

THE DEVELOPMENT OF THE EUROPEAN UNION COUNTER-TERRORISM FRAMEWORK

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Abstract

Despite long experience with terrorism, homegrown and exogenous, Europe has only recently developed a comprehensive legal and institutional framework for counterterrorism. The first truly supranational European counter-terrorism (CT) legal measures were developed after 1992, with the ratification of the Treaty on European Union (TEU), now commonly called the Maastricht Treaty. With “Anti-Terrorism Collaboration” now a part of the so-called third pillar of the treaty, terrorism became a joint EU security issue, rather than a domestic problem for the respective member states. The EU’s role in the fight against terrorism is quite limited because the primary responsibility in the fight against terrorism lies with the individual member states. This article deals with the adoption and development of EU antiterrorist measures dating from the U.S terrorist attacks on 9/11 through the Madrid attacks, seen as an accelerator for the EU antiterrorist policy until the London attacks as a final trigger of the EU policy. During this period all main strategies and legal instruments in the fight against terrorism were developed, some of them still waiting for their implementation.

Key words: EU Policy, Fight Against Terrorism, U.S Terrorist Attacks, Madrid Terrorist Attacks, London Terrorist Attacks, Measures, Strategy, Implementation

INTRODUCTION

Despite a lot of experience with terrorism, homegrown and exogenous, Europe has only recently developed a comprehensive legal and institutional framework for counter-terrorism (CT).

European cooperation in combating terrorism over the period from the late 1950s until the early 1990s resulted in several multinational legal measures for CT, but most of them were less than complete solutions, lacking strong legal binding powers¹. The first truly supranational European CT legal measures were developed after 1992, with the ratification of the Treaty on European Union, so called the Maastricht Treaty². With „Antiterrorist Collaboration“ now a part of the so called third pillar of the treaty, terrorism became a joint EU security issue, rather than a domestic problem for the respective member states. There followed several European CT-related conventions, which seemed to herald a bright beginning for European CT legislation. However, refinements to the European CT legal framework in that time were slow in coming, and the EU's priority shifted to more pressing developments in the essential institutional legal documents in the 1990s, specially focused on the 'full functioning of a European single market, which includes the free movement of goods, services, capital and persons'³.

The EU's role in the fight against terrorism is quite limited because the primary responsibility in the fight against terrorism belongs to the individual member states. However there are four areas where the EU adds value. 1) Exchange of best practices and experience among member states; 2) Assistance in European cooperation, mainly via the Exchange of information among member states; 3) Possibility for collective response policy; 4) Support for international cooperation, for example the cooperation with other international organisations and third countries, etc.

1 Wilkinson P., *International Terrorism: The Changing Threat and the EU's Response*, Chaillot Paper No. 84 (Paris, France: EU Institute for Security Studies, October 2005).

2 Europa: Summaries of EU legislation, "Building Europe through the treaties," available at: http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm.

3 European Parliament, "The Maastricht and Amsterdam Treaties," available at: http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf.

This article deals with the adoption and development of EU antiterrorist measures dating from the U.S terrorist attacks on 9/11 through the Madrid attacks, seen as an accelerator of the EU antiterrorist policy, until the London attacks as a final trigger for new EU policy. During this period all main strategies and legal instruments in the fight against terrorism were developed, some of them still waiting to be implemented.

EUROPEAN COUNTER-TERRORISM BEFORE 9/11

In the late 1960s a series of terrorist acts took place in various corners of Europe. Acts of indigenous political violence, fuelled by separatist/ethnic ideas⁴ or left-wing ideologies⁵, swept across the larger part of the continent. These domestic incidents were accompanied by acts of trans-national terrorism of increasing intensity, mostly of Middle Eastern origin. Between 1968 and 1988 Western Europe saw 3629 international terrorist acts, the highest number in the world (33, 2% of the total number). The number of casualties was equally high and this trend continued to the early nineteen nineties.

Year	1968	1972	1974	1987	1990-1993
Number of casualties	241	541	1190	2905	2955

Table n. 1: Number of casualties resulting from terrorist acts in Western Europe between 1968-1993⁶

4 The most prominent examples are ETA (Euskadi ta Askatasuna – Basque Fratherland and Liberty) operating in the Basque provinces of Spain and the IRA (Irish Republican Army) in Northern Ireland. These two organisations were, by far, the most deadly of all West European terrorist groups for the next few decades.

5 Among the most prominent organisations of this type, characterised by anti-US, anti-NATO and anti-capitalist stance, should be mentioned the Italian BR (Brigate Rosse – Red Brigades), the German RAF (Rote Armee Fraktion – Red Army Faction), the French AD (Action Direct – Direct Action), the Greek ELA (Revolutionary People’s Struggle) and the Portuguese FP-25 (Popular Forces of 15 April).

6 „Terrorism“ (V4) (October 1990: West European Terrorism and Counter-Terrorism. The Evolving Dynamic, (London: Macmillan Press, 1996) p. 173.

Although many European countries gained a lot of counterterrorism (CT) experience with homegrown terrorism throughout the 20th century, the development of a European legal framework for CT as well as CT-related institutions only happened with the establishment of the European Union. Thus, even the Convention on Extradition (1957), which facilitated the early stage of European judicial cooperation, was ineffective in counterterrorism because one of the articles allowed a state to refuse an extradition in a case where the request related to a political offence at a time when European terrorism was thought of almost exclusively as politically oriented⁷.

The informal cooperation was much more promising. In the 1970s, amid the uptick in domestic terrorism and the rising threat of Palestinian extremism, European countries formed several different working groups and initiatives in order to improve their counterterrorism efforts. Of particular interest is the Terrorism, Radicalism, Extremism, and Political Violence Group (TREV I), established in 1975 by European Community member states. In 1977, the same states introduced TREV I as a special counterterrorism subgroup⁸. Although TREV I did not have official European Community competencies, permanent structures, legal powers, or even a budget, until the 1990s, it marked the only European CT success, however limited, especially in information sharing and cross-border assistance in organized crime and terrorism⁹. The TREV I group persisted until 1993, when the Treaty of European Union (TEU, Maastricht Treaty) was ratified and became operational.

7 Council of Europe, European Convention on Extradition (Paris, France: Council of Europe, December 13, 1957), available at <http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>; In 1977, the Council of Europe introduced a Convention on the Suppression of Terrorism, which unsuccessfully tried (through one article) to improve on the European Convention on Extradition by requiring signatories to “extradite the suspect or bring the suspect before your own judicial authorities.”; Wilkinson, *International Terrorism*,

8 These groups included: the Club of Berne established in 1971 by the national security services of Belgium, Denmark, France, Germany, Switzerland, Great Britain, Italy, the United States, and Israel; the Club of Vienna established in 1978 by law-enforcement authorities from Austria, France, Germany, Switzerland and Italy; the Police Workgroup on Terrorism, established in 1979 by nine member states of the European Community, along with Austria, Finland, Norway, and Sweden; and the Quantico Club established in 1979 by Australia, France, Canada, Germany, Great Britain, and the United States; Magdalena Grajny, “The European Union counterterrorism policy before and after the 9/11 attacks: to what extent does the European Union have an integrated policy towards terrorism?”, *Terorryzm.com*, February 21, 2009, available at: <http://www.terorryzm.com/the-european-union-counterterrorismpolicy/>.

9 Monar, “Common Threat and Common Response?,” p. 292.

Title VI of the third Maastricht Treaty pillar, “Cooperation in Justice and Home Affairs (JHA),” advances the most fundamental EU idea, freedom of movement, which requires a secure area where people can travel safely within the Union and enjoy the same protections of life, liberty, and property that they know at home. To this end, the JHA followed the lead of the TREVI group and addressed issues such as asylum policy, external borders and border control, immigration, drug addiction, international fraud, judicial cooperation in civil and criminal matters, customs cooperation, and police cooperation¹⁰. The Maastricht Treaty also called for the establishment of the European Police Office (Europol), but amid the complicated and changing framework of EU institutions, Europol did not take up operations until 1998. Slowly but surely, the counterterrorism legislation began to appear, including such measures as the EU Declaration on the Financing of Terrorism in 1993; the La Gomera Summit Declaration in 1995, which recognized terrorism as a “priority objective among the matters of common interest”; the EU Convention on Extradition in 1996, which abolished political exemptions in the case of extradition; and the European Judicial Network (EJN), introduced in 1998, which speeded up judicial processes among member states¹¹.

Then came the Amsterdam Treaty in 1999, which introduced the Area of Freedom, Security and Justice (AFSJ), with which the EU promised “to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”¹². The Treaty of Amsterdam made changes in JHA pillar by moving areas of asylum, immigration, and judicial cooperation in civil matters to the first pillar (European Community), and then consolidating the remaining functions into a new, more streamlined pillar, now called Police and Judicial Co-operation in Criminal

10 Title VI, Provisions on Cooperation in the Field of Justice and Home Affairs; Maastricht Treaty, Treaty of European Union, February 7, 1992, Eurotreaties.com, available at: <http://www.eurotreaties.com/maastrichteu.pdf>.

11 Grajny M.: “The European Union counterterrorism policy before and after the 9/11 attacks: to what extent does the European Union have an integrated policy towards terrorism?”, 2009 available at: <http://www.terrorism.com/the-european-union-counterterrorism-policy/>.

12 Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts, Official Journal C 340, November 10, 1997, European Union, available at: <http://eur-lex.europa.eu/en/treaties/dat/11997D/hm/11997D.html>.

Matters (PJCC)¹³. After the Treaty of Amsterdam, the third pillar acquired many of the basic provisions that would become important for CT, including operational police cooperation (prevention, investigation, data exchange, joint training, liaison officers), Europol (support for national investigations, EU police coordination, assisting in arrangements between prosecuting/investigating officials), judicial cooperation (proceedings, facilitation of extradition, compatibility of rules, prevention of conflicts of jurisdiction), the harmonization of national criminal laws including the provisions on terrorism, opportunities for agreements with third countries or international organizations regarding third pillar issues, the unification of standards in carrying out checks on persons at external EU borders, and unified rules on visas for periods less than three months. Still, PJCC posted only limited operational progress, especially in the field of counterterrorism. More broadly, in the period 1993–2000, EU conventions on issues of terrorism did not lead to the introduction of strong CT legal-institutional measures because member states still did not consider CT as an EU issue. They also resisted the demands for increased integration at the expense of sovereignty, especially in a sensitive area such as security. As Argomatiz concludes, “terrorism almost always remained at the bottom of initiatives [and furthermore] in two of these eight years—1997 and 2000—there was not a single legislative instrument, binding or non-binding”¹⁴. The EU Commission had to contend with insufficient experts in the JHA Directorate, and Europol was effectively limited to activities concerned with the collection, transmission, and analysis of data provided by national law-enforcement agencies. (Before 9/11, only seven officers were seconded to the CT section)¹⁵. The notable—if partial—exception to this record of inactivity on CT came in 1999, when the EU Council met in Tampere, Finland, and agreed on the so the called Tampere milestones, related to freedom, justice, and security¹⁶.

13 Ibid.

14 Javier Argomaniz, *The EU and Counter-Terrorism*, New York: Routledge, 2011, 7.

15 Jörg Monar, “The European Union’s response to 11 September 2001: Bases for action, performance and limits,” 2003, Albany.edu, available at: <http://www.albany.edu/~rk289758/BCHS/col/JHA-TERRORISM-NEWARK.doc>;

16 Monar, “The European Union’s response”; Following the recommendations of the Tampere EU Council Summit in October 1999, the Police Chiefs Task Force (2000) was established as a coordination group for the reinforcement of Europol (exchange of experiences, evaluations, and planning); the European Police College (2000), as a hub of national law-enforcement training institutes; and a provisional unit: Pro-Eurojust (2001), in area of judicial cooperation.

Ultimately, in spite of the fact that terrorist activities in Europe had touched directly or indirectly all European countries before 2001, the joint European CT approach was mostly declarative, without willingness to accept terrorism as a European security problem (not only domestic) and to share the security-related part of sovereignty, let alone to support new CT structural initiatives or any kind of terrorism-related intelligence sharing. Still, the basic elements for a unified or at least coordinated CT response were formed in this period.

EUROPEAN COUNTER-TERRORISM AFTER 9/11

POST 9/11 RESPONSE

The terrorist attacks on the United States (U.S.) in September 2001 had caused an awakening in the EU giving it an opportunity to speed up the EU's efforts in counter-terrorism. By that time there were only six Member States (MS) having the counter-terrorism legislation and operational tools capable of combating this phenomenon; cross-border CT support was negligible¹⁷. However, shortly after 9/11, Germany and Spain were identified as bases for the planning and execution of the attacks, and European officials, in cooperation with the United States, undertook many CT operations (79 actions by October 19, 2001) that led to numerous arrests in several EU member states—Belgium, France, Germany, Italy, Spain, and the UK¹⁸.

A European Council meeting took place 10 days after the 9/11 in order to discuss the international situation and the relevant EU response. In its conclusions the Council expressed its solidarity with the U.S, the willingness to cooperate intensively as well as its decision to play a more important role in resolving international conflicts (particularly in the Middle East) within the counter-

¹⁷ Germany, Spain, France, Italy, Portugal and the United Kingdom had Counterterrorism legislation in 2001; Grajny "The European Union Counterterrorism Policy."

¹⁸ Grajny M.: "The European Union counterterrorism policy before and after the 9/11 attacks: to what extent does the European Union have an integrated policy towards terrorism?"; 2009 available at: <http://www.terrorizm.com/the-european-union-counterterrorism-policy/>.

terrorism prevention framework. The European council had also agreed the first Action plan on combating terrorism¹⁹ The Plan of Actions or the so called CT Road Map was inspired by the 1999 Tampere Summit conclusions and provided guidelines for the European CT response. It introduced 41 measures/actions in five main CT areas: (1) enhancing police and judicial cooperation (the development of the European Arrest Warrant and a common EU definition of terrorism, identification of terrorists and their organizations in the EU, the enhancement of Europol's role in data sharing and special investigation teams); (2) developing international legal instruments (implementing as quickly as possible all terrorism-related international conventions); (3) putting an end to the funding of terrorism (extension of the Council Directive on money laundering and the framework Decision on freezing assets); (4) strengthening air security (threat assessment, training for crews, the improved checking of luggage, cockpit protection, quality control of all measures applied by the EU member States); and (5) coordinating the European Union's global CT action. On October 19, 2001 the European Council adopted a declaration that mainly repeats the European CT position and strongly encouraged the urgent implementation of the measures listed in the roadmap.

In October 2001 the European Council adopted a Declaration which repeated the EU position on combating terrorism and called for the urgent implementation of the roadmap measures²⁰. Although by the end of 2001, the EU Commission and the EU member states agreed on a common definition of terrorism, as the main element of CT legislation, and on the EU list of terrorists and terrorist organizations, six more months of negotiations ensued before the Framework Decision on Combating Terrorism was adopted²¹. The Framework Decision forms

19 Council of the European Union, "Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001," (Brussels, Belgium: Council of the European Union, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140.en.pdf).

20 Council of the European Union, "Declaration by the Heads of State or Government of the European Union and the President of the Commission: Follow-up to the September 11 Attacks and the Fight against Terrorism," (Brussels, Belgium: Council of the European Union, Document SN 4296/2/01 REV 2, October 19, 2001), available at: http://ec.europa.eu/justice_home/news/terrorism/documents/conseil_gand_en.pdf.

21 Council of the European Union, "Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP)," Official Journal of the European Communities L344 (December 28, 2001): 93-96, available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF>.

the legal cornerstone of the European CT efforts and, as a part of EU law, is binding for all member states and EU bodies. “The framework decision harmonizes the definition of terrorist offences in all EU countries by introducing a specific and common definition. Its concept of terrorism is a combination of two elements²². a) An objective element, as it refers to a list of instances of serious criminal conduct (murder, bodily injuries, hostage taking, extortion, fabrication of weapons, committing attacks, threatening to commit any of the above, etc.); b) A subjective element, as these acts are deemed to be terrorist offences when committed with the aim of seriously intimidating a population, unduly compelling a government or international organisation to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organisation. The Framework Decision provides also important CT guidelines in areas of terrorism support penalties, policing, jurisdiction and prosecution, protection of victims, implementation regulations, and reporting system²³.

The European Security Strategy (ESS), adopted in December 2003, incorporated the fight against terrorism into its first strategic objective together with the proliferation of Weapon of Mass Destruction (WMD), regional conflict, state failure, and organised crime²⁴. The ESS is the first ever strategic document providing long term guidance for the whole of EU foreign policy and provides the opportunity for the further development of different security issue-related sub-strategies, including a CT Strategy. However, the promising rhetoric of the ESS proved hard to follow with action, even in the post 9/11 situation. Many legal measures, adopted already in 2001, such as the European Arrest Warrant and the Money Laundering Directives were not implemented for another four years. It became evident that 9/11 was not a sufficient warning for the EU and its CT framework would have to wait for the next calamity before it took on more substance.

22 Council of the European Union, Council Framework Decision of 13 June 2002 on combating terrorism (Luxembourg: Council of the European Union, 2002), available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:164:0003:0003:EN:PDF>.

23 Council of the European Union, Council Framework Decision of 13 June 2002.

24 Council of the European Union, European Security Strategy: A Secure Europe in a Better World (Brussels, Belgium: Council of the European Union, 2009), available at: http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC7809568ENC.pdf.

POST MADRID RESPONSE

During the Madrid morning rush hour on March 11, 2004, ten bombs exploded in four commuter trains. The blasts killed 191 people, injured 1.841, and caused €17.62 million in immediate material damages—plus another €211.58 million in the estimated related economic cost for Spain²⁵. The bombings were reported to be a retaliation, carried out by a Spanish group sympathetic to or affiliated with al Qaeda, for Spain's participation in the U.S.-led coalition in Iraq, yet later an investigation did not find evidence to decide exactly who masterminded the attacks²⁶.

The Madrid attacks pushed the EU into an urgent response such, was the adoption of the Declaration of solidarity with Spain, better and faster national implementation of earlier adopted CT legal Instruments, the adoption of draft CT measures that were waiting on the EU Council table, strengthening the fight against terrorist financing, enhanced operational coordination and cooperation, enhanced dialogue with third countries on terrorism, and such other measures as support for the victims of terrorism, health security measures related to bio-terrorism, community civil-protection mechanisms, etc.²⁷

The European Council reacted quickly, adopting the Declaration on Combating Terrorism during its meeting on March 24–26, 2004, which introduced all the proposed actions from the EU Commission memo, and, in addition, requested urgent work on a plan for implementing the ESS; the council established the EU CT coordinator to facilitate the CT work of the EU Council; and mandated the

25 Reinares F., "The Madrid Bombings and Global Jihadism," *Survival: Global Politics and Strategy* str. 52, available at: <http://dx.doi.org/10.1080/00396331003764629>.

26 The Spanish court verdict in 2007 implies „that the attacks were carried out by a local group of loosely conneted Islamic radicals who linked up with a gang of Moroccan drug dealers. In other words, 11-M was a local job executed without outside assistance and funded by a Madrid-based drug dealing racket.“; Soeren Kern, "Spain Faces Difficulties in Judging Islamic Terrorists," *Grupo de Estudios Estratégicos*, October 23, 2007, available at: http://www.gees.org/articulos/spain_faces_difficulties_in_judging_islamic_terrorists_4749.

27 European Commission, "European Commission action paper in response to the terrorist attacks on Madrid," *Europa Press Releases RAPID*, March 18, 2004, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/04/66&format=HTML&aged=1&language=EN&guiLanguage=en>.

preparation of a revised Plan of Action to Combat Terrorism through seven main objectives²⁸.

1. To deepen the international consensus and enhance international efforts to combat terrorism;
2. To reduce the access of terrorists to financial and economic resources;
3. To maximize the capacity within EU bodies and member States to detect, investigate and prosecute terrorists and to prevent terrorist attacks;
4. To protect the security of international transport and ensure effective systems of border control;
5. To enhance the capability of the European Union and of member States to deal with the consequences of a terrorist attack;
6. To address the factors which contribute to support for, and recruitment into, terrorism;
7. To target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced²⁹.

The EU Commission, in October 2004, sent to the Council and the European Parliament four important initiatives with an aim to make counterterrorism “an integral part of general EU policy”: (1) prevention, preparedness and response to terrorist attacks; (2) prevention of and the fight against terrorist financing; (3) preparedness and consequence management in the fight against terrorism; and (4) critical infrastructure protection in the fight against terrorism³⁰

These initiatives developed important ideas for civil society’s involvement in the fight against terrorism through: defending fundamental rights against violent radicalization; public-private security dialogue; support to victims of terrorism; integrated community CT policies; integrated EU and national rapid alert and civil protection systems; better communications with public; scientific and technical

28 Council of the European Union, Declaration on Combating Terrorism March 25, 2004 (Brussels, Belgium: Council of the European Union, 2004, available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/DECL-25.3.pdf>).

29 Council of the European Union, Declaration on Combating Terrorism March 25, 2004.

30 Europa Summaries of EU Legislation, “Fight Against Terrorism: Prevention, Preparedness and Response,” available at: http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/l33219_en.htm.

research in the area of security; and effective and integrated cooperation with the private sector³¹.

In November 2004 the EU Council adopted “The Hague Program: Strengthening Freedom, Security and Justice in the European Union,” which among many measures, requested integrated CT actions between member states and third states in connection with terrorist recruitment, terrorist financing, threat analysis, infrastructure protection, and consequence management³². Also in November, the Council adopted the Conceptual Framework on the European Security and Defense Policy (ESDP) Dimension of the Fight Against Terrorism, which initiates the use of overall crisis-management and conflict-prevention ESDP capabilities in support of the European CT objectives listed in the March 2004 Council’s Declaration³³.

POST LONDON RESPONSE

On July 7, 2005 the first suicide terrorist bombing in Western Europe took place on the London Public Transport System. Three bombs at three separate locations on the London Underground, and one bomb on a London Bus, were detonated by hand. Fifty-two civilians and four bombers were killed and more than 700 [people] were injured³⁴.

The London attacks again proved the theory that the European CT response has been driven by events, notably terrorist attacks. And like after 9/11 and Madrid, the political momentum to agree on difficult CT issues picked up quickly after

31 Ibid.

32 Council of the European Union, “Brussels European Council 4/5 November 2004, Presidency Conclusions,” (Brussels, Belgium: Council of the European Union, December 8, 2004), available at: http://ec.europa.eu/echo/civil_protection/civil/prote/pdfdocs/hague_programme2_4.pdf.

33 Council of the European Union, “Conceptual Framework on the ESDP dimension of the fight against terrorism,” (Brussels, Belgium: Council of the European Union, November 22, 2004), available at: http://www.consilium.europa.eu/uedocs/cmsUpload/14797Conceptual_Framework_ESDP.pdf.

34 British Red Cross, “London Bombings 2005,” available at: <http://www.redcross.org.uk/What-we-do/Emergency-response/Past-emergency-appeals/London-bombings-2005>.

the London attacks, which was obvious through the more efficient and faster implementation of CT measures. The EU reaction was fast; an extraordinary EU Council Meeting was held on July 13, 2005, and the Council adopted a Declaration condemning the London attacks and promising to “accelerate the implementation of the EU Action Plan on Combating Terrorism and other existing commitments”³⁵. The Declaration highlights the importance of improving capabilities in pursuing and investigating terrorists across borders, preventing people turning to terrorism, protecting citizens and infrastructure, as well as improving the ability to manage and minimize the consequences of terrorist attacks. Also, the Council requested the rapid introduction and implementation of several important European CT-related legal instruments which had been previously prepared, and announced a review of all activities in “December 2005, including the national implementation of EU measures in order to ensure that the Union has the right framework for combating terrorism”³⁶.

More than four years after 9/11 and following around two hundred CT measures and activities the EU was still missing a long-term CT policy that could be understood easily by EU citizens and used as a strategic guideline for member states’ governments. Therefore, the UK, during its six-month rotation of the presidency of the EU, joined forces with the EU Counter-Terrorism Coordinator to develop the first draft of the European CT Strategy. The strategy was presented on October 21, 2005³⁷. The draft explains the European CT as a strategic commitment for the long term. It positions itself as a reinforcement of national CT efforts and introduces mechanisms for the political oversight of the strategy and for monitoring progress at the operational level. Tellingly, while many previous important EU legal-institutional CT instruments were adopted only after delays and long and hard negotiations between the EU Commission and the member states, the draft of European Union CT Strategy was negotiated very quickly and the strategy was adopted after only 40 days on November 30, 2012.

35 Council of the European Union, “Press Release: Extraordinary Council meeting Justice and Home Affairs, Brussels, 13 July 2005,” (Brussels, Belgium: Council of the European Union, July 13, 2005), available at: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/85703.pdf.

36 Council of the European Union, “Press Release: Extraordinary Council meeting Justice and Home Affairs, Brussels, 13 July 2005”.

37 Council of the European Union, *The European Union Counter-Terrorism Strategy*.

Through the CT Strategy, “the commitment of the Union is to combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice”³⁸. The strategy organizes previously adopted CT-related measures and actions under four pillars—prevent, protect, pursue, and respond – as well as summarizing all previous CT legal, institutional, and operational documents of the EU. The strategy emphasizes a need to: (1) prevent “people [from] turning to terrorism by tackling the factors or root causes which can lead to radicalization and recruitment, in Europe and internationally,” (2) protect “citizens and infrastructure and reduce our vulnerability to attack, including through improved security of borders, transport and critical infrastructure,” (3) pursue and investigate “terrorists across our borders and globally; to impede planning, travel, and communications; to disrupt support networks; to cut off funding and access to attack materials, and bring terrorists to justice,” (4) “prepare ourselves, in the spirit of solidarity, to manage and minimize the consequences of a terrorist attack, by improving capabilities to deal with: the aftermath; the co-ordination of the response; and the needs of victims”³⁹.

In November 2005 the EU Council simultaneously adopted the European Union Strategy for Combating Radicalization and Recruitment to Terrorism. This strategy focuses on the fight against radicalisation and recruitment into terrorist groups of the al Qaeda type or those inspired by this type of terrorism, representing a main threat for the EU as a whole. In the strategy, the EU promises to: “disrupt the activities of the networks and individuals who draw people into terrorism; ensure that voices of mainstream opinion prevail over those of extremism; promote yet more vigorously security, justice, democracy and opportunity for all”⁴⁰.

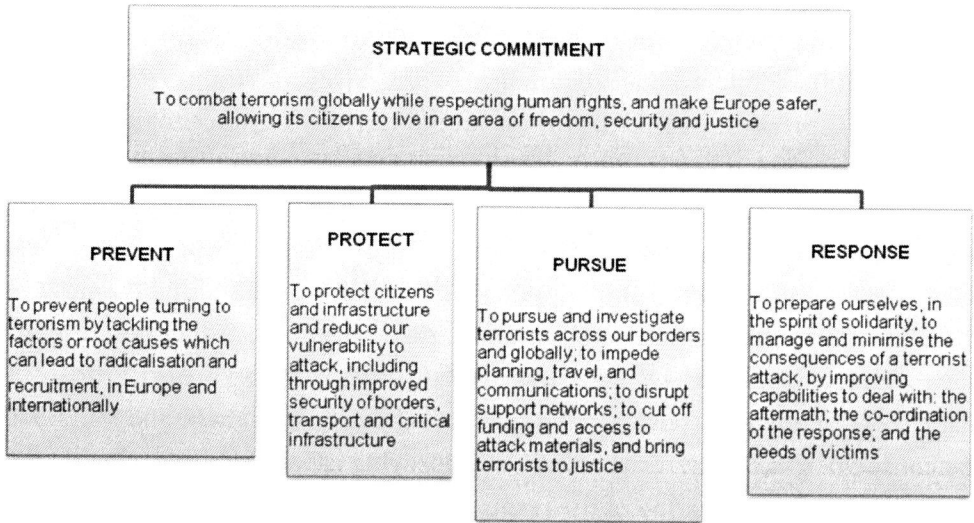
Since the end of 2005, dozens of new legal and institutional instruments have been introduced. The EU Counterterrorism Coordinator (CTC) has reported to the Council twice a year on the implementation of the CT Strategy, on the Action Plan to Combat Terrorism, and on the implementation of European CT-related

38 EU Counterterrorism Coordinator, “Implementation of the Strategy and Action Plan to Combat Terrorism,” (Brussels, Belgium: EU Counterterrorism Coordinator, Document 9416/1/08 Rev 1, May 26, 2008), available at: <http://register.consilium.europa.eu/pdf/en/08/st09/st09416-re01.en08.pdf>.

39 EU Council, EU Counter-Terrorism Strategy, 2005.

40 EU Council, Strategy of the European Union for combating radicalisation and recruitment, 2005.

legislation in member states; additionally the office has published occasionally EU CT Strategy discussion papers with updates and recommendations on the European CT legal institutional framework.



Scheme n. 1

Since 2006 a few specific action plans have been adopted dealing with the CT Customs activities, Chemical Biological and Radio-Nuclear (CBRN) activities, critical infrastructure protection or explosives protection. In February 2010, the Council had added the Strategy on EU Internal Security to the existing EBS. It mentions terrorism as a priority among the main security challenges. This strategy contains so called guidances for the EU to react on the mentioned challenges, integrating existing strategies and conceptual approaches⁴¹.

⁴¹ EU Council, EU Internal Security Strategy: Toward the European Security Model, 2010.

THE ROLE OF THE EUROPEAN UNION IN COUNTER-TERRORISM

As the primary responsibility is with the individual member states (MS) the EU's role in the fight against terrorism is quite limited. Nevertheless, there are few areas where the EU adds value.

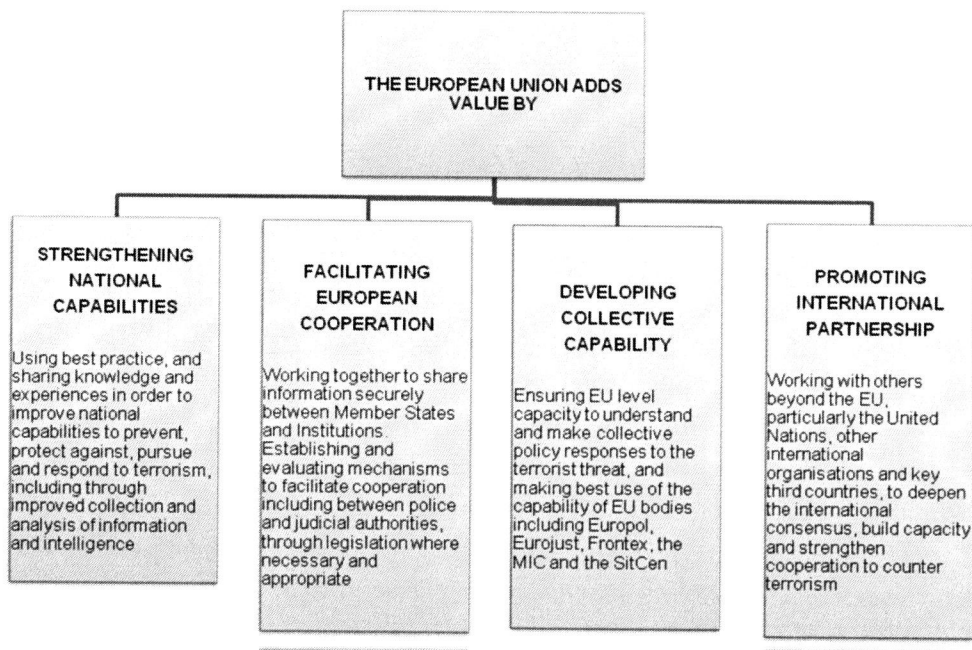
First of all, it is in strengthening national capabilities by using best practices and sharing knowledge and experiences. This is usually done, notwithstanding regular working groups meeting within the EU institutions, by organising various seminars, training events and conferences. Such activities allow MS to learn from each other. MS having less experience in the counter-terrorism can find it useful to apply at their national level some of the good practices identified in other MS, having more experience in the field.

Secondly, the EU plays a role in facilitating European cooperation mainly by sharing information securely between MS and institutions. It has established and evaluated mechanisms to facilitate cooperation including between police and judicial authorities, through legislation where necessary and appropriate.

Thirdly, the added value of the EU is in ensuring the EU level capacity to understand and make collective policy responses. It has created various common platforms as e. g. Europol for the exchange of police information and the facilitation of police cooperation; Eurojust for judicial cooperation; Frontex for analysing threats to the EU's external borders and SITCEN – the joint situation centre cooperating with intelligence services of MS.

Fourthly, it plays an important role in promoting international partnership which means mainly working with others beyond the European Union, in particular, the United States (U.S) and other international organizations as e. g. Council of Europe (CoE), Organisation for security and cooperation in Europe (OSCE), etc. and also to assist key third countries to build their capacities and strengthen cooperation to counter terrorism⁴².

42 Council of the EU: EU Counter-Terrorism Strategy, Brussels, 2005.



Scheme n. 2

CONCLUSIONS

The terrorist attacks on the U.S in September 2001 caused an awakening in the EU giving it an opportunity to speed up the EU's efforts in CT. At that time there were only six MS which had the CT legislation and operational tools for combating this phenomenon; cross-border CT support was negligible. Taking into account the very slow implementation of adopted measures, it became evident that 9/11 was not a sufficient warning for the EU and its CT framework would have to wait for the next calamity before it took on more substance.

The Madrid terrorist attacks in March 2004 served as an accelerator of the EU CT policy starting a real common European approach to combating terrorism. Two important CT tools were adopted shortly afterwards: The Declaration on Combating Terrorism and the establishment of the EU Counter-Terrorism Coordinator to facilitate the CT work of the EU Council.

It was mainly after the Madrid attacks that the EU had adopted many new CT measures, activities and legal documents. However, the continuous absence of a binding EU strategy to combat terrorism as well as the very slow implementation of adopted legislation was undermining the final results of the EU efforts. Since the Madrid attacks there was an increasing effort to link various EU instruments, used mainly for combating organised crime, illegal migration or financial crime, with the fight against terrorism. By using such a link their importance had been emphasized and it had speeded up their adoption. These efforts were not seen only in the JHA area but also in areas such as civil protection or critical infrastructure protection. Moreover, more funds had been allocated for CT activities, so a search for the CT link was understandable.

It was the London attacks which brought the EU Strategy for the fight against terrorism, adopted in November 2005. The aim of this strategy was to explain to EU citizens and the public as a whole the steps the EU was taking in the CT area. Through the CT Strategy, “the commitment of the Union is to combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice.” The strategy organizes previously adopted CT-related measures and actions under four pillars—prevent, protect, pursue, and respond—as well as summarizes all the previous CT legal, institutional, and operational documents of the EU.

Until the Lisbon treaty’s entrance into force in 2009, the EU CT policy was influenced by the cumbersome decision-making process concerned with the police and judicial cooperation in criminal matters, as it had to required the unanimity of all Member States. There were significant shortcomings in the implementation of adopted measures. The Lisbon treaty brought certain improvements, mainly in bringing the qualified decision-making process into the JHA area. It also created an improved balance of adopted measures with individual rights and freedoms as the EU Court of Justice gained the competence of control, as well as the interpretation and re-evaluation of individual acts in the FSJ area. This competence should ensure greater judicial control and protection within the EU.

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