

## **Policing the Perilous Euroland: Countering Terrorism and Radicalization in Europe**

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### **Abstract**

Counter-terrorism is not a completely new arena of activity in the European Union. The Member States have cooperated since the early seventies, when terrorism was rife in various countries. The terrorist attacks of 9/11 have propelled the issue back onto the policy agenda, and joint efforts have been amplified by the attacks in Madrid (March 2004) and London (July 2005). Recently, concerns have been voiced over the resurgence of violent right-wing extremism. In contrast to the seventies, the EU can now encourage intensive cooperation between the jurisdictions of the Member States, as it has established an Area of Freedom, Security and Justice. In this article, we discuss the three main planes of cooperation, namely the strategic, the regulatory and the agency level of cooperation. Finally, we analyze how nation states have responded to the call for European cooperation in the field of counter-terrorism.

### **Keywords**

Terrorism, Radicalization, Europe, Strategy, Regulation, Law, Sovereignty, Europol, Eurojust SitCen

### **Introduction**

The European Union (EU), which currently consists of 27 Member States, perceives terrorism and radicalization as a profound security threat, particularly after “9/11”. The attacks which took place on 11 March 2004 in Madrid and on 7 July 2005 in London brought the security threat even closer home to the 500 million inhabitants in the EU. Terrorism had been on the agenda of the EU since the mid seventies, as several EU Member States had a long experience with terrorism (Schmid, 1983). Some Member States, like Spain and France, still face a considerable challenge from the Basque separatist movement ETA and from the Corsican independency movement. Despite the continuing attention for Islamist extremism, European countries have recently been alarmed by forms of violent right-wing extremism. Examples are the mass murder by the radical extremist Anders Breivik in Norway on 22 July 2011<sup>1</sup>, and a string of racist murders by neo-Nazis in Germany<sup>2</sup> (Goodwin, 2011; Kaya, 2011).

Hence, despite the fact that the diagnosis of terrorism tended to shift to networked, Al Qaida inspired transnational terrorism, there is still a preoccupation with domestic groups that work on the basis of an entirely different ideology. The EU defines terrorism in terms of its constitutive elements and has imposed

legislation on the Member States which demands from the Member States that they criminalize acts of terrorism. Moreover, except for deep forms of legislative harmonization between the EU Member States, counter-terrorism as a policy field can also be characterized as a crowded policy arena with actors who represent different levels of governance (Den Boer and Monar, 2002; Peers, 2003). Within the EU, domestic and international agencies with a mandate in the field of counter-terrorism have become increasingly linked up, also because the EU has strongly encouraged a multi-dimensional approach to terrorism (Monar, 2007; Herschinger et al., 2010). A major concern is that agencies may fail to communicate or co-ordinate could hamper the prevention of a terrorist attack. Moreover, if agencies operate in a fragmented jurisdictional environment, terrorists may well be able to exploit legal loopholes.

Counter-terrorism in the EU goes along with a process of agencification. Bodies like the European Police Office *Europol* were given new tasks after the September 2001 attacks in the USA. Hence, it can be argued that the terrorist attacks of 2001, 2004 and 2005 provided a strong impulse to a comprehensive EU strategy against terrorism (Balzacq and Carrera, 2005).<sup>3</sup> The first response was to prompt a hyperactive regulatory agenda: the Extraordinary Council that took place after 9/11 launched 175 measures, among which several proposals for new legislation (Bures, 2006). The counter-terrorism instruments that have flown from this regulatory response include the EU Arrest Warrant, the EU Framework Decision on Terrorism, and a Framework Decision on Joint Investigation Teams, all of which are applied to a much wider range of criminal offences and all of which can actively be used by law enforcement.

Meanwhile, the policy issue of terrorism had matured into a more strategic, coherent and comprehensive programme. Even after 9/11 and the attacks that followed in Madrid and London, the EU Member States showed resistance in implementing the various EU-instruments that had been adopted by the Council. In the new decision-making régime of the Lisbon Treaty,<sup>4</sup> terrorism remains a sensitive area that rests firmly in the sovereign hands of the Member States. As a common field of policy-making, counter-terrorism has assumed a position between Justice and Home Affairs and Common Foreign, Defence and Security Policy. Meanwhile, the EU has drawn up a framework for the prevention, repression and prosecution of terrorism in Europe. The Lisbon Treaty, the Stockholm Programme<sup>5</sup> and the Internal Security Strategy<sup>6</sup> open up new avenues for counter-terrorism initiatives. Several other measures have since been adopted which can be regarded as a response to terrorism.

Below, we will discuss the EU effort against terrorism and radicalization in more detail. The first section of the article focuses on the strategic response of the EU, which has gradually evolved from a fragmented ad hoc response to a more integrated long term response which is based on selected policy priorities. Second, we will map the regulatory response of the EU and provide an overview of the main instruments that have been adopted by the EU in order to fight terrorism through law enforcement cooperation, information-sharing, crisis-management and the criminalization of acts of terrorism. Third, we will describe the way in which relevant agencies and counter-terrorism networks in the EU have been given various responsibilities in counter-terrorism. Fourth and finally, we devote a section to the way in which Member States have responded to the EU-strategies, policies and instruments.

## **The Strategic Response**

When the terrorist attacks took place on 9/11, the EU immediately declared its solidarity with the United States. An extraordinary council was convened very soon after the events which amounted to a listing of policy ambitions to be realized. Despite the political endorsement of this activity, there was an absence of a real strategic perspective. With the attacks that took place in Madrid and London, and a series of other anxieties spurred on by single attacks which were motivated by extremist Islamist ideologies, the Member States of the EU realized it was time for real action and a more consistent strategic programme against terrorism. Despite the salience of terrorism as a security topic, this proved not to be an easy task. One obstacle was that the institutions of the EU – the European Commission, the European Parliament and the European Court of Justice – had marginal power in this field, as counter-terrorism is traditionally in the sovereign hands of the Member States. In the particular field of counter-terrorism, this boils down to a non-intervention principle, which means that the EU has no sanction powers, if a nation state in the EU refuses to comply with regulatory decisions. This contrasts to other fields in the EU, such as the Common Agricultural Policy.

A second obstacle flows from the situation that the responsible agencies in the Member States have engaged in longstanding forms of cooperation, but none of them had been fully institutionalized at EU-level. Counter-terrorism cooperation was mostly networked and - when it came to the exchange of operational intelligence - bilateral (Den Boer et al., 2008).

A third obstacle is that the experience with terrorism is (fortunately) infrequent (Dahl, 2010), but this implies that criminal justice systems and law enforcement bodies are not traditionally geared towards giving terrorism and radicalization top priority in their work. In fact, in most Member States law enforcement organizations

face restructuring exercises due to budget cuts and the drive for more efficiency, and they struggle with scarce capacity. A fourth reason is that counter-terrorism in the EU has been a policy which is situated at different levels of governance (Herschinger et al., 2010). It depends strongly on the political-administrative system of each EU Member State how, where and when efforts are invested in the fight against terrorism and radicalization. In some countries, counter-terrorism is high on the agenda and can be imposed top-down; in other countries, with a strongly decentralized character, such as The Netherlands and Germany, local and regional governance are important loci of power where the participation in the policy agenda is relatively high. Later in the article, we will return to domestic differences.

Despite these obstacles, the EU has gradually managed to steer its own course, even to the extent that one may now speak of a “European approach to terrorism”. Important elements of the EU counter-terrorism strategy are prevention and multi-disciplinary cooperation. Since 2005, the EU has built its counter-terrorism strategy on four pillars, namely prevent, protect, pursue and respond.<sup>8</sup> The language of this strategy strongly resembles that of the British national response to terrorism. The main objectives of the EU strategy against terrorism are the cooperation with third countries (for instance with South East Asia), the respect for human rights, the prevention of recruitment into terrorism, the protection of potential targets, the investigation and prosecution of acts and suspects of terrorism, and the improvement of the capability to respond to and to manage the consequences of terrorism.<sup>9</sup>

The prevention pillar of the EU strategy aims at combating recruitment into terrorism and radicalization. It seeks to do so by identifying the instruments, methods and communication they use. It is acknowledged that this terrain of activity belongs to the EU Member States themselves, but the EU plays the role of coordinator and stimulator of the exchange of good practices and information. The protection pillar seeks to decrease the vulnerability of targets, and in this context, several initiatives have been taken in the context of border and transport security, as well as the protection of critical infrastructures. In the prosecution (“pursue”) pillar of the EU counter-terrorism strategy, one seeks to bolster the judicial apparatus to disrupt terrorist organizations by making it more difficult to get access to weapons, explosives and finances. It is in this pillar that information exchange between the relevant EU agencies is strongly encouraged, assisted by the availability of several EU-wide databases and information-sharing agreements. As we will see in the next section, several legislative instruments have been adopted to fight money laundering and terrorist financing. The fourth pillar of the EU strategy revolves around response through media coordination, assistance to victims and help in civil military EU crisis management operations.

Progress is reviewed every six months by the Council, and each Presidency organizes a high-level political dialogue on terrorism. The counter-terrorism strategy is complemented by a detailed action plan which lists the relevant measures. The Committee of Permanent Representatives (who represent the Member States in the EU) monitor progress in detail on a regular basis, and it is provided that the Counter-Terrorism Coordinator and the European Commission perform regular follow-up and updates.

### **The Regulatory Response**

The 9/11 events have led to a series of new legislative measures. The EU has taken a broad approach to counter the terrorist threat and introduced a “genuine EU counterterrorism policy” (Bures 2006: 60), internally, as well as externally.

On 27 December 2001, the first EC measure to fight terrorism in the aftermath of 9/11 was adopted. By regulating that funds, financial assets, and economic resources of those people and groups involved in terrorist activities and listed in the annex of the regulation are to be frozen, EC Regulation 2580(2001) provides for substantive measures to fight terrorism. In addition, banks and other financial institutions should provide information about those individuals and groups.<sup>10</sup> The list of names has been updated on a regular basis.

As Regulation 2580/2001 only covers terrorist groups not related to the Taliban, Osama bin Laden or Al Qaida, EC Regulation 881(2002), which was adopted in May 2002, established another list.<sup>11</sup> This list, which refers to individuals and entities related to the Taliban, Osama bin Laden or Al Qaida was set up by the UN and merely converted into EU law.<sup>12</sup>

The 2002 adopted 'Council Framework Decision on combating terrorism,' which includes a definition of the term terrorism, builds the cornerstone of the EU's fight against terrorism. It provides a definition of terrorism and terrorist groups and regulates the punishment of terrorist offences, which include inciting, aiding, or abetting terrorists and terrorist crimes. The definition establishes the core of the Framework Decision and basically incorporates the content of the by then twelve existing UN Conventions on terrorism. In 2008, the Framework Decision on combating terrorism was amended, with the Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism.<sup>13</sup> These two Framework Decisions have led to a minimum harmonization in criminal matters related to terrorist offences.

In June 2002, the 'Framework Decision on the European arrest warrant and the surrender procedures between Member States' was adopted.<sup>14</sup> For 32 offences, the European Arrest Warrant makes the arrest and transfer of suspects possible without formal extradition procedures, by abolishing the principle of double criminality and

allowing for extradition of nationals of the surrendering state. A final measure that was adopted before the first large Islamist terrorist attack on European soil occurred is the 'Council Framework Decision on joint investigation teams' in June 2002.<sup>15</sup> It regulates that two or more Member States can set up joint investigation teams for a limited period of time - combating terrorism is the priority of these teams.

Immediately following the terrorist attacks in Madrid and London in March 2004 and July 2005 respectively, the EU adopted new counter-terrorism strategies. It was an important element in the Hague Programme, which was adopted in May 2005, and explicitly laid down in the new EU Counter-Terrorism Strategy, adopted in December 2005, serving as guidelines for the future, but not constituting new legal measures.<sup>16</sup>

The next legislative step was the amendment of the existing mechanism on information exchange of convictions in November 2005. To further facilitate cooperation in criminal matters, the Proposal for a Council Framework Decision on the European Evidence Warrant was adopted in July 2006, which enables Member States to obtain documents and data from one another for the use in criminal proceedings, thereby leading to faster procedures. The European Evidence Warrant was finally adopted in 2008.<sup>17</sup>

A number of different information systems have also been implemented, such as the Visa Information System in early 2008. Additionally, the Data Retention Directive was adopted and has meanwhile been implemented by almost all EU Member States. The Directive came into force on May 3, 2006, and aims at further harmonization between Member States.<sup>18</sup> It requires providers of electronic communications services and networks to retain traffic data related to emails and telephone calls for at least six months and up to two years from the date when a call was made, an email sent, or a website was visited. Information to identify the originator and recipient of the calls or emails is included, as well as the time, date, and length of the call or email. Internet telephony is also included along with calls to and from cell phones and landlines. In accordance with national law, these data have to be made accessible to the police for investigation purposes. It updates and in fact reverses the E-Privacy Directive, which was adopted in 2002, an in general did not allow for the storing of data.

Moreover, the "Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union" was adopted, which aims at faster exchange of information and data, for example by setting up time frames for responding to requests.<sup>19</sup>

As already mentioned, in 2007, an amendment of the Framework Decision on combating terrorism was proposed, which was adopted in 2008. By this amendment, the list of terrorist offences includes provocation to commit terrorism, as well as recruitment and training for terrorism. The UN called on its Member States to criminalize these acts in 2005.<sup>20</sup>

Hence, in the aftermath of 9/11, the EU has accelerated the legislative measures to counter the terrorist threat, by implementing UN measures on behalf of the Member States. Most counter-terrorism instruments were introduced immediately after 9/11. A second wave of new measures was triggered by the attacks on European soil in 2004 and 2005. Table 1 summarizes the main regulatory EU instruments in the field of counter-terrorism.

## **The Agency Response**

### *Europol*

The objective of the Europol,<sup>21</sup> which was established by virtue of the Maastricht Treaty that entered into force in 1992, is to improve the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating terrorism, unlawful drug trafficking and other forms of international crime where two or more Member States are affected. Its mandate is to facilitate the exchange of information between the Member States. This means that Europol has no operational or executive mandate, but that it obtains, collates and analyses information and intelligence. Originally, Europol's investigations were to be limited to unlawful drug trafficking, trafficking in nuclear and radioactive substances, illegal immigrant smuggling, trade in human beings and motor vehicle crime. Subsequently, its mandate was gradually expanded by the EU Justice and Home Affairs Council.

Terrorism was added to Europol's mandate in 2000, only one year after the agency became operational.<sup>22</sup> At first, it was deemed politically undesirable to include anti-terrorism in the Europol-mandate, as there was a lack of a single definition of terrorism and as it would have implied the handling of very sensitive and proactive intelligence. However, the continuous struggle with terrorism in some Member States, notably Spain and the United Kingdom (UK), added significant pressure on the Justice and Home Affairs Council to include counter-terrorism in the mandate of Europol. Notwithstanding this political green light, Member States have remained reluctant to share intelligence and to give up their national sovereignty in law enforcement matters, which has made it difficult for an agency like Europol to prove its added value. The Council Decision on the exchange of information and co-operation concerning terrorist offences sought to improve upon this situation.<sup>23</sup> A



Council Decision changed the status of Europol into a communautarian agency, which *inter alia*, give the European Parliament more budgetary scrutiny powers<sup>24</sup> (De Moor and Vermeulen, 2010).

A leading role on terrorism by Europol was not claimed, partly because Europol was still not regarded as the agency with which national law enforcement agencies and security agencies wanted to share their intelligence, partly also because Europol was without a director between June 2004 and February 2005 (Keohane, 2005, p.20). Initially, Europol established a team of counter-terrorist specialists, with – in principle – two liaison officers from each EU Member State, one from the police and one from the intelligence service.<sup>25</sup> Europol was also requested to update the Directory of Specialised Counter-Terrorism Competences, Skills and Expertise<sup>26</sup> (Den Boer, 2003: 200).

While there was an ad hoc delivery of data to Europol in the field of terrorism, resulting from live ongoing investigations, in 2004 there was still 'no structured communication of (security) intelligence information' to the Analysis Work File 'Islamic Terrorism' at Europol which was assigned by the European Council on 21 September 2001 in setting up the Counter Terrorism Task Force (CTTF) at Europol (Højberg, 2004: 52). In June 2004, the JHA Council decided to grant a supplementary budget to Europol to reinforce the operational intelligence analysis capacity, which meant that the intelligence analysis staff working at Europol could be more than doubled (Højberg, 2004: 55). Europol also convened regular High level counter-terrorism experts meetings to discuss common problems related to terrorism and the responses of the agency to terrorism. In 2006, Europol supported around twenty "live" investigations in several Member States into Islamist terrorism (De Vries, 2006: 3).

The Counter Terrorism Task Force was requested to collaborate directly with American counterparts. The Director of Europol was instructed to conclude an 'informal agreement', pending a formal one, to be concluded on 16 November 2001.<sup>27</sup> The agreement would provide for 'the exchange of liaison officers between Europol and US agencies that are active in the policing sector. Moreover, the Director of Europol was requested to open negotiations with the USA on the conclusion of an agreement that included the transmission of personal data.'<sup>28</sup>

After the terrorist attacks on 11 March 2004 in Madrid, the co-operation between Europol and the national security services was to be advanced, which led to the re-activation of the Counter Terrorism Task Force.<sup>29</sup> In the year 2005, Europol supported 20 ongoing terrorist investigations and two Analytical Work Files (AWF's) were in operation. Support was given to the anti-terrorism branch within Scotland Yard. Europol Liaison Officers (ELO) assisted the intelligence gathering after the event by working closely with the investigation team. Europol also



seconded a liaison officer to SitCen (see below) in order to avoid duplication of efforts. Europol seeks to assist Member States in identifying terrorist networks, to analyse interaction between international terrorism and organized crime, and to develop co-operation with relevant international organizations. This strategy can only be successful if the Member States share information and intelligence with Europol, and –after several legal instruments<sup>30</sup>– this is still seen as a major hurdle in the effectiveness of this agency. Relevant in this regard is that the European Commission wanted Europol to take a lead in advancing intelligence-led law enforcement by accommodating monthly meetings between the national criminal intelligence services of the Member States. Furthermore, there is the Council Decision on the transmission of information resulting from the activities of security and intelligence services with respect to terrorist offences intends to strengthen the relations between Europol and the national security and intelligence services by establishing national contact points in the Member States for the effective transmission of data.<sup>31</sup> Finally, Europol is in charge of producing the annual EU Terrorism Situation and Trend Report (TE-SAT).<sup>32</sup>

### *Eurojust*

In order to improve judicial co-operation between the Member States and to overcome obstacles in mutual legal assistance procedures, Eurojust was established by virtue of the Tampere European Council on 15 and 16 October 1999. However, it was 9/11 that gave Eurojust a genuine boost. The decision to formally create Eurojust was adopted by the JHA Council of 6 and 7 December 2001. On 28 February 2002, the Council adopted the Decision setting up Eurojust.<sup>33</sup> (Den Boer 2003: 200ff). The mandate of Eurojust is to stimulate and improve the co-ordination of investigations and prosecutions between competent authorities in the Member States, for instance on mutual legal assistance or extradition. Eurojust is competent for the co-ordination of judicial investigations on the types of criminality for which also Europol is responsible. Following the Extraordinary Council on 21 September 2001, Eurojust had to pursue a strengthening of 'co-operation between anti-terrorism magistrates.' Like Europol, the agency was asked to intensify its co-operation with anti-terrorism magistrates in the USA. Eurojust is claimed to have been instrumental in avoiding the bombings at the Strasbourg Christmas market, the bombings in Belgium in Kleine-Brogel (a military base), and a bombing attack against the US Embassy in Paris (Nilsson, 2004: 19).

Eurojust organizes regular strategic meetings on terrorism, with representatives from all over the EU. It has created a Terrorism Team, which meets almost every week, and which aims at establishing a centre of expertise within Eurojust regarding terrorism, at ensuring that terrorism co-ordination meetings are well-structured and well-organised, at enhancing the exchange of terrorism-related

information between the nominated national experts on terrorism, at maintaining a general database of legal documents related to terrorism, at defining a better approach to the receipt and handling of terrorism information from open and closed sources, and at maintaining contacts with working parties and meetings in Brussels on topics related to terrorism. Following a former Council Decision,<sup>34</sup> the Eurojust Terrorism Correspondence team was called into being with national correspondents for terrorism matters with access to information from judicial authorities on persons, groups and entities suspected of terrorism and as listed in the EU Common Position 2001/931/CFSP. A later Council Decision 2005/671/JHA of 20 September 2005 repealed the former Council Decision, and was regarded as a qualitative and quantitative improvement in the exchanges of information, as it would considerably broaden the scope of information to be transmitted to Eurojust. The relevant Council Decision entered into force on 30 September 2005 and had to be implemented by the EU Member States by 30 June 2006. The number of terrorism-related cases dealt with by Eurojust was 28 in 2010, compared to 21 in 2009.<sup>35</sup> The highest percentage of criminal activities reported to Eurojust relate to drug trafficking and fraud.

### ***SitCen***

The EU Joint Situation Centre (SitCen) was created in 2002 and provides Member States with strategic analyses of the terrorist threat. It is based in the Council Secretariat and it reports to the EU High Representative and Secretary General of the European Council. SitCen is composed of about 45 (mostly seconded) national experts from intelligence and security agencies, including military ones! SitCen employees analyze intelligence assessments from the Member States based on national intelligence, open sources and diplomatic reports, and in turn provide Member States with threat assessments. National officials decide which information they send to SitCen. External assessments are combined with information from internal security agencies, and from Europol and the Counter Terrorism Group. SitCen produces reports from European politicians and ambassadors and these reports are essentially of a diplomatic or preventive nature, but not targeted at identifying or striking particular terrorists.

### ***Anti-terrorism Co-ordinator***

After the explosion of the railway bombs in Madrid on 11 March 2004, 175 measures were adopted in the form of a Roadmap, mainly because it was acknowledged that many of the originally intended counter-terrorism measures had not been adopted or implemented. A European Council Declaration on Combating Terrorism was concluded on 25 March 2004. One of the objectives included the development of mechanisms for the co-operation and promotion of effective systematic collaboration between police, security and intelligence services. It was decided that this multi-disciplinary co-operation between domestic services and

international services was subject to coordination by an EU anti-terrorism co-ordinator, who would be accountable to the Secretary General of the European Council or High Representative. The task of the EU anti-terrorism co-ordinator is to persuade the Member States to implement agreed EU anti-terrorism measures, but it should be reminded that the CT-coordinator does not have a budget or legislative powers, that he is not in the position to chair meetings and he does not attend relevant meetings at NATO (Keohane, 2005: 18). However, the EU anti-terrorism co-ordinator interacts directly with the national governments, which may hamper the potential of the Commission to co-ordinate anti-terrorism efforts across the different directorates with a competence in the field of counter-terrorism. Except for the CT-coordinator, the EU has a Council Working Group on Terrorism (coter) (Bergenstrand, 2004: 87), a Police Working Group on Terrorism (PWGOT), and the Counter Terrorism Group (Bergenstrand, 2004: 88; De Vries, 2006: 3; Wiebes, 2004: 119), and the Member States participate in the Club de Berne (Bergenstrand, 2004: 85; Keohane, 2005: 31).

### **Concluding Notes on National Implementation**

In the ten years that followed 9/11, the EU has emerged as a security actor in its own right (Curtin, 2011). It has shown the capacity to respond to a security crisis through a political strategy, agencification and regulation. Despite the fact that counter-terrorism is deeply embedded in the national systems of the Member States of the EU, the joint efforts have amounted to coordinated cooperation and standardization of practices, for instance in the field of information exchange and the transfer of suspects. However, between the Member States there are still considerable differences. This is due to the fact that they have different experiences with terrorism, legal traditions and cultural perceptions of privacy.

Most instruments in the field of counter-terrorism have been adopted in an intergovernmental realm of decision-making. This means that instruments like the Framework Decisions on combating terrorism or on the European Arrest warrant, had to be converted into national law. The Member States have a certain leeway on how and when to implement the supranational instruments in their domestic laws. In addition, the competencies in the field of security mainly rest with the Member States, which also enacted a plethora of purely national laws in the field of counterterrorism. Therefore, despite all the developments on the EU level, "the European Union is still a long way from harmonization of counterterrorism policies of its Member States" (Van Dongen 2010, 237).

Differences are salient in three fields: the codification of criminal offences, criminal justice and procedure and the protection of data and privacy (Wiegand 2011). A quick scan through the implementation of the Framework Decision on combating terrorism in France, Germany, Italy, The Netherlands, Spain and the UK

exemplifies these differences in the fields of criminal offences and data and privacy protection when converting supranational EU law into domestic law. Especially in the latter field, the states have adopted numerous other laws, such as widening the use of CCTV, extending DNA databases or increasing co-operation between different national police agencies and intelligence services within the different states, but also across them. In the field of criminal justice and procedure, most newly adopted measures, such as extensions of police custody or allowance for interrogations without legal counsel, were taken on a purely national basis.

The 2002 Framework Decision on Combating Terrorism establishes a definition of the terrorism and lists a number of terrorist criminal offences, as well as the maximum possible sentences for these. It thereby aims at a minimum harmonization of the punishment of terrorist crimes. Prior to the implementation of the Framework Decision, the six relevant states all had different acts covered in their national law. The Netherlands did not have a special terrorist legislation prior to the implementation of the Framework Decision. The other five states all had terrorist crimes covered in their domestic legal systems, but each to a different extent. France, Spain and the UK already included all offences in their domestic legislation before the adoption of the Framework Decision, whereas in Germany and Italy, only domestic terrorism was a crime, but not international terrorism. Both countries added an international dimension of terrorism to their criminal codes immediately after 9/11. Italy further added conspiracy and support for conspiracy of terrorism, which was not covered in Italian law before.<sup>36</sup>

After the adoption of the Framework Decision on Combating Terrorism, Germany added 'terrorist intention' as an element of crime in 2003 and The Netherlands implemented the regulations of the Framework Decision in 2004, in order to comply with their obligation under EU law. By adding conspiracy to the law, The Netherlands went further than the EU required. France, but especially the UK added a number of additional criminal offences to their criminal codes not covered in supranational law, such as, in the UK, the possession of terrorist materials, even if not intended for the perpetration of a terrorist crime or the eliciting, publishing, or communicating of any information that could be useful for a terrorist attack.

The amendment of the Framework Decision in 2008 led to the adoption of further legislation. Especially in case of Germany and The Netherlands this is visible: both countries adopted laws with regard to preparation of terrorist crimes and participation in terrorist training camps in 2009. Italy had introduced these acts already in 2005, after the attacks in Madrid and London, whereas France, Spain and the UK had them covered prior to 9/11. Spain stands out in the comparison of these

six states, as it did not introduce any new legislation with regard to terrorist crimes, with the exception of the widening of the concept of incitement in 2010 in order to comply with the amendment of the Framework Decision of 2008.

The Framework Decision on Combating Terrorism has led to a harmonization of national counter-terrorism laws. This effect can be observed in case of countries which had no or only limited legislation on counter-terrorism before, like the Netherlands or Italy and Germany. In this way, the Framework Decision led to an approximation of laws in the Netherlands, Italy, Germany and Spain, but as France and even more the UK has added a number of terrorist offences not covered by any supranational instrument, which the other states did not, the EU Member States area still characterized by a diversity of counter-terrorism legislation. Counter-terrorism cooperation between in the EU has become an irreversible process. With stronger EU institutions, we may witness a more profound process of strategic and legislative harmonization in the future.

## Endnotes

<sup>1</sup>“The Norway attacks: Manifesto of a murderer”, *The Economist*, 24 July 2011; <http://www.economist.com/blogs/newsbook/2011/07/norway-attacks>; accessed 20 December 2011.

<sup>2</sup>“Germany's Shocking Neo-Nazi Killers: How Did They go Undetected?”, *Time World*, 17 November 2011; <http://www.time.com/time/world/article/0,8599,2099616,00.html>, accessed 20 December 2011.

<sup>3</sup>The Ministers of Justice and Internal Affairs convened on 13 July 2005 and endorsed the need for a collective strategy against the terrorist threat.

<sup>4</sup>Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJC 306, Vol. 50, 17 December 2007.

<sup>5</sup>European Council, *The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens*, OJC 115/1, 4.5.2010.

<sup>6</sup>Council of the European Union, *Draft Internal Security Strategy for the European Union, “Towards a European Security Model*, 23 February 2010, 5842/2/10, <http://register.consilium.europa.eu/pdf/en/10/st05/st05842-re02.en10.pdf>

<sup>7</sup>As our article primarily seeks to offer an overview, we neither discuss issues such as governance, accountability, human rights, data protection or jurisdiction (see e.g. Hillebrand, 2010; Kaunert, 2010; Curtin 2011; Wolff *et al.*, 2011), nor external relations and defence policy of the EU with regards to terrorism and radicalization (see e.g. Cremona *et al.*, 2011).

<sup>8</sup>Council of the European Union, 30 November 2005: The European Union Counter-Terrorism Strategy. Available at: <http://register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf>; accessed 12 December 2011; see also Action Plan to Combat Terrorism, 13 February 2006 (<http://register.consilium.europa.eu/pdf/en/06/st05/st05771-re01.en06.pdf>; accessed 12 December 2011); Implementation of the strategy and action plan to combat terrorism of 19 May 2006 and of 12 December 2005 (<http://register.consilium.europa.eu/pdf/en/06/st09/st09589.en06.pdf>; <http://register.consilium.europa.eu/pdf/en/05/st15/st15704.en05.pdf>; accessed 12 December 2011).

<sup>9</sup>[http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/fight\\_against\\_terrorism/133275\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133275_en.htm); accessed 12 December 2012.

<sup>10</sup>Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. Available at: [http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&model=guicheti&numdoc=32001R2580](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&model=guicheti&numdoc=32001R2580); accessed 15 December 2011.

<sup>11</sup>Council Regulation 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al Qaida network, and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan. Available at [http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&model=guicheti&numdoc=32002R0881&lg=en](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&model=guicheti&numdoc=32002R0881&lg=en) ; accessed 15 December 2011.

<sup>12</sup>The list was introduced by the UN with Resolution 1267(1999) and implemented in the EU in 2000 with Council Regulation EC 337(2000), which was updated with EC Regulation 881/2002.

<sup>13</sup>Council Framework Decision on combating terrorism. Available at: [http://eurlex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett](http://eurlex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32002F0475&model=guichett); accessed 15 December 2011 and Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008F0919:EN:NOT>; accessed 15 December 2011.



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- <sup>19</sup> Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006F0960:EN:NOT>; accessed 15 December 2011.
- <sup>20</sup> S/RES/1624/2005 Threats to International Peace and Security. Available at [http://daccessods.un.org/access.nsf/Get?Open&DS=S/RES/1624%20\(2005\)&Lang=E&Area=UNDOC](http://daccessods.un.org/access.nsf/Get?Open&DS=S/RES/1624%20(2005)&Lang=E&Area=UNDOC); accessed 15 December 2011.
- <sup>21</sup> Council Act of 26 July 1995 drawing up the Convention on the establishment of a European Police Office, Official Journal C316, 27.11.1995.
- <sup>22</sup> Council Decision 99/C 26/06 [Official Journal C 26 of 30.01.1999], Council Decision of 3 December 1998 instructing Europol to deal with crimes committed or likely to be committed in the course of terrorist activities against life, limb, personal freedom or property.



<sup>23</sup>Council Doc. No. 2005/671/JHA, 20 September 2005.

<sup>24</sup>Council Decision of 6 April 2009 establishing the European Police Office (Europol), OJ L 121/37, 15.5.2009.

<sup>25</sup>Objective 31, doc. 12759/01.

<sup>26</sup>SN 3926/6/01 REV 6; Joint Action 96/610/JHA of 15 October 1996, adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise in the Member States of the European Union, OJ L/273 of 25.10.1996.

<sup>27</sup>Draft Council Decision amending the Council Decision 2000/C 106/01 of 27 March 2000 authorizing the Director of Europol to enter into negotiations with 3<sup>rd</sup> States and non-EU related bodies. EUROPOL 85, Brussels, 16 November 2001.

<sup>28</sup>Objective 52, doc. 12759/01; Agreement between the United States of America and the European Police Office;  
[https://www.europol.europa.eu/sites/default/files/flags/united\\_states\\_of\\_america.pdf](https://www.europol.europa.eu/sites/default/files/flags/united_states_of_america.pdf) (accessed 19 December 2011).

<sup>29</sup>European Council, "EU Plan of action on combating terrorism – Update", December 2004. <http://eu.int/uedocs/cmsUpload/EUplan16090.pdf>.

<sup>30</sup>E.g. Council Decision 2003/48/JHA of 19 December 2002, seeking to improve the exchange between Member States and EU bodies.

<sup>31</sup>Council Decision COM (2005) 695, 2005/0271 (CNS), not published in the Official Journal.

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<sup>32</sup>Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63/1 (2002/187/JHA), 6 March 2002.

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<sup>34</sup>Annual Report Eurojust 2010, p. 33:

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<sup>35</sup>Council Decision 2003/48/JHA of 19 December 2002 on the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP (OJ L 16, 22 January 2003).

<sup>36</sup> Annual Report Eurojust 2010, p. 33:

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