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**THE EUROPEAN UNION
POST 9/11 COUNTER-TERROR POLICY RESPONSE:
AN OVERVIEW**

JAVIER ARGOMANIZ

(Centre for the Study of Terrorism and Political
Violence, University of St Andrews, UK)

**RESEARCH INSTITUTE FOR EUROPEAN AND AMERICAN STUDIES
(RIEAS)**

**# 1, Kalavryton Street, Alimos, Athens, 17456, Greece
RIEAS url: www.rieas.gr**

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Dr. John M. Nomikos
Director

RESEARCH INSTITUTE FOR EUROPEAN AND AMERICAN STUDIES (RIEAS)

Postal Address:

**# 1, Kalavryton Street
Athens, 17456, Greece
Tel/Fax: + 30 210 9911214**

E-mail: rieas@otenet.gr

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JAVIER ARGOMANIZ

*(Centre for the Study of Terrorism and Political
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Abstract:

Examinations of the EU response to the threat of jihadist terrorism in Europe tend to encompass these policies with the vague label of 'EU counter-terrorism'. This paper contends that such approach ignores the fact that the impact and influence of the

Union as a counter-terror actor diverges profoundly across the different dimensions of the response. Consequently, this report provides an overview of the key policies developed by the Union in each of the policy sectors that constitute the Union anti-terrorist activity and concisely examines the practical relevance of these measures.

Introduction

The attacks in New York, Madrid and London have made the European Union a relevant counter-terror actor. Whereas 9/11 acted as a catalyst for the rapid approval of measures that had been progressing at a disappointing pace at the Council (den Boer & Monar, 2002), Madrid was a loud wake up call for the need of increased European collaboration and the events in London further served to solidify counter-terrorism as an EU priority (Edwards & Meyer, 2008). The result is that the EU is now considered by European governments as a legitimate forum for conducting counter-terror cooperation. The transnational character of the threat, the networked presence in Europe of violent Islamist groups and the worrying phenomenon of radicalisation of some second and third generation European Muslims (Vidino, 2006) have reinforced the need of growing European counter-terror cooperation. They also signify the necessity of a complex response that would encompass enhanced cooperation not only on the prosecution of those accused by terrorist crimes but also on the prevention of radicalisation processes, the protection of potential terrorist targets and the provision of response mechanisms in the aftermath of an attack. Unlike other unidimensional European security actors (i.e. NATO), the EU's competencies in a wide range of economic and social spheres made it in principle a valuable forum for a multidimensional response.

Such response has been extensive and wide-ranging at the policy and institutional level, a point illustrated by the almost 50 policy outputs –each encompassing an extra number of more targeted initiatives- included in the November 2009 iteration of the EU's Action Plan on Combating Terrorism¹. Considering the substantial number of measures and the fact that the EU reaction has been sharply criticised by some observers for being piecemeal and incrementalist (den Boer, 2003; Keohane 2005), it is not surprising to find that the Action Plan paints an unwieldy and complex picture. Indeed, the 2005 Counter-terror Strategy² has aimed to provide clarity to the EU counter-terror efforts by framing it under four pillars based on the UK's own CONTEST strategy: Prevent, Protect, Pursue and Respond. In principle, the goal of the strategy is to provide a holistic response and endow with coherence a sprawling policy reaction. In practice it has acted more as an instrument of political marketing as its main aim has been to communicate 'what the EU is doing' in this area to external audiences³.

The intention of this report it is not to assess the effectiveness of the Strategy as a guiding document but to shed some light on the policy response that the EU has advanced since 2001. To be precise, the adopted 'helicopter view' will set aside institutional transformations to zoom instead on the key policy outputs originated in this complex arena of European governance. The aspiration is therefore not to account for every initiative that has emerged with a connection to the fight against terrorism but to concentrate on those that have shaped more substantially the EU's reaction.

It will become abundantly clear in this document that the EU's relevance varies substantially across the different dimensions of counter-terror action. In other words, there are important divergences in the extent to which the different policy

sectors that constitute EU counter-terrorism have become *europeanised*. This is a major reason why the report will examine the Union policy response by framing it in eight broad areas: Police and Intelligence Cooperation, Judicial Cooperation, Infrastructure and Transport Protection, Customs and Border Security, Response Management, Anti-terrorism Financing, Anti-radicalisation and Terrorist Recruitment and External Relations. As shown below, some of these sectors do not fit neatly within any of the four dimensions of the Strategy and some easily straddle the conceptual gaps between these pillars.

Table 1. Counter-terror Policy Sectors by Pillar

<i>Sector</i>	<i>Pillar</i>
Police and Intelligence Cooperation	Pursue, Prevent
Judicial Cooperation	Pursue
Infrastructure and Transport Protection	Protect
Customs Control and Border Security	Protect
Response Management	Respond, Protect
Anti-terrorism Financing	Prevent, Pursue
Anti-radicalisation and Terrorist Recruitment	Prevent
External Relations	Prevent, Pursue

Accordingly, whereas previous studies have tended to obviate these sectoral cleavages and immerse policies in the same vague label of ‘EU counter-terrorism’, this paper contends that a sector-by-sector approach provides a more effective approach to the understanding of the policy outputs produced by the Union. Accordingly, the following sections will explore each of these sectors in turn.

Police and Intelligence Cooperation

Police work and the production and management of intelligence are at the core of effective counter-terror action. Hence improving the sharing of information between European security services has been from the outset considered a central element in the EU anti-terrorist efforts. The 2005 Counter-terrorism Strategy emphasised for instance that the Union will support member states’ efforts by ‘encouraging the exchange of information and intelligence between them, providing common analyses of the threat and strengthening operational co-operation in law enforcement’.⁴

This strategic goal has evolved in practice into three areas of action:

- a) Expansion of powers and material resources of EU bodies with competencies in law enforcement;
- b) Increase of the exchange of counter-terror information horizontally amongst member states’ authorities and
- c) Vertically between national and European agencies.

Although broadly outside the policy-focused remit of this report, the first area of action has resulted in significant institutional changes at the EU level. These include the creation and injection of resources to internal teams specialised in terrorism within Europol and Eurojust (Gregory, 2005), the establishment of an dedicated anti-terrorist unit within the Commission JLS DG⁵, the upgrading of the terrorism-specific Council Working Groups COTER (second pillar) and TWG (third

pillar)⁶ and, most importantly, the setting up after Madrid of a Counter-terror coordinator post under the EU High representative for the Common Foreign and Security Policy (CFSP)⁷.

In parallel, new structures have been created to formalise the exchange of information between national police authorities with the approval of the 2002 *Framework decision on Joint Investigation Teams* and the 2002 Council Recommendation to set up *Multi-national ad-hoc teams for gathering and exchanging information on terrorism*.⁸ The latter specialise uniquely on antiterrorism and can be formed in the pre-criminal investigative phase for the informal sharing of intelligence data and operational coordination⁹. The former have been undoubtedly more visible and permit law enforcement officials and representatives from the judiciary to work jointly in cross-border judicial investigations involving serious crime in two or more member states. Europol officers and Eurojust magistrates are also allowed to take part in JITs investigations (Nilsson, 2006, p.80).

The JITs and ad-hoc teams are integral to the goal of promoting the exchange of information at the horizontal level. This objective has been facilitated by the introduction at the Hague Programme of a European principle of governance for these procedures. In this respect, the *principle of availability*, a response to the post-Madrid calls by the European Council for simplifying the exchange of intelligence between law enforcement authorities¹⁰, enables police officers from any member state to obtain information from a law enforcement agency in any other state. The purpose behind the principle is to address bureaucratic slowdowns to the process of data sharing by removing the requisite for judicial authorisation.

The principle is a key step forward insofar it provides a guiding framework for the formulation of further legal initiatives. Thus, it has served to instigate some proposals by the Commission's Justice Liberty and Security (JLS) Directorate General such as the 2005 *Framework Decision on the exchange of information under the principle of availability*¹¹ and the 2005 *retention and storage of telecommunications data directive*¹². The 2006 *Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States*¹³ also aims to guarantee that police intelligence is provided to other national authorities on request.

Moreover, *Council Decisions 2008/615/JHA* and *2008/616/JHA*, by translating to EU legislation some of the provisions from the 2005 Prüm Treaty, have also served to partially advance the *principle of availability* goal of access to information held by other member states' authorities. These initiatives authorise Member States to start the indirect exchange of DNA, fingerprint and vehicle registration data¹⁴, with potentially very important consequences for practical cooperation in terrorism and cross-border crime.

Taken together, these proposals aim to address the underlying challenge that represents the traditional lack of trust between European internal security services. Yet the overlap between these and other legislative initiatives has been criticised in some quarters¹⁵ for engendering an over-complex *acquis* and being a potential source of confusion for national practitioners. Although these advances put new instruments in the hands of national counter-terror police units, their impact will be limited unless they are consistently and similarly interpreted by all partners.

On the other hand, moves towards enhancing horizontal information exchange have been accompanied with somewhat less ambitious initiatives for the strengthening of bottom-up terrorism data sharing from the national to the European level. The 2002 *Council Decision on the implementation of specific measures for police and judicial*

cooperation to combat terrorism and the 2005 *Council Decision on the exchange of information and cooperation concerning terrorist offences* are the most relevant. The Decisions called upon member states to designate a contact point to communicate to Europol general information regarding ongoing terrorism cases such as the groups and acts under investigation.¹⁶ In addition, member states would also appoint a Eurojust national correspondent for terrorism matters, a figure who will have access and share information concerning prosecutions and convictions for terrorist offences that could affect two or more member states.¹⁷ It should be noted however that these ‘soft laws’ are as far as the Council has been willing to go in legally encouraging vertical assistance between national and European police authorities.

On balance, Union policies have contributed more significantly to the strengthening of horizontal forms of information exchange than hierarchical cooperation between EU and national security agencies. The Commission’s more ambitious proposals to enforce stronger rules for information exchange –including a competing *principle of equivalent access* to that of *availability*¹⁸- have been shot-down by the more reluctant member states, who much prefer to formalise bilateral and multilateral ad hoc cooperation than to support a top-down approach.

A similar picture emerges in relation to intelligence data sharing. EU institutions have also acknowledged that closer cooperation between member states’ intelligence services is fundamental for an efficient counter-terror response. The EU has aimed to address this need not only by calling for more cooperation between national agencies but also by enhancing its own institutional capacity in this area. The latter should not imply however that the EU has followed a vertical approach where intelligence from national agencies is channelled by a centralised EU body. This was the essence of a post-Madrid proposal for a European CIA coming from Austria and Belgium that was swiftly struck down by the large member states. The much more favoured alternative has been the establishment of a Situation Centre under the High representative for CFSP. Essentially, the *Sitcen* acts as a unit to collect and manage processed, non-operational intelligence analyses from individual member states representatives.

It is safe to say that neither a genuine intelligence circle nor a European CIA is in sight for the near future (Müller–Wille, 2008). The persistence of bilateral cooperation is explained by the increased risk of compromising sources when more actors are involved and the chronic problem of mistrust. In this regard, perhaps the greatest contribution by EU agencies in this area is that they create a platform for promoting trust and confidence-building which has the potential to facilitate further bilateral sharing in the long term.

Judicial Cooperation

Judicial cooperation in terrorism matters has developed from the principle of Mutual Recognition of judicial decisions agreed at the 1999 Tampere European Council.¹⁹ Indeed the first concrete application of this principle has been the 2002 *Council Framework Decision on the European Arrest Warrant (EAW)*, arguably the most relevant instrument in the area of European judicial cooperation in criminal matters. Thus, the EAW was designed to replace the existing system of multilateral extradition by requiring each national judicial authority to recognise the requests for the surrender of a person made by another member state’s judicial authority.²⁰ Crucially as regards terrorism crimes, the Warrant does not make exceptions for

political offences or for the surrender of a country's own nationals. Terrorism is also one of the 32 serious crimes for which the rule of double criminality is forfeited.²¹ Following this, the measure's practical impact on the acceleration of extradition procedures should be seen as a remarkable success. This is illustrated by the reduction on the average time to execute a Warrant from more than nine months to 45 days.²² The extradition from Italy to the UK of Hussain Osman, a suspect involved in the failed 21 July London bombings represents the most high profile example of its application for counter-terrorism purposes.²³

Following on the EAW steps, other relevant legislative measures based on the same principle and following similar provisions have been developed. From these the most important is the *2008 Council Framework Decision on the European Evidence Warrant (EEW)*, a judicial decision issued by a competent authority of a member state 'for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters'.²⁴ The objective is to accelerate the transfer of evidence in serious crime cross-border cases, yet it must be noted that the EEW does not include key materials such as forensic information (i.e. DNA) or statements from witness and experts.

Whilst the principle of mutual recognition has been at the core of EU developments in this area, legislative harmonisation in counter-terrorism has been contained to a rather basic level. Yet in view of the political sensitiveness of terrorism, these limited steps still represent substantial advances. Hence the *2002 Framework Decision on Terrorism* marks a milestone by establishing a common European definition of terrorism. The definition relates to groups, individuals or entities committing or threatening certain violent acts (i.e. murder, kidnapping) with the intent to intimidate a population or destabilise a country's political system or economic structures. Furthermore, the Decision also consists of a list of harmonised terrorist offences and penalties, instituting no less than eight years as maximum penalty for participating in a terrorist group and no less than 15 for leading a terrorist organisation. The practical implications of the Decision are very clear: the number of states explicitly addressing terrorist crimes in their national penal codes has expanded from six in 2000 to the 27 EU member states. This certainly institutes a solid legal baseline from which to develop further practical cooperation between judicial national authorities. Moreover, as Nilsson has noted (2007, p.84), it also constitutes a major political landmark: 'for the first time terrorist offences are defined in a binding legal instrument drafted within a multi-lateral forum'. Complementing this basic harmonisation, the 2001 Council Regulation issuing a *Common list of terrorist organisations* also represents a common operational reaction in the form of the freezing of assets of those entities included in the list.

Nonetheless, there can be little doubt that the expansion of practical cooperation and information exchange between European judicial authorities is a consequence of national governments' political choice for mutual recognition over harmonisation. This has helped to circumvent the obstacle of differentiated legal systems and to foster transgovernmental contacts between national judges supported by the pre-existing European Judicial Network (EJN) and the formation in Eurojust of a Terrorist Team. It is important to note however that differences in national legislations have engendered problem areas in the application of mutual recognition instruments. Interestingly, this has encouraged several member states to request further steps to 'approximate legislation and identify common procedural standards as means of enhancing mutual trust'.²⁵

Infrastructure and Transport Protection

Along with Border security, Transport and Infrastructure protection are the main policy priorities of the EU Strategy's 'Protect' pillar. The rationale for EU involvement in these areas is underlined in the Strategy with a reference to the 'interdependency of border security, transport and other cross-border infrastructures'.²⁶ The document contends that the EU should provide a platform through which to share information about national responses, foster public-private actors' networks and deliver good practices and innovations. All with the goal of reducing the vulnerability of critical and transport infrastructure (CIs) across Europe from physical and electronic attacks by terrorist groups.

As such, the principle of subsidiarity and the idea that states take full responsibility for the operational elements have taken central stage in the seminal 2004 Commission Communication *Critical Infrastructure Protection in the Fight Against Terrorism*.²⁷ The document introduced first the proposals for a *European Programme for Critical Infrastructure Protection (EPCIP)* and *Critical Infrastructure Warning Information Network (CIWIN)* both aiming to set up a horizontal framework for the protection of CIs. However discussion of these Commission initiatives has progressed extremely slowly at the Council and the only significant practical outcome has been a 2008 Council Directive formulating a common procedure for designating CIs in Europe.²⁸

Advances have undoubtedly occurred faster in other areas with the release in 2008 of an *Action Plan in Enhancing the Security of Explosives*. Containing more than 40 measures, the Plan aims to combat the use of explosive devices by terrorists within the EU. The most relevant measures have been the setting up a Network of European Explosive Ordinance Disposal (EOD) units and the work on an Early Warning System (EWS) and a Europol-hosted database with data on incidents related to explosives (European Bomb Data System (EBDS)).²⁹

In the same vein, EU action in *transport security* has centred on enhancing the protection of seaports, airports and other transport systems from terrorist attacks. This has been addressed mainly through Europe-wide harmonisation of minimum security standards. These are the goals behind the 2002 EU's first *Common Regulation on civil aviation security*³⁰ that followed the 9/11 attacks and was updated in 2008, and the 2006 Regulation on on-board liquids that came as a result of the August 2006 Heathrow plot to explode transatlantic carriers with liquid explosives. With regards maritime security, the *2005 Directive on enhancing port security*³¹ enforced common standards by requested member states to draw up port security plans and appointing a security officer in each major European port.

Crucially, the Commission has endowed itself with the powers of conducting inspections in order to identify weak points and monitor the application by Member States of these norms in both sea and airports. Due to this fact, this is a sector where the Commission has enhanced its remit through binding community legislation and now maintains a significant operational role. As a result, few other spheres of EU counter-terror action compare in terms of the extent of direct impact on the ground by EU supranational bodies.

Customs Control and Border Security

Strengthening *external border management and control* is presented in the EU Counter-terror Strategy as a mechanism to prevent known or suspected terrorists to enter or operate within the EU. EU work in this area has focused on firstly, obtaining more exhaustive information of those entering the EU area and, secondly, supporting national surveillance at EU's external borders by setting up in 2005 a European Border Agency in Warsaw.

In relation to the first area of activity, a *European Passenger Name Record programme* emulating the American own system is presently under discussion. The legislation would force airlines to provide passenger information to national border authorities on flights entering their territory from outside the EU³². A second generation of the Schengen Information System (SIS II) will also include critical new functions³³ that will transform this instrument from a border control database into a powerful investigative tool that can also be applied to terrorism. Its development however has been plagued with technical problems and forced delays that have pushed the start of its operation to 2011³⁴. Similar problems have stopped the *Visa Information System (VIS)* from entering into operations. The VIS encompasses a centralised database including individual visa files containing biometric information (digital face image and fingerprints). These are inputted into the system by national consulates outside the EU. The tenuous connection with terrorism comes from the fact that the VIS permits checking visa applications against terrorist watch lists and both national authorities and Europol have been authorised access to the database in the investigation of serious crimes offences. Lastly, in 2004, a new *Regulation on EU passports* agreed to the inclusion of biometric identifiers in machine-readable chips on newly-issued passports.

Response Management

The management of the consequences of terrorist attacks is the fourth priority of the EU Counter-Terrorism Strategy. Under the 'Respond' strand, the document states that the effects of a terrorist attack can constitute a crisis of transborder impact or produce an extreme emergency overwhelming the resources of a single state. Therefore there would be a role for the EU in coordinating the exchange of security information between states and managing mutual operational support.³⁵ Taken together the management of the consequences of a terrorist attack has been formulated at the EU level as consisting of three different strands of policy: *Civil Protection*, *Assistance to the Victims* and *Security Research*.

In this respect, the advent of 9/11 ensured the inclusion of threats of terrorist origin as a major element in EU's *Civil Protection* policies, as reflected in the adoption of Council Decision 2001/792, which formally established the *Community Mechanism*. This Mechanism acts as the script for EU action in the event of a terrorist attack or a natural disaster, involving a number of measures and instruments set in place –including a European Monitoring and Information Centre (MIC) within the Commission- in order to improve preparedness and facilitate real-time mutual assistance in the event of a major emergency.³⁶ Interestingly, these resources can be

deployed outside the EU as part of ESDP missions. The mechanism was activated informally in September 2001, one month before being officially established.³⁷

As part of the Community Civil Protection Mechanism, the EU has established networks of alert and mutual assistance (*Early Warning Systems*) to detect in real time the break out of security emergencies and disseminate information to designated actors at the European and national level. Since 2006, these specialised systems came together under a general rapid alert system with the name of ARGUS that channels information between all existing crisis centres and rapid reaction mechanisms.³⁸

Within *Civil Protection*, strengthening preparedness to deal with the consequences of a Chemical, Biological, Radiological or Nuclear (CBRN) attack has become a major priority. A *CBRN programme*³⁹ was instituted on December 2002 following the 9/11 attacks and the Anthrax scare in US and this has evolved into the *2009 EU CBRN Action Plan*. The Plan aims to prevent and limit the impact of CBRN attacks by restricting the access to these materials, improve their detection and efficiently respond to events involving CBRN substances⁴⁰. The lengthy negotiations and preparatory work invested on the plan have taken place in parallel with a number of periodical *training courses and seminars, joint simulation exercises* and a *peer evaluation review of national preparedness and consequence management arrangements* in the field of terrorism.

Alternatively, the aspect of the *assistance to the victims of terrorism* was first introduced in the EU's Counter-terror Plan after the 2004 attacks in Madrid with the approval of Council Directive establishing a compensation scheme.⁴¹ Since then the Commission has co-funded a number of projects from local authorities, NGOs and research institutes on raising awareness and helping the victims to recover. These have been accompanied with the financing of a *Network of Associations of Victims of Terrorism* established to nurture links between European groups.⁴²

Finally, EU efforts in the fields of infrastructure protection and consequence management have been underpinned by an exponential increase in funding for *security research* by the Commission. Thus, Research DG has supported the development of the ESRP (*European Security Research Programme*) within the 7th Framework Programme of Community Research (2007-2013) with an allocation of more than €400 Mio.⁴³ It currently involves more than 80 collaborative research projects on dual use technology and 900 public and private organisations⁴⁴, a sizeable security-industry complex now growing attached to these policies.

In sum, EU policies in response management are characterised by the principle of subsidiarity and complementarity: clearly, there has been a reluctance by national governments to give significant operational powers to the EU in civil protection. As a consequence, most EU measures have been of a coordinating character, avoiding the introduction of new legislation and harmonisation. Nonetheless EU involvement in this area has resulted in the emergence of new agencies and transnational networks⁴⁵ and, remarkably, the Commission involvement in this field has been expanded to include man-made attacks.

Anti-terrorism Financing

It was at the extraordinary meeting of 21st September 2001 when the European Council first requested national ministers to take measures to combat the financing of terrorism. By 2005 this issue had already become an internal security priority and a key element of the Pursue strand of the Strategy.

Even so, the EU initial actions were rather limited in ambition and based mostly on transposing at the European level UN Security Council resolutions 1373 and 1267. This was achieved through the *Council Common Position 2002/402/CFSP* and *Regulation 881/2002* whose aim was the freezing of Taliban and Al-Qaeda financial resources. As these instruments were exclusively focused on Al-Qaeda's operatives, they have been complemented with similar efforts directed to other terrorist groups with interests in Europe. Consequently, a December 2001 *Council's Common Position on the application of specific measures to combat terrorism* criminalised the financing of terrorism whereas *Regulation 2580/2001* authorised the Council to draw an additional list of individuals and groups involved with terrorism in Europe. This involved the freezing of part of their funds, financial assets and economic resources by member states.

Whereas the UN resolutions steered EU's initial steps, it was the G-8's 2001 *FATF Recommendations on Terrorism Funding* which subsequently became the basis for the EU Anti-terrorism funding response. The 9 FATF recommendations impact as international standards is reflected in the *Commission Communication on the Prevention and the Fight against Terrorist Financing* and the joint Council-Commission *EU Anti-Terrorist Financing Strategy*. These two documents have acted since 2004 as a route map for EU anti-terrorist funding efforts and set out three strategic dimensions: improved cooperation in the exchange of information, enhanced traceability of financial transactions and greater transparency of legal entities.⁴⁶

Some of the Recommendations have been translated into EU legislation by the 2005 *Third money laundering directive*. The directive extends the existing provisions in the second money laundering directive to terrorist crimes. It also introduces more detailed requirements regarding customer identification and makes compulsory the reporting of transactions of goods or services of 15000 € or more.⁴⁷ Other key EU measures implementing FATF Special Recommendation are the *Regulation on controls of cash entering or leaving the Community*, a *Regulation on information on the payer accompanying transfers of funds*, a *Directive on a New Legal Framework for Payments in the Internal Market* and a *Code of Conduct for NPOs* (Not-Profit-Organisations).

It is clear from the above that EU policies in this field have been fundamentally shaped by the Union's international obligations. Thus, most EU action has been predominantly legislative or focused on the exchange of best practices. Yet action at the European level has shifted more recently towards operational horizontal cooperation in intelligence exchange and financial investigations. In this area the Commission partially funds the FIU.NET computer network that links member states' FIUs (Financial Intelligence Units), the state authorities that receive the suspicious transaction reports (STRs) submitted by the financial sector. In parallel, both Europol and Sitcen have also started to play a role in the intelligence analysis of terrorism financing-related intelligence.

Anti-radicalisation and Terrorist Recruitment

Not unlike national counter-terror strategies, a preventive approach was a late addition to the overall EU response, first becoming a formal priority at the 25 March 2004 European Council Declaration on Combating Terrorism.⁴⁸ A year later, the EU's Counter-terror Strategy cemented the view of the necessity to accompany repressive measures with the countering of radicalisation and recruitment into terrorism.

In practice, EU efforts have so far centred more on mapping out and analysing the problem than on seriously tackling it. The Commission Communication *Terrorist recruitment: addressing the factors contributing to violent radicalisation* was key to kick start these efforts resulting in both an *EU Action Plan* and a *Strategy for Combating Radicalisation and Recruitment to Terrorism*. Partly because the more detailed measures were produced separately for the Anti-radicalisation Action Plan, the Strategy's proposals are rather vague and diffuse. The latter articulates the EU's 'comprehensive response' to radicalisation under three main pillars: the disruption of radical networks and individuals activities, the support for mainstream voices over extremism and the promotion of 'security, justice, democracy and opportunity for all'.⁴⁹

Interestingly, work in this area has been separated in 'streams', thematic areas assumed by individual countries, often according to previous national experiences and expertise. Namely, whereas the UK has contributed with initiatives on media and strategic communication, Denmark has led work on disengagement and Spain on imam-training⁵⁰. This is an innovative use of the EU as a platform for task allocation and specialisation but also illustrates how Member states are certain that the anti-radicalisation and integration of immigrants fall primarily within their competences. National experiences in this area vary markedly. States' integration models and Muslim communities' size, origins and Islamic traditions vary enormously across European member states. Due to this diversity, national governments' perspectives have coalesced into the view that a one-size-fits-all approach would be of limited effectiveness.

Therefore, with the important exception of the *2008 amendment on the Framework Decision on Terrorism criminalising public provocation, training and recruitment for terrorism*⁵¹, the EU's role has been hitherto less about initiating legislation and more about acting as facilitator. The main aim has been to enhance transgovernmental learning through the sharing of best practices and the setting up of networks of experts. Nonetheless, inefficiencies remain. Hence the external anti-radicalisation dimension is seriously underdeveloped, defined as it is by rather symbolic and poorly-funded initiatives. One major problem, as some authors (Behr & Berger, 2009) point the finger at, is the EU's refusal to recognise the elephant in the room in their narratives on the cause of jihadist terrorism by ignoring the authoritarian character of governments in the Arab world as a subject of discussion.

External Relations

As shown above, the global nature of the terrorist threat has made external relations a necessity in the European Union counter-terrorist effort. This is highlighted by the strong external dimension in the EU Counter-terror Action Plan: almost a third of the measures in the November 2009 update involve some form of international cooperation⁵².

In this regard the EU has been a strong supporter of the Council of Europe, G-8 and other regional organisations in their efforts to build consensus and eventually establish an international anti-terrorist regime. The EU's own counter-terror coordinator has close links with the UN Counter-Terrorism Committee and has encouraged other countries to adopt the existing 16 UN Conventions in this area. Similarly, the EU has cooperated with third countries on the basis of *political dialogue, technical and financial assistance* projects and the inclusion of *anti-*

terrorism clauses in bilateral and multilateral agreements. Since 2004, the Union has sustained high-level political dialogues with individual states such as Russia, India or Pakistan, established regional conferences on inter-faith dialogue and opened talks with the countries of the Gulf Cooperation Council about the fight against terrorism financing.⁵³ Most of these initiatives however have been criticised at the practitioner level for the lack of concrete achievements emerging from the meetings. There is still the impression that these are not much more than ‘talking shops’ and have had very little effect in practice. Moreover, EU officials have complained that ‘in some countries there is no connection between our assistance and the political issues that are discussed at a top level’ as ‘they don’t see it as a high priority’.⁵⁴

Special clauses on anti-terrorism have also been included in regional accords (i.e. Cotonou commercial agreement) and bilateral agreements with non-EU countries such as Algeria, Egypt or Lebanon. These clauses however are rather vague and ‘difficult to apply beyond the immediate political effect and it will not lead in practice to sanctions and blocking of agreements’.⁵⁵ The ineffectiveness of this mechanism has been highlighted by the fact that there has been so far not a single punitive action or sanction applied to a non-compliant country.⁵⁶ It is difficult not to argue that cooperation with third countries has been limited at the political level and counter-terror clauses have had a purely rhetoric significance.

Alternatively, the COTER Working Group at the Council has identified seven priority target countries to receive technical and financial assistance and training. On balance however EU officials have acknowledged that so far results have been meagre partially because of the third countries’ preference to work with bilateral partners rather than the EU as a whole.⁵⁷ Although technical assistance has the greatest potential to enhance security levels in neighbourhood countries out of the different EU activities, a significant increase in funding may well be necessary before a substantial difference is made.

Finally, and notwithstanding EU’s efforts in building up a network of allies, there is little doubt that EU’s key partner in this area continues to be the United States. In spite of divergent strategic cultures and judicial and data protection practices (Mitsilegas, 2003), US-EU counter-terror cooperation has grown exponentially since 9/11 and it is now substantial, extensive and working at a variety of levels. The examples are multiple: the *Europol-US authorities information sharing agreements*⁵⁸, 2002 agreements on *extradition practices and mutual legal assistance (MLA)*⁵⁹, the 2004 Container Security Initiative⁶⁰, the 2007 *Passenger Name Records Agreement*⁶¹ or the transatlantic *Policy Dialogue on Borders and Transport Security (PDTBS)*⁶². No other international actor has influenced EU policies more comprehensively than the US, leading in some instances to an asymmetric process of internalisation of US policies by the EU (Argomaniz, 2009).

Conclusion

What emerges from this concise policy overview is that whereas in some areas such as police cooperation there is a constellation of actors active at the European level and a substantive number of measures have been produced since 2001; in other sectors the EU activity has been less matured. This is due not only to the relative recentness of these issue areas (i.e. anti-radicalisation) but also because European action is constrained by member states’ understanding that a particular sector is fundamentally a national competency (i.e. infrastructure protection). This partly

explains why the internal dimension has been significantly more developed than the external action.

Therefore the often used cliché of the EU as a ‘paper tiger’ is only partially truth: whilst in some areas its relevance has been limited -not far from empty rhetoric in truth- there are other aspects where the Union decisions have had an important practical impact. To reach this conclusion however it is important to look at this field of EU activity as a collection of policy sectors with their own separate institutional dynamics and decision-making actors. The presence of strategic documents and action plans should not divert us from a picture of an increasingly fragmented sphere of governance. A policy domain that is complex, in places overstretched and sectorially carved.

Finally, consideration has to be given to the recent shift from prioritising the formulation of policies to their implementation, the latter often considered a very problematic characteristic of the EU response (Monar, 2006). The fact that there are about 50 broad measures in the latest iteration of the Action Plan whereas there were more than 130 in the March 2007 update is very revealing. This goes in line with the idea that EU policies in counter-terrorism have been ‘bomb-driven’: characterised by sudden burst of frenzy policy-making efforts followed by periods of inertia. Thus, the recent lack of high profile attacks in Europe and resultant public pressure has had the effect of allowing European policymakers the necessary ‘breathing space’ to reflect more closely on the substantial implementation challenges associated to these measures.

ENDNOTES

¹ Council of the European Union (2009b) EU Action Plan on Combating Terrorism, 15358/09, 26 November 2009.

² Council of the European Union (2005e) The European Union Counter-Terrorism Strategy, 14469/4/05, 30 November 2005.

³ Interview with Council Official, General Secretariat, DG H - Justice and home affairs, January 2006.

⁴ Council of the European Union (2005e) *op. cit.*, p. 10.

⁵ Interview with Commission Official, DG JLS, April 2008.

⁶ Interview with National Official, Member State Permanent Representation, April 2008.

⁷ Gijss de Vries was appointed as the first EU counter-terror coordinator in 2004. Ex-Council Secretariat JHA director Gilles de Kerchove replaced him in 2007 after the former stepped down from the post. Council of the European Union (2007c) ‘Javier Solana, EU High Representative for the CFSP, appoints Mr. Gilles de Kerchove as EU Counter-Terrorism Coordinator’, Press Release, 19 September 2007

⁸ European Commission (2004f) European Security Strategy—Fight against Terrorism, SEC(2004) 332, 9 November 2004.

⁹ Interview Spanish National Police Officer, May 2006.

¹⁰ European Council (2004) ‘Declaration on Combating Terrorism’, 25 March 2004.

¹¹ European Commission (2005b) Proposal for a Council Framework Decision on the on the exchange of information under the principle of availability, COM/2005/490 final, 14 October 2005.

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¹⁴ Council of the European Union (2009b) *op. cit.*, p.11.

¹⁵ UK House of Lords (2009) *Prüm: an effective weapon against terrorism and crime?*, Paper 90 (London: HMSO), p19.

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¹⁷ Council of the European Union (2005c) Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, Official Journal of the European Union, L 253, 29 September 2005, p. 23.

¹⁸ UK House of Lords (2005) *After Madrid: the EU's response to terrorism*, Paper 53 (London: HMSO), p. 13.

¹⁹ Council of the European Union (2005e) *op. cit.* p. 10.

²⁰ Council of the European Union (2002) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, Official Journal of the European Union, L 190, 18 July 2002, p. 2.

²¹ *Ibid.* p. 4.

²² European Commission (2005a) Commission evaluation report: the European arrest warrant has broadly achieved its objectives, Memo/05/58, 23 February 2005.

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²⁴ Council of the European Union (2008c) Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters, Official Journal of the European Union, L 350, 30 December 2008.

²⁵ Spellman, J. (2009) European Evidence Warrant, Mutual recognition and judicial co-operation in criminal matters in the EU, Irish Eurojust representative talk at IIEA, available online at: <http://www.iiea.com/events/the-european-evidence-warrant-as-approved-in-december-2008>.

²⁶ Council of the European Union (2005e) *op. cit.* p. 8.

²⁷ European Commission (2004e) Communication from the Commission to the Council and the European Parliament. Critical Infrastructure Protection in the fight against terrorism, COM(2004)702 final, 20 October 2004.

²⁸ Council of the European Union (2008b) Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection, Official Journal of the European Union, L 345, 23 December 2008.

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³³ Such as new categories of alert, new categories of data (including biometric data), the interlinking of alerts, widened accessibility for Europol, Eurojust and national security authorities and a shared technical platform with the Visa Information System. Council of the European Union (2005b) 'New Functions for the Schengen information system in the fight against terrorism', Press Release, 15 March 2005.

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³⁵ Council of the European Union (2005e) *op. cit.* p. 15

³⁶ European Commission (2004d) Communication from the Commission to the Council and the European Parliament. Preparedness and consequence management in the fight against terrorism, COM(2004) 701 final, 20 October 2004, p. 3.

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⁴³ European Commission (2007a) Commission Activities in the Fight against Terrorism, Memo/07/98, 12 March 2007.

⁴⁴ Council of the European Union (2009b) *op. cit.*

⁴⁵ European Security Research Advisory Board (ESRAB), European Network and Information Security Agency (ENISA) and the European Centre for Disease Prevention and Control are only some of the examples.

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⁴⁷ European Commission (2004b) 'Money laundering: Commission proposes to update and improve Directive', Press Release, 30 June 2004.

⁴⁸ European Council (2004) *op. cit.*

⁴⁹ Council of the European Union (2005d) The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism, 14781/1/05 REV 1, 24 November 2005.

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⁵³ Council of the European Union (2007a) 'EU Council Secretariat Factsheet. The European Union and the Fight against Terrorism', Press Release, 9 March 2007, p. 5.

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About the Author:

Javier Argomaniz *is a teaching assistant and researcher at the Centre for the Study of Terrorism and Political Violence at the University of St. Andrews, UK)*

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