

Institutional Framework of the European Union Counter-Terrorism Policy Setting

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Introduction

One of the objectives of the European Union (EU) as is laid down in the Treaty on European Union Article 29, is to provide citizens with a high level of safety within an area of freedom, security and justice by preventing and combating crime in particular among others also terrorism, through closer cooperation between police forces, customs authorities and other competent authorities in the Member States¹. In December 2003 the European Council adopted a comprehensive document titled “A Secure Europe in a Better World – A European Security Strategy”, outlining the threats facing the Member States. Terrorism heads the list and the document states: “terrorism puts lives at risk; it imposes large costs; it seeks to undermine the openness and tolerance of our societies and it poses a growing strategic threat to the whole of Europe”². The last point in this statement is probably the most significant as the attacks in Madrid and London in March 2004 and July 2005 respectively did have implications on most EU Member States. So in order to minimize this threat, the security strategy proclaims that “Concerted European action is indispensable”³.

One has to bear in mind that safeguarding national security and protecting the state and its citizens from terrorists falls in the competence of the Member States. As the EU Counter-Terrorism Coordinator (CTC) Mr. Gijs de Vries has stated: “the role of the union [EU] is not to supplant Member States but to support them in working internationally and the main thrust of Europe's defence against terrorism remains firmly at the level of national governments”⁴.

The EU's difficulties are compounded because ‘counter-terrorism’ is not in itself a defined area and in its broadest and fullest sense ‘counter-terrorism’ spans across a number of policy areas⁵. It is a cross-pillar activity engaging many EU actors and instruments and because of that, coordination problems have been encountered on several levels⁶. Counter-terrorism requires action from every

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government department, not only from those charged with law enforcement, border control and foreign and defence policy. Finance ministries need to track terrorist funding, health ministries should have stockpiles of vaccines and education ministries should fund academic research into Islamic groups⁷. National governments find it hard to coordinate their own ministries and agencies involved in counter-terrorism, trying to coordinate the collective efforts of 25 governments at the EU level are exponentially more difficult⁸.

After the Madrid attacks in March 2004, the European Council emphasized in its declaration on combating terrorism that it instructs the Council to put in place new committee structures capable of ensuring greater operational cooperation on security and terrorism within the EU⁹. This article discusses the current EU institutional framework in which the EU counter-terrorism policy is set. It seeks to find an answer to what kind of an EU institutional framework is needed for “concentrated European action” and for “ensuring greater operational cooperation”. The specific research question focuses on how the European Union counter-terrorism policy is being set at the EU level.

In order to answer the abovementioned research questions this article first describes the threat that terrorism poses to the EU Member States. This is followed by a description of the theoretical basis of the EU level counter-terrorism policy setting. Then the actors involved in the EU counter-terrorism policy setting are portrayed and their roles explained. On the basis of the above, an analysis of the current EU level institutional framework and its problems is presented. In the conclusions recommendations are made on how to shape the institutional framework of the EU counter-terrorism policy setting into a more effective one.

As the core action in the fight against terrorism is in the competencies of the Member States, this article mainly looks at the institutional set up of the Council in the II and III pillar policy setting and concentrates less on the set up in the I pillar. Moreover, due to the limits on the length of this article, it does not encompass an analysis of the institutional set up at the Member States level, where national positions for the EU counter-terrorism policy setting are prepared, as that differs considerably between Member States and would require longer research.

1. Terrorism as a security threat to the European Union Member States

Terrorism is not a new phenomenon in Europe, as the citizens of Spain, United Kingdom, Ireland, Germany, Greece and Italy know all too well¹⁰. In Britain, Ireland and Spain alone, more than 5000 lives have been lost to terrorism over the last 30 years¹¹.

The European Security Strategy states that Europe is both a target and a base for terrorism: European countries are targets and have been attacked¹². Logistical bases for Al Qaeda cells have been uncovered in the United Kingdom, Italy, Germany, Spain and Belgium¹³. The strategy makes particular pointed reference to the danger of terrorist groups using biological, chemical or even nuclear bombs on European soil¹⁴. In November 2004 Gijs de Vries the EU Counter-Terrorism Coordinator said that there remains a substantial and sustained threat of further terrorist attacks in Europe and the threat emanates mainly from Islamist networks, groups or individuals, though non-Islamist groups as well continue to pose risks to security¹⁵.

Unfortunately 7 July 2005 bombings in London proved de Vries's assessment to be correct. As of 11 July 2005, "New York Times" reported a European participant saying at the meeting of high-level intelligence and counter-terrorism officials from two dozen European countries and the United States in London: "We're all under the threat of attack, and we all must work together to stop the next one. The next attack could happen outside my window."¹⁶

The continent served as a logistical base for the September 11th attackers and has itself been the target of a number of foiled plots¹⁷. In February 2002, the Italian authorities apparently thwarted a plot by al-Qaeda to poison Rome's water supply with cyanide-based chemicals¹⁸. In January 2004, the French anti-terrorist police detained five people in Lyon – two of them admitted to plans to attack specific targets in France using ricin and botulinum bacteria¹⁹. In April 2004, British anti-terrorist agents foiled a plot involving the use of corrosive substance osmium tetroxide²⁰. While the impact of these attacks might have been limited – with the exception of the possible attempt to poison Rome's water supply – one can only imagine the psychological effects arising from such an attack²¹. The United States of America embassy in Paris, the Christmas market in Strasbourg, a United States of America base in Belgium and the United States of America military facilities in Great Britain were also among the planned targets of

terrorist groups located in London, Rotterdam and Frankfurt²². There is no doubt that cells sympathizing with Al-Qaeda are active in Europe²³.

As the Madrid attacks demonstrated, terrorism – in particular radical Islamic terrorist groups – remains a serious threat in Europe and beyond²⁴. The same was reiterated in the United State of America Department of State “Country Reports on Terrorism 2004”, where it was stated that “terrorist activity and the presence of terrorist support networks in Europe remain a source of concern”²⁵.

According to the latest Europol’s report which outlines the terrorism situation in the EU over the last twelve months, the terrorist threat to the EU is posed by a wide number of groups and organisations ranging from international Jihadist networks and large scale nationalist groups to violent political extremist activists, generally involved in acts of sabotage and criminal damage²⁶. While the EU as an entity might not be subject to a specific threat from Al-Qaeda and/or its affiliates, these groups are targeting a number of Member States that are perceived as enemies of Islam and designated as “legitimate” targets due to their involvement in Iraq or in Afghanistan or to specific factors such as the law banning the Islamic veil in French schools²⁷. As such, France, Germany, Italy, Poland, Spain and the United Kingdom (as well as other countries, including the United States and Israel) have been specifically designated by al-Qaeda leadership²⁸. Moreover, the bomb attacks in Madrid in March 2004 and the disruption of a number of terrorist cells in other Member States demonstrate the continuous will of al-Qaeda and/or its affiliates to strike within the European Union boundaries and influence governments’ policies and the day to day life of its inhabitants²⁹.

Terrorist do not limit their attacks to institutions associated with the State, but seek to attract maximum publicity from high profile attacks, deliberately causing large numbers of civilian deaths³⁰. Together with their disregard for their own lives, this makes it much more difficult to put in place effective physical counter-measures³¹. The will of some of these terrorists to use chemical devices appears to be consistent; however, the most favoured method still relies on suicide bombers as demonstrated in a string of attacks in Russia in August [2004], which culminated with the Beslan hostage taking³². But we have to take into account that intelligence shows a growing interest in chemical, biological, radiological and nuclear (CBRN) materials by Islamic terrorist groups³³. Hard-copy poison recipe books were found in training camps in Afghanistan, Pakistan and Georgia³⁴. More specifically, recent arrests made in France, Spain and the United Kingdom, where traces of ricin, training manuals and chemical substances were

discovered, are indications that attempts are being made to acquire CBRN materials³⁵. That points to the assumption that the threat of a small-scale chemical or biological attack is substantially higher than in the past³⁶.

The sheer number of arrests of Islamic terrorists or supporters in the European Union is also an indicator that Europe is not only a target for al-Qaeda and other Jihadist groups but it is also to be considered as a place of recruitment and logistical support for the Jihad in Afghanistan, Iraq and Chechnya³⁷. Furthermore, fully trained fighters returning from these fighting grounds are a potential threat due to their level of training³⁸.

The vulnerability of individual European countries makes them so interdependent that none of them can effectively protect their citizens on their own³⁹. A chemical or radiological attack on a European capital might have consequences for several countries in the region and conventional attacks are also likely to cause ripple effects far from their target in today's increasingly complex and interdependent societies⁴⁰. Moreover, as the creation of a free internal European market proceeds, competitive pressure on providers of, for example, energy or transportation services would, in the absence of common security standards, result in the lowest common denominator being applied⁴¹. This all suggests that there is a need for common efforts and cooperation in order to protect the Member States and their citizens. In order for this cooperation to be fruitful, effective institutional set up is needed, where there is no confusion of tasks and competence.

2. Theoretical basis of the European Union counter-terrorism policy setting

In the wake of the hostage-taking and murders at the Munich Olympic Games in 1972 and in response to terrorist threats with sources both within and outside Europe, as well as the problem of drug trafficking, the European Community Member States created the so-called Trevi (Terrorism, Radicalism, Extremism, and Violence International) Group of interior and justice ministers, which began to meet regularly in 1976⁴². This was largely an intergovernmental forum for collaboration outside of the formal treaty structure and it lacked a permanent secretariat, but provided the law enforcement authorities in the European Community with a limited, yet useful way to communicate and exchange information on various transnational crimes, as well as to share best practices to combat them⁴³.

Nowadays the role of the EU in the fight against terrorism is still relatively limited as most of the instruments and competence in this area remain in the hands of the Member States. However, through its legislative work and policy initiatives the EU can do a lot to help national authorities work together internationally⁴⁴.

Article 2 of the Treaty on European Union states that the “Union shall set itself the objective 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”⁴⁵. This is the basis of EU level action in the sphere of internal security, including combating terrorism. Article 29 of the same treaty specifically refers to terrorism as one of the serious forms of crime to be prevented and combated by developing common action in three different ways: closer cooperation between police forces, customs authorities and other competent authorities, including Europol; closer cooperation between judicial and other competent authorities of the Member States; and approximation, where necessary, of rules on criminal matters⁴⁶. For the Treaty on European Union terrorism is part of the problem of (organized) crime, although there are differences between the aims of each form of crime⁴⁷. Organized crime is generally associated with financial gain, while terrorism is considered to have political motives, but what applies to the problem of organized crime certainly applies to that of terrorism⁴⁸.

The Treaty of Amsterdam split up the Justice and Home Affairs policy between a group of newly communitarized areas under Title IV of the Treaty on European Communities (asylum, immigration, external border controls, and judicial cooperation in civil matters) and another group which remains within the intergovernmental context of Title VI of the Treaty on European Union (police and judicial cooperation in criminal matters)⁴⁹. From an operational point of view, this legal borderline between the European Community and intergovernmental areas causes many problems because the different strings of decision-making, procedures, and legal instruments which are applicable make any more comprehensive ‘cross-pillar’ action more difficult and cumbersome⁵⁰.

The European Union counter-terrorism policy is not in itself a very clearly defined policy area, as it encompasses aspects of almost all traditional policy areas, for example the EU non-proliferation policy or the European Security and Defence Policy (ESDP). Several EU policies help to address the causes of

radicalisation and recruitment into terrorism⁵¹. The EU development strategy and its contribution to the Middle East Peace Process play a significant role in this respect, as does the process of comparing and analysing the Member States policies with respect to the integration of minorities and countering discrimination⁵².

There is a paradox in the EU's role in counter-terrorism. On the one hand, the governments agree in principle that cooperation at the EU level is good because of the cross-border nature of the terrorist threat, but on the other, they are slow to give the Union the powers (such as investigation and prosecution) and resources (such as spies and money) it would need to be truly effective⁵³. This is because security policy – especially when it concerns protecting citizens – goes to the core of national sovereignty, and governments are reluctant to give the EU powers that could interfere with their existing laws and national security practices⁵⁴. The EU is working hard to coordinate national anti-terrorism policies, but it is only just starting to pursue its own counter-terrorism policies⁵⁵.

3. Institutional framework of the European Union counter-terrorism policy setting – actors and their roles

Institutional framework of the European Union counter-terrorism policy setting could, in broad terms, be divided between four different institutions or groupings: the Council of the European Union with all its bodies, working groups and the secretariat; the Commission of the European Communities; independent agencies of the EU; Member States cooperation outside the formal Council structure, but with links to it.

3.1 The Council of the European Union

3.1.1 The European Council

The European Council brings together heads of state or government and the President of the Commission. It discusses numerous contributions that have been prepared by various Council compositions. With counter-terrorism issues that is mainly by the Justice and Home Affairs Council and/or the General Affairs and Foreign Relations Council.

In June 2005 the European Council adopted a Plan of Action containing well over 100 initiatives to be taken during the Dutch, Luxembourg and British

Presidencies⁵⁶. It also identified four priority areas: information sharing, combating terrorist financing, mainstreaming counter-terrorism in the EU's external relations, and improving civil protection and the protection of critical infrastructure⁵⁷. The European Council is turning a lot of attention to counter-terrorism issues as it discusses them at least once a year. But its decisions remain mere declarations as most of the issues are already decided on the ministerial level.

3.1.2 The Committee of Permanent Representatives

All the work in the Council is prepared or coordinated by the Permanent Representatives Committee (COREPER), made up of the permanent representatives of the Member States working in Brussels and of their assistants⁵⁸. All texts coming up for a formal ministerial [Council] decision have to pass through COREPER⁵⁹.

Unfortunately, COREPER deals with counter-terrorism related matters in its two formations. COREPER II is composed of ambassadors and deals with counter-terrorism issues that are part of the Justice and Home Affairs, the Common Foreign and Security Policy (CFSP), the European Security and Defence Policy, and Financial Policy. COREPER I is made up of ambassadors' deputies and deals with transports, telecommunication, environment, research, etc⁶⁰. As such it does not have the time to devote itself only to counter-terrorism⁶¹.

Contact Group (network of focal points) of persons from the Member States' Brussels Permanent Representations dealing with all aspects of terrorism

The Contact Group (network of focal points) of persons from the Member States' Brussels Permanent Representations dealing with all aspects of terrorism was created in the autumn of 2004 and has so far convened three times⁶². The task of the focal points is to act as central contact points for all counter-terrorism related information in the Member States' Brussels Permanent Representations and guarantee that all relevant documents relating to counter-terrorism reach the competent authorities in the Member States⁶³. As such it is not a new Council working group but just a contact group of focal points for preparing the meetings of the Council preparatory bodies and sharing information.

3.1.3 The Justice and Home Affairs Council

The Justice and Home Affairs (JHA) Council brings together Justice and Interior ministers on average once a month to discuss the development and implementation of cooperation and common policies in this sector. Since 2001 the Council - notably the Justice and Home Affairs Council - has adopted important legislative measures and policies to facilitate cross-border cooperation by national law-enforcement authorities and intelligence agencies⁶⁴.

The Hague programme adopted in November 2004 by the European Council highlights that “the JHA Ministers within the Council should have the leading role in the fight against terrorism, taking into account the task of the General Affairs and External Relations Council”⁶⁵.

The Article 36 Committee

The Article 36 Committee (CATS) was set up under Article 36 of the Treaty on European Union to fulfil a coordinating role in criminal matters of police and judicial cooperation and to give opinions for the attention of the Council, either at the Council’s request or on its own initiative. It is also to contribute, without prejudice to the COREPER responsibilities, to the preparation of the Council discussions in the areas covered by Article 29 of the Treaty on European Union⁶⁶.

CATS is, by its nature, a coordinating committee consisting of senior officials from the Member States’ Ministries of the Interior and/or Justice. It coordinates the work of the various third pillar working groups dealing with police cooperation, judicial cooperation in criminal matters, Schengen Information System as well as the work of the EU agencies and the various bodies working with police and judicial cooperation (Europol, Eurojust, Cepol etc.)⁶⁷. As a general rule, CATS meets once a month.

The Terrorism Working Group

One of the two Council working groups fully devoted to the fight against terrorism is the Terrorism Working Group (TWG) composed of representatives of the Member States’ Ministries of the Interior and/or law enforcement agencies (and in some Member States of security services)⁶⁸. This group meets three to five times per Presidency and deals with internal threat assessments, practical cooperation and coordination among EU bodies⁶⁹. For the last three years, the TWG has held, once per presidency, joint meetings with the second

pillar working party on terrorism (COTER) dealing with international aspects, to issue a consolidated assessment ("compendium"), integrating the internal and external dimension of the threat⁷⁰.

The TWG itself covers only the law enforcement cooperation aspects - other JHA elements which might have an impact on the fight against terrorism such as visa policy, document security and judicial cooperation are dealt with elsewhere, while other aspects such as transport security or data protection have yet another different chain of reporting/decision making.

The Working Party on Civil Protection

The Working Party on Civil Protection is working on an early warning mechanism and consequence management as a whole⁷¹. It has also been dealing increasingly with counter-terrorism issues as the terrorism threat has been growing in the EU Member States.

The Strategic Committee on Immigration, Frontiers and Asylum

The Strategic Committee on Immigration, Frontiers and Asylum coordinates the work of the various working groups in the field of migration, visa, borders and asylum⁷². This working committee and its subordinate preparatory working groups process regulations that support the fight against terrorism.

3.1.4 The General Affairs and External Relations Council

The General Affairs and External Relations Council (GAERC) consists of the Member States ministers of foreign affairs. It touches upon counter-terrorism issues mainly when it prepares the European Council meetings and updates the EU list of terrorist organizations and persons linked to terrorist activities. This list was first adopted in December 2001 in the wake of the terrorist attacks on September 11th.

The Political and Security Committee

The Political and Security Committee coordinates the second pillar working groups in the field of the CFSP and the ESDP⁷³. It has similar functions as CATS, but in the II pillar.

The Working Party of Foreign Relations Counsellors

The Working Party of Foreign Relations Counsellors engages itself particularly in the EU mechanism to freeze assets of terrorists and terrorist organizations⁷⁴.

It discusses the Member States' proposals in the format called the Clearing House.

The Working Party on Terrorism (International Aspects)

Second Council working group fully devoted to the fight against terrorism is the Working Party on Terrorism (International Aspects) (COTER), which is mainly composed of representatives of the Member States' ministries of foreign affairs⁷⁵. This group meets once a month and deals with issues related to external matters, threat assessments and policy recommendations as regards third countries and regions, implementation of the United Nations conventions and the coordination of work, in particular in the United Nations as well as handling seminars on the financing of terrorism⁷⁶.

3.1.5 The Council secretariat

In the JHA sector, the Council secretariat has played a markedly different role from that of its other spheres of activity. Apart from the usual role of note-taking and reporting, advising on procedures and being the 'honest broker' and 'institutional memory', the Council secretariat has in this particular field played the role of a motor, legal drafter and initiative taker⁷⁷.

The Counter-Terrorism Coordinator

In March 2004 the European Council adopted the "Declaration on Combating Terrorism" in which the Council emphasised "that a comprehensive and strongly coordinated approach is required in response to the threat posed by terrorism"⁷⁸. With the same declaration the European Council agreed to the establishment of a Counter-Terrorism Coordinator (CTC). Consequently the Council also welcomed the decision of the Secretary General/High Representative Javier Solana to appoint Mr. Gijs de Vries to the position⁷⁹. According to the Council declaration the Coordinator works within the Council Secretariat, coordinates the work of the Council in combating terrorism and, with due regard to the responsibilities of the Commission, maintains an overview of all the instruments at the Union's disposal with a view to regular reporting to the Council and effective follow-up of Council decisions⁸⁰. According to de Vries he does not have a more specific job description⁸¹.

In Keohane's⁸² opinion, de Vries has virtually no powers, apart from persuasion as he cannot force governments to act, in addition he has no budget and cannot propose legislation nor can he chair meetings of national justice or foreign

ministers to set the anti-terrorism agenda. De Vries has stated himself that he is not responsible for coordinating individual Member States' national counter-terrorism structures or operations as that is a matter for the countries themselves⁸³.

The Situation Centre

In June 2005 the Council decided to stimulate cooperation among Europe's security and intelligence services by reinforcing the Situation Centre (SitCen) in the Council Secretariat⁸⁴. SitCen brings together national experts to analyse intelligence assessments from the Member States (rather than raw intelligence)⁸⁵. The national officials decide what information they want to send to SitCen⁸⁶. Previously, SitCen analysts only assessed threats emanating from outside the EU territory⁸⁷. From 2005 onwards SitCen provides the Council with strategic analysis of the terrorist threat based on intelligence from the Member States' security [internal security services] and intelligence services [external services] and, where appropriate, on information provided by Europol⁸⁸.

3.2 The Commission of the European Communities

The role of the Commission of the European Communities is to make proposals for European Union legislation⁸⁹. It also monitors how that legislation is implemented once it has been adopted by the EU Council of Ministers⁹⁰. However, in the area of Justice, Freedom and Security the European Commission shares its right to make legislative proposals with the Member States⁹¹.

Generally, the Commission, which until 1997 had virtually no role in the area of law enforcement and security, is now fully associated with the work and indeed has generated, in response to requests from the Council and the European Council, most of the proposals in the field of counter-terrorism⁹². One of the examples of the Commission's work is, for instance, its intention to propose in 2005 a European programme for the protection of critical infrastructure with a trans-boundary dimension⁹³. Based on the information provided by the Member States, the Commission is drawing up an assessment of the national assets and capabilities that can be made available through the Community Civil Protection Mechanism in the event of a major terrorist attack⁹⁴.

According to Mr. Jonathan Faull, the Commission Director-General for Justice, Freedom and Security there is an internal working group of the Commission which he chairs together with his colleague from the External Relations Directorate-General. The working group brings together everybody within the

Commission dealing with the internal and the external aspects of terrorism. Below that level there is an internal group, chaired by Mr Faull's director responsible for counter-terrorism, and an external group, chaired by the external relations staff on the directorate level⁹⁵.

The Monitoring and Information Centre

Set up at the Commission in the framework of the Civil Protection Mechanism, the Monitoring and Information Centre (MIC) is the central instrument of cooperation between the national emergency systems and the EU level⁹⁶. Following an attack, Member States may choose to appeal to the solidarity of the other Member States, either bilaterally or through MIC, which has a permanent and direct contact with the various civil protection capabilities in the Member States, as well as a database of the civil protection capacities that may be provided by the Member States on a case by case basis and which may include national military resources⁹⁷. MIC can provide assessment/ coordination teams capable of assessing needs and facilitating coordination, as well as intervention teams made available by the Member States⁹⁸.

3.3 The independent agencies

The institutions listed below have been established by the Member States and remain under the intergovernmental control of their various management boards⁹⁹. However, given their pan-European approach to law enforcement and, in some cases, daily operations independent of oversight by the Member States, these bodies represent a subtle but noteworthy shift in the direction of a more supranational approach to fighting transnational organized crime in the EU¹⁰⁰.

3.3.1 Europol

“Europol is the European Union law enforcement organisation that handles criminal intelligence. Its aim is to improve the effectiveness and co-operation between the competent authorities of the Member States in preventing and combating serious international organised crime and terrorism.”¹⁰¹ Europol is charged with building and maintaining a database of information supplied by the Member States, and using this data to analyse crimes, conduct specific investigations at the request of national law enforcement authorities, and request that the latter launch such investigations¹⁰².

Europol's main role is to assist national police forces through the exchange and analysis of information, its operational role is limited to supporting joint investigative teams at the request of a Member State¹⁰³. It has been given a central role in the fight against terrorism, following 11 September 2001, particularly through the establishment of its Counter-Terrorism Task Force which brought together experts from various law enforcement and intelligence services¹⁰⁴.

In Gijs de Vries opinion only Europol has the capacity to comprehensively map European trends in crime and the relationship between the smuggling of people, weapons, drugs and the financing of terrorism¹⁰⁵. The Counter Terrorism Task Force of Europol has identified the financing of terrorism as a priority issue and is working, *inter alia*, on the identification of new sources and methods of terrorist financing, as well as of fund raising using local Islamic charities and cash couriers¹⁰⁶.

3.3.2 Eurojust

Eurojust is an independent body composed of magistrates from the EU Member States and it aims to improve coordination and cooperation between investigators and prosecutors dealing with serious international crime including terrorism and has convened meetings on how to improve judicial cooperation to fight terrorism¹⁰⁷.

The Member States have designated a Eurojust national correspondent for terrorist matters in order to enhance its counter-terrorist work¹⁰⁸. Eurojust has set up a team that is specifically tasked with looking into questions of terrorism¹⁰⁹. The main aims of the Terrorism Team are to ensure that the terrorism co-ordination meetings are well prepared and organised, to enhance the exchange of information related to terrorism via regular contacts with nominated correspondents on terrorism and to establish a general database of legal documents related to terrorism¹¹⁰.

3.3.3 The European Border Agency

The European Border Agency was created in October 2004 by the Council Regulation (EC) No 2007/2004. The Agency coordinates operational cooperation between Member States in the field of management of external borders; assists Member States in training national border guards, including the establishment of common training standards; carries out risk analyses; follows

up on the development of research relevant for the control and surveillance of external borders; assists Member States in circumstances requiring increased technical and operational assistance at external borders; provides Member States with the necessary support in organising joint return operations¹¹¹.

3.4 Member States cooperation outside the Council

3.4.1 The Counter Terrorism Group

The intelligence and security services of the Member States have cooperated in the fight against terrorism for a considerable time within the informal framework of the so-called 'Club of Bern', where some other European countries participate as well¹¹². After the attacks in the United States of America on 11 September 2001 and following the conclusions of the European Council of 21 September 2001, the heads of the European Union Member States security services set up a specific counter-terrorism focused cooperation group called the Counter Terrorism Group (CTG)¹¹³. Their first meeting was held in Hague in November 2001, chaired by the Belgian service and organised by the BVD [Netherlands' National Security Service]¹¹⁴.

The Group consists of the EU Member States' security services counter-terrorist experts plus their counterparts in Norway and Switzerland¹¹⁵. It is important to note that police services do not participate in this group¹¹⁶. The Police services cooperate in the Police Chiefs Task Force and Police Working Group on Terrorism setups. The CTG meets after every three months under the chairmanship of the service of the country holding the European Union presidency, but it is outside the Council structures¹¹⁷. The CTG reports to the national representatives in the regular European Union groups via the national capitals¹¹⁸.

The objective of CTG is to improve operational cooperation¹¹⁹. Its work focuses on Islamic terrorism and, among other things, includes the preparation of common threat assessments and discussions of initiatives to optimise the operational cooperation on combating terrorism¹²⁰. In addition, the group has initiated discussions on a number of organisational and structural issues; as well as preparations for the admission of the services of the new EU Member States¹²¹. Also the heads of the security forces of the Member States meet regularly in the CTG format¹²². According to Ireland's National Police Service Commissioner Noel Conroy, this co-operation is demonstrated by the fact that

during the Irish Presidency of the European Union, when the outrage happened in Madrid on 9 March 2004, the CTG convened for an emergency meeting in Dublin attended by all countries' heads of counter-terrorism¹²³. Its purpose was to identify best practice for a co-ordinated response to that outrage¹²⁴.

Taking into account the abovementioned, the CTG provides the security services with a useful operational level format for changing terrorism related information in a multilateral way. This is a good achievement as traditionally security services have been collaborating bilaterally. The existence of the Group helps in streamlining the implementation side of the counter-terrorism policy and as such is a vital part of the European Union counter-terrorism institutional framework.

3.4.2 The Police Chiefs Task Force

The Police Chiefs Task Force (PCTF) is an international forum to help high-level national police officials share best practices and information on current trends in cross-border crime, and contribute to the planning of joint operations¹²⁵. Launched during the Portuguese Presidency in 2000, it meets every six months, outlining various common priority areas, such as community policing and drug trafficking¹²⁶. The PCTF is headed by the Presiding Member State of the EU. The Council decided on 19 November 2004 that the PCTF should meet within the Council structures on strategic issues but also that they should have an operational meeting.

3.4.3 The Police Working Group on Terrorism

The Police Working Group on Terrorism (PWGT) was formally established in 1979 in response to terrorist threats from, among others, the Provisional IRA, the Red Brigades in Italy and the Baader Meinhof gang in Germany. It provides operational communication between the EU Member States police forces at about the level of the heads of the national counter-terrorism bodies¹²⁷. The leaders of all the PWGT counter-terrorist units meet twice a year in the member countries on a rotating basis¹²⁸. It tends to operate at a level which is below that of the European Police Chiefs Task Force¹²⁹.

4. Analysis of the current institutional framework and its problems

Monica de Boer¹³⁰ has outlined the problem with the EU counter-terrorism policy setting very well by saying that, “a crowded policy area, which harbours a

multiplication of actors who may not all be seeking to achieve the same policy objectives leads to obstructions along the decision-making process, or – seen from a slightly more optimistic perspective - to duplications and inefficiency regarding the achievement of policy objectives.”

Reforming the institutional framework and progress made so far

In March 2004, only three days before the Madrid bombings, the EU's foreign and security policy chief, Javier Solana, finished an internal report on the EU's counter-terrorism efforts¹³¹. The report identified three major shortfalls: some Member States were not implementing the EU agreements, such as the common arrest warrant; the EU lacked sufficient resources to play a meaningful role in counter-terrorism; and coordination between the EU officials working on law enforcement, foreign and defence policies was poor¹³².

After the Madrid attacks the European Council emphasized in its declaration on combating terrorism, issued on 25 March 2004, that it instructs the Council to put in place new committee structures capable of ensuring greater operational cooperation on security and terrorism within the Union¹³³. From this only one conclusion could be made - institutional framework that was present at the time did not satisfy the Member States.

On 3 June 2004, COREPER discussed the working structures of the Council in terrorism matters on the basis of options submitted by the CTC Gijs de Vries and agreed to maintain the current working group structures but to reinforce coordination in capitals and in Brussels¹³⁴. COREPER also came to the conclusion that it should engage itself in a more systematic and regular follow-up of implementation of the Action Plan, by discussing terrorism once a month at COREPER where Presidency and/or the CTC would make a report on the latest developments, and by giving stronger direction to the work being undertaken in various committees and working parties, and by reporting to the Justice and Home Affairs Council as well as to the General Affairs Council which has overall responsibility for coordinating and organising the work of the Council¹³⁵. COREPER also stated that the working structures of the Council should be reviewed by COREPER before the June 2005 European Council¹³⁶.

In a sense it was a decision to continue with the present status quo situation as reinforcing coordination in capitals is dependent on 25 different capitals with different national systems. The decision to discuss terrorism once a month in COREPER adds extra burden on the COREPER agenda and the ambassadors

might not have enough time to go through all the issues in detail. Furthermore, there has been no review of the Council working structures so far. In a way it shows lack of continuity already at the COREPER level.

The issue with the EU 'pillars' system and the need for cross-pillar coordination

The European Union Committee at the United Kingdom House of Lords¹³⁷ made a thorough inquiry about the EU's response to terrorism and came to the conclusion that: "In an area where clarity of roles and responsibilities is vital, we found the structures within the EU for combating terrorism complex and confusing". Keohane¹³⁸ adds his opinion that "the EU has been slow to build an effective institutional infrastructure for counter-terrorism".

In Gijs de Vries opinion current working structures of the Council are directed towards the artificial division of pillars, something that does not facilitate coordination either in Brussels or in capitals¹³⁹. There is no dedicated body in Brussels that deals with all the aspects of terrorism on a full time basis¹⁴⁰. COREPER does not have the time to devote itself only to this issue and also deals with terrorist related matters in its two formations (COREPER II deals with the JHA, the CFSP, the ESDP, the financing of terrorism; COREPER I deals with transports, telecommunication, the environment)¹⁴¹. The two main Council Working Groups on terrorism (COTER and TWG) act in separate pillars, are capitals-based and do not feed sufficiently into the Brussels-based discussion and decision-making processes¹⁴². Coordination problems have emerged between the first and second pillars, for example in relation to programming¹⁴³. That is the case especially when it comes to planning technical assistance programmes¹⁴⁴.

Currently, the Council and the Commission are responsible for coordinating instruments and initiatives within their respective areas of competence¹⁴⁵. But arguably, the sheer complexity of the field and the variety of actors, institutions and organizations involved means that effective coordination will require some bureaucratic consolidation, as well as the full-time attention of an organization dedicated to the purpose¹⁴⁶. One of the solutions could be that the CTC could encourage greater cooperation between the Commission and the Council¹⁴⁷. But according to Keohane some Commission officials are suspicious of de Vries as he works for the national governments in the Council. They fear that, as an 'agent' of the governments, de Vries will try to limit the Commission's role in the EU counter-terrorism efforts¹⁴⁸.

This all means that within the institutions, there are considerable coordination challenges given the range of actors involved and even more points to the need to have a High-Level Cross-Pillar Counter-Terrorism Committee that would report to COREPER as that is the only cross-pillar decision-making structure preparing the Council meetings. A High-Level Cross-Pillar Counter-Terrorism Committee, chaired by the CTC and Presidency could provide an adequate structure for raising problems and making proposals to COREPER to task other Council working groups to draft concrete solutions in the policy areas that are related to counter-terrorism. That would also take away the extra burden put on COREPER. Also it would help to limit the European policy-makers 'stovepipe' effect¹⁴⁹, where one actor is unaware of or unable to affect the actions of the other key players. For the EU, this means limiting the barriers raised by the three pillars¹⁵⁰.

However, it is likely that the best thing to be done in order to overcome the difficulties in the EU counter-terrorism policy setting is to abolish the current pillar structure and to create an appropriate institutional framework that would support efficient policy setting. The provisions in "The Treaty establishing the Constitution for Europe" could make it a reality, but for the time being its ratification process has been put on hold following the disapproval by the French and Dutch citizens. But once ratified, the abolition of our famous "pillars" should make it easier to properly design integrated EU policies in this, as in other, areas¹⁵¹. And it should significantly improve the decision-making process in the EU, making it easier to adopt legislation on terrorism and other forms of international crime¹⁵². The Council of Ministers would be able to adopt legislation in the field of counter-terrorism (including public health aspects of emergency response management) on the basis of qualified majority voting instead of unanimity, as is the case today¹⁵³. The European Parliament would gain key legislative powers and national parliaments would obtain additional powers to scrutinise the EU draft legislation¹⁵⁴. Moreover, The Treaty establishing the Constitution for Europe would bring additional power to Eurojust to initiate investigations and to resolve conflicts of jurisdiction, when a European law has been adopted¹⁵⁵. But as long as the "Treaty establishing Constitution for Europe" is on hold, other ways need to be found in order to achieve concentrated European action.

EU's role in counter-terrorism

The EU does not, and probably never will, run its own counter-terrorist operations¹⁵⁶. It is the Member States alone that carry out anti-terrorist

operations¹⁵⁷. The role of the EU in fighting terrorism, as defined by the Council, is to assist the Member States, not to supplant them¹⁵⁸. Police forces, judicial authorities, security and intelligence agencies, border authorities all remain under national control, which means also that most operational work in the field of counter-terrorism will therefore remain in the preserve of national authorities¹⁵⁹. Therefore, one has to be clear about what the EU can and cannot do, so as not to create expectations the EU could not meet.

Consequently, also in terms of operational cooperation, the CTG should be the main body where these matters are discussed and intelligence shared. If necessary, due to the formal reasons of reporting and accountability, the CTG could be made an official Council working group that would report to CATS or even better - to the High-Level Cross-Pillar Counter-Terrorism Committee.

The Counter-Terrorism Coordinator's role

The CTC has a vital role in overseeing the work of the various EU groups and committees within the Second and Third Pillars in order to prevent overlapping, avoid duplication and to ensure that their aims and objectives are delivered and in monitoring the implementation of agreed measures¹⁶⁰. But in the House of Lords opinion, the CTC should have a clear job description which identifies his primary role as an internal coordinator rather than an external representative¹⁶¹. It should also provide less scope for ambiguity than at present.

Strengthening analysis

With the strengthening of the SitCen, one central body which collects information from Member States competent authorities and puts it together into analysis has been established. This can certainly be called a significant step forward, as previously COTER and TWG were preparing threat analysis and other kinds of analysis. With that change, the Council working groups will be able to task the SitCen to draw up analysis and focus their work on drafting policy recommendations and regulations.

Overall, the issue of the counter-terrorism policy setting institutional framework has been on the agenda for at least a year and a half. Only limited progress has been achieved so far. The appointment of a CTC with an ambiguous job description and the strengthening of the SitCen is virtually all that has been done so far. As Keohane¹⁶² notes the EU's countless counter-terrorism committees and its extensive action plan will not have much long-term impact unless they are all working towards the same basic aim. Given the range of interests involved, effective coordination – and the work of the CTC – is crucial¹⁶³. The

present proliferation of the EU groups and agencies needs to be reduced and streamlined¹⁶⁴.

Conclusions

Terrorism is a threat to EU Member States security. The European Security Strategy states that Europe is both a target and a base for terrorism¹⁶⁵. Several plots have been foiled by Member States security and police services. But as the Madrid attacks in March 2004 and the London attacks in July 2005 demonstrated particularly radical Islamic terrorist groups remain a serious threat to all Member States. European countries are so interdependent of each other, which mean that none of them can effectively protect their citizens on their own.

Safeguarding national security and protecting state and its citizens from terrorists falls in the competence of the Member States. The EU has a role to play but it must remain a coordinating one in support of the Member States, which have the primary responsibility for combating terrorism¹⁶⁶. The hard work of tracking down potential terrorists, preventing attacks and bringing suspects to justice remains the preserve of national services¹⁶⁷. The EU does not have the powers, such as investigation and prosecution, to tackle terrorism like a national government¹⁶⁸. It can help governments to identify, extradite and prosecute terrorists, but it is only slowly developing its own anti-terrorism policies¹⁶⁹.

One has to take into account that counter-terrorism policy is a horizontal policy. It does not only involve internal security policy shaping the legal environment of the security services and the police, but involves also foreign policy, for example agreements with third parties, financial policy setting the rules for financial sector institutions, health policy setting rules as to what kind of vaccines to store, cultural policy regulating the work of religious institutions, telecommunication and transport policy regulations, immigration policy, etc. On the EU level it all comes together as a cross-pillar policy as a result of the current pillar system. It is evident from the description of the present institutional framework and its analysis presented earlier that the present pillar system and its institutional framework complicate counter-terrorism policy setting on the EU level. Member States have understood that as well, by highlighting in the declaration on combating terrorism the need for putting in place new committee structures capable of ensuring greater operational cooperation on security and terrorism within the EU¹⁷⁰. But as long as the pillar system is in place, only

minor changes to the institutional framework can be achieved. Creation of the Counter-Terrorism Coordinator post within the Council secretariat is a step in positive direction, but its job description should be more specific with less ambiguity in it than at present.

Based on the analysis presented earlier one solution could be the creation of a High-Level Cross-Pillar Counter-Terrorism Committee, chaired by the CTC and the Presidency for raising problems and making proposals to COREPER to task other Council working groups to draft concrete solutions in the policy areas related to counter-terrorism. As a cross-pillar preparatory body this would limit the barriers raised by the three pillars. In addition strengthening of SitCen could be carried further by tasking it with analytical activities in all policy areas. That means that other working groups should not prepare their own analytical documents anymore, but concentrate on making policy recommendations and drafting necessary regulations.

As the role of the EU in fighting terrorism is to assist the Member States, not to supplant them, the operational cooperation and intelligence sharing should mainly be left to the CTG, PCTF and PWGT. If necessary, due to formal reporting and accountability reasons, the CTG, PCTF and PWGT could also be made official Council working groups that would report to CATS.

Overall, the issue of institutional framework of the EU level counter-terrorism policy setting has been on the agenda for at least a year and a half. Only limited progress has been achieved so far. The appointment of a CTC with an ambiguous job description and the strengthening of the SitCen is virtually all that has been done so far. As Keohane¹⁷¹ notes the EU's countless counter-terrorism committees and its extensive action plan will not have much long-term impact unless they are all working towards the same basic aim. Clear understanding of what can be done at EU level in the fight against terrorism and putting in place effective institutional framework for that is crucial for minimizing the threat of terrorism to EU Member States security.

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