verified foreign terrorist fighters entered by EU Member States'. The Coordinator furthermore noted that more than 90 % of the contributions by Member States regarding verified foreign terrorist fighters in AP Travellers in 2015 originated from just five Member States.

In the current context, it should be noted that **Europol's resources, powers and mandate has expanded recently**, with the entry into force of a new [Regulation](#) in May 2017.⁴⁵ In addition to renewed powers, Europol increasingly develops strategic and operational exchanges with non-EU countries. On the specific issue of foreign fighters, these include hosting joint meetings of the Foreign Terrorist Fighters Working Groups of the Global Counterterrorism Forum (GCTF)⁴⁶ and the signature of mutual agreements. In April 2016, Europol and the United States' Federal Bureau of Investigation (FBI) signed such an agreement, which includes the FBI's active involvement (i.e., in sharing of information) in AP Travellers.⁴⁷ Europol's new powers are accompanied by data protection safeguards and parliamentary scrutiny: the EDPS monitors Europol's processing of personal data and Europol's work is overseen by a Joint Parliamentary Scrutiny Group (JPSG), with members from both national parliaments and the European Parliament. The **role of parliaments will be key**, as the **lack of access to information on Europol operational activities** has been underlined on many occasions.⁴⁸

⁴¹ Eurojust 2016 Report (not publicly available).

⁴² See [Reply](#) given by Commissioner Avramopoulos to a parliamentary written question (E-004621-15), European Commission, 9 July 2015.

⁴³ [European Counter Terrorism Centre](#), Europol website.

⁴⁴ [State of play](#), 6785/16, EU Counter-Terrorism Coordinator, 4 March 2016.

⁴⁵ Press release, [European Parliament adopts new regulation for Europol](#), Europol, May 2016.

⁴⁶ Press release, [Europol hosts a joint meeting on counterterrorism](#), Europol, January 2016

⁴⁷ Press release, [FBI and Europol strengthen joint fight against foreign terrorist fighters](#), Europol, April 2016

⁴⁸ Concerns have for instance been raised as regards the lack of transparency surrounding the implementation of the Terrorist Financing Tracking Programme (TFTP). See: M. Wesseling, [An EU Terrorist Finance Tracking System](#), Royal United Services Institute for Defence and Security Studies, September 2016.

As regards the **use of opportunities and tools offered by Eurojust and Europol**, it has often been acknowledged that these were **underused**,⁴⁹ despite their increasing role as intermediaries in ongoing counter-terrorism investigation and prosecution.⁵⁰ As regards access to databases, Europol and Eurojust currently have limited access rights to carry out certain types of queries on specified alert categories. Better Europol connectivity with the EU databases was a priority set out in the Council's November 2015 conclusions. In cooperation with the Commission, Europol has worked to improve its access to and use of the SIS, to allow batch searches against its databases and move from manual and ad-hoc to systematic use of the system.⁵¹ Current proposals under negotiations related to the SIS (see section 2.3 above) include Europol's full access rights to SIS. The European border and coast guard agency (Frontex) would also be allowed to access the SIS when carrying out operations in support of Member States. In its [resolution](#) of 11 February 2015 on anti-terrorism measures, the European Parliament reiterated the fact that EU agencies involved in data collection and sharing should be 'compliant with EU and national law and based on a coherent data protection framework offering legally binding personal data protection standards at an EU level'.

3.3. Frontex

The **Frontex** mandate was revised in 2016, however not without controversy.⁵² It now includes the right to process personal data for the purpose of risk analysis, organising operational activities including joint operations, rapid border interventions, return operations and return interventions, and transmission to the competent national authorities or EU agencies (including Europol and Eurojust). It also includes mandatory systematic checks of EU citizens at external land, sea, and air borders against databases such as the SIS and the Interpol's SLTD. With these new powers, Frontex increasingly resembles a law enforcement agency, as recognised by its Director during an [exchange of views](#) with the TERR Committee.

As regards the issue of foreign fighters, **Frontex claims a role in the detection of returnees**. To operationalise the common risk indicators established by the Commission to better identify returning foreign fighters (see section 2.2 above), Frontex developed a handbook in January 2016 aiming to support the Member State and Schengen Associated country border authorities.⁵³ At the operational level, in February 2018, Frontex launched a new operation in the Central Mediterranean: Operation Themis, which replaced the previous Triton programme, launched in 2014. Its operational area spans the Central Mediterranean Sea in waters used by flows of migrants from Algeria, Tunisia, Libya, Egypt, Turkey and Albania. In addition to search and rescue missions, Operation Themis, has an 'enhanced law enforcement focus'. The security component includes 'collection of intelligence and other steps aimed at detecting foreign fighters and other terrorist threats at the external borders'.⁵⁴ Information gathered by Frontex-deployed officers during Themis operations are passed on to Europol, in addition to relevant Member States.⁵⁵ It is not clear at the time of writing what kind of intelligence Frontex collects in the framework of Operation Themis as regards foreign fighters – nor the extent to which this focus brings added-value in detection of returnees.

⁴⁹ See W. van Ballegooij, *The Cost of Non-Europe in the fight against Terrorism*, op.cit.

⁵⁰ France and Belgium have for instance asked Europol and Eurojust to support their investigations following the Paris and Brussels attacks (November 2015 and March 2016). Europol set up Taskforce Fraternité, under which it assigned up to 60 officers to support the French and Belgian investigations.

⁵¹ [State of play](#), EU Counter-Terrorism Coordinator, 4 March 2016.

⁵² See: A. Gatto and J. Carmona, [European Border and Coast Guard system](#), Briefing, EPRS, October 2016; [Super-Frontex approved, acclaimed and decried](#), Euractiv, July 2016.

⁵³ See: [Fact Sheet](#), Implementation of the European Agenda on Security, European Commission, July 2016.

⁵⁴ Press release, [Frontex launching new operation in Central Med](#), Frontex, 2018.

⁵⁵ [Frontex naval operation to look for 'foreign fighters'](#), EU Observer, 1 February 2018.

3.4. European Union Agency for Law Enforcement Training (Cepol)

In addition to Eurojust, Europol and Frontex, the European Union Agency for Law Enforcement Training (Cepol) has been given an increasing role in providing training related to the detection and management of returnees. These include seminars and courses on identification of foreign fighters and common risk indicators, as well as on 'deradicalisation' of returnees.⁵⁶

4. Development of EU expertise on foreign fighters

The EU Counter-Terrorism Coordinator has called on many occasions for improved knowledge sharing at EU level as regards the issue of foreign fighters and investment in the development of rehabilitation programmes for returnees inside and outside prison.⁵⁷ The FRA has also called for a new counter-terrorism and counter-radicalisation roadmap based on a combination of prevention and protection as well as detection and repression.⁵⁸ The Committee of the Regions (CoR) furthermore adopted a [report](#) in 2016 underlining that supportive measures should be provided to help returnees reintegrate into society following trial and release from prison. On this occasion, the CoR stressed that human rights should be at the core of EU policies on counter-terrorism and prevention of violent radicalisation. As underlined in part II of this study, for the Member States under review, the critical question regarding returnees is how to efficiently combine prevention, criminalisation and rehabilitation.

The focus on these critical aspects of prevention of radicalisation and rehabilitation has led to the development of an EU-wide expertise, which evidently bears relevance to the specific issue of foreign fighter returnees. This expertise enriches analyses provided by the above-mentioned EU agencies⁵⁹ and include practitioner's networks, EU hubs for knowledge-exchange and sharing of best practices. However, such efforts are currently scattered across several initiatives, and more coherence and centralisation of information are currently being envisaged, as detailed below.

4.1. Radicalisation Awareness Network (RAN)

In 2011, the European Commission launched the Radicalisation Awareness Network (RAN), its main policy tool for countering radicalisation. This network of first-line practitioners around Europe (teachers, social workers, community police officers, etc.) aims at supporting the sharing of knowledge, experience and best practices across the EU.

Since its inception, RAN has attracted over 3 000 professionals from all EU Member States.⁶⁰ The RAN is organised in nine working groups.⁶¹ This network is supported and coordinated by the RAN Centre of Excellence, which since 2015 functions as a hub for connecting, developing and disseminating expertise. The Centre is funded by the Internal Security Fund – Police (as detailed in section 4.3).

⁵⁶ See: CEPOL courses on foreign fighters, [CEPOL website](#).

⁵⁷ [Report](#): State of play, EU counter-terrorism coordinator, 30 November 2015.

⁵⁸ [Address](#) to the LIBE Committee joint debate on counter-terrorism, deradicalisation and foreign fighters, FRA Director Morten Kjaerum, 27 January 2015.

⁵⁹ As mentioned above, Eurojust regularly provides reports on the issue of foreign fighters from a criminal law perspective, while Europol publishes annual EU Terrorism Situation and Trend Reports ([TE-SATs](#)) and Frontex annual risks analyses.

⁶⁰ See: [Radicalisation Awareness Network](#) (RAN), European Commission website.

⁶¹ The Communication and Narratives Working Group (RAN C&N); the Education Working Group (RAN EDU); the Youth, Families and Communities Working Group (RAN Y,F&C); the Health and Social Care Working Group (RAN H&SC); the Local Authorities Working Group (RAN LOCAL); the Prison and Probation Working Group (RAN P&P); the Police and Law enforcement Working Group (RAN POL); the EXIT Working Group (RAN EXIT) and the Remembrance of Victims of Terrorism Working Group (RAN VVT).

Both the network and the centre are currently run by Radar, a Netherlands-based contractor, on the basis of a four-year procurement contract.

On the specific issue of foreign fighters, the RAN has been collecting data on existing initiatives addressing the issue (such as the [Cities Conference on Foreign Fighters](#) in 2014). Since 2016, the RAN Centre of Excellence has held over a dozen meetings with first-line practitioners on the topic of returnees. The subject has been discussed from multiple perspectives and areas of expertise: police, local authorities, education, prison and probation, youth, family and communities, exit and health and social care. First-line practitioners from the most affected EU Member States have shared details of their returnee cases and lessons learned from them. The findings are presented in a [manual](#) published in 2017. Intended to give national authorities extra insight into practitioners' needs and ideas, the manual provides **recommendations to handle the issue of returnees and their families**. The priorities of the RAN for 2018 include further work on this issue, in particular in improving contacts between first-line practitioners and the families of foreign terrorist fighters and working with the children of returnees.⁶²

4.2. Other EU networks/platforms fostering exchanges of expertise

In addition to the RAN, EU networks and initiatives to foster exchanges of expertise in the field of radicalisation include many other networks dealing with related aspects:

- radicalisation online (such as the EU Internet Forum, the European Strategic Communications Network (ESCN));
- implementation of prevention policies (such as the Network of National Prevent Policy-makers⁶³ and the European Network of Experts on Radicalisation (ENER));⁶⁴
- judicial training (such as the European Judicial Training Network (EJTN));
- penitentiary training (such as the European Network of Penitentiary Training Academies (EPTA)).⁶⁵

All these activities at EU level are **key to developing evidence-based policies towards EU returnees**. As an illustration, the EJTN is working on a training programme on counter-terrorism and radicalisation, tailored to the needs of the relevant stakeholders and practitioners across the EU.⁶⁶ The programme included [dedicated training](#) on the judicial response to foreign fighters. In addition, and in conjunction with EPTA, EJTN carried out EU-wide testing of training modules and identified training needs in Member States in the field of radicalisation.⁶⁷ This counter-terrorism training resources collection is available to EJTN Members.⁶⁸

⁶² [Update 44](#), RAN, November 2017.

⁶³ This network was launched by the Commission in February 2017, with the two-fold objective of: (1) strengthening and institutionalising the exchange of expertise and experiences on prevent approaches and prevention policies in Member States; and (2) involving Member States more closely in the activities of the Radicalisation Network (RAN). See [Draft Revised Guidelines for the EU Strategy for Combating Radicalisation and Recruitment to Terrorism](#), 9572/17, Council of the EU, 24 May 2017.

⁶⁴ ENER provides a platform for discussing the phenomenon of radicalisation and assists EU and national level policy-makers in gathering expertise and identifying and exchanging good practices in the field of prevention.

⁶⁵ EPTA is supported by the European Organisation of Prison and Correctional Services (EuroPris), a non-political organisation that brings together practitioners in the prison sphere with the specific intention of promoting ethical and rights-based imprisonment and exchanging information in support of this agenda.

⁶⁶ See [Training Section on Countering Terrorism and Radicalisation to Violent Extremism](#), EJTN website.

⁶⁷ [Interim report](#), HLCEG-R, December 2017, p.4

⁶⁸ [EJTN launches a unique counter-terrorism training resources collection](#), EJTN website.

4.3. EU related funding and overall coherence

All the above-mentioned networks receive EU funding. According to the [comprehensive assessment](#) of EU security policy released in July 2017, through its different funding programmes, the Commission provided and earmarked financial support, amounting to around €150 million, to a large number of projects tackling radicalisation within the EU (and in total more than €300 million when including projects outside Europe). However, this estimate does not take into account the projects on radicalisation funded by national authorities under what is known as the 'shared management' strand of Internal Security Fund Police (see below), which has a global budget of €662 million for the 2014-2020 period. Furthermore, it does not include research on radicalisation funded under the Seventh Framework Programme (FP7) and Horizon 2020 budgets.⁶⁹ As a result, the **total amount of EU funding supporting the prevention of radicalisation is hard to estimate.**

For the Internal Security Fund (ISF) alone, the instrument for financial support for police cooperation, preventing and combating crime, €3.8 billion was committed for the 2014-2020 period. The ISF is composed of two instruments, ISF Borders and Visa (ISF-B&V), and ISF Police (ISF-P). For the 2014-2020 period, slightly more than €1 billion was made available for funding actions under the ISF-P instrument, of which €662 million will be channelled through shared management and €342 million through direct management. The [annual work programme](#) for 2017 indicated that the ISF budget doubled, compared to the 2016 work programme, on the basis of 'the multiplication of terrorist attacks on EU soil and the renewed call for additional action at EU level on security'. In addition, by a [decision](#) adopted in October 2017, the ISF-P component of the ISF was increased to a maximum amount of €108 million⁷⁰ 'to reinforce the budget for the different actions related to counter-terrorism'. The RAN Centre of Excellence is funded by the ISF-P and the Commission has earmarked a budget of €25 million over four years (2015-2019) to support its work.

The Commission is planning **an evaluation of the ISF in the second quarter of 2018**. The interim evaluation will 'look at the progress made in the implementation of the programme, and assess whether corrective actions are needed to make sure that the programme delivers as planned'. It will also contribute to the preparation of the next generation of funding instruments in the framework of Multiannual Financial Framework (MFF) post-2020.⁷¹

The variety of existing networks at EU level supported by EU funds, which focus on different aspects of radicalisation, responses and stakeholders, has raised concern as regards **lack of transparency** and **lack of a coherent and effective EU framework** allowing for closer coordination and cooperation between these different initiatives. At the JHA Council in March 2017, Germany and France presented a proposal for a more structured and institutionalised exchange. As a result, the Commission announced the establishment of a High-level Commission Expert Group on Radicalisation (HLCEG-R) at the JHA Council of June 2017.⁷²

⁶⁹ Notably Societal Challenge 6 on inclusive, innovative and reflective societies and Societal Challenge 7 on secure societies.

⁷⁰ Of which €83 300 000 for grants and €21 300 000 for procurement.

⁷¹ See: [Evaluation and fitness check roadmap](#), Ref. Ares(2017)2272614, European Commission, April 2017.

⁷² Related public information are available on the Commission's register of experts group: [High-Level Commission Expert Group on radicalisation](#) (E03552).

4.4. High-Level Commission Expert Group on radicalisation

In July 2017, the [decision](#) to set up a High-Level Commission Expert Group on radicalisation (HLCEG-R) was adopted to step up efforts to prevent and counter radicalisation and to improve coordination and cooperation between all relevant stakeholders.

HLCEG-R brings together representatives from EU Member States, the European Commission and relevant EU services, institutions and agencies (Europol, Eurojust, Ceuol, the FRA), and the RAN, as well as the European External Action Service (EEAS) and the EU Counter-Terrorism Coordinator. The Committee of the Regions (CoR), the European Economic and Social Committee (EESC), the European Judicial Training Network (EJTN), Research Executive Agency, the Council Secretariat, and European Parliament LIBE and TERR Committee Secretariats were invited as observers. The European Strategic Communications Network (ESCN) participated as an external expert.

The group was tasked with offering advice on:

- improving cooperation and collaboration among the different stakeholders and in particular Member States;
- further developing EU 'prevent' policies, including by elaborating a set of principles and recommendations for the implementation of targeted and effective measures to prevent and counter radicalisation at both EU and national level;
- ensuring more structured cooperation mechanisms at Union level in future.

The expert group delivered its first [interim report](#) in December 2017. The final report is expected in November 2018.

In its interim report, the HLCEG-R underlines that while most of the key actions identified in the 2016 Commission [communication](#) related to the prevention of radicalisation have been implemented or initiated, significant challenges remained as regards the issue of returning foreign fighters, in particular in relation to a lack of shared information on returnees at EU level, despite the expertise deployed across various initiatives (see above).

HLCEG-R highlights for instance a **lack of information** related to the overall numbers of returnees, their characteristics, the proportion of men and women, number of children (per age group), pattern of returns etc. It underlines that the exchange of relevant studies would provide useful insights facilitating the development of more tailored approaches for returnees. HLCEG-R stresses that better knowledge related to exit work (de-radicalisation or disengagement) is crucial to ensuring that these individuals receive appropriate treatment, assessment and monitoring. Tailored responses, based on evidence and best practices, are particularly needed for cases of child returnees. Here, early intervention (including support for families and broader social inclusion measures), alternatives to detention and prosecution, a strong focus on rehabilitation and reintegration, and attention to mental health issues were highlighted as deserving further attention.

Part II of this study confirms the current shortcomings in the development of evidence-based policies in this field (see in particular Part II, section 3.3). It stresses a significant challenge in this area: while practitioners and policy-makers are asking for pragmatic and 'ready-to-use' approaches to respond to the phenomenon of returnees, **a consensus on best practices and what are efficient measures in the long-term remains elusive**. As noted by the authors of the study, the premise of deradicalisation programmes complicates their evaluation: unlike other areas of policy, results may not be observed directly and evidencing the effectiveness of deradicalisation intervention requires

'counterfactual information', i.e. the lack of terrorist attacks by certain individuals. Attempting to assess the success of such interventions can thus produce 'false-negatives' (i.e., people benefiting from such interventions might never have engaged in violence in the first place). The study provides several examples of Member State programmes for tackling radicalisation, in and outside prisons (see Annex 3). While assessment of these programmes is difficult for the above reasons, the authors of the study nonetheless note **a growing consensus** – both at practitioner and academic level – **that more comprehensive approaches are needed in this field**. While policies for managing the return of adults from Iraq and Syria are predicated upon criminal investigations and prosecutions (in line with provisions of the 2017 Directive on combating terrorism), the key question, according to the authors of the study, is how best to relate these policies with 'soft measures' such as socio-preventive measures (including forms of rehabilitation and reintegration). Where child returnees are concerned, the authors note that there are early signs of more defined approaches at Member State level that aim at combining security and child protection concerns.

5. European Parliament position

The [decision](#) of 6 July 2017 confirmed the setting up of a special Parliamentary committee on terrorism (the TERR Committee). The Committee's responsibilities include, inter alia, the evaluation of existing policies and instruments to counter terrorism (from an operational, strategic and prevention perspective) while assessing the impact of the EU anti-terrorism legislation and its implementation on fundamental rights. The term of office of the special committee is 12 months, and it will present a mid-term report and a final report to Parliament containing recommendations concerning the measures and initiatives to be taken.

The issue of foreign fighters was previously addressed in several Parliament resolutions referring to: deradicalisation and preventing radicalisation, information sharing and cooperation with third countries. A horizontal issue of EU concern has been safeguarding fundamental rights.

As regards **deradicalisation** and **preventing radicalisation**, the [resolution](#) of 12 December 2017 on strengthening citizens' rights strongly encouraged the strengthening of cross-sectoral programmes targeting education, voluntary and cultural activities and youth work, as well as deradicalisation programmes. It emphasised the importance of having long-term proactive deradicalisation processes in the judicial sphere, and called on Member States to take a multi-layered approach to radicalisation and to take advantage of the support from the RAN, as well as the support available through other EU programmes.⁷³ Furthermore, the [resolution](#) of 5 October 2017 on prison systems and conditions highlighted **radicalisation in prisons** as a major concern. Funding for tackling radicalisation in prisons has been made available under the European Agenda on Security, and the resolution strongly recommended Member States take measures to prevent radicalisation in prisons, establish deradicalisation programmes, promote policies for reintegration, and exchange best practices in this area.

With regard to **children in IS-controlled territories**, the [resolution](#) of 14 December 2016 stressed the importance of repatriating, rehabilitating and reintegrating child soldiers and called on the Commission to prioritise children's rights by proposing a comprehensive child rights strategy and action plan for the next five years.

The [resolution](#) of 16 February 2017 on combatting terrorism underlined the importance of **information sharing** between Member States. The [resolution](#) of 6 July 2016 on the strategic priorities for the Commission further called on the Commission to monitor EU counter-terrorism

⁷³ Such as the European Structural and Investment Funds, Horizon 2020 and Europe for Citizens.

measures, including the transposition and implementation of effective police and judicial cooperation, and for information sharing between Member States, notably through Europol and Eurojust. The Parliament also called on the Commission to present proposals to move towards interoperability.

On **cooperation with third countries**, the [resolution](#) of 14 April 2016 on the report on Turkey urged Turkey to increase its efforts to prevent foreign fighters, as well as money and equipment, from reaching extremist groups. The [resolution](#) of 9 July 2015 on security challenges in the Middle East and North Africa (MENA) region stressed the importance of improved cooperation between the Member States and the MENA countries in combatting terrorism, and called for increased cooperation between these countries and Europol. The resolution further underlined the need to overcome challenges for cooperation regarding the issue of foreign fighters. The [resolution](#) of 12 March 2015 on the annual report from the High Representative of the European Union for Foreign Affairs and Security Policy also stressed the need to increase international and intra-EU cooperation to prevent foreign fighters from travelling to join terrorist groups, and called on Member States to ensure that foreign fighters are brought to justice within the remit of their domestic criminal law systems.

An overarching concern of the European Parliament in regard to the issue of foreign fighters in particular and the question of terrorism more broadly relates to the **need to safeguard fundamental rights**. The above-mentioned [resolution](#) on combatting terrorism stressed the need to strengthen efforts to ensure security, with full respect for common EU values, such as rule of law and human rights.

6. Conclusions on the EU framework

Since the entry into force of the Lisbon Treaty, the Parliament has gained significant powers in EU legislation in the field of Justice and Home Affairs. The Parliament can play its role of oversight and scrutiny to the full by, for example, adopting relevant parliamentary resolutions or calling on the European Commission to take certain measures, as well as by exercising its budgetary powers.

As regards the specific issue of returning foreign fighters, Parliament plays a critical role in developing its own **evidence-based capacities**. The TERR Committee's responsibilities therefore include examining, analysing and evaluating 'with impartiality, facts provided by law enforcement authorities of the Member States, competent EU agencies and recognised experts and the extent of the terrorist threat on European soil and to propose appropriate measures to enable the European Union and its Member States to help prevent, investigate and prosecute crimes related to terrorism'.⁷⁴ TERR Committee's mandate also includes the assessment of the impact of the EU anti-terrorism legislation and its implementation on fundamental rights. This effort can improve the transparency of EU decision-making as regards the definition of the problems at hand and subsequently, lead to the development of better evidence-based policies.

Furthermore, the Parliament ensures that the Commission follows up on the implementation of EU legal texts at Member State level. The Commission's reporting duties are key to assessing the **relevance and added value of any EU instruments**, but in particular those that have been

⁷⁴ [Decision](#) on setting up a special committee on terrorism, its responsibilities, numerical strength and term of office, European Parliament, 6 July 2017

proposed without impact assessment (such as the Directive on combating terrorism)⁷⁵ and those that have raised concerns, such as the PNR Directive.⁷⁶ Implementation reports⁷⁷ by the Parliament are essential instruments in this process, as well as in the promotion of **better application** of the [better-law making principles](#), including in relation to rigorous impact assessment of proposed legislation.

The Parliament's **oversight of EU agencies** in the field of justice and home affairs is equally central. The Joint Parliamentary Scrutiny Group (JPSG) overseeing Europol for instance is a first step toward further scrutiny, which is critical in the area of Justice and Home Affairs where EU agencies' activities have a major impact on fundamental rights.⁷⁸ In that regard, the FRA plays a key role in assessing the state of fundamental rights in the EU: this includes annual updates of the state of play that consistently analyse the impact of counter-terrorism policies on fundamental rights.⁷⁹

Concerning the **allocation of financial resources**, activities that support the prevention of radicalisation at EU level (through, for instance, networks of practitioners, research and projects, and training programmes), are currently funded across various budgets and programmes. Two key Commission reports are expected in this respect: an evaluation of the ISF (announced for the second quarter of 2018), and an evaluation of the Justice Programme (planned for June 2018 in accordance with Article 14 of the related [Regulation](#)).⁸⁰ It is to be expected that these evaluations will point to possible synergies, identify any overlaps and propose overall solutions to improve the effectiveness of these programmes. Careful examination and checks of these reports are pivotal, as these will contribute to the preparation of the next generation of funding instruments in the framework of the EU Multiannual Financial Framework (MFF) post-2020.

⁷⁵ Article 29 of the directive on terrorism imposes reporting duties on the Commission: the Commission shall, by 8 March 2020, submit a report to the European Parliament and to the Council, assessing the extent to which the Member States have taken the necessary measures to comply with this directive. The Commission shall furthermore, by 8 September 2021, submit a report assessing the added value of this directive with regard to combating terrorism. The report shall also cover the impact of this directive on fundamental rights and freedoms, including on non-discrimination, on the rule of law, and on the level of protection and assistance provided to victims of terrorism.

⁷⁶ The Commission is required, in accordance with Article 19 of the [Directive](#) to conduct a review by 25 May 2020, that must cover: compliance with the applicable standards of protection of personal data, the necessity and proportionality of collecting and processing PNR data, the length of the data retention period, and the effectiveness of exchange of information between the Member States.

⁷⁷ Implementation reports are an important instrument in the Parliament's scrutiny and oversight of the executive. Parliament adopts implementation reports in the form of own-initiative reports regarding the transposition of EU legislation into national law and their implementation and enforcement in the Member States.

⁷⁸ See: C. Vlachou, [The Joint Parliamentary Scrutiny Group for Europol: a successful Institutional innovation?](#), Academic Research Network on Agencification of EU Executive Governance (TARN), April 20, 2018.

⁷⁹ See [Publications and resources](#), FRA website.

⁸⁰ The interim evaluation shall also 'address the scope for any simplification of the programme, its internal and external coherence, and the continued relevance of all objectives and actions'.

Part II. External study

Member States' approach to tackling the return of foreign fighters

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LANGUAGE VERSIONS

Original: EN

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Manuscripts completed in May 2018.
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Executive summary

Of Europe's estimated 5,000 departees, the vast majority of returnees came back long before the current period of interest in this issue, which was catalysed by revelations of the involvement of returnees in the planning and commission of violent acts in Brussels in 2014 and Paris in 2015. While the military rollback of IS in Iraq and Syria fostered apprehension that European departees would return *en masse* with similarly malicious intentions, in fact a small number of returnees have arrived back on EU soil since. Returnees are far from a homogenous population; within and across the groups of male, female, and child returnees is a diversity of backgrounds, experiences, and motivations that present EU Member States with a complex collection of challenges.

In responding to these challenges, Member States variously deploy numerous repressive and socio-preventive mechanisms across different government agencies and professional sectors—widely labelled 'comprehensive' strategies. The current study analyses in detail six Member States: Belgium, Denmark, France, Germany, the Netherlands and the UK. The approaches developed by these Member States have, in the broadest sense, converged across the sample subsequent to the passage of United Nations Security Council Resolution 2178. The resolution, which served as the precursor for the EU's Directive on Terrorism (2017/541), marked an international effort to foster coherence in the judicial response to 'foreign fighters' by criminalising acts pertaining to travel 'for terrorist purposes'. In this context, since 2014 an expanded range of criminal offences, including an array of preparatory and ancillary acts, have become the principal tools used across the six Member States for tackling this issue.

This has produced a homogenisation in the policy response to the way adult returnees are handled when they first arrive back on EU soil, which is primarily premised on criminal investigation and risk assessment. Significant policy trends have equally emerged in the use of administrative measures (i.e. deprivation of citizenship, restriction of movement) for returnees who are not subject to prosecution, although there are important differences in the formulation and use of such powers across the sample of Member States. Strengthened by new legislation, efforts to prosecute departees and returnees are marked by trends in (i) the use of trials *in absentia*, (ii) the pursuit of internet, battlefield, and intelligence evidence, and (iii) a renewed parity in the investigation of male and female returnees resulting from evolving perceptions of women's roles in IS. If convicted, returnees are increasingly likely to be held in specialised prison facilities for 'violent extremist offenders,' where deradicalisation and disengagement programmes are now commonplace. Such programmes, which are also typical outside of the prison and probation context, vary according to their objectives, inclusion criteria, methods, and the availability of their results. It is too early to discern strong conclusions about their impact, and results remain scarce and scattered. At this early stage, it is also difficult to ascertain a clear picture of Member States' policies for child returnees, the vast majority of whom were born in Iraq and Syria post-2012. In general, 'case by case' approaches are standard practice.

Many of the policies developed by the six Member States have proven contentious in academic, legal, and political arenas, casting a spotlight on questions of effectiveness, added value, and fundamental rights compliance. Regarding the latter, concerns have been raised that policies that fail to safeguard the rights of terrorism-related suspects and offenders, in line with recognised international standards, could prove counter-productive by fuelling so-called processes of 'radicalisation' (See section 3). These debates will continue to take place as further cases of returnees come to light. Meanwhile, the EU continues to play a pro-active role in strengthening the capabilities of Member States in the spheres of cross-border judicial and law enforcement cooperation, and the exchange of good practices for preventing 'radicalisation'.

Introduction

As approximately 5,000 European men, women, and children from 26 EU member states, have travelled to Iraq and Syria since 2012,⁸¹ unease about 'foreign fighters' has grown increasingly salient. Though it is now widely acknowledged that the 'foreign fighter' phenomenon is nothing new,⁸² the scale of this current manifestation, and the military rollback of IS in Iraq and Syria, have prompted a renewed wave of interest in the risks posed by the return of 'foreign fighters'. Revelations about the involvement of returning European citizens— who had reportedly received various levels of training and direction from within IS-claimed territory— in attacks in Brussels (2014⁸³ and 2016⁸⁴), Paris (2015),⁸⁵ and Manchester (2017)⁸⁶ have heightened the sense of alarm.

The passage of United Nations Security Council Resolution (UNSCR) 2178 in 2014 marked the rapid emergence of what formally became known as the 'foreign [terrorist] fighter' threat on the international security agenda. Particularly following the mass shootings and suicide attacks that hit Paris on November 13th 2015, fears that battle-hardened, ideologically fervent combatants would return to Europe *en masse*— with destructive intentions and capabilities— now characterise common perceptions of this threat.⁸⁷ As a result, there is a tendency for attacks like those that have occurred in recent years in Brussels, Paris, Nice, Berlin, Manchester and London to be 'viewed through the lens of the foreign fighter phenomenon.'⁸⁸ Despite this, very few concrete cases of 'foreign fighters' returning to conduct attacks in Europe have been observed. Although the attacks in Paris and Brussels (as well as a number of foiled plots⁸⁹) directly involved individuals who had returned from Iraq and Syria, academics have struggled to reach convincing scientific conclusions about the causal relationship between 'foreign fighting' and political violence in Europe.⁹⁰ This is not to say that there is no reason for legitimate concern— which is clearly not the case in light of the atrocities in Brussels and Paris. Rather, it serves as a reminder that the threat posed by individuals returning from Iraq and Syria might be most appropriately characterised as 'low probability, high impact.'⁹¹ Beyond direct involvement in violence, there are also concerns that returning 'foreign

⁸¹ The Soufan Center, [Beyond the Caliphate: Foreign Fighters and the Threat of Returnees](#), 2017.

⁸² The work of David Malet highlights the importance of placing the current wave of the phenomenon in historical context. See for example D. Malet, *Foreign Fighters: Transnational Insurgents in Civil Conflicts*, Oxford: Oxford University Press, 2013.

⁸³ Tran, [Brussels Shooting Raises Fears over European Fighters Returning from Syria](#), The Guardian, 01.06.2014.

⁸⁴ BBC News, [Brussels attacks: Two brothers behind Belgium Bombings](#), 23.03.2016.

⁸⁵ R. Cragin, [The November 2015 Paris Attacks: The Impact of Foreign Fighter Returnees](#), 2017.

⁸⁶ L. Dearden and B. Kentish, [Salman Abedi 'travelled to Syria and Libya' before carrying out Manchester attack](#), The Independent, 24.05.2017.

⁸⁷ This is captured in Europol's annual [European Union Situation and Trend Report](#), 2017. Highlighting various factors, including increased proficiency in conducting attacks, 'brutalisation,' a 'radicalising' capacity, and a 'high degree of security awareness,' Europol warns that 'an increasing number of returnees will likely strengthen domestic jihadist movements and consequently magnify the threat they pose to the EU'.

⁸⁸ E. Bakker and J. de Roy van Zuijdewijn, [Jihadist Foreign Fighter Phenomenon in Western Europe: A Low-Probability, High-Impact Threat](#), 2015.

⁸⁹ For an analysis, see Centre d'Analyse du Terrorisme, [Attentats, tentatives et projets d'attentats en relation avec le contexte syro-irakien dans les pays occidentaux](#), 2017.

⁹⁰ One recent, widely-circulated estimate posits that approximately 1 in 360 'foreign fighters' directly engage in domestic terror attacks in the West. Importantly, however, this and other tentative estimates are hampered multiple limitations, including a marked lack of data on individuals who have not engaged in terrorism after returning from Iraq and Syria. For a discussion of some of the enduring difficulties here, see Bakker et al, [Returning Jihadist Foreign Fighters: Challenges Pertaining to Threat Assessment and Governance of this Pan-European Problem](#), 2014, p. 17. For an example study see T. Hegghammer, and P. Nesser, [Assessing the Islamic State's Commitment to Attacking the West](#), Perspectives on Terrorism, 9 (4), 2015.

⁹¹ As described by Bakker and de Roy van Zuijdewijn, 2015, op.cit.

fighters' may assist in the planning and preparation of such attacks in Europe.⁹² There is, however, a growing recognition that 'returnees' from Iraq and Syria, whether they have engaged in fighting or not, are not a homogenous group— they in fact represent a diverse range of backgrounds, experiences, and motivations (see Section 1). As several experiences with former foreign fighters show, returnees' attitudes can also consist in entire disengagement from violence and active engagement in the prevention of 'radicalisation' (See annex 3).

In November 2016, the EU's Counter-Terrorism Coordinator informed the European Council of the need for 'a comprehensive approach towards returnees...' dispersed across the judicial, law enforcement, and social spheres.⁹³ This sentiment has since been endorsed by the Council of the European Union⁹⁴, and is aligned with calls for 'comprehensive'⁹⁵ or 'holistic'⁹⁶ governmental approaches featuring a wide collection of policy actors. Comprehensive models are increasingly envisioned as balancing acts that combine repressive measures, such as arrest, detention, and restriction of movement, with various forms of rehabilitation and reintegration efforts.⁹⁷ The latter have become increasingly prominent in light of recognition of the limits of repressive measures for managing risks pertaining to returnees:⁹⁸ evidentiary challenges can complicate prosecutions, mass surveillance is heavily resource-intensive, whereas imprisonment may only delay the risks posed by certain individuals. As such, 'deradicalisation' (efforts to stop an individual engaging in violence by focusing on ideological transformation) and 'disengagement' (focusing on behavioural change) programmes are now widespread.⁹⁹

This study provides an updated analysis of how EU Member States have responded to calls for comprehensive responses to returnees. In doing so, it provides a comparative perspective on the types of approaches favoured in some of the most affected Member States, illustrating the methods deployed and evidence of the results different measures have achieved. In doing so, it highlights (i) approaches taken across the judicial, law enforcement, and social spheres, offering insights into the measures adopted for children and families, and (ii) the EU's role here and its added value in this field.

Preliminary notes on terminology and methodology

In this briefing note, European citizens and residents who travelled to Iraq or Syria post-2012 are referred to as 'departees,' whereas the term 'returnees' is favoured for those who have journeyed back to Europe since. This is for several reasons. Firstly, despite its pervasive use in this context, the term 'foreign fighter' is a continued point of contention in academic debates, with significantly divergent perspectives on precisely who and what it describes.¹⁰⁰ Furthermore, the lack of a uniform understanding of how this particular phenomenon should be labelled across Member States only

⁹² Europol, 2017, op.cit.

⁹³ EU Counterterrorism Coordinator, [Foreign terrorist fighter returnees: Policy options \(Document 14799/16\)](#), 2016, p 2.

⁹⁴ EU Counterterrorism Coordinator, [Foreign Terrorist Fighter returnees: policy options for the criminal justice response \(Document 7294/17\)](#), 2017.

⁹⁵ Bakker et al, 2014, op.cit.

⁹⁶ A. Reed, J. Pohl, and M. Jegerings, [The Four Dimensions of the Foreign Fighter Threat: Making Sense of an Evolving Phenomenon](#), 2017.

⁹⁷ Bakker et al., 2014, op.cit.; Reed et al, 2017, op.cit.

⁹⁸ See EU Counterterrorism Coordinator, 2016, op.cit.

⁹⁹ This focus was underscored in 2017 the Council of the European Union's [Draft Revised Guidelines for the EU Strategy for Combating Radicalisation and Recruitment to Terrorism \(Document 9646/17\)](#), which called for the '[i]mplementation and evaluation of specific prevent as well as de-radicalisation disengagement and rehabilitation programmes'.

¹⁰⁰ For a discussion see M. Sexton, [What's in a Name? Proposing New Typologies for 'Foreign Fighters'](#), 2017.

adds to the potential confusion: while Belgium and the UK favour 'foreign terrorist fighters',¹⁰¹ Denmark references 'foreign fighters'¹⁰², whereas the Dutch authorities use 'jihadist travellers'.¹⁰³ Secondly, the term 'foreign terrorist fighter' risks inductively labelling individuals as 'terrorists' prior to any form of legal process and sits uncomfortably with the fact that there is no consensus on the definition of terrorism in either the United Nations or academia.¹⁰⁴ Thirdly, the focus on 'foreign fighters' in this context, which stems from the perception that male combatants almost pose the most immediate security threat, does not accommodate for emerging insights that not all male departees engage in fighting in groups like IS.¹⁰⁵ Conversely, 'returnee' accommodates for an array of profiles, *inter alia*, those involved in the planning and organisation of terrorism, combatants, non-combatants, and the different roles played by women, and children (as described in Section 1). As such, **this briefing note foregrounds the terms 'returnee' and 'departee' in order to bypass the confusion of the 'foreign [terrorist] fighter' debate.**

Furthermore, our knowledge about departees and returnees is scarce and fraught with methodological problems. This has significant implications for how policies are perceived and conceived. First, the 'state of the art' of quantifying returnees according to demographics is confined by a lack of verifiable empirical data. Most existing 'profiles' are based on the estimates of Member States,¹⁰⁶ which, consistent with the lack of common terminology, vary considerably in terms of how of data is collated.¹⁰⁷ Such estimates largely derive from the work of security and intelligence agencies, whose methods of data collection and analysis cannot be verified independently (the authors of the studies cited here are open about these limitations). As a result, assumptions about the backgrounds and motivations of returnees that emanate from these numbers should always be treated with caution.

Qualitative analyses of returnees' backgrounds, experiences, and motivations also share a number of limitations that are not just significant from an academic perspective. Most studies rely on exceptionally small sample sizes, usually due to (i) the difficulties of acquiring research participants from within the conflict zone (particularly where IS are concerned); (ii) restrictions imposed by ongoing criminal investigations and privacy regulations;¹⁰⁸ and (iii) the inaccessibility of returnee participants due to, *inter alia*, a fear of self-incrimination.¹⁰⁹ Studies that seek to provide answers to 'why do they go?' or 'why do they return?' feature various efforts to mitigate these obstacles, including: (i) reliance on individuals who intended to travel to Iraq and Syria but did not make it (thereby representing returnees in a very limited way);¹¹⁰ and (ii) dependence on unconventional

¹⁰¹ T. Renard, and R. Coolsaet, 'From the Kingdom to the Caliphate and Back: Returnees in Belgium', in Renard T., and Coolsaet R., (Eds.) [Returnees: who are they, why are they \(not\) coming back, and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands](#), 2018; British Counter-Terrorism Official. Interview with Francesco Ragazzi and Josh Walmsley. 21.02.2018.

¹⁰² PET, [Assessment of the terror threat to Denmark](#), 2017.

¹⁰³ NCTV, [The Netherlands comprehensive action programme to combat jihadism: Overview of measures and actions](#), 2014.

¹⁰⁴ For a discussion see F. Ragazzi, [Commentary to the Guidelines for Prison and Probation Services Regarding Radicalisation and Violent Extremism](#), 2015, p. 4.

¹⁰⁵ See, for example: De Bont et al., [Life at ISIS: The Roles of Western Men, Women and Children](#), Security and Global Affairs, 2017; Meleagrou-Hitchens et al., [The Travelers: American Jihadists in Syria and Iraq](#), 2018; L. Dawson and A. Amarasingam, [Talking to Foreign Fighters: Insights into the Motivations for Hijrah to Syria and Iraq](#), 2017.

¹⁰⁶ B. van Ginkel and E. Entenmann (Eds.), [The Foreign Fighters Phenomenon in the European Union. Profiles, Threats & Policies](#), 2016; Soufan Center, 2017, op.cit.; el-Said and Barrett, [Enhancing the Understanding of the Foreign Terrorist Fighters Phenomenon in Syria](#), 2017.

¹⁰⁷ As captured by the recent, widely-cited Soufan Center report: 'Accurate numbers are difficult to extract from official accounts as some are absorbed into a total figure for all who have travelled, some include children born in Syria and Iraq while others do not, and some are clearly estimates without the basis being clear.' Soufan Center, 2017, op.cit., p. 34.

¹⁰⁸ E. Bakker and S. De Leede, [European Female Jihadists in Syria: Exploring an Under-Researched Topic](#), 2015.

¹⁰⁹ P.R. Neumann, [Victims, Perpetrators, Assets: The Narratives of Islamic State Defectors](#), 2015.

¹¹⁰ E. Bakker and P. Grol, [Motives and Considerations of Potential Foreign Fighters from the Netherlands](#), 2015; el-Said and Barret, 2017, op.cit.

methods of data gathering, such as interviews conducted via encrypted social media platforms¹¹¹ that (while potentially very useful) are problematic¹¹². In light of these limitations, all 'returnee profiles' should be understood in terms of their descriptive and phenomenological nature, recognising that it **is extremely difficult to make reliable generalisations about Europe's returnees**. This considered, the study will attempt to answer the following research questions:

Research questions

- What are the profiles of these so-called foreign fighters and what are the various issues they raise to the Member States they are returning to?
- What types of approaches towards foreign fighters have been favoured at the level of Member States?
- What resources have been mobilised with what results?
- How do these approaches deal with the particular issue of minors and individuals' family members?
- What role has the EU played and what is its added value in this field?

Case studies

In order to explore the various research questions, the briefing note considers six case studies: Belgium, Denmark, France, Germany, the Netherlands and the UK. The countries are chosen for the following reasons:

- They are representative of the main counter-terrorism and counter-radicalisation policies currently deployed by EU member states: Belgium, the Netherlands and the United Kingdom have been at the forefront of the development of the so-called 'soft' approaches in terms of de-radicalisation; Denmark has equally been influential through the development of the oft-cited 'Arhus model'.
- They represent a diversity of approaches and models of counter-terrorism, from the community policing approach of the Nordic countries to a more intelligence and law enforcement-centred approach in countries like France.
- They provide a good sample of centralized (France, UK) versus de-centralized approaches (Belgium, Denmark, Germany, Netherlands)
- Departees and returnees from these 6 countries represent the vast majority of Europe's total number (See Section 1).
- 5 of the 6 Member States have been the direct recipients of terrorist attacks since the advent of the current departee/returnee phenomenon in 2012.¹¹³

Sources

The present report is informed by:

- The analysis of the relevant academic and grey literature (EU institutions and relevant international organizations)

¹¹¹ See for example Dawson and Amarasingam, 2017, op.cit.

¹¹² A discussion of the relative merits and drawbacks of these methods is found in Dawson et al, [Talking to Foreign Fighters: Socio-Economic Push versus Existential Pull Factors](#), 2016.

¹¹³ The Netherlands has not experienced a high-profile attack of this kind since the murder of Theo van Gogh in 2004. The returnee issue has, however, remained high on the counter-terrorism agenda (See Section 2).

- Interviews with policymakers at the national and EU levels, and additional interviews with legal and policy experts (See Annex 4 for the list of interviews)

Outline

Section 1 analyses the profiles of Europe's departee and returnee contingent, providing insight into the scale of the phenomenon in the EU and the backgrounds, experiences, and motivations of individuals that may return from Iraq and Syria. This facilitates the appreciation of Member States' approaches in **Section 2**, which provides a comparative overview of the cases in terms of the rationale, objectives, methods, and results of various measures. **Section 3** then provides an overview of the key debates that have emerged in light of these policies, which is followed in **Section 4** by an assessment of the EU's role and added value in strengthening Member States' national capabilities for managing the return of their citizens and residents from Iraq and Syria.

1. Returnee profiles

Key Findings

- The vast majority of European returnees arrived prior to the November 13th 2015 Paris attacks, and speculation during 2016 that European departees would return in vast numbers has not come to fruition.
- In some Member States, almost 50% of departees have returned, whereas elsewhere this figure may be as low as 12%.
- Estimating the number of European children in Iraq and Syria is virtually impracticable. Vast numbers were born in conflict-stricken territories post 2012, making them extremely difficult to track, and in some cases as high as 75% of 'child returnees' from a given Member State are thus under the age of six.
- Male, female, and child returnees represent a diverse range of backgrounds, experiences, and motivations, and thus present a complex collection of needs and potential risks that demand not only security but also humanitarian responses.

Of the approximately 5,000-5,500 Europeans that departed for Iraq and Syria between 2011-2016, approximately 1,200 are estimated to have already returned.¹¹⁴ This section presents the common characteristics of Europe's (potential) returnees to facilitate the appreciation of Member States approaches in Section 2. The key policy challenges that Member States (may) confront in responding to the diversity of Europe's returnee contingent, which features a range of backgrounds, experiences, and motivations, are addressed throughout Sections 2-4.

1.1. Profiles

1.1.1. Return rate

Though exact numbers are hard to ascertain, **the vast majority of Europe's returnees came back in two waves: one in 2013-2014**, prior to the June 2014 declaration of a 'caliphate' by 'Islamic State' (IS) militants, **and one in early 2015**.¹¹⁵ **Inbound flows of returnees thus declined sharply in 2015**, marking out a **first 'wave'**¹¹⁶ **or 'generation'**¹¹⁷ **of returnees**. This did not, however, prevent widespread speculation during 2016 that European departees would journey back to the EU *en masse* following the military rollback of IS in Iraq and Syria.¹¹⁸ Vast numbers of Europe's departees are adjudged to have died in Iraq and Syria—in Belgium this is as high as one third of the total number— while many are thought to have been arrested or may relocate to neighbouring countries¹¹⁹. As such, earlier assessments that forecasted an influx of large numbers of returnees have since been revised, with only small handfuls of returnees being received in 2017. Set against

¹¹⁴ Soufan Center, 2017, op.cit.

¹¹⁵ Renard and Coolsaet et al., [Returnees: who are they, why are they \(not\) coming back, and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands](#), 2018.

¹¹⁶ EU Counterterrorism Coordinator, 2016, op.cit.

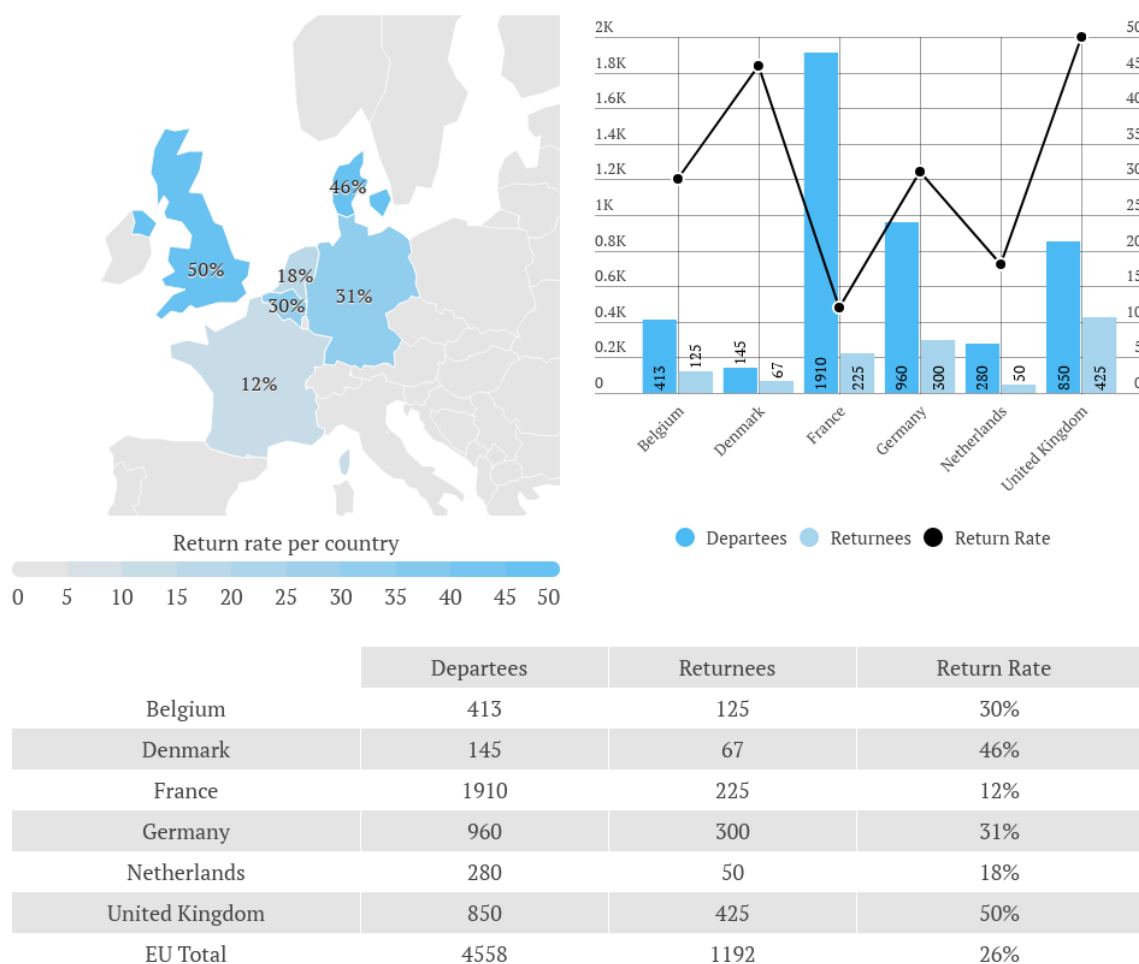
¹¹⁷ RAN, [Responses to Returnees](#), 2017.

¹¹⁸ Renard and Coolsaet, 2018, op.cit.

¹¹⁹ This aspect was reiterated by Jean-Charles Brisard (Centre for the Analysis of Terrorism - CAT), in his [intervention](#) at a TERR committee meeting on 9 April, 2018.

the backdrop of the **EU's estimated average return rate of 22-24%**,¹²⁰ the ratios of returnees to departees illustrate the scale of the phenomenon. Return rates vary across the six cases from 12% (France) to 46% (Denmark). Aggregated figures from the six cases display that the vast majority of Europe's departees (83-91%) and returnees (1,192) are from Belgium, Denmark, France, Germany, the Netherlands, and the UK.

Table 1: Return rate per country



- **Belgian authorities** presently classify 498 Belgian citizens and residents as 'Foreign Terrorist Fighters' - all individuals aged 12+ - of which 413 successfully travelled to Iraq and Syria after 2012.¹²¹ As of January 31st 2018, approximately one third of these 413 departees had returned, one third had died in the conflict zone, and one third remained in Iraq and Syria.¹²² The vast majority of Belgium's estimated 125 returnees returned between 2013-2015, although no exact figure has been made publicly available.¹²³ In 2017, Belgium received just five adult returnees (four women, one men) and eight minors (aged 12 and under).¹²⁴

¹²⁰ Soufan Center, 2017, op.cit. and van Ginkel and Entenmann, 2016, op.cit.

¹²¹ Belgian officials also include individuals who intended to travel to Syria but did not make it, either because they were forcibly prevented or decided not to of their own volition; Renard and Coolsaet, 2018, op.cit.

¹²² P. van Tigchelt, 2018, op.cit.

¹²³ Ibid.

¹²⁴ Ibid.

- Approximately 300 of **Germany's** estimated 960 departees were thought to have returned by January 2018. 150 are thought to have been killed in Iraq and Syria.¹²⁵
- By contrast, both the **UK** and **Denmark** have experienced return rates closer to 50%; approximately 67 of Denmark's 145 departees have returned (35 are thought to remain abroad), compared with 425 of Britain's 850 departees.¹²⁶

At the other end of the spectrum, the **Netherlands** and **France** have received proportionately low numbers. In February 2017, Dutch authorities estimated that approximately 280 citizens or residents had travelled successfully from the Netherlands to Iraq or Syria since 2012, at which time an estimated 50 had returned,¹²⁷ a return rate of just 18%. Of France's estimated 1,910 departees,¹²⁸ the largest of any of the cases, 225 had returned by late February 2018;¹²⁹ a return rate of 12 %.

1.1.2. Gender

The latest figures publicly available suggest that **men constitute approximately 83 per cent of the total number of European departees**.¹³⁰ As displayed in Table 2, while the majority of the six Member States have reported on the gender makeup of their departee contingents, the same information is only available for two Member States regarding returnees. The **Dutch** departee cohort is less male-dominated than the EU average: only 68% of the 280 are men.¹³¹ In **France**, the ratio of women to men is significantly higher among returnees than departees; approximately 17% are women i.e. 320 of 1,910 departees,¹³² while figures from February 2018 suggest that around 72 of the 256 returnees are women (28%).¹³³ Of the 125 returnees in **Belgium**,¹³⁴ approximately 21% are women.¹³⁵ **Germany**, **Denmark**, and the **UK** seem to feature ratios significantly lower than the European average of 17% women departees. Recent estimates indicate that 11% of German departees are women,¹³⁶ whereas in 2015 it was reported that this figure was closer to the European average, at 20% (190 of 960).¹³⁷ In **Denmark**, around 10% of departees were women,¹³⁸ whereas 100 of the UK's 850 departees were female (12%).¹³⁹

¹²⁵ D. H. Heinke, and J. Raudzsus, [Germany's Returning Foreign Fighters and What to Do About Them](#), 2018.

¹²⁶ Soufan Center, 2017, op.cit.

¹²⁷ AIVD, [Focus on Returnees](#), 2017.

¹²⁸ Soufan Center, 2017, op.cit.

¹²⁹ French Government, 2018, op.cit.

¹³⁰ B. Van Ginkel and E. Entenmann (Eds.), 2016, op.cit.

¹³¹ Soufan Center, 2017, op.cit.

¹³² Ibid.

¹³³ French Government, [Prévenir Pour Protéger: Plan national de prévention de la radicalisation](#), Paris, 2018.

¹³⁴ P. van Tigchelt, Remarks made at the Alliance of Liberals and Democrats for Europe seminar on '[Child Returnees: managing the return of European children from jihadist conflict zones](#)' at the European Parliament, Brussels. 31.01.2018.

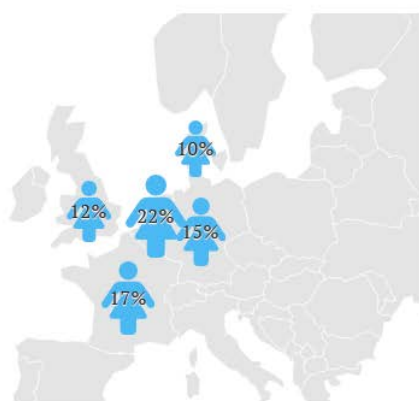
¹³⁵ T. Renard, and R. Coolsaet, 2018, op.cit.

¹³⁶ D.H. Heinke, and J. Raudzsus, [Germany's Returning Foreign Fighters and What to Do About Them](#), 2018.

¹³⁷ The reason for the variation in these figures is not clear from the sources.

¹³⁸ van Ginkel and Entenmann, 2016, op.cit.

¹³⁹ Soufan Center, 2017, op.cit.

Table 2: Percentage of female departees and returnees across the sample¹⁴⁰

	% of Female Departees	% of Female Returnees
EU	17	-
Belgium	-	21
Denmark	10	-
France	17	28
Germany	11-20	-
Netherlands	22	-
United Kingdom	12	-

1.1.3. Age

There is a variable degree of detail available about how age is distributed across the departee/returnee cohorts in each case, though **European departees tend to be in their 20s**. In the **Belgian** case, approximately 80 % of the total number of individuals considered 'FTFs' (which includes children aged 12+) are young men aged between 20 and 30,¹⁴¹ with an average age of around 25.¹⁴² **Germany's** departees span across the ages 13-62 years-old, with an average age of 28.5 years.¹⁴³ One study found that approximately 41% (322 individuals from a sample of 784 departees) are between 18 and 25 years-old.¹⁴⁴ Such detailed figures are hard to come by for the other cases; very tentative estimates for the **Netherlands** suggest that the majority of Dutch departees are below 25, whereas in the UK the majority of departees are thought to be between 18 and 30 years old.¹⁴⁵ At this stage, data for the age distribution across the groups of **Danish** and **French** adult departees are scarce.

Quantifying European children in Iraq and Syria is even more complex than for adults, particularly because keeping track of those born there since 2012 is virtually impossible. For **Belgium**, as of late January 2018, more than 140 children (below the age of 12) with (claims to) Belgian citizenship were thought to have been in Iraq and Syria, 75 % of whom are under the age of six and were thus likely to have been born there.¹⁴⁶ By the same point, four teenagers and 14 children below 12 years-old had returned to Belgium whereas a group of 22 children were thought to have announced their intention to return (either alone or with their parents).¹⁴⁷ **Dutch authorities** estimate that a minimum of 80 children 'with a Dutch connection' presently reside in Iraq and Syria,¹⁴⁸ just 20 % of whom are considered to be above the age of 9 (the threshold at which they are

¹⁴⁰ '-' in this table signifies 'unknown,' either because the information is known by Member States but has not been made publicly available, or because it is simply not known by Member States' national authorities. Figures for Belgium are extrapolated from the EU average on the graph.

¹⁴¹ Renard and Coolsaet, 2018, op.cit.

¹⁴² van Ginkel and Entenmann, 2016, op.cit.

¹⁴³ Heinke and Raudzus, 2018, op.cit.

¹⁴⁴ D. Heinke, [German Foreign Fighters in Syria and Iraq: The Updated Data and its Implications](#), 2017.

¹⁴⁵ van Ginkel and Entenmann, 2016, op.cit.

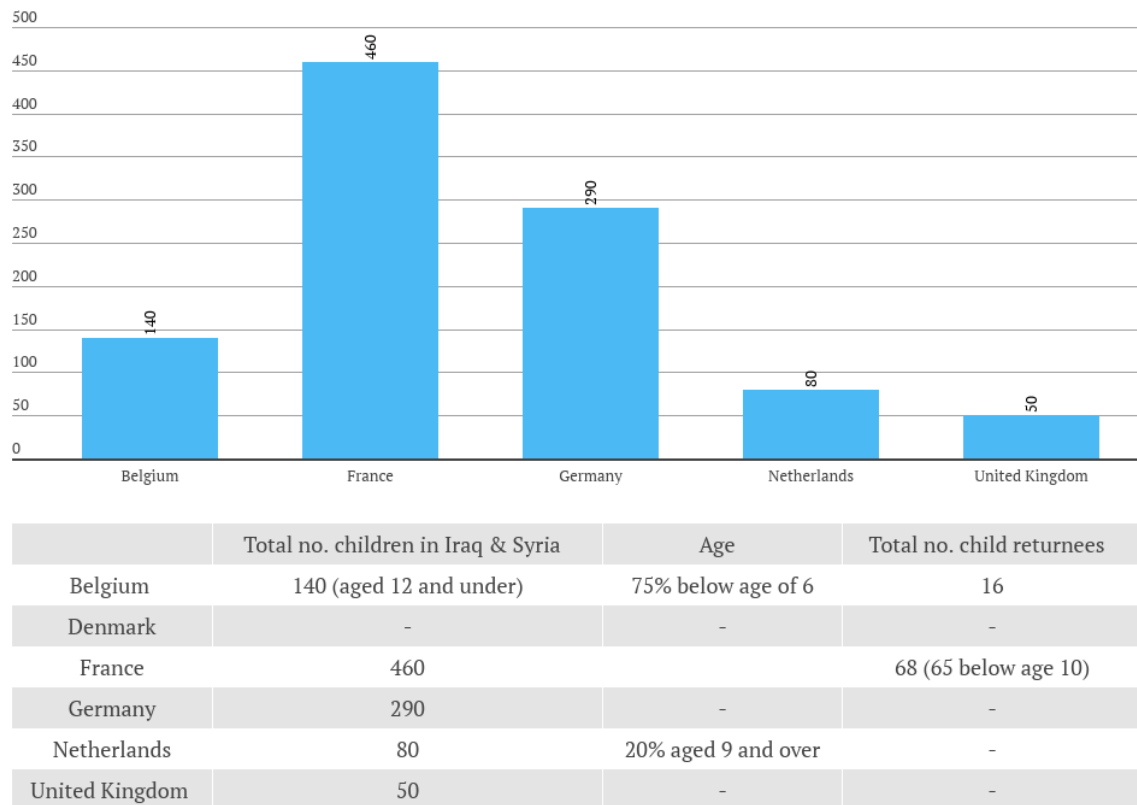
¹⁴⁶ van Tigchelt, 2018, op.cit.

¹⁴⁷ Renard and Coolsaet, 2018, op.cit.

¹⁴⁸ Official at the Dutch Ministry of Justice. Interview with Francesco Ragazzi. The Hague. 08.03.2018.

classified as 'jihadist travellers' by Dutch authorities¹⁴⁹). Half of the overall number of 80 Dutch children travelled with their parents.¹⁵⁰ Regarding **France**, 460 children with (claims to) French citizenship were in Iraq and Syria in 2017,¹⁵¹ 68 of which were thought to have returned by late February 2018.¹⁵² Only 3 of France's 68 child returnees are aged 10 and above.¹⁵³ **German authorities** estimate that there are presently 290 children with (claims to) German citizenship in Iraq and Syria.¹⁵⁴ The latest figures for the UK, which stands at 50 children, appears strikingly low,¹⁵⁵ whereas the numbers for **Denmark** in this area are hard to come by.

Table 3: Estimated number of children¹⁵⁶



¹⁴⁹ AIVD, *Focus on Returnees*, 2017.

¹⁵⁰ B. van Ginkel, and S. Minks, *Addressing the Challenge of Returnees: Threat Perceptions, Policies and Practices in the Netherlands*, 2018.

¹⁵¹ L. Gustafsson, & M. Ranstorp, *Swedish Foreign Fighters in Syria and Iraq*, 2017.

¹⁵² French Government, 2018.

¹⁵³ Representative of France's Interministerial Committee for the Prevention of Delinquency and Radicalisation (CIPDR), remarks made at the RAN conference '*Common PCVE Challenges in Western Balkans and European Union*', Sofia, 04.04.2018.

¹⁵⁴ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley, 21.03.2018.

¹⁵⁵ Soufan Center, 2017, op.cit.

¹⁵⁶ '-' in this table signifies 'unknown', either because the information is known by Member States but has not been made publicly available, or because it is simply not known by Member States' national authorities.

1.2. Experiences and motivations

Understanding the diversity of roles, experiences, and motivations featured in Europe's (potential) returnee contingent is a prerequisite to appreciating the policy challenges posed. Much of the discussion surrounding the roles and experiences of individuals returning to Europe from Iraq and Syria is premised upon the dichotomy between 'first' and 'second' generation returnees. According to the Radicalisation Awareness Network (RAN),¹⁵⁷ the majority of Europe's returnees—the so-called 'first generation'—departed before the advent of IS and its declaration of a 'caliphate' in 2014, and were broadly driven by alternative motivations to their successors (i.e. to take up arms against Syria's President Assad)¹⁵⁸. It has thus been posited that they are 'more prone to disillusionment' and are 'arguably less violent'¹⁵⁹. Conversely, based on various assumptions about the motivations, roles, and experiences of the (much smaller) group of 'second generation' returnees, it has been argued that these represent a significantly greater security threat than their predecessors.¹⁶⁰ The 'current, second generation,' whose departures were interlinked with the activities of IS, are perceived to be 'more battle-hardened and ideologically committed,' and 'may have come back with violent motives: to harm EU citizens.'¹⁶¹ **Importantly, however, these distinctions, while useful for contextualising the phenomenon, should not overlook the heterogeneous nature of Europe's (potential) returnees.** Rather, a survey of the academic literature and front-line practitioners' experiences in the most affected Member States—the latter of which have most been recently collected in the RAN's 'Responses to Returnees' manual¹⁶²— **indicate a diversity of experiences within and across the categories of men, women, and child (potential) returnees.**

1.2.1. Men and women

On the one hand, **male returnees** are considered to share a 'higher risk of combat experience and skills,' and may have 'often' been 'involved in and exposed to war atrocities.'¹⁶³ **Evidence is also mounting in the academic literature, however, that many men play a number of supporting roles with no direct involvement in combat.**¹⁶⁴ These supporting roles may include engineers, doctors, administrative workers, cooks, drivers, or employees of the religious police or Sharia courts.¹⁶⁵ While such supporting activities may be 'difficult to see separately from the violent jihad,'¹⁶⁶ it nonetheless appears important not to automatically assume that all male returnees have

¹⁵⁷ Formed and steered by the European Commission, RAN functions as a network—or 'network of networks'—of front-line practitioners from across EU Member States that interact with issues of 'radicalisation'. RAN's work is discussed further in Section 4.

¹⁵⁸ RAN, 2017, op.cit.

¹⁵⁹ Ibid.

¹⁶⁰ In November 2016, for instance, the EU's Counterterrorism Coordinator (CTC) informed the Council of the European Union that: 'Those having already returned could pose a threat to security, though their motivation to travel to Syria in the first wave may have been more to protect Muslims than to join Daesh (which did not exist at the time). Those being currently sent back to Europe by Daesh to commit attacks are naturally regarded as a threat to security and a number of those have been involved in recent terrorist attacks and foiled acts. The FTFs still in theatre are regarded as dangerous and battle hardened. There are largely two categories of returnees: those in the majority that will drift back, and those who will be sent back on specific missions, which are of most concern'; EU Counterterrorism Coordinator, [Foreign terrorist fighter returnees: Policy options \(Document 14799/16\)](#), 2016.

¹⁶¹ RAN, 2017, op.cit, p. 3.

¹⁶² Ibid.

¹⁶³ Ibid, p. 6

¹⁶⁴ See for example De Bont et al, [Life at ISIS: The Roles of Western Men, Women and Children](#), 2017; Meleagrou-Hitchens et al, 2018, op.cit.; Dawson and Amarasingam, 2017, op.cit.

¹⁶⁵ de Bont et al, 2017. op.cit.

¹⁶⁶ Ibid. para 22.

engaged in violent combat themselves. Case-by-case assessments of returnees may take this into account in adjudging the risks and needs of individuals.

Equally, **evolving understandings of the roles of female departees evidence that they are not a homogenous group**. Traditionally, female departees were considered to have occupied a less diverse range of roles while in Syria and Iraq, often considered passive 'jihadi brides' who conducted little more than family duties.¹⁶⁷ Significantly though, evidence that, **rather than merely being 'victims' of organisations like IS, some female departees are central to the recruitment and propaganda activities** of such groups is increasingly prevalent.¹⁶⁸ Some female returnees may also have been involved in the al-Khansaa Brigade, IS' all-female religious police, which has a mandate to enforce laws and punish disobedience, including through violent means.¹⁶⁹ As such, it is clear that female returnees, like their male counterparts, represent a range of roles and experiences.

1.2.2. Children

The actions and experiences of children recruited into groups like IS are heavily dependent on their age and gender.¹⁷⁰

Boys recruited into IS are variously directed into armed conflict roles (training, direct combat, and potentially execution) anywhere between the ages of 9-15.¹⁷¹ This is significant insofar as (i) it is the primary reason why some Member States classify some minors as 'foreign [terrorist] fighters — i.e. the Netherlands (Aged 9+) and Belgium (Aged 12+), and (ii) children that are younger than the age of criminal responsibility in their respective host states may have been directly involved in terrorism-related criminal offences.

Girls recruited into IS are trained in how best to support husbands to whom they may be married from the age of nine.¹⁷² While they may not engage in combat roles, girls are generally referred to as 'sisters of the Islamic State' alongside adult females.¹⁷³ Accordingly, they may become involved in recruitment and the dissemination of propaganda when it is deemed that they are mature enough.

Regardless of their actions, however, under international law all children recruited into armed or terrorist groups are, in the first instance, the victims of crimes committed by adults. This is discussed further in Section 3.4.

Despite diverse backgrounds, experiences, roles, and motivations, all adult and child returnees are considered to have 'some level of trauma and emotional/psychological issues.'¹⁷⁴

¹⁶⁷ E.M. Saltman, & M. Smith, ['Till Martyrdom Do Us Part': Gender and the ISIS Phenomenon](#), 2016.

¹⁶⁸ Bakker and de Leede, 2015 op.cit.; Saltman and Smith, 2015, op.cit.; De Leede et al, [Radicalisation and violent extremism – focus on women: How women become radicalised, and how to empower them to prevent radicalisation](#), 2017.

¹⁶⁹ de Bont et al, 2017, op.cit.

¹⁷⁰ de Bont et al, 2017, op.cit.; Van der Heide, L. and J. Geenen, [Children of the Caliphate: Young IS Returnees and the Reintegration Challenge](#), 2017.

¹⁷¹ van der Heide and Geenen, 2017, op.cit.; RAN, 2017, op.cit.

¹⁷² Winter, C. Women of the Islamic State: A Manifesto on women by the Al-Khanassaa Brigade, translation and analysis by Charlie Winter., 2015.

¹⁷³ UNODC, [Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System](#), 2017.

¹⁷⁴ RAN, 2017, op.cit., p. 3.

1.2.3. Motivations for returning

Like the other aspects of returnee 'profiles,' typologies of why departees return to Europe are vague, descriptive and can, at best, offer general impressions for contextualising the phenomenon. Returnees may 'fall broadly into five categories':

(i) those who leave early or after only a short stay and were never particularly integrated with IS; (ii) those who stayed longer, but did not agree with everything that IS was doing; (iii) those who had no qualms about their role or IS tactics and strategy, but decided to move on; (iv) those who were fully committed to IS but forced out by circumstances, such as the loss of territory, or were captured and sent to their home countries; and (v) those who were sent abroad by IS to fight for the caliphate elsewhere.¹⁷⁵

Whether these categories suitably reflect the multiplicity of motivations among Europe's returnees is debatable. **For these purposes, however, they help to illustrate the diversity of Europe's returnees, which facilitates the appreciation of the wide-ranging challenges posed for policymakers.**

1.3. Conclusion

Though the vast majority of European departees returned long before the current wave of interest in this issue, the diverse collection of backgrounds, experiences, and motivations displayed among the returnee contingent presents EU Member States with a complex collection of challenges. Addressing the wide-ranging needs and risks present across the returnee contingent demands that Member States' national authorities deploy a range of mechanisms across different government agencies and professional sectors, balancing fundamental rights, security, and political concerns. In responding variously to these complex issues within the confines of their own governmental and legislative contexts, the selected Member States—as the ones most directly affected by this issue in the EU—offer important examples for understanding the overall European response to returnees and the challenges that lie ahead.

¹⁷⁵ Soufan Center, 2017, op.cit., p. 18-19.

2. Overview of Member States' Approaches

Key Findings

- Member States' responses to returnees have increasingly converged following the passage of United Nations Security Council Resolution 2178. The question is no longer one of 'criminalisation or reintegration,' but how these two impulses are related as part of 'comprehensive' responses.
- Member States have increasingly turned to toughening administrative measures (i.e. pre-trial detention, citizenship deprivation, restriction of movement) to manage the perceived risks posed by returnees.
- Some Member States are pursuing strategies of investigating and prosecuting departees *in absentia*, whereas judicial trends are also emerging in the pursuit of internet, battlefield, and intelligence evidence, and a renewed parity in the investigation and prosecution of male and female departees.
- Member States vary significantly in their models for imprisoning terrorism-related and 'violent extremist' offenders. Across the six cases, there is a general shift towards 'containment' models that separate or isolate terrorism-related suspects and offenders from 'common law' criminals.
- Member States also deploy a range of different approaches to the rehabilitation and reintegration of terrorism-related suspects and offenders, which vary regarding their objectives, inclusion criteria, methods, approaches to evaluation, and the availability of their results. In most cases, it is too early to discern solid conclusions about the impact of these measures.
- It is difficult to ascertain a clear comparative picture of Member States' approaches to child returnees as it is still an emerging issue. Most policies are 'case-by-case' in nature, relying on a mixture of child care and security practices.

Many of the challenges posed by the returnee phenomenon are to some degree unprecedented. As such, individual Member States have often been forced to 'learn by doing' in pursuing comprehensive policy responses that are suited to their unique political contexts. An analysis of the six cases reveals that, **despite the specificities of the legal and governmental frameworks in each Member State, approaches have increasingly converged subsequent to the passage of United Nations Security Council Resolution 2178 (UNSCR 2178) in 2014.**¹⁷⁶ UNSCR marked an international effort to establish a coherent legal framework specific to the issue of 'Foreign Terrorist Fighters,' which it defined as:

individuals who travel 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.¹⁷⁷

In doing so, it required UN Member States to ensure that their domestic criminal laws criminalised (attempted) travel, financing, and the organisation and facilitation of travel (i.e. recruitment) for 'the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training.'¹⁷⁸ In outlining an international legal framework for the criminalisation of all acts related to travel 'for terrorist purposes,' UNSCR 2178 served as the

¹⁷⁶ United Nations Security Council Resolution 2178, 2014.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

precursor for EU Directive 2017/541, the EU's efforts to establish a coherent criminal justice response to the departee/returnee phenomenon. As detailed in the opening analysis of this study (Part I), the adoption of the Directive in March 2017 (which is presently in its transposition phase and with which Member States¹⁷⁹ must comply by September 8th 2018¹⁸⁰) was preceded in all six cases by amendments to domestic counter-terrorism legislation pursuant to UNSCR 2178. **As such, as each of the selected Member States have expanded their own provisions for criminalising various preparatory and ancillary acts that do not amount to the direct commission of political violence—** such as travel 'for terrorist purposes'— policy responses to returnees have grown increasingly similar.

In all of the cases, Member States' policies for managing the return of adults from Iraq and Syria are predicated upon criminal investigation and prosecution. Rehabilitation and reintegration measures, such as deradicalisation and disengagement programmes, are deployed in all six cases. **Importantly, however, this section finds that such socio-preventive' initiatives are not deployed as blanket alternatives to repressive measures, but often play a supplementary role** insofar as they are: (i) deployed within prison and probation systems to tackle 'radicalisation', (ii) alternatives to inaction in instances where prosecution and imprisonment are not appropriate due to, for example, a lack of evidence. As such, while individual policies implemented across the six Member States—for both repressive and socio-preventive purposes— differ in terms of their specific objectives, methods, and evidence of their results, a broader commonality in rationale premised upon criminal justice has emerged. **The key question for Member States is no longer, therefore, 'criminalisation or reintegration,'¹⁸¹ but how best to relate these policies with one another as part of 'comprehensive' responses to returnees.**

Where child returnees are concerned, early signs suggest that Member States are also adopting similar approaches that account for both security and child protection concerns.

This section provides a comparative overview of Member States' approaches to returnees in terms of first-line procedures, investigation and prosecution, administrative measures, incarceration, rehabilitation and reintegration, and the treatment of children across these categories. In some instances, it is acknowledged that some observations about particular aspects of policy are preliminary in light of the emerging nature of the returnee phenomenon. The controversies that arise in relation to certain policies are discussed in the next section (3).

2.1. First-line response

There are **very few significant differences between the first-line response procedures implemented across Member States when an adult returnee arrives.** The RAN, in its 2017 manual entitled 'Responses to Returnees,' provides an outline (see below) of the generic process followed by most EU Member States, including the six selected for this Briefing Note.¹⁸² Subsequent to UNSCR 2178, **first-line approaches to adult returnees are predicated upon criminal investigations and risk assessment procedures involving judicial, intelligence, and law**

¹⁷⁹ Except the UK and Denmark.

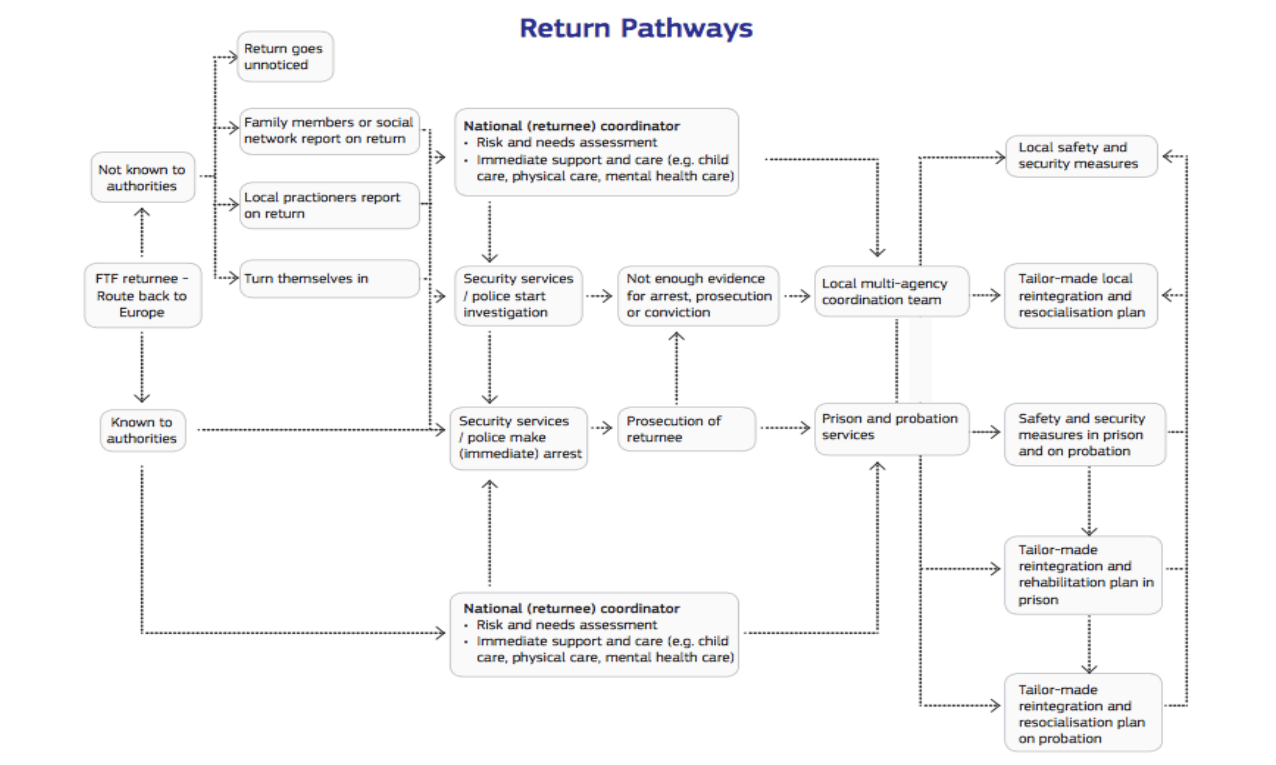
¹⁸⁰ [Directive \(EU\) 2017/541 of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JH](#), Article 28.

¹⁸¹ See C. Lister, [Returning Foreign Fighters: Criminalization or Reintegration?](#), Washington, D.C.: Brookings Institution, 2015.

¹⁸² RAN's outline is based on the Dutch authorities' explanation of its first-line procedures included in: NCTV, [Comprehensive approach returnees](#), 2017.

enforcement actors. Where prosecutions are not appropriate, due to a lack of evidence, **returnees may be managed on a case-by-case basis according to the extent to which they are deemed to pose a threat.** Whereas those deemed 'low-risk' returnees may participate in **rehabilitation and reintegration initiatives**, 'high-risk' individuals may be subject to a range of **administrative measures**. These are discussed in the relevant sub-sections below.

Table 4: Return Pathways (RAN)¹⁸³



2.2. Administrative measures

2.2.1. Deprivation of Citizenship

Member States' capacity and willingness to avoid the return, or facilitate the deportation, of individuals by revoking their citizenship is now a key consideration in security-oriented discussions about the management of returnees. According to the 1961 UN Convention on the Reduction of Statelessness, all of the six Member States are bound by obligations that, in practical terms, restrict the use of citizenship deprivation powers to dual-nationals.¹⁸⁴ German law does not allow for the deprivation of citizenship of German 'foreign fighters'¹⁸⁵ although this has been the subject of public

¹⁸³ RAN, [Responses to Returnees](#), 2017.

¹⁸⁴ Convention on the Reduction of Statelessness, 1961.

¹⁸⁵ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018.

debate.¹⁸⁶ While the other five Member States possess such provisions in cases of dual citizenship, the legal basis upon which they can be deployed varies significantly across the selected cases, which in turn influences how they are exercised in particular scenarios. Significantly, **while in Belgium, Denmark, and France criminal conviction is an essential prerequisite to deprivation of citizenship, the Netherlands and the United Kingdom do not impose such preconditions.** As such, if the Belgian, Danish, and French authorities wished to prevent the return of an individual suspected of presenting a security risk, this would have to be preceded by a criminal investigation and successful prosecution *in absentia*. At this early stage, data is limited on the use of these powers for returnees across the sample of Member States, although a number of cases have begun to emerge since mid-2017. (See Annex 2.3. for the detailed provisions of the different countries in this regard and a sample of cases).

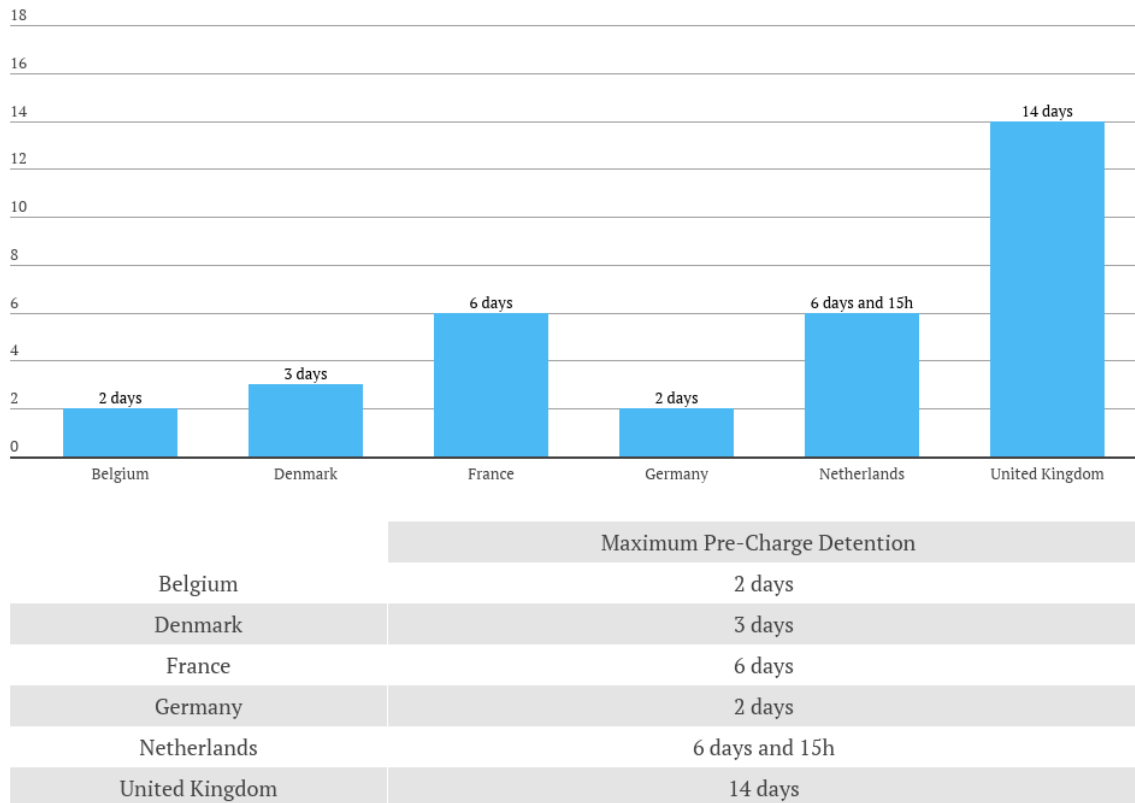
2.2.2. Pre-charge and pre-trial Detention

Once a returnee arrives, Member States may deploy administrative detention, either before a formal charge is made (pre-charge) or once an individual has been charged with an offence (pre-trial), as a preventive mechanism when dealing with individuals identified as a threat. **Pre-charge detention periods vary considerably across the sample, ranging from 2 days (Belgium¹⁸⁷) to 14 days (UK¹⁸⁸).** Pre-trial detention ranges from 3 months (Netherlands) to four years (France).

¹⁸⁶ In January 2018, for instance, the Interior Minister of the State of Bremen, announced [intentions](#) to revoke the citizenship of 'Foreign Fighters' with dual-nationality.

¹⁸⁷ Belgium's Pre-Trial Detention Act permits that returnees can be detained on a pre-charge basis for a maximum of 24 hours, although since 2016 the Belgian parliament has been considering proposals to extend this to 72 hours in terrorism cases.; Maes et al, [1st Belgian National Report: Detour – Towards Pre-trial Detention as Ultima Ratio](#). 2016.

¹⁸⁸ Ragazzi, 2014.

Table 6: Maximum Pre-charge Detention in Terrorism Cases¹⁸⁹

2.2.3. Restriction of movement

In all six cases, Member States may impose restrictions on the movements of returnees. **Measures range from the refusal to issue or seizure/invalidation of identity cards and passports (Belgium, Denmark, France, Germany, Netherlands, UK) or the obligation to receive police approval to travel to certain areas (Denmark).** Premised on a preventive logic, such tools may become particularly relevant where there is concern that a returnee poses a security risk but there is **insufficient evidence to formally charge them with a terrorism-related offence**. It will also likely become relevant where returnees are released on probation, although evidence of such cases is scarce due to the fact that most returnees have not yet been released. Data pertaining to the use of these powers are only available for some Member States. (For more details, see Annex 2.4.)

2.2.4. Monitoring and other administrative restrictions

If the prosecution of a returnee is considered **inviably due to a lack of evidence** (which was more often the case prior to the criminalisation of travel 'for terrorist purposes'), Member States deploy a range of monitoring measures to pre-emptively disrupt suspected terrorist activity. The same logic applies to individuals convicted of terrorism-related offences who are **released from prison. The**

¹⁸⁹ Sources for pre-charge and pre-trial detention: Belgium: [Quelle est la durée légale de la détention préventive?](#), 28.11.2017. Denmark: Ragazzi, 2014.; France: Ibid. and Article 145-2, French Criminal Code; Germany: Morgenstern and Kromrey, [1st National Report on Germany: Detour – Towards Pre-trial Detention as Ultima Ratio](#), 2016; Liberty, [Terrorism Pre-Charge Detention: Comparative Law Study](#), 2010 ; The Netherlands: Ragazzi, 2014; UK: Ragazzi, 2014.

measures consist of electronic surveillance (France, UK, Netherlands, Germany, Belgium), house arrests (France, UK) and special reporting and monitoring measures as well as relocation away from specific geographical areas (France, UK). (Further detail in Annex 2.5.)

2.3. Investigating and prosecuting returnees: preliminary observations

While, in the context of UNSR 2178 and EU Directive 2017/541, Member States' capacity to mount criminal prosecutions against returnees has expanded, jurisprudence experience in this area is still very much in its infancy. Many of Europe's returnees— **the first 'wave'**— arrived back to the continent prior to United Nations Security Council Resolution 2178 in 2014. Their return thus **pre-dated the criminalisation of travel for terrorist purposes and various other ancillary acts across most of the six selected Member States, meaning that many were not systematically prosecuted**. A November 2016 report by Eurojust evidenced that, as Member States are processing more returnee cases armed with tougher anti-terrorism legislation, they increasingly 'face more diverse and complex issues.'¹⁹⁰ Despite efforts to establish a more coherent legal framework in the EU, Member States may vary on a number of issues, including precisely which acts are constitutive of travelling for 'terrorist purposes,' and how the language of *facilitation* and *support* of terrorism are interpreted in court.¹⁹¹ At present, providing a detailed comparative overview is very difficult due to the relatively new nature of the issue and variability in the level of detail about the cases that have been completed. While Eurojust's 2016 report provides some glimpses of how jurisprudence is developing, and academic literature is emerging,¹⁹² the **ability to thoroughly compare prosecution practices is dependent upon the completion of a greater number of the ongoing cases**, as well as more detailed insights into court rulings across affected Member States. The following section thus provides a brief overview of some preliminary observations that have emerged from cases in some of the selected Member States. One particularly significant issue related to this phase is the question of where European departees should be judged if they are arrested in Iraq or Syria, which is discussed further in Section 3.1.

2.3.1. Investigations and trials *in absentia*

Some Member States have displayed a reluctance to wait until their citizens and residents return to initiate criminal investigations and prosecutions. Starting law enforcement and judicial proceedings while departees remain in Iraq and Syria enables Member States' competent authorities to arrest and imprison convicted returnees upon arrival. The **potential advantages** of this approach are that: (i) the early instigation of criminal investigations **can maximise Member States' capacity to collect sufficient evidence if an individual is suspected of terrorism-related crimes**, and (ii) prosecution *in absentia* can **bypass the limitations of detaining individuals on a pre-trial basis**, whereby the pursuit of evidence may extend beyond the legal time limit in which an individual can be detained— potentially sparking serious fundamental rights concerns. Conversely, **potential drawbacks as regards trials *in absentia* may include concern the feasibility of due process**: individuals who reside in conflict zones are often difficult to locate and contact directly, which can make it difficult for Member States to provide individuals with formal notification that they have been summoned to court.

¹⁹⁰ Eurojust, [Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response: Fourth Eurojust Report](#), 2016. p. 12.

¹⁹¹ Ibid.

¹⁹² Paulussen and Pitcher, [Prosecuting \(Potential\) Foreign Fighters: Legislative and Practical Challenges](#), 2018.

The emergence of such cases in recent years by some Member States indicate that these practices could become increasingly central to criminal justice responses to departees in the EU. At this stage, however, it is too early to develop detailed comparative insight into how Member States are tackling the inherent challenges of such approaches, due to the relatively small number of cases and the fact that many are still ongoing at the time of writing. That said, key cases in the **Netherlands, Belgium, and France**, each of which have resulted in convictions, illustrate early experiences in this regard. **Denmark** has utilised trials *in absentia* on at least one occasion for departees, although the details are scarce at present. **According to German law, prosecutions *in absentia* are not permitted based on an 'immediacy principle' that requires individuals to be present in court.**¹⁹³ Evidence of the use of trials *in absentia* by the UK courts is hard to come by (see Annex 2.6. for a more detailed insight into the cases mentioned above).

2.3.2. Evidentiary tactics

While prosecutions may be successful in proving 'travel for terrorist purposes' or membership of a terrorist organisation like IS, it can be significantly more challenging to provide evidence of further (often more serious) crimes committed in Iraq and Syria.¹⁹⁴ Despite this, Member States are beginning to find ways to mitigate some of the obstacles in prosecuting returnees, although they generally do not release figures on the number of successful prosecutions of returnees. Eurojust's 2016 report on the criminal justice response to 'foreign terrorist fighters' evidenced that practices are shifting in accordance with the evolution of the evidence available from within the conflict zone. Three not mutually exclusive evidence types (internet, battlefield, and intelligence), which were earmarked as potential key issues by the EU's Counter-Terrorism Coordinator in 2014,¹⁹⁵ have become central to the discussion:

Internet evidence

The **mobilisation of social media data as a prosecution tactic** provides opportunities to fill the evidence gaps that pervade returnee cases. The vast collection of photos, videos, and communications featured on mainstream platforms like Twitter, Facebook, and Instagram—as well as encrypted services such as KiK and Telegram—can be potentially incriminating given the expansion of terrorism legislation across Member States. Certain precedents have emerged in recent years. For example, prosecutors in the **Dutch 'Context' case**, which saw nine persons convicted of various terrorism-related offences, drew upon Facebook, Twitter, and YouTube posts in proving the commission of crimes of incitement and dissemination, and of 'terrorist intent'.¹⁹⁶ Significantly, **messages posted in a private Facebook group were found not to be incriminating by virtue of their non-public nature.** The '**Sharia4Belgium**' case also mobilised email conversations and Facebook data in sentencing 45 individuals to between three and fifteen years imprisonment.¹⁹⁷ **In the UK, several successful counter-terrorism prosecutions have been built upon social media evidence**, including that of **a returnee who, having arrived back from an IS**

¹⁹³ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018.

¹⁹⁴ As described by one German prosecutor: 'What proof can we get from a war zone where all state structures have collapsed? Cooperation in terms of legal help doesn't work either in Syria or Iraq. If we are able to determine they are returnees from the ranks of the 'Islamic State' or other groups, then mostly we can only prove their membership in a terrorist organization. But we often get the impression that these people weren't just put on guard duty or received weapons training in Syria, but were involved in bodily harm, killings and bombing attacks.' See Knight, [German prosecutor: Hard to convict 'Islamic State' returnees](#), 29.03.2016.

¹⁹⁵ See, for example: EU Counter-Terrorism Coordinator. [Foreign Fighters and Returnees: Discussion Paper](#), 2014.

¹⁹⁶ [Prosecutor v. Imane B. et al](#), 2018.

¹⁹⁷ Paulussen and Pitcher, 2018, op.cit.

training camp in Syria, was found guilty of 'preparation of terrorist acts' after expressing an intention to return there on social media.¹⁹⁸

'Battlefield' evidence and intelligence

The admission into court proceedings of data retrieved from conflict-stricken territories in Iraq and Syria represents a relatively unfamiliar practice for most Member States. Notwithstanding, its prevalence is likely to increase as further military and law-enforcement operations, such as house searches and arrests, unfold in liberated territories following the rollback of IS.¹⁹⁹ Potential evidence may include bureaucratic documents (i.e. membership forms) for IS, passports, mobile-phones, computer hard drives, and biometric forensic data (i.e. fingerprints) found on weapons, documentation, or deceased or captured IS members.²⁰⁰ Importantly, **if it is not clear how evidence has been sourced (i.e. due to its accrual by the covert activities of intelligence actors), this presents significant complications regarding its admissibility in judicial proceedings.** The District Court of Glostrup in **Denmark set a key precedent** in this still relatively uncharted territory when it used intelligence from within the conflict zone, namely an IS registration form, to convict a Danish citizen of joining a terrorist organisation.²⁰¹ Significantly, the data was shared by US authorities, who **'provided an explanation to the court as to how this and other similar forms had come into their possession.'**²⁰² Though information is light on Member States' approaches to this issue, Germany are in negotiation with the United States to gain access to battlefield data accrued by the US military forces in Iraq and Syria.²⁰³ Importantly, however, such data is not permissible in German courts if obtained by intelligence-gathering means.²⁰⁴

2.3.3. Gender disparity

Investigation and prosecution practices for returnees appear to have shifted significantly in recent times in light of evolving understandings of the roles of female departees in Iraq and Syria. Whereas it was often assumed that female departees were passive victims of males—consistent with the stereotype of passive 'jihadi brides' discussed in Section 1—insights into their increasing involvement in recruitment and other ancillary activities have resulted in changing practices. In **Germany**, for instance, for several years males were automatically subject to criminal investigation upon arrival, whereas evidentiary thresholds were much higher in order for women to be investigated upon return.²⁰⁵ In December 2017, however, **Germany's** federal judicial authorities announced a **tougher judicial stance on female returnees to remove gender discrepancies in investigation and prosecution practices.**²⁰⁶ A similar dynamic has unfolded in **France**, as female departees are just as likely as men to be subject to investigation and prosecution due to a shift in perception about their roles in IS.²⁰⁷ A February 2018 study by the Egmont Institute, featuring analyses of policies for returnees in **Belgium, Germany, and the Netherlands** by several prominent scholars of counter-terrorism, found that '[u]ntil recently, women were treated with more clemency,

¹⁹⁸ See Hill, [Responding to Terrorists' use of Social Media: Legislation, Investigation, and Prosecution](#), 2017.

¹⁹⁹ As described in: EU Counterterrorism Coordinator, [Strengthening Military, Law Enforcement and Judicial Information Exchange in Counter-Terrorism](#), 2017.

²⁰⁰ Paulussen and Pitcher, 2018, op.cit. p. 4.

²⁰¹ Europol, 2017, op.cit.

²⁰² Eurojust, 2016, op.cit. p. 4.

²⁰³ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018.

²⁰⁴ Ibid.

²⁰⁵ Heinke and Raudzsus, 2018, op.cit.

²⁰⁶ RT News, [ISIS wives should be brought to trial alongside fighters - German prosecutors](#), 15.12.2017.

²⁰⁷ Official of France's 'Coordination Unit of the Fight Against Terrorism (UCLAT). Skype interview with Francesco Ragazzi and Josh Walmsley. March 21 2018. This insight is also referred to in Eurojust's 2016 report.

but this has now come to an end' in these three Member States.²⁰⁸ **While no statistical data has yet been made available of this 'gender bias,' it does appear that evolving threat perceptions are beginning to influence criminal justice responses to female returnees.** That said, notable cases of females being convicted of offences pertaining to travel for terrorist purposes had occurred prior to this alleged shift in prosecution practices. One May 2015 case in Belgium that saw four women sentenced *in absentia* included a total of seven females (five Belgians, one Dutch, one Moroccan), with charges ranging from one year and eight months to five years for charges related to enlistment, recruitment, and financing.²⁰⁹ At this stage, there is no publicly available evidence of similar dynamics in the other cases in the sample, Denmark and the UK.

2.4. Prison and probation

2.4.1. Detainment models

Detainment models have generated substantial debate within and across Member States. While a large number of states shared a consensus around a dispersal approach, which tends to emphasise the possible rehabilitation of offenders within the broader prison population, avoiding group dynamics and normalizing the offenders' trajectory, a growing number of Member States, concerned with the increased risks of recruitment as well as the intention to deliver tailor-made programmes by specialized staff, are currently moving towards a containment model. The Netherlands, for example, uses a model of **centralised containment**, housing **all individuals suspected and convicted of terrorism-related offences in a single specialised 'Terrorist Ward'** within an existing maximum-security facility. **Germany** has no systematic prison regime at the national level. That said, it can broadly be observed that **dispersal** models, whereby individuals suspected or convicted of terrorism-related offences are detained among the general prison population, are favoured in Germany's federal states. **Belgium, France, Denmark**, and the **UK** each currently operate **mixed models** combining both **dispersal** and **containment** on a case-by-case basis. There is, however, an **increasing shift towards the development of specialised units for the separation and isolation of 'violent extremist offenders'**. The ongoing debate about the appropriateness of 'containment-style' approaches is discussed in Section 3.2.2, whereas more details on the detainment models across the sample are found in Annex 2.7.

2.4.2. Rehabilitation & reintegration: prison and probation

Across the six cases, Member States deploy a range of rehabilitation programmes within the prison and probation context that are applicable to returnees— or that may provide 'inspiration' for how to design initiatives for handling returnees within the criminal justice system. Programmes vary in terms of:

- **Objectives:** Some programmes prioritise disengagement (behavioural transformation resulting in a desistance from violence), whereas others aim to achieve deradicalisation (ideological or psychological transformation).
- **Methods:** Some programmes provide one-to-one theological interventions, whereas others focus on delivering more practical reintegration assistance, such as employment or housing support.

²⁰⁸ Renard and Coolsaet, 2018, op.cit. p. 4.

²⁰⁹ Huffington post, [Belgium convicts 7 women for supporting ISIS](#), 18.05.2015.

- **Inclusion criteria for participants:** Some programmes have already evidenced the involvement of returnees, whereas in other instances this is not reported (for initiatives targeting individuals on probation, this could be because convicted returnees are not yet likely to be released from prison)
- The extent to which private actors (such as intervention providers) are involved.
- **Approaches to evaluation** and the **availability of results.** Methodological difficulties inherent in the evaluation of deradicalisation and disengagement programmes—which are discussed further in Section 3.3— mean that **evidence of the results of these initiatives is scarce and scattered.**

As the level of publicly available detail on the programmes deployed across the six cases is variable, this study provides some examples illustrating different types of approaches across these key areas in Annex 3.

2.5. Non-custodial measures

Member States have also developed rehabilitation and reintegration programmes outside of the prison and probation context that can be applied to returnees who are adjudged to require support— these vary in similar ways to programmes in prisons. Some examples are found in Annex 3. Family support mechanisms are also common tools used across Member States for managing the returnee phenomenon outside of the custodial system.

Various forms of networks and organisations designed to support the families of individuals who are perceived to present with 'radicalisation-related' concerns are now commonplace in Member States. Many of these are developments of existing family support structure that have been adapted to accommodate for the families of individuals who have travelled to Iraq or Syria. These often comprise specific **helplines for families** to call in order to seek advice about individuals of concern, and often include the provision of special counsellors who are able to provide support on a range of practical (i.e. arranging contact with a family member abroad), legal (directing families towards legal aid), and psychological and theological issues.²¹⁰

2.6. Child returnees: preliminary observations

Beyond generic references to 'case-by-case' approaches and 'joint assessments by security and social care actors,' it is difficult to establish a clear picture of the policies adopted in response to child returnees. This is particularly true of the cases of Denmark, Germany, the Netherlands and the UK. This lack of concrete information is likely linked to the fact that Member States' responses are still very much in their infancy, as their national authorities are only beginning to confront the challenges pertaining to the return of children from Iraq and Syria. **As such, providing an overview of the specific procedures deployed in individual cases is complicated at this stage. Member States' policies for child returnees are generally accommodated into existing frameworks of juvenile detention and child care.**²¹¹ The following sub-section outlines preliminary observations

²¹⁰ For a detailed overview of some of these programmes in the selected Member States, see: RAN CoE, [Working with families and safeguarding children from radicalisation Step-by-step guidance paper for practitioners and policy-makers](#), 2017.

²¹¹ See for instance Heinke and Raudzsus, 2018 op.cit; van Ginkel, B., and Minks, S. *Addressing the Challenge of Returnees: Threat Perceptions, Policies and Practices in the Netherlands*. In Renard T., and Coolsaet R., (Eds.) in [Returnees: who are they](#).

of some of the measures being taken across the six cases to handle child returnees. The challenges of responding to child returnees who may be both victims and perpetrators are discussed in Section 3.4.

First-Line Response

Two cases do stand out in providing some illustration of the procedures being developed and the actors involved; both the Belgian and French governments have very recently made efforts to articulate how child returnees should be handled. In early March 2018 **Belgium's** National Security Council announced new measures that marked early semblances of a coordinated strategy for child returnees. While still prioritising a case-by-case approach, it offered a 'roadmap' of six actions to be completed once a child arrives, based on an (i) evaluation of the threat (ii) data checks for existing files (iii) consideration of the possibilities to effectively follow up upon their return; (iv) determination if the child is at least 16 years-old, at which point more coercive measures are permissible; (v) ascertain the location and status of their parents; (vi) assessing the extent to which the child has been indoctrinated and/or militarily trained.²¹²

In cases where a child is classified as a security threat, juvenile detention is considered a possible option. Otherwise, social care mechanisms are activated, although again information is scarce on exactly how such practices unfold in this context, particularly as the issue is still quite new. A priority of Belgium's response to child returnees is to ensure children remain with their parents, even during incarceration. In cases where this is deemed unsafe, attempts are made to place children in the custody of their grandparents or, failing that, in specific childcare services.²¹³

In the **French** context, instructions for the authorities and practitioners for dealing with the challenges of child returnees were outlined in March 2017.²¹⁴ The instructions articulated that each case should be assessed by the prosecutor's office in the first instance to conduct a risk assessment and affirm whether prosecution is an appropriate option.²¹⁵ Those that are referred for judicial measures will then be handled by a juvenile judge.²¹⁶ It further articulated that local socio-preventive and family support structures would, in cooperation with the Public Prosecutor, be vital in managing the return of children from Iraq and Syria, ensuring that appropriate child protection support was in place for all child returnees. Measure 47 of the France's 2018 counter-radicalisation Action Plan sought to reinforce this, mandating strengthened measures for regional councils to follow up children who return from Iraq and Syria.²¹⁷ Other notable measures have unfolded across some of the six cases as Member States have begun to respond to the challenges pertaining to child returnees:

- **DNA testing:** Many 'child returnees' are technically not 'returnees' at all; as high as 75% (i.e. Belgium) of a Member State's total number of children in Iraq and Syria may have been born there and will likely never have set foot in Europe. Accordingly, evidencing a child's biological connection to their (alleged) parents, and therefore determining the claims to a certain nationality and citizenship, can be complex. In the absence of official documentation, DNA testing provides a means of mitigating these obstacles, but is itself difficult for several reasons. For instance, a child may appear at a national embassy in Iraq, but the parents' whereabouts

[why are they \(not\) coming back, and how should we deal with them? Assessing Policies on Returning Foreign Terrorist Fighters in Belgium, Germany and the Netherlands](#), 2018.

²¹² 7sur7, [Des mesures supplémentaires pour contrôler les 'returnees' mineurs](#), 01.03.2018.

²¹³ van Tigchelt, 2018, op.cit.

²¹⁴ Le Premier Ministre, [Instruction relative à la prise en charge des mineurs à leur retour de zone irako-syrienne](#), Paris, 2017.

²¹⁵ Ibid.

²¹⁶ Ibid.

²¹⁷ French Government, 2018, op.cit.

may not be known. In some cases, both parents may be deceased, rendering DNA testing impracticable. If a child's legal status cannot be determined, formal repatriation is unlikely. Due to only a small handful of cases across the sample, it is very difficult to compare approaches. **So far DNA tests for child returnees have been used by (at least) the UK,²¹⁸ Netherlands,²¹⁹ Germany,²²⁰ and Belgium.²²¹**

- **Removal of parental custody** has been used in at least one case in the Netherlands. In 2016, a female returnee who arrived back to the Netherlands from Syria was detained at the Dutch 'Terrorism Ward' on suspicion of terrorism-related offences. Prior to her release in summer 2017, the woman's two children, who she had originally taken to Syria, were placed in the custody of their grandparents.²²²

²¹⁸ Davenport and Hall, [Top Counter Terror Officer Warns Of Threat Posed By Jihadi Children Returning To UK](#), *Evening Standard*, 01.02.2018.

²¹⁹ Official at the Dutch Ministry of Justice. Interview with Francesco Ragazzi. The Hague. 08.03.2018.

²²⁰ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018.

²²¹ van Tigchelt, 2018, op.cit.

²²² Official at the Dutch Ministry of Justice. Interview with Francesco Ragazzi. The Hague. 08.03.2018.

2.7. Summary table of Member State policies²²³

Table 7: Summary table of the Member State approaches

		Belgium	Denmark	France	Germany	Netherlands	UK
Legislation	Bound by EU Directive 2017/542	✓	X	✓	✓	✓	X
	Criminal law in line with UNSCR 2178 + EU Directive 2017/541	✓	✓	✓	✓	✓	✓
Investigation and Prosecution	Criminal investigations <i>in absentia</i>	✓	✓	✓	✓	✓	✓
	Prosecution <i>in absentia</i>	✓	✓	✓	X	✓	-
	Systematic policy of intervention if citizen sentenced to death in Iraq	-	-	✓	✓	✓	-
	If not already initiated, criminal investigation opened automatically when adult returnee arrives (men and women)	✓	✓	✓	✓	✓	✓
Administrative measures	Maximum pre-charge detention	2 days	3 days	6 days	2 days	6 days and 15 hours	14 days
	Maximum pre-trial detention	No limit	-	4 years	6 months	3 months (extendable for two years)	6 months
	Deprivation of citizenship without criminal conviction	X	X	X	n/a ²²⁴	✓	✓
	Departees/ returnees have been deprived of citizenship	-	✓	-	X	✓	-
	Travel bans	-	✓	✓	✓	✓	✓
	Powers to withdraw & refuse to issue passports	✓	✓	✓	✓	✓	✓

²²³ '-' signifies information that was not found or made available during the course of the research.

²²⁴ German law does not allow for the deprivation of citizenship of German 'foreign fighters'.

		Belgium	Denmark	France	Germany	Netherlands	UK
Prison and Probation	Prison Model for terrorism-related suspects and offenders	Dispersal	Shifting to containment	Shifting to containment	Dispersal	Containment	Shifting to containment
	Specific rehabilitation and reintegration programmes for terrorism-related suspects and offenders	✓	✓	✓	✓	✓	✓
Non-custodial measures	Rehabilitation and reintegration programmes applicable to returnees	✓	✓	✓	✓	✓	✓
	Family support tools	✓	✓	✓	✓	✓	✓
Children	Age of criminal liability	12+	15+	13+	14+	12+ (16+)	10+
	Age considered 'foreign [terrorist] fighter'	12+	-	-	-	9+	-
	DNA testing of children born in Iraq or Syria	✓	-	-	✓	✓	✓

3. Debates and controversies

Key findings

- Member States face several legal, ethical, and practical concerns regarding the judicial treatment of European deportees detained in Iraq and Syria, as illustrated by the emergence of a handful of cases in the public domain.
- Toughened counter-terrorism measures introduced in some Member States to (i) restrict the movement of European deportees and (ii) detain terrorism-related suspects and offenders in specialised wings or units have aroused concerns about fundamental rights compliance and, therein, the counter-productiveness of these policies.
- While the added value of deradicalisation and disengagement programmes continues to be questioned by academics, practitioners across Europe have sought to reformulate what is meant by 'evaluation' as a pragmatic response to the challenging scenarios they confront on a daily basis.
- Whereas insights into the roles of minors recruited into groups like IS have led to a trend towards triaging child returnees into different categories of threat, some observers cite the norm of 'primary victimisation' in international law to urge against the exceptional judicial treatment of children who may have committed terrorism-related offences in Iraq or Syria.

The returnee phenomenon, and specifically its interconnection with concerns about the commission of violent attacks in Europe, is highly politically charged. As Member States have developed new and existing counter-terrorism measures across the judicial, law enforcement, and social spheres, debates have unfolded about the appropriateness of these policies. Important discussions have also emerged as Member States have begun to confront the uncertainties arising from the fluid nature of the returnee issue—which is contingent upon shifting geopolitics in conflict-stricken areas of Iraq and Syria. Some of these key debates are highlighted here.

3.1. European deportees detained in Iraq and Syria

A considerable point of contention regarding policy responses to deportees is the appropriate location for the prosecution of Europeans arrested and detained in Iraq and Syria on suspicion of terrorism-related offences. International pressure is mounting for members of the US-led Global Coalition Against ISIS (which features several EU Member States) to repatriate such individuals to reduce the perceived risk that they may (further) engage in political violence.²²⁵ Few Member States have, however, outlined clear positions on this contentious issue. Member States face a complex mixture of legal (jurisdiction and fundamental rights), ethical (the treatment of detainees), and practical (the complexity of judicial cooperation with Iraq and Syria) questions regarding their obligations and capabilities. Matters are further complicated by the fact that vast numbers of those

²²⁵ Following a closed-door meeting in Rome in February 2018, defence ministers from 15 states belonging to the US-led Global Coalition Against IS were unable to agree on how the issue should be tackled. After the meeting, the US Defence Secretary urged that captured deportees were repatriated by their countries of origin, based on a perceived risk that improper judicial proceedings would lead to any dangerous suspects being freed. See Kheel, [No Final Agreement on What to Do With Captured Foreign ISIS Fighters](#), 2018; Ali, [As IS Shrinks in Syria, U.S.-Led Coalition Grapples with Foreign Detainees](#), 2018; AP Archive, [Mattis Pushing Allies on Detainees in Syria](#), 2018.

detained are women who, while they now may be subjected to more punitive treatment based on the evolution of perceptions of their roles in groups like IS, often have young children in their care.²²⁶ The few cases to emerge in the public domain so far illustrate these complexities.

3.1.1. The case for prosecution in Iraq and Syria

The expansion of various measures across the selected Member States for preventing the return of departees (citizenship deprivation, passport revocation, exclusion orders, as foregrounded above in Section 2.2) indicates that, particularly regarding individuals deemed 'high-risk,' repatriation may not be the preferred option.

- **The fear that individuals may return from Iraq and Syria to perpetrate or plan attacks** still dominates much of the policy thinking on this issue at the international level.²²⁷
- Equally, whereas the situation in Syria is slightly more complex (see hereafter), recognised judicial authorities in Iraq may harbour their own reasons to prosecute **individuals they suspect of committing crimes within their legal jurisdiction**, independent of European interests.²²⁸ France has so far distinguished itself from the other five Member States by outlining an overt preference for French departees, around 40 of which are currently detained in Northern Syria (by Kurdish forces) and Iraq,²²⁹ to be tried there providing individuals are afforded a fair trial.²³⁰

3.1.2. The case for prosecution for repatriation

The key considerations regarding the potential repatriation of European departees are both fundamental rights and security-oriented. Concerns have been foregrounded in academic, legal, and advocacy circles about the **capacity of both Iraqi and Syrian judiciaries to afford individuals the right to a fair trial**.²³¹

- **In Syria, government-controlled areas 'generally fail to live up to international standards of independence and impartiality.'**²³² **Beyond such zones, where most European departees are thought to be held,**²³³ a patchwork of makeshift judicial institutions, over which multiple armed groups exert varying levels of control, has **vastly diminished the principles of independence and due process.**²³⁴ The capture of two high-profile British IS members by the Syrian Democratic Forces in Northern Syria in January 2018 thus became the focus of calls for

²²⁶ Representative of Human Rights Watch. Skype interview with Francesco Ragazzi. 22.03.2018.

²²⁷ See for example the latest report of the United Nations Counter-Terrorism Committee Central Directorate, [The Challenge of Returning and Relocating Foreign Terrorist Fighters: Research Perspectives](#), 2018.

²²⁸ Official of France's Coordination Unit of the Fight Against Terrorism (UCLAT). Skype Interview with Francesco Ragazzi and Josh Walmsley. March 21 2018.

²²⁹ The National, [ISIL Wives and Children Press Charges Against France Over Syria Detention](#), 2018.

²³⁰ In January 2018, a 33-year-old French female departee made a public plea to the French government for repatriation after being arrested in Kurdish-held Syria on suspicion of terrorism-related activity. In response, government spokesperson declared that no such provisions would be made. If, Griveaux stated, 'there are legal institutions capable of guaranteeing a fair trial assuring their right to a defence,' König, and other such individuals, should be 'judged there'. France's Foreign Minister later reinforced this position, specifically referencing French citizens captured by the Syrian Democratic Forces: 'They are fighters. They are French, but they are our enemies. The conclusion is that they will be judged by those who they fought.' See De Sèze, [Jihad : pourquoi juger les femmes parties en Syrie sur place est impossible](#), 05.01.2018.; Middle East Eye, [No deal between US allies on how to deal with foreign IS militants](#), 14.02.2018,

²³¹ As enshrined by Article 6 of the European Convention on Human Rights.

²³² M. Ekman, [ILAC Rule of Law Assessment Report: Syria 2017](#), 2017, p. 8.; see also Violations Documentation Centre, [Special Report on Counter-Terrorism Law No. 19 and the Counter-Terrorism Court in Syria](#), 2015.

²³³ Representative of Human Rights Watch. Skype interview with Francesco Ragazzi. 22.03.2018.

²³⁴ Ibid.

trial at the International Criminal Court in The Hague.²³⁵ Concerns also extend to the conditions of detention in Syria. In January 2018, lawyers representing a number of French women and children detained in Kurdish-held Northern Syria filed a lawsuit against the government, urging that France was duty-bound to repatriate its citizens to safeguard **against their arbitrary detention** and the health risks associated with imprisonment in a conflict zone.²³⁶ Significant counter-terrorism questions have also been raised about the relative insecurity of Syrian jails compared with European detention facilities, centring on the likelihood that 'high-risk' individuals may be more easily able to escape.²³⁷

- **Regarding Iraq**, where a reported 100 European departees are under judicial control²³⁸, although court systems are more stable,²³⁹ **legal scholars and rights advocates have highlighted the inconsistency of its anti-terrorism legislation with international legal norms.**²⁴⁰ Concerns also centre around Iraq's use of **the death penalty** for terrorism-related offenders—in January 2018 the French Justice Minister announced that the government would intervene if French nationals were condemned to death.²⁴¹ That same month, a German woman was convicted of 'providing logistical support and assistance to the terrorist group (IS) to commit crimes' and sentenced to death by Iraq's Supreme Judicial Council.²⁴² In light of this contravening European standards on human rights, the German authorities have intervened and are awaiting judgment on their appeal to convert the sentence to a prison term.²⁴³ German authorities are also trying to arrange the repatriation of a 16-year old female sentenced to six years imprisonment by a Baghdad court, although it remains uncertain whether she will be returned to Germany during this term.²⁴⁴

Determining the extent to which EU Member States can exert influence over the outcomes of the judicial treatment of their departees abroad (either regarding repatriation or sentencing) depends largely on the precedents provided by the cases presently unfolding in Syria and Iraq.

3.2. The appropriateness of tougher counter-terrorism measures for returnees

As Member States have adopted new powers to curtail the threat of terrorism - often in direct response to the question of returning 'foreign [terrorist] fighters'- the appropriateness of such policies has come under scrutiny. In particular, the trend in the expansion of restriction of movement

²³⁵ K. Rawlinson, [Amber Rudd Hints Isis 'Beatles' Could Be Returned To UK](#), 2018.

²³⁶ 'These women who went out there are the object of legal proceedings in France. They accept that they must face up to their criminal responsibilities as soon as they arrive on French territory'. Referencing the 'French authorities' perfect knowledge of the illegal and arbitrary detention of the women, the lawsuit was filed against the 'deliberate inertia' of the French government. See Bourdon et al, [Familles-Detenues-En-Syrie-Et-Kurdistan-Communique-De-Presse](#), 2018.

²³⁷ See for example [Pourquoi il faut juger les jihadistes en France](#), 13.01.2018.

²³⁸ W. Worley, [At least 100 European Isis fighters 'to be prosecuted in Iraq, with most facing death penalty'](#), 2018

²³⁹ For an overview, see T. Mehra, [Bringing \(Foreign\) Terrorist Fighters to Justice in a Post-ISIS Landscape Part I: Prosecution by Iraqi and Syrian Courts](#), 2018.

²⁴⁰ In December 2017, for instance, Human Rights Watch reported that the crime of IS membership was being prosecuted in a generic, sweeping, and disproportionate manner; often affording impunity for more sinister crimes like rape, torture, and murder, despite their pervasiveness. See Wille, B. [Iraq: Why ISIS Trials are Robbing Victims of Their Rights](#), 2017. Also American Bar Association, [Compliance of Iraq's Anti-Terrorism Law \(2005\) with international human rights standards](#), 2014.

²⁴¹ Le Parisien, [Djihadistes français en Irak et en Syrie : Paris interviendra en cas de condamnation à mort](#), 2018.

²⁴² Mortimer, C. [Iraq sentences German woman to death for joining Isis, reports say](#), 21.01.2018.

²⁴³ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018.

²⁴⁴ D.Charter, [Linda Wenzel, German teen who joined Isis, is jailed for six years in Iraq](#), The Times, 2018.

measures, as well as the shift towards 'containment'-style detention models for terrorism-related inmates, have prompted questions of the fundamental rights compliance and potential counter-productiveness of some policies.

3.2.1. Preventing the return of individuals suspected of involvement in terrorism abroad

Measures introduced to prohibit the return of individuals from Iraq and Syria to the **Netherlands** (2017²⁴⁵) and the **UK** (2015²⁴⁶) stand out among the other six Member States insofar their exercise is not predicated on an individual being convicted of a terrorism-related offence (See also Annexes 2.4-2.5). In both cases, 'reasonable suspicion' that an individual is involved in the activities of a terrorist group abroad is sufficient to prevent their return (for limited, indefinitely renewable periods), prompting concerns in legal circles regarding security and human rights. In a December 2017 report for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE), **legal scholars outlined concerns that the Dutch measures risked compromising suspects' right to a fair trial** 'given the possibility of inequality of access to information,' and 'the potential ineffective representation *in absentia* for those that wish to challenge the stripping of their Dutch citizenship,' among other concerns.²⁴⁷ Additionally, in a letter to the Dutch Government, the Council of Europe's Human Rights Commissioner formally expressed concerns that the measures may, de facto, discriminate against Moroccan and Turkish nationals, who constitute 50% of Dutch dual nationals.²⁴⁸ The UK's 'Terrorism Exclusion Orders' (TEO) have proven similarly contentious. In 2015, the National Council for Civil Liberties (Liberty), an independent civil liberties and human rights organisation, found TEOs to be incompatible with the European Convention on Human Rights.²⁴⁹ Citing the 'highly dubious' nature of the 'practical ability of individuals to challenge the imposition of TEOs' from abroad, as well as the vagueness of appeal conditions, Liberty found that TEOs would fail to **'mitigate the risk of British citizens being pushed further towards terror factions or detained and subjected to torture and inhumane degrading treatment while trapped abroad'**.²⁵⁰ Though the full impact of these measures in both Member States can only be discerned as cases are tested nationally, they could reasonably lead to allegations that national authorities are **abrogating their responsibility** to contribute to the international fight against terrorism by not bringing suspects of terrorism-offences to trial.

3.2.2. Containment prison models for terrorism-related suspects and offenders

There is considerable debate in political circles, in the scholarly community, as well as among prison and probation professionals as to whether suspects or offenders entering prison for terrorism crimes should be dispersed in multiple institutions of the prison system – or if they should instead be regrouped, in locations such as high-security prisons or wings.²⁵¹ As Member States increasingly develop facilities for the latter 'containment' approach, a spotlight will continue to be cast on the appropriateness of these regimes, regarding both security interests and human rights compliance. As the only example of a model of total containment among the six cases, the **Dutch 'Terrorism**

²⁴⁵ Interim Act on Counterterrorism Administrative Measures, 2017.

²⁴⁶ Counter-Terrorism and Security Act, 2015.

²⁴⁷ For a discussion of these new measures, see Gutheil et al., [EU and Member States' policies and laws on persons suspected of terrorism-related crimes](#), 2017.

²⁴⁸ Ibid.

²⁴⁹ Liberty, [Liberty's Second Reading briefing on the Counter-Terrorism and Security Bill in the House of Lords](#), 2015.

²⁵⁰ Ibid.

²⁵¹ Ragazzi, 2015, op.cit.

Ward' model (See Section 2.2.4 and Annex 2.7) has attracted recent scrutiny. While the Dutch authorities insist that the special detention model enables a more specific targeting of resources, including specially trained staff, and a reduction of the risk of recruitment,²⁵² an October 2017 report²⁵³ by two international NGOs highlighted several human rights concerns. The report found that

someone suspected, not convicted, of an entirely non-violent crime, like posting something online, could end up being detained for up to 22 hours a day for the duration of their stay without ever being able to hold their child or have meaningful human contact with the outside world.²⁵⁴

This finding led the authors to conclude that **special detention regimes for terrorism-related suspects and offenders run the risk of being counter-productive insofar as such exceptional treatment can, by infringing on individuals' fundamental rights, inhibit their ability to return and contribute to society**, which could reasonably be considered to fuel further 'radicalisation'.²⁵⁵ The Dutch government has allegedly displayed a willingness to introduce reforms to address these concerns,²⁵⁶ and thus the extent to which such efforts are deemed successful will be key to informing the debate about the appropriateness of the containment-oriented facilities that are increasingly prevalent in the EU.

3.3. The added value of deradicalisation and disengagement programmes

The premise of deradicalisation and disengagement programmes—to prevent terrorist violence—complicates evaluation from the outset. Unlike other areas of policy, where results may be directly observed and quantified, evidencing the effectiveness of deradicalisation (targeting ideology) or disengagement (targeting behaviour) interventions requires 'counterfactual' information²⁵⁷— i.e. the lack of terrorist attacks by a certain individual. Attempting to pinpoint that it was because of a particular intervention that a person chose not to engage in violence can produce 'false-negatives' (i.e. they may never have engaged in violence in the first place).²⁵⁸ While such programmes are required to be evidence-based, there is a lack of consensus about precisely what this evidence should consist of, and how it should be collected and assessed.²⁵⁹ Against this backdrop, **academics have questioned the added value of this patchwork of different programmes to their stated goal of combating political violence**. In response, some **policymakers and practitioners in EU circles**, such as in the European Commission's Directorate General Migration and Home Affairs, **urge**

²⁵² Official at the Dutch Ministry of Justice. Interview with Francesco Ragazzi. The Hague. 08.03.2018.

²⁵³ Open Society Justice Initiative and Amnesty International, [Inhuman and Unnecessary: Human Rights Violations in Dutch High-Security Prisons in the context of Counterterrorism](#), 2017.

²⁵⁴ Ibid, p. 6.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ C. Heath-Kelly, [Counter-Terrorism and The Counterfactual: Producing The 'Radicalisation' Discourse and The UK PREVENT Strategy](#), 2012.

²⁵⁸ L. Lindekilde, 'Refocusing Danish Counter-Radicalisation Efforts: An Analysis of the (Problematic) Logic And Practice Of Individual De-Radicalisation Interventions', in Christopher Baker-Beall, Charlotte Heath-Kelly and Lee Jarvis (ed.), *Counter-Radicalisation: Critical Perspectives*, Routledge, 2015, p. 223-242.

²⁵⁹ For a review see Feddes and Galluci, [A Literature Review on Methodology used in Evaluating Effects of Preventive and De-radicalisation Interventions](#), 2015; J. Horgan, K. Braddock, [Rehabilitating the Terrorists?: Challenges in Assessing the Effectiveness of De-radicalization Programs](#), 2010. One possible solution that has been proposed is to transpose measurements of recidivism in regular prison and probation contexts to measure the impact of interventions for 'radicalised' individuals. There are, however, significant doubts about how worthwhile this would be. See, for example, B.Schuurman, L.van der Heide, [Foreign fighter returnees & the reintegration challenge](#), 2016, p. 4.

a recalibration of what 'evaluation' means for understanding such programmes, prioritising process over impact at this early stage.

3.3.1. Questionable scientific foundations?

Over the past ten years, a growing body of scientific literature has tried to establish and describe the process of radicalisation, with however little agreement.²⁶⁰ One of the main reasons for academic scepticism is that **the term originated first in policy circles and was only later submitted to scientific inquiry.** In the wake of the 9/11 attacks, the term served a primarily political function, offering a vocabulary to discuss the 'root causes' of terrorism. Following the attacks in Madrid in 2004 and London in 2005, the term then became the central focus of discussions about the social and political processes determinant of such acts. **There are many controversies around the use of the term, but the main point of contention between the policy definition of radicalisation and the critical academic positions concerns the possible sense of ineluctability and determinism that can sometimes be contained in the term.** Some key policy documents, the most famous of which being the New York Police Department's document 'Radicalisation in the West' (2007)²⁶¹ suggest for example that radicalisation happens in 'steps' with one stage leading to the other. Many experts on radicalisation have shown that there is little evidence to support this conceptualisation of the process by which individuals come to embrace political violence.²⁶² The work of John Horgan, for example, shows that **radicalisation is a complex process, which depends on a lot of circumstances, luck, and ultimately a person's unpredictable ability to make specific choices.**

3.3.2. A pragmatic approach?

Although social science research on the effectiveness of these programmes is still inconclusive, they are currently what practitioners in the field consider as the best tools to advise and provide emotional support to individuals suspected or convicted of terrorism-related acts, in order to encourage them to desist from violent extremism. This is evidenced by the continued influence of such initiatives in the exchange of good practices coordinated by the RAN steered by the European Commission (discussed further in Section 4). There is a growing recognition in these European policy circles that expecting a 'master design' for deradicalisation or disengagement is unrealistic, due to the complexity of providing 'hard results'.²⁶³ Instead, **despite political pressures for accountability-based evaluations based on impact, practitioners increasingly focus on operational evaluations that enhance the transferability of 'inspiring' practices.**²⁶⁴ The logic of these evaluations is to understand the underlying assumptions of why a particular model was implemented in a specific context and the methodology being pursued as a result. It is argued that, by doing so, it is possible to provide adaptable guidance on organisation, procedural quality requirements, and the potential merits of different methods and types of actors from a practitioner's perspective.²⁶⁵ The sentiment is that, **while the debate about effectiveness continues, it offers little to assist practitioners who are required to respond immediately to complex situations, such as the management of a 'violent extremist' offender, on a daily basis.** Rather than reflecting on successes and failures after an intervention is finished (which is itself often difficult to

²⁶⁰ Ragazzi, 2015, op.cit.

²⁶¹ M. Silber and A. Bhatt, [Radicalization in the West: the Homegrown Threat](#), 2007.

²⁶² See for example J. Horgan, *Walking Away from Terrorism*. Oxon and New York: Routledge, 2009. Also the (unpublished) report of the European Commission's Expert Group on Violent Radicalisation from 2008.

²⁶³ Officials from the European Commission's Directorate General Migration and Home Affairs. Interview with Francesco Ragazzi and Josh Walmsley, 21.02.2018. Brussels.

²⁶⁴ Ibid.

²⁶⁵ Ibid.

determine), **integrating evaluation into programmes from their initial stages is considered a pragmatic response to the challenges faced regarding terrorism-related suspects and offenders.**

3.4. Counter-terrorism and protecting child returnees - a policy contradiction?

Member States are confronted by uncertainties that arise from the fact that some child returnees may be both the victims and perpetrators of criminal offences following their time in Iraq and Syria. Specifically, they may face difficulty in ascertaining whether there is a policy contradiction between their security priorities for countering terrorism and their legal obligations to children who may have perpetrated terrorism-related offences but are always victims under international law.²⁶⁶

3.4.1. Child returnees: threats first, victims second?

It is widely claimed that children recruited into groups like IS in Iraq and Syria may perpetrate criminal acts, including serious violent offences.²⁶⁷ This stems from longstanding insights into the use of children by armed groups,²⁶⁸ but also the understanding that IS recruits boys into combat roles from the age of nine and the emergence of IS video footage that appears to show children being used in the commission of violence.²⁶⁹ **As a result, the counter-terrorism lens through which adult returnees are viewed is often extended to children,²⁷⁰ with minors being classed as 'foreign [terrorist] fighters' as young as 9 (Netherlands²⁷¹) or 12 (Belgium²⁷²).** This perspective is, however, nuanced by a growing recognition that, rather than being a homogenous group, child returnees can be triaged into different categories of threat according to their age: (i) teenagers, (ii) pre-teens, and (iii) infants.²⁷³ Teenagers are characterised as the most serious and immediate terrorist threats based on calculations of the likelihood of their reception of training or direct involvement in violence, whereas pre-teens and infants are considered to present long-term security risks if they are not appropriately resocialised.²⁷⁴ Policymakers should, it has been posited, view pre-teens and infants primarily as victims, while 'older children' demand an approach that goes beyond the victim-perspective.²⁷⁵ In this context, it is not unreasonable to consider that **child**

²⁶⁶ The notion of a 'conflict of interest' was discussed at a meeting of the ALDE group of the European Parliament in January 2018 on the issue of child returnees. See ALDE, [Child Returnees: Managing The Return Of European Children From Jihadist Conflict Zones](#), 2018.

²⁶⁷ See for example: UNODC, [Handbook on Children Recruited and Exploited by Terrorist and Violent Extremist Groups: The Role of the Justice System](#), 2017.; RAN, 2017, op.cit.

²⁶⁸ UNODC, 2017, op.cit.

²⁶⁹ In January 2016, for example, a four-year-old British boy featured in an IS video apparently detonating a bomb that killed prisoners. See Davenport and Hall, 2018, op.cit.

²⁷⁰ In January 2018, for instance, an official from Germany's domestic intelligence agency (BfV), issued a warning: '[w]e have to consider that these children could be living time bombs. There is a danger that these children come back brainwashed with a mission to carry out attacks'. In February, a British counter-terrorism officer warned that '[s]ome terror groups are training children to commit atrocities. We need to not just understand the risk the mother poses but the risk that any child poses as well²⁷⁰'. See Shalal and Siebold, ['Brainwashed' children of Islamist fighters worry Germany: spy chief](#), 31.01.2018. And Davenport and Hall, 2018, op.cit.

²⁷¹ AIVD, [Focus on Returnees](#), 2017.

²⁷² Renard and Coolsaet, 2018, op.cit.

²⁷³ This was reflected in remarks by the director of the Radicalisation Awareness Network (RAN) the January 2018 ALDE group meeting on child returnees. See ALDE, 2018, op.cit.

²⁷⁴ ALDE, 2018, op.cit.

²⁷⁵ Van der Heide and Geenen, 2017, op.cit.

returnees may be subject to increasingly punitive treatment as they are increasingly grouped together with adult terrorism-related suspects and offenders.²⁷⁶

3.4.2. Primary victimisation without exception

Beyond the counter-terrorism perspective, in light of the international legal framework on the rights of all children, **some observers have urged caution about triaging child returnees into different categories of threat.**²⁷⁷ As enshrined in international law, **individuals under the age of 18 who have been recruited into armed or terrorist groups are, without exception, the victims of crimes committed by adults.**²⁷⁸ The United Nations Office on Drugs and Crime (UNODC), in its January 2018 handbook on 'Children Recruited and Exploited by Terrorist and Violent Extremist Groups',²⁷⁹ cites several widely ratified conventions and treaties that consolidate the victim-first status of children recruited into groups like IS.²⁸⁰ **The fundamental principle that emerges, according to UNODC, is that 'no child recruitment process can be regarded as truly voluntary, because of the cognitive abilities of the child, and the different forms of coercion or influence associated with recruitment methods.'**²⁸¹ This perspective holds that, while child returnees' victim-first status does not immunise them from criminal responsibility, it firmly distinguishes the conduct of children that of adults, marking a clear baseline for the judicial treatment of children suspected of terrorism-related crimes.²⁸² Furthermore, UNODC posits that counter-terrorism policies that perceive children solely in terms of their potential future propensity for violence (i.e. radicalisation) can have damaging long-term effects:

Such children are often regarded as belonging to a special category of offenders, and specialized procedures and measures are adopted to recognize the particular seriousness of terrorist acts. This often leads to the adoption of a punitive approach with no consideration of child rights, which, in turn, results in lasting consequences for the development of the child and has a negative impact on his or her opportunities for social reintegration.²⁸³

In addition to this perspective, it has also been highlighted that, **as the vast majority of European children in Iraq and Syria were born there, and are therefore younger than six years-old, the question of their treatment is more relevant to humanitarian concerns than counter-terrorism.**²⁸⁴

²⁷⁶ In the Netherlands, from the age of 16 children may already be subject to exceptional measures for adult terrorism-related suspects and offenders, including detention in the specialised high-security 'Terrorism Ward' at the Vught Penitentiary Institution and deprivation of citizenship under the Interim Administrative Measures Act of 2017.

²⁷⁷ At the 2018 ALDE meeting on child returnees in Brussels, representatives from both UNODC and Child Soldiers International, a prominent NGO in this area, argued that it was essential to remember that all children under the age of 18 recruited into terrorist groups are all victims first.

²⁷⁸ UN Convention on the Rights of the Child, Article 19.

²⁷⁹ UNODC, 2017, op.cit.

²⁸⁰ These include the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (2000), the 2007 ['Paris'] Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, UN Security Council Resolution 1314 (2000).

²⁸¹ UNODC, 2017, op.cit. p. 11

²⁸² UNODC cites several international conventions to highlight judicial safeguards that must be afforded to children that do not apply to adult terrorism-related suspects and offenders, including that children cannot be criminalised solely on the basis of their association with a terrorist group and that deprivation of liberty, also known as detention, must always be a last resort (Principles and Guidelines on Children Associated with Armed Forces or Armed Groups, para. 3.6 and para. 3.7.).

²⁸³ UNODC, 2017, op.cit. p. 70-71.

²⁸⁴ Representative of Human Rights Watch. Skype interview with Francesco Ragazzi. 22.03.2018.

3.5. Conclusion

The current phenomenon of returnees, and some of the policies developed in response across the sample, present challenging and contentious legal, ethical, and practical issues. The question of the appropriate judicial and diplomatic responses to European departees detained in Iraq and Syria is itself wrought with ambiguities regarding Member States' obligations and capabilities that will only be determined as further cases unfold. Equally, the toughening of counter-terrorism measures for (i) restricting the movement of departees/returnees and (ii) containing terrorism-related suspects and offenders in specialised prison units have sparked debate about fundamental rights and counter-productiveness. Discussions of effectiveness also pervade the socio-preventive policies adopted by Member States, both in and outside of prison. While academics continue to call the scientific foundations of deradicalisation and disengagement programmes into question, front-line practitioners urge a pragmatic response to evaluation that assists in coping with challenging situations on a daily basis. Though counter-terrorism and the protection of child returnees may appear a policy contradiction, as children are increasingly triaged into different categories of threat, international observers foreground internationally established children's rights norms in arguing compellingly that this is not the case.

4. EU role and exchange of good practices

Key findings

- The November 2015 Paris attacks catalysed efforts to establish a coherent response to the phenomenon of departees/returnees across both the legislative and policy spheres, resulting in a proliferation of measures in the contexts of cross-border strategic and operational cooperation, information sharing, and the exchange of good practices.
- The attacks similarly underlined the centrality of Eurojust in establishing operational links between competent authorities in Member States that may have not collaborated previously on judicial matters.
- Europol's European Counter-Terrorism Centre is key to the EU's commitment to strengthening Member States' national capabilities on departees/returnees, offering a platform for the exchange of information and the provision of operational and strategic support regarding investigations and prosecutions.
- The EU's efforts to fulfil its remit to strengthen national capabilities via the exchange of information and best practices, as outlined in its 2005 Counter-Terrorism Strategy, is anchored by the Radicalisation Awareness Network (RAN).
- RAN's practitioners' manual, 'Responses to returnees: Foreign terrorist fighters and their families,' marks the most comprehensive collection of 'good practices' to date on the issue of departees/returnees.

With its 2005 Counter-Terrorism Strategy, the EU outlined a 'strategic commitment 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.'²⁸⁵ The Strategy, which clearly established national security as exclusively a Member State competence, is predicated upon four 'pillars': Prevent,

²⁸⁵ Council of the European Union, [The European Union Counter-Terrorism Strategy](#), Brussels. 2005.

Protect, Pursue, Respond, that frame the cooperation of EU Member States and institutions in combating terrorism.²⁸⁶ Within this, the primary responsibility for all counter-terrorism issues, including that of returnees, lies with the Member States, and the EU role is predominantly supportive in nature. Specifically, its role is conceived in terms of (i) '**strengthening national capabilities**' via the **exchange of information and best practices**, (ii) '**facilitating European cooperation**,' (iii) '**developing collective capability**,' and (iv) **coordinating the EU's input on counterterrorism on the international level**, particularly in relation with the UN and Third States.²⁸⁷ Rather than formal obligations, however, these four dimensions mark out priority areas, leaving considerable scope for variation in counter-terrorism policy across the EU. The result, as found by a 2017 study for the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee, is a 'plethora of sub-strategies, action plans, and overlapping policy fields with multiple measures' that 'break[s] up counter-terrorism in a number of 'composite' parts and [...] embed[s] 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.'²⁸⁸ In light of this crowded policy landscape, developing a picture of how the different tools, measures, and actors interact around the returnee phenomenon is a prerequisite to assessing both their relevance to, and the added value of, the overall EU response.

In 2014, the Counter-Terrorism Strategy was updated to place '**foreign fighters**' at the centre of the EU's priorities, reflecting an effort to establish a coherent European response to the issue that was further catalysed by the attacks in Paris on November 13th 2015. In August 2014, responding to a suggestion by the EU's Counter-Terrorism Coordinator (CTC), the European Council called for the 'accelerated implementation' of a collection of measures across four priority areas: (i) **prevention of radicalisation**, (ii) **detection of suspicious travel**, (iii) **investigation and prosecution**, and (iv) **cooperation with third countries**.²⁸⁹ On February 12th 2015, the Council issued a statement reinforcing the EU's commitment to these policy areas, calling for further acceleration of the European response to 'foreign fighters'; one that has been realised through a subsequent proliferation of measures and policies across the Union's heterogeneous infrastructure for counter-terrorism. The ongoing transposition of Directive 2017/541, by creating a baseline standard for the criminalisation of acts pertaining to travel 'for terrorist purposes,' marks the culmination of efforts to establish coherence in the legislative sphere. Beyond this, several significant measures have been forged, and existing ones reinforced, through the cooperation of Member States and EU agencies across the priority areas foregrounded by the Council (see for more details, the opening analysis in part I). The following section provides an overview of how, and by whom, issues related to each of these four priority areas are being tackled across the EU within its broader strategic remit to support Member States. In particular, it highlights ongoing efforts in the spheres of **cross-border strategic and operational cooperation, information exchange**, and the **sharing of good practices** for managing the return of European citizens and residents from Iraq and Syria.

Against the backdrop of EU Directive 2017/541, Member States face several obstacles in delivering judicial responses to their citizens or residents who (may yet) return from Iraq and Syria, placing cross-border cooperation and information exchange at the centre of discussion. Specifically, the challenges of tracking the movements of European departees within conflict-stricken territories, conducting effective criminal investigations, and securing evidence once an individual is suspected of a terrorism-related offence has been shown to require the cooperation of Member states and key EU agencies. The cross-border nature of the departee/returnee phenomenon brings multiple actors from EU agencies, Member States, and Third countries into play across three spheres: (i) law enforcement, (ii) judicial, (iii) social sector and (iv) military. Europol and Eurojust are central to the

²⁸⁶ Ibid.

²⁸⁷ Wensink et al., [The European Union's Policies on Counter-Terrorism Relevance, Coherence and Effectiveness](#), 2017.

²⁸⁸ Ibid.

²⁸⁹ Council of the European Union, [The Challenge of Foreign Fighters and the EU's Response](#), Brussels, 2014.

provision of operational and strategic support to Member States to mitigate these obstacles and are also integral to the exchange of information across the law enforcement and judicial spheres. Both of these agencies have also been at the forefront of calls by the EU Counter-terrorism Coordinator to enhance collaborate with actors from Third States, including military entities, on the use of battlefield evidence for support Member States in investigating and prosecuting returnees/departees. As highlighted in the opening analysis of this study, Frontex is playing an increasingly prominent role in efforts to detect the movements of returnees across borders. The social sphere is left to the Member states, and best practices are shared via instances such as the Radicalisation Awareness Network (RAN).

4.1. DG Home

The Directorate General Migration and Home affairs (DG Home) of the European Commission is active in the assessment of the risks presented by the returnee phenomenon in the EU and the exchange of this information at policy level. As the interface between the Commission and the EU's threat assessment producers, including Europol, in 2013 DG Home produced 'comprehensive risk assessment' on the threats, vulnerabilities, and impacts pertaining to 'foreign fighters'.²⁹⁰ Rather than seeking to locate geographically where attacks could be committed, it sought to locate gaps in the collective EU security apparatus that could be exploited for terrorist activity by returnees. The principal impact of the assessment was a reappraisal of the Commission's policy on border security, honing in on both outgoing and incoming cross-border travel, the latter of which had received much less attention at the time.²⁹¹ It is in this context that the Commission has made significant moves to reinforce checks at external borders via its central borders database, the Schengen Information-System,²⁹² and has stepped up efforts to regulate the use of the Passenger Name Record system (PNR) for exchanging data held by air carriers.²⁹³ DG Home also developed a screening tool to guide border control authorities to identify common risk indicators regarding potential terrorism-related suspects at the level of front-line practice.²⁹⁴

4.2. Europol

The EU's law enforcement agency, Europol, is central to efforts to strengthen Member States' national capabilities on departees/returnees, offering a platform for the exchange of information and the provision of operational and strategic support regarding investigations and prosecutions. These functions became explicitly integrated into Europol's mandate within seven days of the 13 November 2015 attacks in Paris with the formation of the European Counter Terrorism Centre (ECTC).²⁹⁵ The ECTC became officially operational in January 2016 in direct response to the 'growing number of foreign terrorist fighters,' designed as a hub to support Member states in tackling the issue. Its contributions to information-exchange on departees/returnees are anchored by a

²⁹⁰ Officials from the European Commission's Directorate General Migration and Home Affairs. Interview with Francesco Ragazzi and Josh Walmsley. 21.02.2018. Brussels. These risk assessments have not been made publicly available.

²⁹¹ Ibid.

²⁹² See: [Regulation amending Regulation \(EU\) 2016/399 as regards the reinforcement of checks against relevant databases at external borders](#), 2017.

²⁹³ [Regulating the use of passenger name record \(PNR\) data](#), 10.11.2017.

²⁹⁴ Officials from the European Commission's Directorate General Migration and Home Affairs. Interview with Francesco Ragazzi and Josh Walmsley. 21.02.2018. Brussels.

²⁹⁵ Europol. [Terrorism Situation and Trend Report 2016](#). The Hague. 2016.

centralised database, or 'Analytical Work file',²⁹⁶ for counterterrorism consisting of several thematic 'analytical projects'. Two of these projects are centrally relevant to the collation and exchange of data pertaining to departees/returnees:

- **Hydra** is designed to 'support the prevention and combating of terrorism-related crimes... perpetrated by individuals, groups, networks, or organisations who evoke Islam to justify their actions'.²⁹⁷
- **Focal Point Travellers** is used to collate data on all individuals who (seek to) travel 'for terrorist purposes'.²⁹⁸

Importantly, ownership of these data lies with the individual Member States who, as a condition for their participation, exercise control over the authorisation of how the information they contribute is used and transferred, if at all.²⁹⁹ The participation of individual Member States in these mechanisms varies considerably and is largely dependent on (i) the particularities of their national security infrastructure and (ii) their willingness to share information at the regional level.³⁰⁰ **The Dutch and Belgian authorities, for instance, have shared their entire lists of names and background information pertaining to their departees/returnees with the ECTC. By contrast, the UK has preferred to retain their data in the intelligence domain, whereas Denmark have shared names only via the European Information System (EIS), Europol's generic database for all areas of crime.**³⁰¹ Based on these data, and dependent on the levels of authorisation (handling codes H1, H2 or H3)³⁰² provided by Member States, the ECTC is able to notify individual national authorities where information about an individual is common to the interests of two Member States. Through this, the ECTC strives to enhance cross-border cooperation via the initiation of bilateral contacts regarding specific cases of European departees/returnees.

4.3. Eurojust

As the primary mechanism for cross-border judicial cooperation in Europe, Eurojust plays an important role in the EU's effort to establish a coherent criminal justice response to departees/returnees across Member States. Much of its output pertains to expanding the knowledge base on judicial experiences and challenges, which has been channelled through a series of **tactical meetings** on terrorism, the first of which took place on 20th June 2013, bringing together: Member States' national correspondents to Eurojust for terrorism matters, representatives from the competent authorities of Member States and Third States in the judicial and law enforcement spheres, Europol, and the EU Counter-Terrorism Coordinator³⁰³. In building upon these events by distributing four annual reports to several key EU agencies and Member States' institutions between November 2013- 2016, Eurojust has been central to the development of the knowledge-base on the judicial treatment of departees/returnees at EU level:

²⁹⁶ This is one of two major databases in operation at the ECTC, the other being its Serious Organised Crime Analytical Work File.

²⁹⁷ See [European Counter Terrorism Centre- ECTC](#), Europol.

²⁹⁸ Officials at Europol's European Counter Terrorism Centre. Interview with Francesco Ragazzi and Josh Walmsley. 08.03.2018.

²⁹⁹ Ibid.

³⁰⁰ Ibid.

³⁰¹ Ibid. As underlined in the opening analysis in part I, the contribution of the Member States to EU database is suboptimal.

³⁰² Ibid.

³⁰³ Eurojust, 2016, op.cit.

- Its **2013** report, 'Foreign Fighters in Syria – A European Perspective: Eurojust's Insight into the Phenomenon and the Criminal Policy Response,' foregrounded 'the **need for a coordinated and structured approach to the emerging FTF phenomenon**, integrating judicial, administrative and other multi-disciplinary measures.'³⁰⁴
- In **2014**, its second report addressed '[c]hallenges in securing strong evidence, particularly electronic evidence, and conducting financial investigations,' seeking to underline 'the **risk of creating prosecution gaps in the absence of common minimum standards** for criminalisation of certain conduct.'³⁰⁵
- Its **2015** report provided an '[a]nalysis of jurisprudence experience,' highlighting '**national experiences** with countering radicalisation in a judicial context.'³⁰⁶
- The report on 'foreign terrorist fighters' from November 2016, built upon the earlier reports, focusing on '[s]pecial and emergency powers applicable in case of terrorist attacks, **admissibility of (foreign) intelligence as evidence** for criminal proceedings and **links between terrorism and organised crime**.'³⁰⁷

Both the tactical meetings and the annual reports, by exchanging experiences and challenges pertaining to the judicial treatment of departees/returnees, form the basis for Eurojust's provision of operational and strategic support to Member States on individual cases.

The **2016 report** outlined that **EU Member States were increasingly seeking Eurojust's strategic and operational assistance in terrorism-related cases**, often in light of the evidentiary challenges that arise in cases of departees and returnees. Importantly, Eurojust is **only involved where assistance has been formally requested on a particular case** and does not have an overview of other ongoing cases in a given Member State.³⁰⁸ In this context, Eurojust is increasingly active in facilitating **Mutual Legal Assistance Requests**, facilitating the execution of **European Arrest Warrants** (EAWs), and attempting to ensure that information gaps between law enforcement and judicial institutions are bridged. In close cooperation with Europol, Eurojust plays a key role in setting up Joint Investigation Teams (JIT) whereby, based on cooperation agreements between two or more states, both judicial and law enforcement actors are brought together to conduct specific cross-border criminal investigations. Another mechanism in this context is the **Eurojust National Coordination System** (ENC), through which Coordination Meetings and Coordination Centres are used to facilitate judicial cooperation and share insights into legal obstacles faced in 'FTF' cases.³⁰⁹ This mechanism facilitated the opening of the **case of the 13th November Paris attacks**, for instance, which resulted in the involvement of 30 Member States and led to five coordination meetings with the most involved national authorities.³¹⁰ Highlighting the importance of Eurojust's operational support, a significant outcome of these processes was the surrender of suspects to France from involved Member States.³¹¹ Whereas Member States with pre-existing judicial cooperation arrangements may deploy Liaison Magistrates in bilateral cases, **the November 13th case underlines the centrality of Eurojust in establishing operational links between competent authorities in Member States that may have never collaborated previously on judicial matters**.³¹² Furthermore, Eurojust is also active in the operational and strategic cooperation

³⁰⁴ Eurojust. Foreign Fighters in Syria - A European Perspective: Eurojust's Insight into the Phenomenon and the Criminal Policy Response, 2013 (not publicly available).

³⁰⁵ Foreign Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response, 2014, (not publicly available).

³⁰⁶ Eurojust. Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response, 2015 (not publicly available).

³⁰⁷ Eurojust, [Foreign Terrorist Fighters: Eurojust's Views on the Phenomenon and the Criminal Justice Response: Fourth Eurojust Report](#), 2016.

³⁰⁸ Eurojust official. Interview with Francesco Ragazzi and Josh Walmsley. 09.03.2018.

³⁰⁹ Eurojust, 2016, op.cit.

³¹⁰ Ibid.

³¹¹ Ibid.

³¹² Ibid.

with Third States such as Turkey, and the USA, although in Iraq and Syria action in this area is inhibited by the impact of several decades of conflict on the judicial infrastructure in these countries.³¹³ Eurojust is therefore integral to the EU's provision of operational and strategic support to Member States in the judicial sphere regarding departees/returnees.

4.4. 'Battlefield Evidence': EU Agencies, third States, and international institutions

In July 2017 the EU's Counter-Terrorism Coordinator (CTC) provided the delegations to the Council of the European Union with a set of concrete 'quick wins,' short-term and medium-term measures for 'strengthening military, law enforcement and judicial information exchange.'³¹⁴ Battlefield evidence was at the forefront of the proposed interaction between Europol, Eurojust, INTERPOL, EU Member States, and Third States. The CTC stated that if Member States decided to 'use battlefield information to the greatest possible extent for law-enforcement purposes,' this could 'have the greatest impact' in this area.³¹⁵ While calling on Member States to discuss the challenges this may bring, the CTC highlighted the importance of 'systematic sharing with **Europol** and **INTERPOL**'.³¹⁶ According to these proposals, Member States should:

- '[P]rovide information on who has the authority over the classification process/classification level of information collected on the battlefield'
- '[S]hare the practices that are followed for sharing and exploiting of information collected by the national armed forces on the battlefield'
- '[D]escribe the current procedures in place and give examples for law enforcement/military information sharing at national level (for example through involvement of military police or gendarmerie type services) and internationally'
- Exchange 'national examples of use of the 'law enforcement sensitive' or something similar, which could pave the way for a closer cooperation'
- '[I]ndicate whether, if present on the ground in Syria/Iraq or Afghanistan, participation in the revival of [the INTERPOL military-to-law-enforcement information exchange tools] Vennlig / Hamah would be an option, including potential challenges'
- '[I]ndicate which of the suggested avenues they consider as most viable to ensure that battlefield evidence be made available to law enforcement and which actions should be taken forward as a priority.'³¹⁷

Each of these proposals fulfils the 'priorities' laid down by the EU's Counter-terrorism Strategy in terms of national capabilities, EU-wide cooperation, developing collective capability, and coordinating the EU's relationship with Third States and international organisations like INTERPOL.

4.5. The Radicalisation Awareness Network

³¹³ Ibid.

³¹⁴ Ibid

³¹⁵ Ibid, p. 3.

³¹⁶ Ibid.

³¹⁷ Ibid, p. 7

Strengthening national capabilities via the **exchange of information and best practices** has been a core component of the EU's counter-terrorism efforts since it was outlined in the 2005 Strategy. Particularly regarding returnees, where producing 'evidence-based' policies is still complicated by methodological difficulties both in terms of establishing reliable profiles and evaluating what works, disseminating 'good practices' from front-line practice offers a key means through which Member States' national authorities can formulate policies in tune with the reality 'on the ground'. Since September 2011, the exchange of knowledge and practices in the fields of 'preventing/countering violent radicalisation' (PVE/CVE) has been anchored by the **Radicalisation Awareness Network (RAN)**. Formed and steered by the European Commission, RAN functions as a network— or 'network of networks'³¹⁸— of front-line practitioners from across EU Member States that interact with issues of 'radicalisation'. This work spans a range of professional sectors and, accordingly, is channelled through a series of thematic working groups **RAN's infrastructure for good practice exchange has been targeted towards the departee/returnee phenomenon since as early as September 2012.**

In July 2017 the European Commission established the **High-Level Commission Expert Group on Radicalisation**, signifying an effort to reinforce the work of RAN by bringing together, *inter alia*, representatives from the RAN Centre of Excellence, Member States, the Commission, Europol, Eurojust, the Fundamental Rights Agency, and the EU's Counterterrorism Coordinator (CTC). The Expert Group is tasked with providing advice on (i) improving cooperation and collaboration among stakeholders and especially between Member States, (ii) furthering the development of EU prevent policies through concrete recommendations, and (iii) facilitating 'more structured cooperation mechanisms at Union level.'³¹⁹ In December 2017, the Expert Group published its Interim Report, further reinforcing the centrality of RAN to the exchange of best practices in the field of socio-prevention.³²⁰ The Expert Group is also the principal vehicle for ongoing proposals, led by the French and German governments, to create an EU centre for the prevention of radicalisation that would centralise the exchange of best practices that occurs through RAN.³²¹

RAN's July 2017 practitioners' manual underscored the primacy of RAN within the EU's effort to strengthen Member States' national capabilities for tackling the returnee phenomenon within the remit of the European Counter-Terrorism Strategy.³²² Building on the groundwork laid by previous events and publications, the Manual marked the culmination of 'over a dozen meetings with first-line practitioners on the topic of FTF returnees' conducted between November 2016-July 2017 by RAN's Centre of Excellence via its working groups.³²³ Though the manual is primarily directed towards front-line practitioners— of social work, education, policing, prison and probation, and healthcare— it also presents a list of **33 practitioners' recommendations for policymakers**, intended to **'give national authorities extra insights into practitioners' needs and ideas as they review existing approaches and strategies in light of challenges related to FTFs.'**³²⁴ Though the list is too extensive to be included here, it is noteworthy that it includes detailed recommendations for: (i) Risk assessment and multi-agency cooperation (ii) Prosecution and imprisonment (iii) The resocialisation of returnees in society (iv) Child returnees; (v) Cross-cutting issues (gender and communication)³²⁵ In addition, the Manual features **14 case studies** that draw upon practitioners' experiences to provide **lessons learned** that are **applicable to a variety of scenarios** including (i)

³¹⁸ [Radicalisation Awareness Network](#), 2018.

³¹⁹ High-level Commission Expert Group on Radicalisation, [Interim Report](#), 2017. p.2

³²⁰ Ibid.

³²¹ Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018. See also description of the High-Level expert group in the opening analysis, Part I.

³²² RAN, 2017, op.cit.

³²³ Ibid.

³²⁴ Ibid, p. 12.

³²⁵ Ibid, p. 3-5.

returnees granted early release from prison,³²⁶ (ii) efforts to rehabilitate returnees in prison³²⁷, (iii) involving families in the rehabilitation of returnees³²⁸, (iv) support for returnees after release from prison,³²⁹ (v) building connections with the families of returnees³³⁰, and (vi) mental health issues among returnees.³³¹ As such, insofar as it is the most extensive collection of 'good practices,' experiences, and cases, the RAN Manual is a useful tool for policymakers in light of the current difficulty of establishing policies grounded in scientific evaluation.

4.6. Conclusion

The returnee issue cuts across EU and Member State competences, significantly restructuring security dynamics between Member States and EU institutions and between EU institutions themselves. The legislative push of UNSC 2178 and the subsequent directive of 2017 have homogenised legislative and administrative policy responses across the Union. In the field of social intervention, the Radicalisation Awareness Network has similarly served as a key location for the diffusion of the Dutch-British model of 'countering/prevent violent extremism' (PVE/CVE) across the member states. The returnee phenomenon has also provided the occasion for DG Home, Europol and Eurojust to serve as a framework for Member States' national responses to the recent wave of terror attacks in Europe, by showing the importance of cross-border judicial and police cooperation. It has also been the opportunity for these institutions to convince the Member States of their usefulness. In that regard, the recent wave of attacks, and the highlighting of the issue of returnees has strengthened European transnational cooperation.

As the issue of returnees is further discussed in Brussels and in the various European capitals, this report pinpoints however that a certain number of key issues remain hotly debated in various policy circles. The question of the prosecution and trial of European departees in Syria and Iraq pose significant questions not only for member states, but for the cooperation of EU judicial authorities with third countries (see section 3.1. and 4.3.). The question of children, in particular, considering the low age of the vast majority of them poses questions that should be framed in terms of human rights as much as in terms of security (see section 3.4.). The question of battlefield and evidence poses key questions to the standards of justice (see section 4.4.). Finally, the RAN, by promoting a specific approach to radicalisation, excluding much of the debates addressed in 3.3.1 for example, may serve to produce solutions that are practical and straightforward, but grounded in only a partial view.³³² While a great deal of useful knowledge has been compiled and exchanged between practitioners, the limited acknowledgement of the academic and policy debates around radicalisation and counter-radicalisation might, in the long run, obscure some of the potentially counter-productive effects of counter-radicalisation with regards to social cohesion, the integration of minorities, and broader civil rights and liberties concerns for citizens in Europe.³³³

³²⁶ Ibid, p. 38.

³²⁷ Ibid, p. 42.

³²⁸ Ibid, p. 45.

³²⁹ Ibid. p. 47-51.

³³⁰ Ibid, p. 57.

³³¹ Ibid, p. 64.

³³² For a more detailed analysis of how the RAN only selectively takes into account academic debates on radicalisation and counter-radicalisation, see Ragazzi F. and Davila D., [The Radicalisation Awareness Network: Producing the EU counter-radicalisation discourse](#), Constitutionalising The Security Union Effectiveness, Rule of Law and Rights in Countering Terrorism and Crime, CEPS, Brussels, 2017.

³³³ For institutional views warning of the possible damaging consequences of PVE/CVE as it is applied in some countries, see the [report](#) of a UN Special Rapporteur on the UK's national Prevent policy, and the 2017 French Senate [report](#) on the fact-finding mission into similar initiatives in France.

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Annex 2. Legislation and policies in detail relevant to departees and returnees across the sample of Member States

Annex 2.1. Travel 'for terrorist purposes'

Across the selected cases, legislation has been introduced as a means of creating a deterrent for individuals who wish to travel abroad with the intention of engaging in the activities of a terrorist group. Though these laws share this preventive purpose, they vary slightly in their focus and characterisation of these offences. (See Annex 2.2. for the detail of legislative measures and their introduction.)

- **Belgium:** Introduced in July 2015, Article 140f **criminalises inbound and outbound travel to and from Belgium with a view to committing a terrorist offence.** Following the January 2015 Charlie Hebdo attacks in Paris, amendments to Article 23/3 in August 2016 extended the scope of this to include both 'the **incitement to travel abroad for terrorist purposes,**' as well as the **recruitment of another individual into travelling for the purpose of committing a terrorist offence.**³³⁴
- **Denmark:** In 2015, concern about 'foreign fighters' led the Danish parliament to amend the 'Treason Article,' **criminalise affiliation with an armed group adversarial to Denmark in an armed conflict.**³³⁵
- **France:** In November 2014, Article 421-2-6 was added to the Penal Code to render prosecutable 'the fact of **preparing a terrorist offence, provided that this preparation is intentionally connected with an individual undertaking the purpose of which [the] is to seriously disturb public order through intimidation or terror.**'³³⁶ The Article lists numerous criminal acts that are constitutive of the offence when supported by a further subjective element, which may include **involvement in the operations of a terrorist group abroad.**³³⁷ This built upon earlier legislation in December 2012, which **expanded the scope for prosecution pertaining to terrorist acts committed abroad by French nationals or residents.**³³⁸
- **Germany's** Criminal Code was amended in June 2015 pursuant to UNSCR 2178; sections 89a and 89b now **criminalise travelling abroad 'with the intent of receiving instructions for the commission of a serious crime.'**³³⁹
- **The Netherlands:** Under sections 134a and 140a of the Dutch Penal Code, **participation in 'terrorist armed struggle' and 'terrorist training' is a punishable offence.**³⁴⁰

³³⁴ Belgian Criminal Code, Article 23/3.

³³⁵ Vestergaard, J. 'Foreign Terrorist Fighters' - De-Radicalisation and Inclusion vs Law Enforcement and Corrections in Denmark. In C. Brière & A. Weyembergh, *The Needed Balances in EU Criminal Law: Past, Present and Future* (1st ed.). Oxford: Hart Publishing, 2017.

³³⁶ French Penal Code, 2014.

³³⁷ Ibid; Further legislation relevant to departees and returnees has unfolded against the backdrop of a national State of Emergency that was declared in the immediate aftermath of the November 13th attacks. This primarily took the form of a new law on internal security in October 2017, which incorporated the bulk of the exceptional measures afforded by the State of Emergency. Prior to the State of Emergency, for example, the offences under Article 421-2-6— including involvement in the activities of a terrorist group abroad— carried a maximum prison sentence of 10 years and a 150,000 euro fine. Under the new law, these have been extended to between twenty and thirty years.

³³⁸ Law No. 2012-423, 2012.

³³⁹ Amendment Act on the Prosecution and Preparation of Serious Violent Offences Endangering the State, 2015.

³⁴⁰ NCTV, 2014, op.cit.

Annex 2.2. Preparatory and ancillary offences

Member States have also introduced laws that criminalise multiple preparatory and ancillary offences that fall short of direct involvement in violence. These are all directly relevant to departees and returnees, and generally centre around training, recruitment, dissemination, incitement, and financing.

- The foundations of **Belgium's** terrorism legislation are Articles 137-141 of its Criminal Code, and specific articles were amended in 2015-2016 pursuant to UNSCR 2178. Under Article 140, **involvement in the activities of a proscribed terrorist organisation— which includes dissemination of information or material, financing, incitement, recruiting, and the provision and reception of training with a view to engaging in terrorist violence—** carries a prison term of between five and ten years and fines of up to 5,000 euro.
- While **Denmark** is not bound by Directive 2017/541, since 2006 its domestic criminal law has included many the ancillary terrorism-related acts. Under sections 114a-114e of the Criminal Code, **offences include enlistment in or recruitment for a proscribed group, along with receiving and providing training and/or financing.**³⁴¹
- Section 129a of **Germany's** Criminal Code penalises the **founding, membership, and support of a terrorist organisation.**³⁴²
- In the **Netherlands**, although there is no specific law that criminalises the incitement of terrorist acts, Dutch law penalises the incitement to commit any felony including terrorism-related offences.³⁴³
- Despite opting out of EU Directive 2017/541, **the UK** possesses an expansive list of terrorism in the form of the Terrorism Acts of 2000 and 2006, the Terrorism Prevention and Investigation Measures (TPIM) Act 2011 and the 2015 Counter-Terrorism and Security Act. Accordingly, multiple offences have long been introduced related to '**conspiring, attempting, aiding, abetting, counselling, procuring or inciting,' terrorism.**³⁴⁴

Annex 2.3. Deprivation of citizenship

Conviction required:

- **In Denmark**, deprivation of citizenship in cases of dual citizenship is possible for persons convicted of a terrorism-related offence, including the ancillary offences of preparation, incitement, and recruitment.³⁴⁵ The powers can be used in cases where an individual is convicted of committing acts that cause 'serious harm to the vital interests of the state' and, in cases where an individual resides in Denmark, must be accompanied by a deportation order.³⁴⁶ In March 2017, a Danish-Turkish man, identified by Danish media outlets as Enes Ciftci, was sentenced to six years imprisonment for 'allowing himself to be recruited' by IS and

³⁴¹ Danish Criminal Code, 2014.

³⁴² German Criminal Code, Section 129a.

³⁴³ Gutheil et al, 2017, op.cit.

³⁴⁴ UK Ministry of Justice. [Summary of the main findings of the review of Islamist extremism in prisons, probation and youth justice](#). 2016.

³⁴⁵ Danish Criminal Code, Chapter 13.

³⁴⁶ Law.gov, [Denmark: Court Strips Terrorist of Danish Citizenship](#), 2018.

simultaneously stripped of his **Danish** citizenship³⁴⁷. Despite retaining his passport, Ciftci will be expelled to Turkey upon completing his sentence³⁴⁸. While Denmark had used these measures once before in June 2016 for a Danish-Moroccan citizen,³⁴⁹ Cifti's case represents the first exercise of such powers for a returnee.

- **Belgium broadened the scope of citizenship deprivation powers** in line with the expanded list of terrorism-related offences in July 2015.³⁵⁰ Previously, **ancillary offences**, such as recruitment, providing weapons training, or incitement had been excluded,³⁵¹ but, as in Denmark, **can now legally be considered grounds to deprive a Belgian dual national of their Belgian citizenship**. Importantly, a **prerequisite for the exercise of this power is conviction of a terrorist offence carrying a minimum five-year prison sentence**. Public evidence of the deployment of Belgium's citizenship deprivation mechanism in cases of departees or returnees since its scope was expanded in 2015 is hard to come by.
- According to the **French Civil Code**, **only in cases of naturalised citizens convicted of treason or terrorism** can French citizenship be deprived, though such measures have been used only thirteen times since 1996, arguably serving a primarily 'symbolic function.'³⁵² Otherwise, **dual-nationality French citizens cannot have their French citizenship removed by the authorities for the sole reason of being identified as a threat to national security**. Though **proposals to loosen these restrictions** reached the national level in the aftermath of the November 13th 2015 Paris attacks, these proved controversial and divisive and were subsequently dropped in March 2016.³⁵³

No conviction required:

- **Netherlands:** A 2017 amendment to Article 14 of the Netherlands Nationality Act **expanded citizenship deprivation powers to negate the precondition of prior criminal conviction where Dutch (dual) nationals, over the age of 16, 'voluntarily enlist in the armed forces of a terrorist militia'**.³⁵⁴ Based on their identification as such by the intelligence services (AIVD), those stripped of Dutch citizenship via these extended measures are listed as 'undesirable foreign nationals (for the Schengen area)'.³⁵⁵ Under the amendment to Article 14, individuals can appeal these decisions at the District Court of The Hague and are formally entitled to legal representation.³⁵⁶ In **September 2017**, the **Dutch** authorities announced that **four suspected 'foreign fighters', all dual-national departees of Moroccan descent, had been stripped of their Dutch citizenship despite not being convicted of an offence'**.³⁵⁷
- **UK:** Britain's Home Secretary is empowered to deprive a person of British citizenship in terrorism-related cases³⁵⁸ and, **like in the Netherlands, its exercise is not contingent on conviction for a terrorism-related offence. Judicial approval is not required.**³⁵⁹ While the

³⁴⁷ Following appeal, the original sentence of 7 years was decreased by one year, whereas the deprivation of citizenship was upheld. See M. Necef, [Categorizing Islamic State Supporters in Denmark: The cases of Enes Ciftci and Natascha Colding-Olsen](#). 2017.

³⁴⁸ Ibid.

³⁴⁹ Law.gov, [Denmark: Court Strips Terrorist of Danish Citizenship](#), 2018.

³⁵⁰ Following amendments to Article 23/2 of the Belgian Criminal Code.

³⁵¹ P. Wautelet, [Deprivation of Citizenship for 'Jihadists': Analysis of Belgian and French Practice and Policy in Light of the Principle of Equal Treatment](#). 2016.

³⁵² B. Boutin, [Administrative Measures against Foreign Fighters: In Search of Limits and Safeguards](#), 2016. p. 15.

³⁵³ K. Willsher, [Hollande drops plan to revoke citizenship of dual-national terrorists](#). 30.03.2016.

³⁵⁴ Statute Law of February 10, 2017, Amending the Dutch Nationality Act in Connection with the Withdrawal of Dutch Citizenship in the Interest of National Security.

³⁵⁵ Ibid.

³⁵⁶ Gutheil et al, 2017, op.cit.

³⁵⁷ Rijksoverheid, [Minister Blok trekt Nederlanderschap in van 4 personen](#), 13.09.2017.

³⁵⁸ Under the British Nationality Act 1981 (as amended). See Gower, M., & McGuinness, T. [Deprivation of British citizenship and withdrawal of passport facilities](#). 2017.

³⁵⁹ Ibid.

British authorities do not release figures on the exercise of these powers, there are **indications that Britain used its citizenship deprivation powers for 33 individuals between 2010-2016.**³⁶⁰ A key ongoing test case regarding British departees is that of Alexandra Kotey and El Shafee Elsheikh, who were reportedly stripped of their British citizenship in early 2018;. In addition to these powers, the UK may use Temporary Exclusion Orders to prevent the re-entry of terrorism-related suspects who remain abroad. TEOs can extend for a maximum period of 24 months and had been used only once as of May 2017.³⁶¹

Annex 2.4. Restriction of Movement

- **Belgian** authorities may refuse to issue, temporarily withdraw, and automatically invalidate the identity cards of Belgian citizens and residents.³⁶² Equally, they can withdraw or refuse to issue Belgian passports.³⁶³ The 2016 Framework-Note produced for the Belgian government,³⁶⁴ which provided a review of 12 counter-terrorism measures adopted in the wake of the January 2015 Charlie Hebdo attacks in France, reemphasised the importance of these provisions.
- **Denmark** introduced restriction of movement measures in its 2016 National Action Plan, whereby individuals must receive police permission to travel to parts of Iraq and Syria.³⁶⁵ In 2015, the Danish National Police seized the passport and issued a travel ban on a 23-year-old male from Copenhagen suspected of planning to travel to Syria or Iraq for terrorist purposes.³⁶⁶ Though the mechanism is largely aimed at tackling individuals who join 'jihadist' groups abroad, a Danish-Kurdish woman presently faces a six-month prison sentence for breaking the conditions of a travel ban when travelling to Syria to fight against IS.³⁶⁷
- **French** nationals suspected of intending to travel abroad to engage in terrorism-related activity may be subjected to an 'administrative interdiction to leave the territory'.³⁶⁸ This results in an automatic invalidation of an individual's passport and ID cards, is applicable for a period of six months (renewable for a maximum of two years), and was deployed 308 times between November 2014-April 2016.³⁶⁹ The effectiveness of these measures has been called into question after one of the main perpetrators of the November 2015 Paris attacks was able to travel to Syria in 2013 despite being subjected to an administrative interdiction.³⁷⁰
- **Germany** can invalidate, withdraw, and confiscate passports, though it is unclear how many times these measures have been applied to returnees.³⁷¹ Despite being the subject of heated debate in 2014 and early 2015, in April 2015 a new form of identification dubbed the 'terrorism ID card' was implemented to replace confiscated passports and identification cards of those suspected of intending to travel (back) to Syria or Iraq to commit terrorism-related offences³⁷².

³⁶⁰ V. Parsons, [Theresa May deprived 33 individuals of British citizenship in 2015. The Bureau of Investigative Journalism](#). 21.06.2016.

³⁶¹ Gutheil et al, 2017, op.cit.

³⁶² Renard and Coolsaet, 2018, op.cit.

³⁶³ Belgian Consular Code, Article 65.

³⁶⁴ I. Vincke, P. Delvaux, and J. Lenders, [Dossier: Organes et mesures de la lutte contre le radicalisme. Association Ville et communes de Bruxelles](#). Brussels. 2016.

³⁶⁵ Danish Government. [Preventing and Countering Violent Extremism: National Action Plan](#). Copenhagen. 2016.

³⁶⁶ The Local Denmark, [Police seize passport from 'foreign fighter'](#), 10.04.2015

³⁶⁷ D. Lørdag, [Politiet varetægtsfængsler dansk-kurderen Joanna Palani](#). 10.12.2016.

³⁶⁸ Law No. 2014-1353.

³⁶⁹ Assemblée Nationale. [Rapport relative aux moyens mis en œuvre par l'État pour lutter contre le terrorisme depuis le 7 janvier 2015](#). 2015.

³⁷⁰ Boutin, 2016, op.cit.

³⁷¹ Passport Act of 1986, Sections 10-12 (as amended in 2007).

³⁷² C. Paulussen, & E. Entenmann, 'National Responses in Select Western Countries to the Foreign Fighter Phenomenon'. In A. de Guttry, F. Capone & C. Paulussen, (Eds.) *Foreign Fighters Under International Law and Beyond*. P. 491-422. The Hague: TMC Asser Press. 2016.

This measure is intended to prevent individuals travelling to the conflict zone via countries in the Schengen area where only a national identity card is required for travel.³⁷³

- The **Dutch** authorities can impose travel bans on individuals suspected of travelling to engage in the activities of a terrorist group; as of March 2017, the Ministry of Security and Justice may, for example, prohibit departure from the Schengen area for up to six months.³⁷⁴ Following amendments to the Passport Act in February 2017, this results in the automatic invalidation of passports. Between December 2013-February 2017, the Dutch Ministry of Security and Justice requested the refusal to issue or invalidation of the passports of 300 'travellers' on the grounds of 'well-founded' suspicion of their affiliation with a terrorist group abroad; this figure is not disaggregated to evidence the number of returnees.³⁷⁵
- In **the UK**, the introduction of the Counter-Terrorism and Security Act in 2015 specifically targeted travel to Syria and Iraq related to the activity of IS. Section 1 empowers the authorities to prevent individuals from travelling by seizing their passports.³⁷⁶ Under Sections 2-4, the government may impose a 'Temporary Exclusion Orders' that prohibits an individual from re-entering the UK for up to two years if they are deemed a terrorist threat.³⁷⁷

Annex 2.5. Monitoring and other administrative restrictions

- In **France**, as of June 2016 the authorities may order electronic surveillance and house arrests for terrorism related suspects.³⁷⁸ Additionally, at the discretion of an investigating judge or public prosecutor, returnees charged with or convicted of a terrorism-related offence are retained in a nationally automated court file, FIJAIT (*Fichier judiciaire des auteurs d'infractions terroristes*), for a period of 20 years.³⁷⁹ This imposes a series of restrictive obligations, namely that individuals must (i) provide a proof of address every three months; (ii) report changes of address within 15 days; (iii) report the details of a planned journey abroad at least 15 days prior to departure; and (iv) if living abroad, notify authorities of an intention to travel to France 15 days prior to departure. Violation of these terms can result in 2 years imprisonment.³⁸⁰ Additional administrative measures in this regard, including electronic surveillance and house arrest, are afforded by Article 77 of Law No. 2016-731 (June 2016).
- The **UK** possesses similar powers in the form of **Terrorism Prevention Investigation Measures** (TPIM), which include house arrests, electronic tagging, physical relocation. As of August 2017, these measures applied to **six individuals**, five of whom were British nationals.³⁸¹ TPIMs are issued by the Home Secretary, subject to High Court approval, and are applicable for a 24-month period.
- In the **Netherlands**, the Interim Act on Counterterrorism Administrative Measures of March 1st 2017 empowered the Minister of Security and Justice to impose obligations to report to the authorities, and electronic monitoring until March 2022.³⁸²
- In June 2017, **Germany** enacted laws, which had been proposed the wake of the December 2016 Berlin Christmas Market attack, allowing for electric tags to be used on individuals in order

³⁷³ Law.gov, [Germany: New Anti-Terrorism Legislation Entered Into Force](#), 10.07.2015.

³⁷⁴ Articles 2-4 of the Interim Act on Counterterrorism Administrative Measures.

³⁷⁵ NCTV, [Voortgangsrapportage integrale aanpak jihadisme](#), 2017.

³⁷⁶ Counter-Terrorism and Security Act 2015, Section 1.

³⁷⁷ Counter-Terrorism and Security Act 2015, Sections 2-4.

³⁷⁸ Law No. 2016-731, Article 77.

³⁷⁹ Eurojust, 2016, op.cit.

³⁸⁰ Ibid.

³⁸¹ M. Hill, [The Terrorism Acts in 2016](#), 2018.

³⁸² NCTV, [New powers for dealing with terrorism](#), 08.03.2017.

to provide the intelligence services with notification when a suspect approaches a proscribed area.³⁸³ In October 2017, German media reported that two out of 705 individuals classified by the intelligence services had been subjected to such measures.³⁸⁴

- In **Belgium**, an August 2015 *circulaire* on 'Foreign Terrorist Fighters' established a policy of enhanced individualised monitoring and surveillance cases of returnees where evidence is insufficient to prosecute; this also provided powers to order electronic tagging for individuals identified by the Coordination Unit for Threat Analysis (CUTA).³⁸⁵

Annex 2.6. Investigations and trials in absentia

- **The Netherlands** has embarked upon an explicit strategy of pursuing investigations and trials *in absentia* under the auspices of the Public Prosecution Service. The early semblances of this policy date back to an investigation entitled 'Operation Context' initiated in 2015, which led to the prosecution of nine individuals, two of whom were tried while in Syria.³⁸⁶ **Hatim R and Anis Z, both of whom departed for Syria in 2013, each received sentences of six years were sentenced for multiple ancillary and preparatory acts.**³⁸⁷ Announcing the practice as official policy in early 2017, Dutch authorities outlined its centrality to the Netherlands' security response, explicitly citing the 'high-risk' nature of the returnee cohort.³⁸⁸ Accordingly, in March 2017 the Court of Rotterdam initiated the **trials of ten individuals for terrorism-related offences who were not expected to appear in court due to their presence in Iraq and Syria.**³⁸⁹ This case, in which the Public Prosecutor was required to notify the defendants of the initiation of the judicial proceedings via Facebook messages, is ongoing.³⁹⁰
- In **Belgium**, the 'Sharia4Belgium' case, which began in September 2014, saw 37 individuals tried in their absence.³⁹¹ While it was claimed that a number of the defendants had died in the conflict zone, the judicial authorities refused to drop the prosecutions in the absence of death certificates as it was assumed **that individuals may feign death to avoid prosecution.**³⁹² In February 2015, Antwerp's Correctional Tribunal found the 'Sharia4Belgium' group to be a terrorist organisation and, accordingly, **ordered the immediate arrest of the 37 individuals, delivering a maximum prison sentence of 15 years.**³⁹³ In another case, one of the perpetrators of the March 2016 Brussels attacks was **found guilty** of 'preparation in the activities of a terrorist group' **despite the defence counsel providing photographic evidence of his alleged death in Syria.**³⁹⁴ Another landmark case, in May 2015, saw **four women sentenced in absentia to five-year prison sentences** for patrolling and guarding entrances to towns and cities in Syria on behalf of IS.³⁹⁵
- In **France**, Salim Benghalem, who left for Syria in 2013, was **sentenced in absentia to fifteen years imprisonment** for his heavy involvement in the November 2015 attacks and several other foiled plots.³⁹⁶

³⁸³ B. Knight, [Virtually no 'dangerous' German Islamists wearing electronic ankle bracelets](#), 26.10.2017.

³⁸⁴ Ibid.

³⁸⁵ K. Geens, [Nouvelle circulaire « Foreign Terrorist Fighters »](#), 2015.

³⁸⁶ Prosecutor v. Imane B. et al, 2018, op.cit.

³⁸⁷ For further details on the exact offences, see Prosecutor v. Imane B. et al, 2018, op.cit.

³⁸⁸ Paulussen and Pitcher, 2018, op.cit. P. 23.

³⁸⁹ AD Nieuws, [Facebookactie onder Nederlandse jihadisten levert twee reacties op](#), 23.03.2017.

³⁹⁰ Omroepwest.nl, [Zoetermeerse jihadist voor de rechter](#), 30.01.2018

³⁹¹ A. Higgins, [Head of Belgian Group Said to Recruit Fighters for Syria Gets 12-Year Term](#), 11.02. 2015.

³⁹² Ibid.

³⁹³ Ibid.

³⁹⁴ Eurojust, 2016, op.cit.

³⁹⁵ Huffington Post, [Belgium convicts 7 women for supporting ISIS](#), 18.05.2015.

³⁹⁶ BBC News, [Paris attacks: Was Salim Benghalem the real ringleader?](#), 26.01.2016.

- **In Denmark**, April 2016 saw the arrest of nine individuals, **five of whom are being prosecuted in absentia**, whereas the remaining four were detained on a pre-trial basis.³⁹⁷ Building such cases is heavily dependent on the work of the Defence Intelligence Services (FE), who in February 2015, were bolstered by fresh surveillance powers that, among other things, lowered the required threshold for monitoring Danish citizens abroad; namely removing the requirement of court approval.³⁹⁸

Annex 2.7. Detainment models in detail

Containment: The Netherlands

The **Netherlands** has developed a systematic national regime for the incarceration of convicted 'jihadists,' including returnees, premised on a model of centralised containment. Both **individuals suspected and convicted of terrorism-related crimes are incarcerated in specialised 'Terrorist Wards'— including women and some minors (16+)**.³⁹⁹ Inmates are **isolated to prevent recruitment**, are subjected to **severely restricted rights** and, according to a 'diversification' policy, are categorised as either 'leaders,' 'followers,' or 'troublemakers'.⁴⁰⁰ As of March 2016, **fourteen individuals** were **detained on the Terrorism Ward**, although this figure is not disaggregated to show the proportion of returnees. That said, **by January 2017, seven returnees had been convicted and eight were being prosecuted**.⁴⁰¹

'Case Study: Terrorist Wing in Vught'⁴⁰²

RAN Prison and Probation Working Group, 2015

Systematic evaluations of this type of approach are scarce, and thus the debate about the relative merits of the Dutch prison model continues. A 2015 working paper by the RAN Prison and Probation Working Group, however, provides some useful insights into what the Dutch Government perceives as the **relative advantages and drawbacks of its concentration model**.⁴⁰³

Advantages include an enhanced ability to:

- limit the risk of recruitment.

³⁹⁷ J. Vestergaard, '[Foreign Terrorist Fighters' - De-Radicalisation and Inclusion vs Law Enforcement and Corrections in Denmark](#), 2017.

³⁹⁸ R. McNeil-Wilson, *Between Trust and Oppression: Contemporary Counter-Terror Policies in Denmark*. 2017.

³⁹⁹ RAN P&P, [Working group meeting - Case-study Terrorist Wing in Vught](#). 2015.

⁴⁰⁰ Ibid, p. 65.

⁴⁰¹ van Ginkel and Minks, 2018, op.cit.

⁴⁰² RAN P&P, 2015, op.cit.

⁴⁰³ Ibid, p. 5.

- improve the knowledge and skills of practitioners through constant interaction with the 'target group' of 'radicalised inmates.'
- provide a custom-made setting.
- deploy specially trained, as opposed to generic, staff.

Drawbacks include:

- 'strong mutual influence and cohesion in the group,' increasing the risk that de-radicalisation initiatives are disrupted.
- inmates develop a 'strong sense of injustice related to the regime'
- the risk of providing 'extremist offenders' with enhanced social status.
- the risk that new social bonds can be formed between 'extremist offenders'.⁴⁰⁴

Dispersal: Germany

- Unlike the other selected Member states, Germany does not have a systematic national policy for imprisoning returnees, making it difficult to compare with other Member States. According to regional needs, the 16 *Länder* are left to formulate their own solutions— with Lower Saxony, Berlin, Baden-Württemberg, North Rhine Westphalia, Hesse, and Bavaria among the most affected.⁴⁰⁵ It can **broadly be observed**, however, that **in contrast with the Dutch containment regime, dispersal models for 'violent extremist offenders' are favoured in Germany**.⁴⁰⁶ In **February 2018**, Germany's Federal Criminal Police Office announced that **approximately 150 'Islamists' were incarcerated, either in custody or following conviction**. This figure is not disaggregated to evidence the number of returnees.⁴⁰⁷ In July 2016, German Federal government highlighted that the 16 *Länder* would soon be submitting recommendations for dealing with 'radicalised' inmates.

Mixed Models:

- In **Belgium**, individuals convicted of terrorism-related crimes are **generally housed among the broader prison population** in one of 32 prisons, although stricter security measures, such as limited communication or solitary confinement, may be applied.⁴⁰⁸ If, however, an inmate 'engages in proselytising or recruitment activities, and based on an individual screening performed by the federal penitentiary administration's Cell Extremism (CelEx) jointly with the central psychosocial service (CPSDEx),' they may be separated.⁴⁰⁹ Belgium has **two specialised 'D-Rad:Ex' units within two existing prisons to separate inmates, each with a capacity for 20 inmates** (22 inmates were held across the two facilities in January 2018).⁴¹⁰ If an individual is deemed particularly dangerous to themselves or others, they **may be detained in Bruges'**

⁴⁰⁴ Other significant concerns have been raised about the human-rights compliance of the Dutch model, which are discussed in Section 3.

⁴⁰⁵ D. Hellmuth, [Countering Jihadi Prison Radicalization in Germany and the U.S.](#), 03.06.2016.

⁴⁰⁶ RAN P&P. [Ex-post paper: Exit programmes in prison and probation](#). 2016. This finding was supported by: Officials at the Federal Ministry of Justice in Germany. Skype interview with Francesco Ragazzi and Josh Walmsley. 21.03.2018.

⁴⁰⁷ V. Flade, & T. Stukenberg, [Wachsende Zahl von Gefährdern alarmiert Gefängnispersonal](#), 21.02.2018.

⁴⁰⁸ De Pelecijn et al, [Foreign National Prisoners in Belgium: Context, developments, and](#) projects. 2018.

⁴⁰⁹ Renard and Coolsaet, 2018, op.cit. p. 31.

⁴¹⁰ Ibid.

high-security prison, which **currently holds Mehdi Nemmouche** (24th May 2014 Brussels attack), **Salah Abdeslam** and **Mohammed Abrini** (13th November 2015 Paris attacks).⁴¹¹ As of January 2018, 44 of **Belgium's** 125 returnees were incarcerated.⁴¹²

- **France is transitioning from a dispersal-based regime towards a containment-oriented model.** In February 2018, the French government expanded the approach initiated in the aftermath of the January 2015 Charlie Hebdo attacks, which mandated the creation of **five specialised QPR** (quartier de prise en charge de la radicalisation) **units to separate 'Islamist' inmates from the general population within existing prisons**, each with a **capacity of 25-28 inmates**.⁴¹³ New QPR units, based on a pre-existing model in Lille-Annoeulin⁴¹⁴ comprising 28 spaces, are planned. The Lille-Annoeulin facility currently houses 18 of France's most high-profile terrorism-related detainees (five convicts, thirteen defendants), including some of those involved in the November 2015 attacks.⁴¹⁵ A further 1,500 'watertight isolation' cells are to be constructed, with an aim to establish 450 by the end of 2018.⁴¹⁶ In addition, four new QER (quartiers d'évaluation de la radicalisation) units are planned, designed for the monitoring of 'radicalisation' concerns, three of which will apply to terrorism-related offenders, and one for common law inmates.⁴¹⁷ As of **late February 2018, 504 individuals were detained in France for acts related with 'Islamist Terrorism' (85 under judicial supervision), 635 detainees were under monitoring by the Prison and Probation Service, and 1,123 'common law detainees were identified as radicalised.**⁴¹⁸
- The **UK is also shifting from a dispersal regime to a containment-oriented approach.** In February 2016, the government announced that it was considering a model of total containment akin to the Dutch model, incarcerating 'violent extremist offenders' in a centralised high-security unit.⁴¹⁹ In April 2017, however, the **UK opted for a combined regime**, following an August 2016 report highlighting the extent of 'radicalisation' in prisons.⁴²⁰ As such, the **most high-risk terrorism-related offenders are to be housed in one of three specialised units within existing jails**, each designed to hold **28 inmates**.⁴²¹ Inmates may appeal their allocation to these units, whereby cases are subject to review on a tri-monthly basis.⁴²² As of 2016, **600 individuals were being monitored for 'radicalisation' concerns within the UK prison system**⁴²³. As of December 31st 2017, **224 individuals were in custody in the UK for terrorism-related offences**, an increase of 43 persons at the same point in 2016.⁴²⁴ 86% of the 224 detainees are adjudged to hold 'Islamist extremist views'.⁴²⁵

⁴¹¹ Ibid.

⁴¹² That two thirds of Belgium's returnees are not in jail is likely the result of an inability to prosecute returnees due to insufficient evidence, especially as the vast majority returned prior to the modifications of its Criminal Code in 2015. Some returnees have also completed their sentences, of which many are between 5-10 years, and remain on probation. Renard and Coolsaet, 2018, op.cit.

⁴¹³ Le Parisien, [Radicalisation en prison : un plan prévoit la création de cinq quartiers dédiés](#), 19.02.2015.

⁴¹⁴ Ibid.

⁴¹⁵ P. Gonzalès, [À Lille-Annoeulin, dans la prison-test de la lutte contre le terrorisme](#), 25.02.2018.

⁴¹⁶ French Government, 2018, op.cit.

⁴¹⁷ Ibid.

⁴¹⁸ Ibid. p. 26.

⁴¹⁹ A. Travis, [UK government considers single secure jail unit for Islamist terrorists](#), 12.02.2016.

⁴²⁰ UK Ministry of Justice, 2016, op.cit.

⁴²¹ BBC News, [First prison unit for extremists to open this summer](#), 21.04.2017.

⁴²² April 2017 also saw the creation of a counter-radicalisation task-force— a cooperation between HM Prison and Probation Service and the Home Office— comprising 100 specialised staff tasked with training front-line practitioners to inform the monitoring of 'extremism.' See BBC News, [Extremism in prisons to be tackled by specialist task force](#), 02.04.2017.

⁴²³ R. J. Williams, [Approaches to violent extremist offenders and countering radicalisation in prisons and probation](#) (RAN P&P Practitioners' Working paper). 2016.

⁴²⁴ Office for Security and Counterterrorism, 2018, op.cit.

⁴²⁵ Ibid, p. 4

Denmark has also **recently expanded its provisions for the separate containment of terrorism-related and 'violent extremist offenders'**. The February 2015 attack in Copenhagen shone a spotlight on **Denmark's** approach to tackling 'radicalisation' in prisons. The perpetrator, Omar Abdel Hamid el-Hussein, had recently completed a two-year prison term, during which staff had notified the Prison and Probation service of concerns that he had expressed sympathy for IS, who then shared with the Security and Intelligence Service (PET).⁴²⁶ This revelation placed prisons' monitoring and information-sharing mechanisms on centre stage, with Danish media reporting in August 2015 that, in the ten weeks that followed the attack, 59 such reports were submitted to PET, pertaining to 50 individuals⁴²⁷. In the context of only 37 referrals of this kind in the preceding twelve months, and criticism of PET's alleged inaction,⁴²⁸ the **government introduced a bill to allow a shift from a 'dilution (dispersal) principle'**⁴²⁹ **towards a concentration model,**⁴³⁰ Subsequently, Denmark's 2016 counter-radicalisation Action Plan included amendments to the Sentence Enforcement Act that expanded the scope to place 'radicalised' prisoners in specialised units, each housing **between four and six inmates.**⁴³¹

⁴²⁶ Hemmingsen, A, [An introduction to the Danish approach to countering and preventing extremism and radicalization](#). 2015.

⁴²⁷ L. Fogt, [50 fanger meldt til PET for radikaliseringsiden dansk terrorangreb](#). 09.10.2015.

⁴²⁸ The Local Denmark, [Extremist inmates 'huge problem' for Denmark](#), 10.08.2015.

⁴²⁹ Danish Ministry of Justice, [Evaluering af indsatsen mod radikaliserings og ekstremisme i fængsler mv.](#) Copenhagen. 2015.

⁴³⁰ The Local Denmark, [Danish prisons to separate radicalised inmates](#), 04.11.2015.

⁴³¹ Danish Government, 2016.

Annex 3. Case studies

This section provides case studies that illustrate some of the key dimensions of commonality and divergence across the rehabilitation and reintegration programmes in the sample. Of the eight cases highlighted, six operate within the prison and probation context, whereas two are explicitly non-custodial initiatives. The cases demonstrate the **variability in objectives and the conceptualisation of success across and within Member States**: whereas three programmes target ideological transformation, or 'deradicalisation' ('Exit-Germany,' and the 'Unity Initiative' and 'Channel' in the UK), three programmes focus on behavioural change, or disengagement (Aarhus Model, TER in the Netherlands, and RIVE in France). One programme (VPN) purports to combine the two approaches. The cases also illustrate how participants are identified; **prison and probation programmes generally target not only terrorism-related suspects and offenders, but also individuals suspected or convicted of common law crimes who are perceived to be 'vulnerable to radicalisation'**. Initiatives outside of the correctional context appear to be open to any individual thought to be displaying signs of the so-called process of 'radicalisation'. Methods vary in accordance with objectives; **whereas programmes targeting 'deradicalisation' often include theological or ideological interventions, 'disengagement'-oriented initiatives tend to focus on providing practical support such as employment, housing, or education assistance**. Finally, the availability of the results of the programmes varies significantly, reflecting the challenges of measuring impact and the novel nature of many initiatives.

Annex 3.1. Back on Track (Denmark)

'Back on Track'

Denmark, 2011-present

Denmark's efforts at the disengagement and social reintegration of returnees are outlined in its national strategy.⁴³² The 'Back on Track' exit initiative, one of the first mentor programmes for terrorism-related offenders in Europe, has received considerable attention from within EU policy circles.⁴³³ The programme was operated as a pilot project between 2011-2014 by the (then) Ministry of Social Affairs and Integration and the Public Prosecution Service, receiving funding from the European Commission's Directorate General Home Affairs.⁴³⁴ Following the 2015 Copenhagen attack, the pilot programme was extended and is now typical of the general approach by the Prison and Probation Service.⁴³⁵ Precise details of the inclusion of returnees into the Back on Track initiative are yet to be reported.

Stated objectives: 'to make each individual inmate better at handling everyday situations, problems and conflicts' and to 'support and improve the motivation of inmates to pursue a positive change towards a law-abiding life and to opt for affiliation with new non-criminal and non- extremist groups.'⁴³⁶

Participants: Prison inmates (both convicted and on remand) and individuals under judicial supervision 'charged with or convicted of terrorism' or in cases in which the judgment or indictment included a crime 'motivated by the victim's ethnicity, political persuasion, sexuality or the like (a hate crime)'.⁴³⁷ The target group includes 'individuals vulnerable to radicalisation'.⁴³⁸

Methods: Using specially trained mentors to incentivise a crime-free lifestyle, developing social networks of family and friends outside of prison, and providing assistance with practical challenges such as housing and employment aid.⁴³⁹

Results: An official evaluation of the project in 2014 by the Prison and Probation Service found that: (i) 'In general it is difficult to document the effect of the project if it is to be based on a measurement of how many target group members will abstain from committing extremist crimes in future.' (ii) Since the mentoring had 'been going on for a relatively short time' it was 'too early to give a definite response.' (iii) 'Despite those reservations, the assessment' found 'that the mentoring plans implemented [...] had a positive outcome.'⁴⁴⁰

⁴³² Danish Government, 2016, op.cit.

⁴³³ RAN. [Collection of Approaches and Practices: Exit strategies](#). 2017.

⁴³⁴ Ibid.

⁴³⁵ DG Home, [Back on Track](#), 06.04.2018.

⁴³⁶ Danish Department of Prisons and Probation, and Danish Ministry of Children, Gender Equality, Integration and Social Affairs, [Back on Track: A Pilot Project on the Prevention of Radicalisation Among Inmates: Final report June 2014](#), 2014.

⁴³⁷ Ibid.

⁴³⁸ Ibid.

⁴³⁹ Ibid.

⁴⁴⁰ Ibid. P. 12.

Annex 3.2 Research and Intervention on Extreme Violence (France)

'Research and Intervention on Extreme Violence' (RIVE)

France, 2017-present

France's 2018 counter-radicalisation Action Plan sought to revitalise efforts within the prison sector after a 2015 prevention initiative, 'Unités de prévention de la radicalisation,' failed to get off the ground following concerns about their efficiency.⁴⁴¹ It signposted (Measure 58) the creation of three new 'individualised treatment centres' for persons under judicial control, in Lille, Lyon, and Marseille, under the auspices of the Ministry of Justice.⁴⁴² The Action Plan states explicitly that these initiatives, which will feature educational, psychological, social and cultural interventions, are scheduled to build upon experiences of a pilot programme in Ile-de-France.⁴⁴³ In November 2017 it was revealed that the pilot programme, 'Research and Intervention on Extreme Violence' (RIVE), had been operating discretely for 10 months.

Stated objectives: The advent of the programme in early 2017 came after the Directorate of the Prison Administration contracted the non-governmental Association for Applied Criminal Policy and Social Integration to facilitate 'the disengagement of extremist violence in an open environment through multidisciplinary, individualized, comprehensive and intensive monitoring.'⁴⁴⁴

Participants: 14 participants (eight males, six females),⁴⁴⁵ identified by a judge, who are currently being prosecuted or imprisoned for terrorism-related offences, have been released following conviction for a terrorism-related offence, or persons incarcerated for common law crimes identified by the prison service as showing signs of 'radicalisation'.⁴⁴⁶ The programme is designed to accommodate fifty participants and has been contracted on a two-year, renewable basis.⁴⁴⁷

Methods: RIVE comprises practitioners of clinical psychology, psychiatry, and religious experts, and interventions can feature a range of dimensions, including practical assistance, family support, home visits, meetings with specialists, and restorative justice.⁴⁴⁸ Outside of prison, RIVE participants can be subject to a range

⁴⁴¹ Francetvinfo.fr., [Prison: 'Les unités de prévention radicalisation sont une coquille vide' \(SNP-FO pénitentiaire\)](#), 11.09.2016.

⁴⁴² French Government, 2018, op.cit.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid.

⁴⁴⁵ C. Audouin, [Terrorisme : un programme de déradicalisation secrètement expérimenté depuis dix mois en France](#), 10.11.2017.; France Inter, [RIVE, le projet de déradicalisation secret du gouvernement](#), 09.11.2017.

⁴⁴⁶ Apcars.fr., [Lutter contre la radicalisation violente](#), 2018.

⁴⁴⁷ Ibid.

⁴⁴⁸ Ibid.

of measures including house arrest, electronic surveillance, and probation restrictions.⁴⁴⁹

Results: It is too early to discern the programme's impact on the disengagement of individuals, returnees or otherwise, at this stage.

Annex 3.3. EXIT (Germany)

'EXIT-Germany' 2000-present

Germany benefits from previous experience in the sphere of deradicalisation and disengagement, particularly in relation to far-right groups; since 2000 nongovernmental organisations have been at the forefront of the development of at least 18 programmes.⁴⁵⁰ While the Federal Intelligence Service (BND) has been active across these initiatives— and almost all of the 16 *Länder* operated government-run deradicalisation programmes— civil society actors operate relatively free of government control, producing a diversity of approaches.⁴⁵¹ A key reason for this, is the 'complex and difficult' role of the federal government where funding is concerned, insofar as it is prohibited from 'providing large-scale institutional funding' as 'only short-term pilot and model projects can be supported through federal resources.'⁴⁵² Launched in 2000, the **'EXIT-Germany'** initiative is one of the most prominent programmes. The transferability of these types of programmes, however, to the challenges of returnees, and 'jihadism' more broadly remains uncertain.

Stated objectives: 'EXIT-Germany' is fundamentally premised on deradicalisation, and the organisation characterises this as follows:

'An 'exit' is considered completed by us when a critical reflection, reassessment as well as successful challenge of the old ideology have taken place. Thus, 'exit' to us means more than simply leaving a party or group. It also goes beyond changing the aesthetics of expression or refraining from violence. An exit is successful when the fundamental ideologies and purposes of the previous actions have been resolved.'⁴⁵³

Participants: 'individuals, who want to leave the extreme right-wing movement and start a new life.'⁴⁵⁴

⁴⁴⁹ Ibid.

⁴⁵⁰ D. Koehler, *Understanding Deradicalization: Methods, Tools, and Programs for Countering Violent Extremism*. Routledge. London. 2017.

⁴⁵¹ Ibid.

⁴⁵² Ibid. P. 246.

⁴⁵³ EXIT-Deutschland. [We Provide the Way Out: Deradicalization and Disengagement](#). 2014.

⁴⁵⁴ Ibid, p. 1.

Methods: 'EXIT takes a passive role and the initiative for a contact needs to come from prisoners themselves when they are considering dropping out.'⁴⁵⁵ Specially trained social workers or 'tutors' then develop intervention relationships with individuals via letters, telephone contact, and 2-4 meetings per year.⁴⁵⁶

Results: EXIT-Germany claims that, since 2000, over 550 interventions in cases of 'right-wing extremists' have produced a 'recidivism rate,' based on the objectives stated above, of approximately 3%.⁴⁵⁷ In 2015, an independent evaluation of the programme in the state of North Rhine-Westphalia found its success rate to be 'very impressive.'⁴⁵⁸

Annex 3.4. Violence Prevention Network (Germany)

Violence Prevention Network (VPN) Germany

One nationally recognised organisation is the Violence Prevention Network (VPN), which has developed in close partnership with RAN and obtains its funding from multiple sources including the European Union (unspecified), some federal and regional agencies, as well as donations.⁴⁵⁹ Its work in the field of returnees is channelled regionally through 'Advice Centres' in regions most affected by the phenomenon of 'foreign fighting,' including Baden-Wurttemberg, Bavaria, Hesse, and Saxony.

Stated objectives: VPN focuses on both deradicalisation and disengagement, premised on the notion that individuals can 'change their behaviour through deradicalisation efforts.'⁴⁶⁰

Participants: 'ideologically vulnerable people and violent offenders motivated by extremism.'⁴⁶¹

Methods: A range of individual and group interventions focused on mentoring, discussing ideology, and assisting individuals in planning for their future outside of prison.

⁴⁵⁵ Ibid. p. 15.

⁴⁵⁶ Ibid.

⁴⁵⁷ Ibid.

⁴⁵⁸ Möller et al. [des Aussteigerprogramms für Rechtsextremisten des Landes Nordrhein-Westfalen \(APR NRW\)](#). 2015.

⁴⁵⁹ In 2016, the VPN's total budget amounted to 4,104,700 euros, with contributors including the States of Hesse and Berlin, the Lotto Foundation, the Ministry of Family Affairs, 'other revenues,' the Ministry of the Interior, and 'Donations'. See Violence Prevention Network, [Facts & Figures](#), 2018.

⁴⁶⁰ Violence Prevention Network, [Vision](#), 2018.

⁴⁶¹ Ibid.

Results: Many of the advice centres are still relatively young, and thus evidence of their results is still hard to come by. In 2017, an evaluation of the deradicalisation efforts of the Advice Centre in Hesse was said to be 'on the way.'⁴⁶² The VPN's 'Taking Responsibility' initiative, which has been rolled out across multiple federal states and seeks to rehabilitate 'violent extremists,' on a voluntary basis, was externally evaluated in 2012. The evaluation found that 'the reincarceration rate for a violent ideologically motivated offence is 13.3% with participants of the programme compared to 41.5 % within inmates who didn't participate.'⁴⁶³

⁴⁶² RAN, [Preventing Radicalisation to Terrorism and Violent Extremism: Approaches and Practices](#), 2017.

⁴⁶³ RAN, [Preventing Radicalisation to Terrorism and Violent Extremism: Approaches and Practices](#), 2016.

Annex 3.5. Terrorists, Extremists and Radicals (Netherlands)

'Terrorists, Extremists, and Radicals' (TER), The Netherlands, 2012-present

Since the mid-2000s, multiple socio-preventive mechanisms and pilot projects have unfolded in the Netherlands, with variable levels of involvement for governmental and civil society actors. The principal government-led initiative is the Dutch Probation Service's *Terrorists, Extremists, and Radicals* (TER) team. Launched in 2012, the TER team consists of thirteen specially-trained probation officers who perform risk management and supervision functions regarding individuals released from prison and liaise with external intervention providers on tailor-made disengagement schemes.⁴⁶⁴

Stated objectives: TER aims '...chiefly to disengage radicalised Muslims (mainly home-grown jihadi) from radical movements with a tailor-made probation approach, and to influence their behaviour.'⁴⁶⁵

Participants: individuals (i) 'suspected or convicted of terrorism-related offenses such as rioting, recruiting and financing,' (i) '**suspected or convicted of travel to or return from conflict areas** or preparing an attack,' (iii) suspected or convicted of other offences but are known to be involved in radicalisation...related risks.'⁴⁶⁶

Methods: TER officers work in close cooperation with the Netherlands' local multidisciplinary case deliberation system, whereby judicial, prison, police, and municipal authorities design tailor-made interventions. As part of this, mentoring and counselling by externally contracted psychological and theological experts who provide cognitive behaviour and religious interventions respectively.⁴⁶⁷ In this sense, TER's setup is somewhat of a public-private partnership.⁴⁶⁸

Results: Researchers studied TER's impacts in 2013-2014, offering preliminary findings of the programme's 'mixed results'⁴⁶⁹ regarding its underlying assumptions, process, and impact. The study found that TER's goal of 'reducing recidivism' among five 'extremist and terrorist offenders' could not be measured conclusively. For two clients who left for Syria and were believed to have died by 2015, 'the project had clearly not been successful. That said, in the other three cases, a preliminary finding was that clients seemed to be 'making somewhat better progress,' with some signs of individuals desisting in condoning political violence.'⁴⁷⁰ A follow-up study has sought to build on these insights over the period January 2016-December 2017,⁴⁷¹ although the results have not yet been published. The Dutch authorities also initiated a pilot 'Inclusion' programme in July 2017 to work in parallel with TER. 'Inclusion' is designed to integrate practical reintegration, such as housing or

⁴⁶⁴ RAN, [Collection of Approaches and Practices: Prison and Probation Interventions](#), 2017.

⁴⁶⁵ Ibid.

⁴⁶⁶ Ibid.

⁴⁶⁷ B. Schuurman, & E. Bakker, [Reintegrating jihadist extremists: evaluating a Dutch initiative, 2013–2014](#), 2015.

⁴⁶⁸ Koehler, 2017, op.cit.

⁴⁶⁹ Schuurman and Bakker, 2015, op.cit.

⁴⁷⁰ Ibid, p. 77.

⁴⁷¹ RAN, [Collection of Approaches and Practices: Prison and Probation Interventions](#), 2017.

employment assistance, a network-oriented approach focusing on social relationships, and cognitive behavioural training.⁴⁷² Subject to a positive evaluation of its implementation, this could be introduced into the centralised 'Terrorism Ward' at the Vught Penitentiary Institution during 2018.⁴⁷³ It is too soon to discern any evidence of its impact.

Annex 3.6. One-to-One Terrorist Act Offender Rehabilitation (UK)

'One-to-One Terrorist Act offender rehabilitation'

The UK, 2009-present

One private actor that has played an increasingly prominent role in the UK context is *The Unity Initiative* (TUI). Founded in 2009, TUI is a consultancy that now works closely with London Probation services, Prison Services, and Home Office, in delivering its 'One-to-One Terrorist Act offender rehabilitation' (TACT) scheme.

Stated objectives: 'taking on the most challenging and high-profile' cases of individuals convicted under Britain's terrorism legislation for the purpose of 'ideological rehabilitation'. In November 2017, TUI announced an increasing focus on 'individuals being investigated for foreign fighter travel to Syria and Iraq.' At the same point, TUI had worked on approximately 20 returnee cases.⁴⁷⁴

Participants: TUI claims that both individuals convicted under Britain's Terrorism Acts (2000, 2006) and **'ISIS returnees are contacting TUI directly for ideological rehabilitation.'**⁴⁷⁵

Methods: Individualised, tailored interventions drawing on 'strong partnerships and consistent support from world renowned Ideological Scholars.'⁴⁷⁶

Results: Beyond anecdotal testimony,⁴⁷⁷ at present no robust evidence to affirm TUI's impact has been reported.

Whereas TUI works in close contact with the UK Government, insofar as government-led programmes are concerned, the UK has implemented a **'Desistance and Disengagement Pilot Programme'** in British prisons since at least as early as 2016.⁴⁷⁸ The details of the programme are, however, scarce at present. In December 2016, a parliamentary representative stated that information about the individuals and organisation involved would not be released due to the programme's sensitive

⁴⁷²Ibid.

⁴⁷³Ibid.

⁴⁷⁴Combating Terrorism Center, [A View from the CT Foxhole: Dr. Angela Misra, Co-Founder, The Unity Initiative](#), 2017.

⁴⁷⁵Ibid.

⁴⁷⁶Ibid.

⁴⁷⁷See BBC News, [How one extremist rejected violence](#), 02.07.2013.

⁴⁷⁸British Counter-Terrorism Official. Interview with Francesco Ragazzi and Josh Walmsley. 21.02.2018.

nature, and to enhance its chances of success.⁴⁷⁹ It is known, however, that the Pilot consists of cooperation between the Home Office and 'experienced practitioners and non-governmental organisations to deliver a suite of mentoring, psychological and theological interventions.'⁴⁸⁰ An impending review of the UK's national counter-terrorism strategy (CONTEST), which is expected to release details of the Pilot,⁴⁸¹ may provide a clearer analysis.

Annex 3.7. Prevention of Radicalisation and Discrimination in Aarhus

'Prevention of Radicalisation and Discrimination in Aarhus' (Denmark, 2007-present)

The 'Prevention of Radicalisation and Discrimination in Aarhus' initiative has been running in formal cooperation with the local collaboration model between schools, social services, and police (SSP) since 2011, building on an existing early intervention crime scheme.⁴⁸² In response to the departure of 31 of its citizens for Iraq and Syria by 2013, it was adapted to become the city's primary socio-preventive instrument for departees and returnees, at a time when returnees were not systematically prosecuted (mostly due to insufficient evidence prior to legislative changes following UNSCR 2178).⁴⁸³ As it was one of the first programmes to offer a clear framework and methodology for tackling this complex problem, the intervention mechanism in Aarhus became influential in the development of other local initiatives. In 2014, municipalities across Denmark began to integrate 'Aarhus-style' initiatives into their own local SSP models⁴⁸⁴. As a government-run initiative, the Aarhus model is tax-payer funded, and does not receive any funding from the European Commission⁴⁸⁵.

Stated objectives: Disengagement is prioritised over deradicalisation.⁴⁸⁶

Participants: The Aarhus model has often been misunderstood. It has often been labelled as a radically alternative approach to returnees to those of Member States

⁴⁷⁹ Parliament.uk, [Counter-terrorism: Written question - HL3518](#), 2018.

⁴⁸⁰ Ibid.

⁴⁸¹ British Counter-Terrorism Official. Interview with Francesco Ragazzi and Josh Walmsley. 21.02.2018.

⁴⁸² Aarhus.dk., [De-radicalisation: Aarhus Kommune](#), 2018.

⁴⁸³ F. Mertz, [Dealing with Jihadist Returnees: A Tough Challenge](#), 2017.

⁴⁸⁴ Hemmingsen, 2015, op.cit.

⁴⁸⁵ Migration and Home Affairs, [Prevention of Radicalisation and Discrimination in Aarhus](#), 2018.

⁴⁸⁶ One Aarhus practitioner described the programme's objectives in 2014: 'We don't spend a lot of energy fighting ideology. We don't try to take away your jihadist beliefs. You are welcome to dream of the Caliphate. But there are some means that you cannot use according to the penal code here. You can be al-Shabab all you like, as long as you don't actually do al-Shabab.' See Hooper, S., [Denmark introduces rehab for Syrian fighters](#), 07.09.2014.

who prioritise arrest and prosecution,⁴⁸⁷ but this overlooks that **it is only available to individuals who have not committed a terrorism-related offence.**⁴⁸⁸

Methods: The initiative has worked in close cooperation with the Department of Psychology and Behavioural Sciences at Aarhus University, and via the **SSP** is able to provide a range of services including mentoring, psychological support, employment and education assistance.⁴⁸⁹

Results: In late 2015, the Ministry of Immigration, Integration and Housing produced a tender to evaluate fourteen similar initiatives 'explicitly stipulating' a focus on 'results, not just the implementation.'⁴⁹⁰ The results, however, are not yet available.

Annex 3.8. Channel (UK)

'Channel'

The UK, 2007-present

Since 2007, the UK's approach to 'countering violent extremism' outside of the criminal justice system has been directed through the government-led 'Channel' programme. Channel is described as 'a multi-agency approach to identify and provide support to individuals who are at risk of being drawn into terrorism,' on a voluntary basis.⁴⁹¹ Under the central direction of the Home Office, the programme employs specially trained mentors to provide tailored interventions. In April 2014, a Home Affairs Select Committee called for the government to develop a specifically tailored, systematic approach to returnees akin to the Channel programme.⁴⁹² The Home Office did not, however, create a new mechanism for dealing with returnees in this way, and the general Channel framework is considered sufficient.⁴⁹³

Stated objectives: Channel, in its interconnection with the UK's overarching 'Prevent' strategy, seeks to: (i) respond to the ideological challenge of terrorism and the threat... from those who promote it,' (ii) 'prevent people from being drawn into terrorism and ensure they are given appropriate advice and support, and (iii) work with sectors and institutions where there are risks of radicalisation...'⁴⁹⁴.

⁴⁸⁷ See, for example, See Hooper, S., [Denmark introduces rehab for Syrian fighters](#), 07.09.2014.

⁴⁸⁸ Hemmingsen, 2015, op.cit.

⁴⁸⁹ P. Bertelsen, [Danish Preventive Measures and De-radicalization Strategies: The Aarhus Model](#), 2015.

⁴⁹⁰ Hemmingsen, 2015, p. 41.

⁴⁹¹ HM Government. [Channel Guidance: Protecting Vulnerable People from being Drawn into Terrorism](#), 2017.

⁴⁹² Home Affairs Committee. [Counter-Terrorism: Seventeenth Report of Session 2013–14](#), 2014.

⁴⁹³ British Counter-Terrorism Official. Interview with Francesco Ragazzi and Josh Walmsley, 21.02.2018.

⁴⁹⁴ HM Government. [Prevent Duty Guidance](#), 2015.

Participants: Individuals identified as 'vulnerable to' or displaying signs of 'radicalisation'— first by civil society actors (teachers, doctors, social workers etc.), and then following assessment by the security services— may be referred to the Channel programme. To which returnees assistance is offered, on what basis, and under what conditions— is handled on a case-by-case basis⁴⁹⁵, though information is scarce.

Methods: Cases are assessed by local multi-agency 'Channel Panels,' which may consist of a range of security, police, education, social work, and healthcare practitioners. These teams are used to design individualised interventions that may include ideological and theological intervention.

Results: The UK government has not released any evaluations of impact of the Channel programme. While the programme has faced high-profile criticism⁴⁹⁶, predominantly due to a lack of transparency and its perceived targeting of Muslims, there is therefore no concrete evidence against which this can be measured at this stage

⁴⁹⁵ Ibid.

⁴⁹⁶ Open Society Justice Initiative. [Eroding Trust The UK's Prevent Counter-Extremism Strategy in Health and Education](#). 2016.

Annex 4. List of interviews

4.1. Officials from EU and National Institutions

- Officials of the European Commission's Directorate General Migration and Home Affairs. Brussels. 21.02.2018.
- British Counter-Terrorism Official. Brussels. 21.02.2018.
- Chief adviser to the EU's Counter-terrorism Coordinator (via Skype). 27.02.2018.
- Official at the Dutch Ministry of Justice. The Hague. 08.03.2018.
- Officials at Europol's European Counter Terrorism Centre. 08.03.2018.
- Officials at Eurojust. The Hague. 09.03.2018.
- Officials at the Federal Ministry of Justice in Germany (via Skype). 21.03.2018.
- Official of France's 'Coordination Unit of the Fight Against Terrorism (UCLAT, via telephone). 21.03. 2018.
- The UK's Independent Reviewer of Terrorism Legislation (via Skype). 27.03.2018.

4.2. Representatives from NGOs and Civil Society

- Jeanne Sulzer, French Legal Expert (via Skype). 16.03.2018.
- Nadim Houry, Human Rights Watch (via Skype). 22.03.2018.

Since the Syrian conflict started in 2011, thousands of EU nationals have travelled or attempted to travel in conflict zones in Iraq and Syria to join insurgent terrorist group, such as the 'Islamic State'. Of those, it is estimated that around 30% have already returned to their home countries.

The issue of foreign fighters touches upon a wide range of policies: prevention of radicalisation, criminal justice responses, exchange of information at EU level and 'deradicalisation' measures.

This study outlines the EU response to the issue of foreign fighters. It furthermore examines in-depth the approaches six Member States have adopted to this phenomenon: Belgium, Denmark, Germany, France, the Netherlands and the UK.

This is a publication of the Ex-Post Evaluation Unit
EPRS | European Parliamentary Research Service

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Print	ISBN 978-92-846-2794-3 doi:10.2861/205	QA-01-18-473-EN-N
PDF	ISBN 978-92-846-2794-3 doi:10.2861/205	QA-01-18-473-EN -C
EPUB	ISBN 978-92-846-2794-3 doi:10.2861/205	QA-01-18-473-EN -P