

“EU AND COUNTERING TERRORISM”

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INTRODUCTION

Today, terrorism is considered to be the greatest threat, or at least one of the most pertinent concerns, for people around the world, particularly in the West. According to an online survey, 66% of Austrians expressed terrorism as one of their major fears (Die Presse, 2016); 71% in Germany listed terrorism among their top concerns (Die Zeite, 2017). In a study conducted by Pew Research Centre in May 2017, most in Europe and North America were found to be actively worried about the rise of Islamic extremism (Poushter, 2017). The EU is very active in counter-terrorism related issues since terrorism continues to pose significant threats across Europe. In 2016 alone, there were 142 failed, foiled or completed terrorist attacks, resulting in 1002 people being arrested for terrorist offences within the geographical area of the EU.¹ The Council of Europe has played a key role in the fight against terrorism by helping develop and reinforce key legal and policing standards in all member nations of the EU to prevent and suppress acts of terrorism. Taking a detailed and extensive approach, the Council of Europe works to help member States fight terrorism more effectively by strengthening and enhancing their national legislation, as well as promote and foster international co-operation. In full respect for human rights and the rule of law, the Council of Europe is continuously working to improve international co-operation and harmony in bringing terrorists to justice. The Council of Europe Committee on Counter-Terrorism is the major body of the Council of Europe activities to combat terrorism. Its primary objectives are to oversee and ensure the successful implementation of relevant Council of Europe legal instruments while also providing a means for international experts to analyze and respond to developments in the counter-terrorism area, including through international standard-setting.²

EUROPEAN UNION TOOLS FOR COUNTERING TERRORISM

The European Parliament, the European Council and the European Commission are the three major wings responsible for development and improvement of terrorism and counter terrorism laws and policies. The primary role of the European Council is to set the organization's political agenda; essentially it is an EU decision-making body rather than law-maker. The European Commission, for its

¹ The Council of European Union, 30 November 2005, Brussels, <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>

² Council of Europe <https://www.coe.int/en/web/counter-terrorism>

part, is the politically independent executive arm of the EU. It draws up proposals for new European legislation, and it implements the decisions of the European Parliament and the European Council. Additionally, together with the Court of Justice, the Commission ensures that EU law is properly applied in all the Member States. Secondly, the EU Counterterrorism Coordinator, who works under the Council of the European Union, is “*responsible for recommending priority areas of action and concrete policies to the Council of the EU ... [as well as] improving communication between the EU and third countries on [counterterrorism]-related issues*”³. Europol and Eurojust aid member states in terrorism-related matters, especially with regard to investigations and prosecutions. Legal assistance is provided through the latter, whereas exchange of intelligence is available through the former. A recent institution that is supposed to be actively engaged in the field of European counterterrorism is the European Counter Terrorism Centre (ECTC), which was launched organisationally under Europol. The ECTC came into being in January 2016 following the longstanding EU consensus:

*“... in the counter terrorism policy context, that a cornerstone for cooperation at EU level was needed to support national counter terrorism efforts”*⁴

Its main function, according to the Europol website, is to act as a hub to exchange information, conduct analysis and coordinate operational support which has led to a significant increase in trust and awareness across national counter terrorism authorities.⁵ In its first year, the information-sharing process has reportedly increased tenfold. In the organisation’s published 1-year report, the ECTC boasts about its achievements.

DEFINING TERRORISM

The Framework Decision 2002/475/JHA, amended in 2008, provides a common definition of terrorist and terrorist-linked offences to facilitate international cooperation, particularly between EU Member States in the absence of a universally agreed definition. This framework decision (2002/475/JHA) and amending decision (2008/919/JHA) require EU countries to align their legislation and introduce minimum penalties regarding terrorist offences. The decisions define terrorist offences, as well as offences related to terrorist groups or offences linked to terrorist activities, and set down the rules for transposition in EU countries.⁶ Subsequently, on 7 March 2017, the Council adopted a directive on combating terrorism (European Union, European Parliament and European Council, 2015). The new rules, which replaced the 2002 Framework, strengthen the legal framework of the EU to prevent terrorist attacks and address the phenomenon of foreign terrorist fighters. The new rules, in the form of a Directive, strengthen and widen the scope of the existing legislation.

³ Boutin et al., 2016, p. 11

⁴ (Europol, 2017, para. 2).

⁵ (Europol, 2017, para. 4).

⁶ *EU rules on terrorist offences and related penalties*, Framework Decision 2002/475/JHA

For example, it criminalizes travel within, outside or to the EU for terrorist purposes, such as to join the activities of a terrorist group or with the purpose of committing a terrorist attack. The Directive will also complement the current legislation on the rights of victims of terrorism.

THE STRATEGY

The organization's counter-terrorism responses are framed around the EU Counter-Terrorism Strategy 2005, adopted by the European Council. It commits the Union to combating terrorism globally, while respecting human rights and allowing its citizens to live in an area of freedom, security and justice.

“The Strategy sets out our objectives to prevent new recruits to terrorism; better protect potential targets; pursue and investigate members of existing networks and improve our capability to respond to and manage the consequences of terrorist attacks.”

It is built around four stands:

- PREVENT people from turning to terrorism and stop future generations of terrorists from emerging;
- PROTECT citizens and critical infrastructure by reducing vulnerabilities against attacks;
- PURSUE and investigate terrorists, impede planning, travel and communications, cut off access to funding and materials and bring terrorists to justice;
- RESPOND in a coordinated way by preparing for the management and minimization of the consequences of a terrorist attack, improving capacities to deal with the aftermath and taking into account the needs of victims.

This Strategy is subjected to regular review for the purpose of keeping it dynamic and flexible. For example, in 2008 the Council adopted an EU strategy for combating radicalization and recruitment to terrorism as part of the 'prevent' pillar. This was subsequently revised in 2014 in response to the challenge of foreign fighters travelling to Syria and Iraq, which pose a major security threat to the EU and its Member States (Council of the European Union, 2014), resulting in the adoption of the EU Strategy for Combating Radicalisation and Recruitment to Terrorism of 2014.

FIGHT AGAINST MONEY LAUNDERING AND TERROR FINANCING

In 2015, the European Parliament and the European Council adopted Directive (EU) 2015/849, which established common rules on the prevention of the use of the financial system of the EU for the

⁷ The Council of European Union, 30 November 2005, Brussels,
<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014469%202005%20REV%204>

purposes of money-laundering or terrorist financing. They believe that flows of illicit money can damage the integrity, stability and reputation of the financial sector, and threaten the internal market of the Union as well as international development. Money laundering, terrorism financing and organised crime remain significant problems which should be addressed at Union level. In addition to further developing the criminal law approach at Union level, targeted and proportionate prevention of the use of the financial system for the purposes of money laundering and terrorist financing is indispensable and can produce complementary results.⁸ Additionally, as part of its response to the 9/11 terrorist attacks in 2001, the organization established a list of persons, groups and entities involved in terrorist acts and subject to restrictive measures. Set down in Council common position 2001/931/CFSP on the application of specific measures to combat terrorism (2001), these were additional measures adopted in order to implement the requirements articulated in Security Council Resolution 1373. This regime is separate from the EU regime implementing Security Council Resolution 1989 (2011) on the freezing of funds of persons and entities associated with Osama bin Laden, the al Qaida network and the Taliban (including ISIL/Da'esh).

CRITICISM OF THE EU COUNTER TERRORISM POLICIES

The biggest obstacle in the implementation of the above policies is the Counter Terrorism Coordinator's ineffectiveness. In the aftermath of the Madrid attacks, with the approval of the member-states, Solana appointed Gijs de Vries as the EU's 'counterterrorism co-ordinator'. However, de Vries has virtually no powers, apart from that of persuasion. He has no budget and cannot propose legislation; nor can he chair meetings of national justice or foreign ministers to set the anti-terrorism agenda. His first job is to define the EU's counter-terrorism role, and to encourage greater co-ordination of national policies at the EU level. For example, the member-states and the Council secretariat have drawn up an extensive list of over 150 measures that the governments and EU institutions should undertake, known as the EU counterterrorism 'action plan'.¹⁶ De Vries audits the progress of these measures and tries to cajole the member-states to implement them, but he cannot force the governments to act. A plethora of other institutions and committees have a role in different aspects of EU counterterrorism policies, and de Vries tries to co-ordinate these. They include not only Europol and Eurojust, but also the terrorism working group (which brings together national interior ministry officials), a foreign policy 'working group on terrorism' (composed of national foreign ministry officials) and the police chiefs' task force.

⁸ Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC

“In an area where clarity of roles and responsibilities is vital, we found the structures within the EU for combating terrorism complex and confusing.”⁹

DISCUSSION OF EU’S FOREIGN POLICY

The Council of Europe’s main international legal instrument in the counter-terrorism field is the Warsaw Convention on the Prevention of Terrorism, 2005. The following is stated in the Warsaw convention:

“THE COUNCIL OF EUROPE Wishing to take effective measures to prevent terrorism and to counter, in particular, public provocation to commit terrorist offences and recruitment and training for terrorism;

- *Aware of the grave concern caused by the increase in terrorist offences and the growing terrorist threat;*
- *Aware of the precarious situation faced by those who suffer from terrorism, and in this connection reaffirming their profound solidarity with the victims of terrorism and their families;*
- *Recognizing that terrorist offences and the offences set forth in this Convention, by whoever perpetrated, are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, and recalling the obligation of all Parties to prevent such offences and, if not prevented, to prosecute and ensure that they are punishable by penalties which take into account their grave nature;*
- *Recalling the need to strengthen the fight against terrorism and reaffirming that all measures taken to prevent or suppress terrorist offences have to respect the rule of law and democratic values, human rights and fundamental freedoms as well as other provisions of international law, including, where applicable, international humanitarian law;”¹⁰*

It lays down guidelines and laws relating to several topics such as public provocation to commit a terrorist offence (Article 5), Recruitment and training for terrorism (Articles 6 & 7), Sanctions and measures to be taken against the same (Article 11) and Protection, compensation and support for victims of terrorism (article 13) amongst others. An Additional Protocol to the Convention on the Prevention of Terrorism is designed to address criminal law aspects of the phenomenon of foreign terrorist fighters and returnees. The Protocol, which opened for signature on 22 October 2015 in Riga and entered into force on 1 July 2017, requires Parties to criminalise taking part in an association or group for the purposes of terrorism, receiving terrorist training, travelling abroad for the purposes of terrorism and financing or organising travel for this purpose. Based on the Additional Protocol, the CDCT also oversees a network to facilitate the rapid exchange of relevant police information for terrorist fighters suspected of travelling to or from member States. The Council of Europe Counter-Terrorism Strategy for 2018-2022 is based on prevention, prosecution and protection. The strategy is

⁹ House of Lords, European Union Committee, ‘After Madrid: the EU’s response to terrorism’, March 2005. <http://www.publications.parliament.uk/pa/ld200405/ldselect/ldeucom/53/53.pdf>.

¹⁰ The Warsaw Convention, 2005

<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016808c3f55>

based on the Council of Europe legal framework and standards and sets out a series of actions and tools to assist Member States.

CONCLUSION

Among other things, there is an opportunity to improve data exchange, police and judicial cooperation, and border control. Although many EU instruments and mechanisms are in place for data exchange and police and judicial cooperation, with an increase in the use of such instruments and mechanisms, those practitioners interviewed for this study still seem to prefer making use of their bilateral trusted contacts for international cooperation. Looking ahead, there are three key actions to improve counter-terrorism. Firstly, greater clarity is needed on those driving the EU counterterrorism policy agenda. Mapping out all the relevant actors and their various mandates and focus areas shows a very crowded market place, without a clear leader of the pack, unless this role will in the future be played by the recently appointed new Commissioner on the Security Union. Secondly, there is a need for more structured future foresight studies to better inform the policy making, as well as regular updates of an EU-wide cross-sectoral terrorist threat assessment. Finally, better monitoring and evaluation of policy impacts is needed to improve their effectiveness and legitimacy, in particular, evidence-based policy and law-making. This needs to go beyond the usual suspects and involve citizens and stakeholders with transparency throughout the process. To help overcome its institutional complexities, the EU should create a cross-institutional body, a European security committee (ESC). The primary role of the ESC would be to advise European heads of government on security matters. The chairmanship of the ESC should alternate between the EU's High Representative for foreign policy and the chair of the JHA ministerial council. An alternating chair would guarantee that ESC members addressed the concerns of both internal and external security decisionmakers. The other permanent members of the ESC should include the counter-terrorism co-ordinator, the chief of the EU military committee, the director of Europol, the justice commissioner and the head of the EU's Situation Centre. The chairman could ask other officials to attend, such as national intelligence chiefs or the aid commissioner, when relevant. The ESC should meet at least monthly, and report to the European Council, the quarterly summits which bring together EU heads of government.
