

EU Counterterrorism Policy 2005-2020

Achievements and Challenges

GIJS DE VRIES

Senior Visiting Fellow at the London School of Economics
and Political Science (LSE)

Former member of the Dutch Government and of the European Parliament
First European Union Counter-Terrorism Coordinator from 2004-2007

Abstract

This chapter assesses the results of the EU's 2005 Counter-Terrorism Strategy across its principal domains of prevention, pursuit of justice, protection, and response to terrorist attacks. It investigates whether the EU has delivered added value in terms of strengthening national capabilities, facilitating cooperation, developing collective capacity, and promoting international partnerships. The chapter concludes that although much of the Strategy has been implemented, several policy gaps remain, and risks to human rights and accountability still need to be addressed.

INTRODUCTION

The attacks in the United States on 11 September 2001 sent shockwaves around the world. They also were a wake-up call for the European Union. Nine days after 9/11, on 20 September 2001, the Council decided on a peer assessment of national anti-terrorist arrangements. However, the initial sense of urgency soon faded. The EU Treaty stipulates that national security remains the sole responsibility of Member States and the EU's authority in counter-terrorism was weak. It took until January

2003 for the real work to start and results were slow in coming. Then, on 11 March 2004, three days before the Spanish general elections, multiple bomb attacks in Madrid (Atocha) killed 193 people and injured around 2,000. The ensuing wave of solidarity rekindled the political will to respond at European level. Among other measures the Council agreed to appoint an EU Counter-Terrorism Coordinator who was subsequently tasked with preparing an EU Counter-Terrorism Strategy in cooperation with the Presidency. The Strategy was adopted in 2005. It set out four main objectives: prevent recruitment into terrorism (Prevent), protect potential targets (Protect), pursue suspected members of terrorist networks (Pursue) and improve Europe's capacity to manage the consequences of a terrorist attack (Respond). A fifth, horizontal objective was to strengthen the EU's role in global counter-terrorism.⁽¹⁾

Fifteen years on it is perhaps a good time to tack stock. There are four ways in which the EU can add value in terms of counter-terrorism: strengthening national capabilities, facilitating cooperation, developing collective capacity, and promoting international partnerships. The chapter will address whether the EU has delivered on its engagements.

A comprehensive overview of the many hundreds of measures undertaken since 2005 would exceed the confines of a single chapter, so this chapter has a more modest aim. I will address three questions: which objectives of the EU Counter-Terrorism Strategy were attained, which were not, and what principal challenges remain, including in terms of maintaining the balance between security and liberty and strengthening accountability?

The discussion opens with the policy area which has seen the most consistent action, Pursue. Next, developments in the other three main areas (Protect, Respond, Prevent) will be presented. This is followed by an analysis of the EU's international role and a discussion of the ramifications of EU counter-terrorism policy for human rights and for accountability. A final section concludes.

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

I. PURSUE

The Pursue strand of the Strategy aims to pursue and investigate terrorists across borders; to impede planning, travel, and communications, to disrupt support networks; to cut off funding and support materials, and to bring terrorists to justice. This area has seen much action and notable results. Today, for example, the EU has the most advanced legislation in the world to restrict access to explosives precursors⁽²⁾ and detect suspicious transactions aiming to build explosive devices.⁽³⁾ European police forces highly value EU instruments such as the Schengen Information System and the European Arrest Warrant and use them frequently.⁽⁴⁾ In 2017 a Directive on combating terrorism was agreed that includes a common definition of terrorism. Since 2019 interoperability between the various EU databases used against terrorism and other crime has much improved,⁽⁵⁾ and feeding and use have increased. However, some areas have seen more progress than others. Where the EU can use its legislative or budgetary powers and where the Council can take majority decisions, the EU CT Strategy has brought results. Intelligence cooperation, however, remains largely off-limits.

A. Terrorism finance

Many terrorist attacks require only little money. Sometimes, as in the decapitation of French teacher Samuel Paty (2020) all it takes is a knife. But to sustain a terrorist campaign money is a prerequisite, and occasionally big amounts are at stake. The combined funding of the seven main extremists' groups of insurgents and terrorists (al-Shabaab, Boko Haram, FARC, HTS, JNIM, Islamic State and the Taliban, plus the DRC fighters) has been estimated at US\$ 1-1.39 billion per year.⁽⁶⁾ RAND estimates that in 2019 ISIL (Da'esh) alone, even after its defeat in Iraq and Syria, may have held US\$ 400 million in assets.⁽⁷⁾

(2) Chemicals that can be misused to manufacture homemade explosives.

(3) European Commission (2020), Communication on the EU Security Union Strategy, COM(2020) 605 final, 24 July 2020.

(4) Under EU legislation EU Member States must create an SIS alert for people suspected of a terrorist offence.

(5) Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa.

(6) Interpol and others, *World Atlas of Illicit Flows*, Paris, Interpol, 2018, p. 9.

(7) P. B. JOHNSTON, M. ALAMI, C. P. CLARKE and H. J. SHATZ, *Return and Expand? The Finances and Prospects of the Islamic State after the Caliphate*, Santa Monica, RAND, 2019.

One of the Strategy's prime objectives was (and is) to prevent terrorist finance by securing a similar level of protection across Member States. EU asset freezes to counter terrorist financing date back to UN Security Council Resolution 1267 (1999). The EU's binding legal regime was extended by a Cash Control Regulation (2007, revised in 2018) and the Third (2005), Fourth (2015), and Fifth (2018) Directives against Money Laundering and Terrorist Financing, as well as a Directive (2018) on combating money laundering by criminal law.⁽⁸⁾

Although these instruments are crucial to establish a level playing field among EU Member States – terrorists search for entry points of least resistance – national implementation has been patchy. Not all Member States, for example, have joined the Commission-funded Anti-Money Laundering Operational network (AMON). EU credit institutions fail to comply with core elements of EU legislation.⁽⁹⁾ EU Financial Intelligence Units still have divergent access to national databases and lack the proper IT tools to use their network (FIU.net).⁽¹⁰⁾ No Member State completely transposed the Fourth Directive against money laundering and terrorist financing, so the Commission was obliged to launch infringement procedures against all 28 Member States.⁽¹¹⁾

Fifteen years on, the EU's traditional legislative approach of using Directives to combat money laundering and terrorism finance appears to have run its course. In 2020 the Commission changed tack. It proposed an action plan for a comprehensive policy against money laundering and terrorist financing which includes a call for an EU-level supervisor.⁽¹²⁾ Another step being considered is to move from Directives to (directly binding) Regulations.

Even if these proposals bear fruit, which is far from certain, policy gaps will remain. One of the most obvious is pay offs in response to hostage taking by terrorist organisations. As long as European and other governments remain willing to pay ransom, directly or indirectly, to terrorists and insurgents, kidnapping of foreign nationals will continue to be a valuable source of terrorist financing.⁽¹³⁾

(8) See also O. BURES, "Ten Years of EU's Fight against Terrorist Financing: A Critical Assessment", *Intelligence and National Security*, 2015, Vol. 30, Nos. 203, pp. 207-233.

(9) European Commission, *Assessment of recent alleged money laundering cases involving EU credit institutions*, COM(2019) 373 final, 24 July 2019.

(10) European Commission, *Assessing the framework for cooperation between Financial Intelligence Units*, COM(2019) 371 final, 24 July 2019.

(11) European Commission, *Eighteenth Progress Report towards an effective and genuine Security Union*, COM(2019) 552 final, 20 March 2019.

(12) European Commission, *Communication on an Action Plan for a comprehensive Union policy on preventing money laundering and terrorist financing*, COM(2020) 2800 final, 7 May 2020.

(13) Financial Action Task Force, *Terrorist Financing in West and Central Africa*, Paris, FATF, 2016.

B. Law enforcement cooperation

After “9/11” a hard-hitting investigation showed that US counter-terrorism services had failed to exchange information and “connect the dots”.⁽¹⁴⁾ Similar problems were known to exist throughout the EU. The Council decided to focus the peer review (originally agreed in 2001) on the exchange of information and coordination between European law enforcement and intelligence services. An interim report by the Article 36 Committee and the Counter-Terrorism Coordinator in 2004 identified good practices. Its principal recommendation was for Member States to set up a national counter-terrorism coordination body. Governments were also encouraged to create a suitable legal basis for interception and exchange of data.

Some countries responded swiftly; others took longer. In 2004 the Netherlands set up a national Counter-terrorism Infobox while Germany established a national counter-terrorism centre (GTAZ). In 2005 additional counter-terrorism coordination structures were created, inter alia, in Belgium (*Organe de coordination pour l'analyse et la menace*), Denmark (Centre for Counter-Terrorism Analysis), Estonia (Counter-Terrorism Council), Ireland (National Emergency Co-ordination Centre), Latvia (Counter-Terrorism Centre), and Spain (CNCA, National Antiterrorist Coordination Center). Poland followed in 2006. Belgium took until 2010 to legally authorise technical intelligence surveillance (SIGINT).⁽¹⁵⁾ Finland, where threat perceptions were relaxed, initially held back while Finnish politicians lamented “the speed and initiatives coming from the EU and other international bodies.”⁽¹⁶⁾ Eventually Finland did implement the changes recommended in the EU peer review.⁽¹⁷⁾

While the peer review thus incontestably contributed to greater national coordination, traditional rivalries between services did not end overnight. In 2010 a study on Fusion Centres throughout Europe concluded: “Despite impressive progress, the relations between the intelligence and the law enforcement communities remain a ‘work in progress.’”⁽¹⁸⁾ The devastating terrorist attacks in Paris in 2015 showed multiple failures in

(14) The 9/11 Commission Report. Final Report of the National Commission on Terrorist Attacks Upon the United States, 22 July 2004, <https://9-11commission.gov/report>.

(15) K. L. LASOEN, “Belgian Intelligence SIGINT Operations”, *International Journal of Intelligence and Counterintelligence*, 2019, Vol. 32, p. 6.

(16) L. MALKKI, “International Pressure to Perform: Counterterrorism Policy Development in Finland”, *Studies in Conflict and Terrorism*, 2016, Vol. 39, No. 4, p. 348.

(17) *Ibid.*, p. 348.

(18) Comité permanent de contrôle des services de renseignement et de sécurité, *Fusion Centres Throughout Europe: All-Source Threat Assessments in the Fight Against Terrorism*, Antwerp, Intersentia, 2010, p. XXI.

cooperation between the 13 French security and intelligence services. To close the “holes in the tennis racquet” France created a new coordination structure (EMaP, État-major permanent) in 2019.

The 2005 Counter-Terrorism Strategy built on the momentum generated by the peer review. One of its key objectives was to get Member States to “move from ad hoc to systematic police co-operation” by sharing information and by making better use of Europol and Eurojust. Over time, this strand of the strategy has yielded important results.

In the past 15 years European information exchange between law enforcement agencies has intensified in terms of quality as well as quantity. The Schengen Information System (SIS II) has developed into a cornerstone of national policing; its 80 million alerts were consulted over 5 billion times by authorities in 2017.⁽¹⁹⁾ The United Kingdom has been among the most active users of SIS, consulting it more than 500 million times per year. Remarkably, in 2018, two years after the Brexit referendum, the UK was even found to have illegally made full and partial copies of the data. Data were subsequently shared with US companies, which under US law may be required to hand them over to US authorities.⁽²⁰⁾

Other European IT systems in the area of freedom, security and justice followed the SIS in quick succession. These include Eurodac (2003), the Prüm system (2008), the Visa Information System (VIS, 2011), the European Criminal Records Information System (ECRIS, 2012), and the Entry/Exit System (2020); the European Travel Information and Authorisation System (ETIAS) is expected to be operational in 2021. A common European search portal will enable police and other agencies to search simultaneously in multiple data bases. A dedicated EU agency, EU LISA, has been tasked with managing and developing the systems. This web of data bases – which also includes Europol’s Information System (EIS) – has spurred a marked increase in European information exchange in the fight against terrorism and other forms of serious crime.

Still, reluctance to share information has not been fully overcome. In December 2020 the European Council felt obliged to urge EU Member States to share data on terrorist suspects. Time will tell if this latest appeal by EU governments to EU governments to do what they repeatedly agreed to do will have the desired effect.

(19) European Commission, “Commission welcomes agreement on a reinforced Schengen Information System”, Press Release, 12 June 2018.

(20) N. NIELSEN, “UK unlawfully copying data from EU police system”, *EU Observer*, 28 May 2018.

For a long time, legal and practical barriers have stood in the way of cross-border operational police cooperation. In practice criminals often enjoyed greater freedom to cross borders than law enforcement officials did. In 2005 the Commission therefore proposed some modest steps to improve cross-border surveillance and hot pursuit in border areas. To its surprise – the Commission had merely responded to a Council invitation in the Hague Programme – nine Member States voiced firm opposition and the draft Council Decision sank like a stone. In 2006 the JHA Council decided to suspend negotiations.

Europol and Eurojust, too, suffered for many years from mistrust and opposition. National police forces tended to look askance at the European cuckoo in their nest and preferred to keep their distance.⁽²¹⁾ In 2003 European police agencies still exchanged ten times more messages through Interpol than through Europol.⁽²²⁾ For the best part of ten years Member States also largely ignored the 2005 Council Decision requiring them to inform Eurojust about judicial proceedings against terrorism.

The terrorist attacks in Paris (2015) and Brussels (2016) proved a game-changer. In the wake of the Paris attacks Europol set up a task force with 60 officers to support the French and Belgian investigations. By early 2016, France and Belgium had provided Europol with terabytes of information, resulting in 800 intelligence leads and more than 1,600 leads on suspicious financial transactions. Institutionally, Europol benefited as well: the Council allowed it to create a European Counter-Terrorism Centre (2016). By 2020 this ECTC was part of “almost” every major counter-terrorism investigation in the EU.⁽²³⁾ One-year earlier Europol had – finally – been allowed to access all categories of alerts in the SIS.

Europol also built on the growing political concern about online terrorist radicalisation. Since 2007, when it established the Check the Web project, the organisation had developed valuable expertise in terrorist propaganda. After the Paris attacks the Council agreed to create an EU Internet Referral Unit at Europol. This IRU met with considerable success: in 2017 over 83% of the content it referred to internet service providers has

(21) O. BURES, “Europol’s Fledgling Counterterrorism Role”, *Terrorism and Political Violence*, 2008, Vol. 20, No. 4, pp. 498-517.

(22) L. BLOCK, “European Counter-Terrorism Culture and Methodology”, *Terrorism Monitor*, 2015, Vol. 3, No. 8.

(23) European Commission, Proposal for a Regulation regarding Europol, COM(2020) 796 final, 9 December 2020, p. 2.

been removed.⁽²⁴⁾ In 2018 Europol successfully managed a Europe-wide takedown of Islamic State media, in close cooperation with Belgium, Bulgaria, France, the Netherlands, Romania and the UK.

The Paris attacks did not only bring Member States to strengthen Europol; it also spurred them to re-assess their relations with Eurojust. Belgium, France, Germany, Italy, Luxembourg, the Netherlands and Spain took the initiative to set up a new Counter-Terrorism Register at Eurojust. The CTR became operational in 2019. At the same time, national authorities became more willing to use Eurojust in terrorism-related cases: such cases increased from 14 (2014) to 94 (2018).

A new initiative could strengthen Europol's role even further. In a daring act of political entrepreneurship the Commission has proposed to give Europol the right to ask Member States to open criminal proceedings in cases affecting a common interest covered by a Union policy, without the requirement of a cross-border dimension of the crime concerned. Although such a right of initiative would not turn Europol into a European FBI (national authorities would remain free to ignore the request), the fact that such a step is even being considered is testimony to the remarkable intensification of European law enforcement cooperation in recent years.

In the meantime, there is still much that Member States could do to make the best possible use of Europol in the fight against terrorism. In 2016 the EU Counter-Terrorism Coordinator admonished EU governments for failing to support for Europol's database of foreign terrorist fighters. Member States had only notified around 3,000 cases, despite well-founded estimates that many more EU citizens had travelled to Syria and Iraq to join terrorist groups. Over 90% of contributions came from just five Member States.⁽²⁵⁾ The Commission has also urged Member States to improve intelligence sharing with law enforcement services by opening up the Counter-Terrorism Group to "interaction" with Europol's Counter-Terrorism Centre.⁽²⁶⁾ Although ten CTG member countries have CTG services embedded in their national Liaison Bureaus at Europol, until now no CTG staff members have been deployed to Europol. Even in 2020 there was still room for improvement in the sharing of information with both Europol and Eurojust.⁽²⁷⁾

(24) Europol, "Europol hosts conference on online terrorist propaganda", press release, 12 April 2017.

(25) EU Counter-Terrorism Coordinator, *Systematic feeding and consistent use of European and international databases*, Council document 7726/16, 14 April 2016.

(26) European Commission, *Enhancing security in a world of mobility: improved information exchange in the fight against terrorism and stronger external borders*, COM(2016) 602 final, 14 September 2016, p. 14.

(27) European Commission Staff Working Document, *Implementation of Home Affairs legislation in the field of internal security, 2017-2020*, SWD(2020) 135 final.

That said, Europol, too, needs to up its game. One area that has not received nearly enough attention is right-wing violent extremism and terrorism. Europol's Internet Referral Unit has mostly focused on Islamic terrorist propaganda. Right-wing violence is as serious a threat to public order and it is high time for it to be countered with the same determination.

C. The politics of transposition

Until December 2009, when the Lisbon Treaty entered into force, EU counter-terrorism policy and legislation formed part of the EU's intergovernmental "third pillar". Decision-making suffered from three major problems: the Commission lacked the power to launch infringement procedures, the Court was powerless to enforce legislation, and unanimity often stymied the Council. National law enforcement agencies and ministries thus felt little pressure to reform. As a result, in the early years EU counter-terrorism policy and legislation tended to reflect the lowest common denominator.

At first sight this may appear surprising. Terrorism is a highly salient issue and European publics react viscerally to each new attack. Politicians are expected to counter the threat and respond effectively: to protect life and limb is the prime responsibility of a state. Surely a cross-border problem such as terrorism calls for a cross-border response; what else is the European Union for? But EU politics is rarely that simple. National security is an integral dimension of national sovereignty; it does not lend itself easily to power-sharing. Also, national threat perceptions differ widely across the EU and national counter-terrorism policies reflect these divergent national sensitivities and experiences. Thirdly, the primary focus of CT policy and practice remains national. Major terrorist attacks tend to prompt calls for the EU to "do something", but soon afterwards practice will revert to normal. The puzzle, then, is perhaps not so much why EU law and policy sometimes fall short, but when and why they succeed.

Sometimes European initiatives succeed because governments use them to break domestic logjams. Spain was deeply divided over the lessons of the 2004 Madrid train bombings. For nearly seven years it failed to adapt its anti-terrorism legislation, which had been designed in response to ETA. Fernando Reinares notes that when Spain did eventually move, in 2010, it was in response to the 2008 European Framework Decision on Combating Terrorism.⁽²⁸⁾

(28) F. REINARES, *Al Qaeda's Revenge: The 2004 Madrid Train Bombings*, Washington (D.C.), Woodrow Wilson Center Press/Columbia University Press, 2017, p. 163.

Ultimately, EU policies do tend to be taken up. Over time, path dependence and the threat of infringement procedures tend to erode national resistance. Socialization, too, undoubtedly plays a role. As Malkki writes: “It has been common to criticize the EU for being an inefficient counterterrorism actor. From the Finnish perspective, however, it is impossible to miss the strong effect that peer interaction and social learning have had in national-level policymaking.”⁽²⁹⁾

The trouble, of course, is that socialization, the threat of sanctions, and other mechanisms can take a long time to induce compliance. All EU policies can be affected by late, flawed, or half-hearted implementation and the domain of counterterrorism is no exception. Between 2005 and 2009, for example, the initial deadline set by the Council was never met by all Member States in any of the instruments; in several instances it was missed by a majority of states.⁽³⁰⁾ Since 2009 an attitude of “*festina lente*” has continued to characterise implementation. In 2018 the Commission upbraided a majority of Member States for their late implementation of six key directives, including the Directive on combating terrorism.⁽³¹⁾ Some years later, however, all had done so.

D. Intelligence cooperation

As mentioned, national security is the sole authority of EU Member States (Article 4(2) TEU). The European Union therefore wields neither legal nor political authority over national intelligence and security services.

Collaboration between European intelligence and security agencies is purely voluntary and takes place mostly on a bilateral basis. Multilateral cooperation occurs in the framework of the Counter-Terrorism Group (CTG), an intergovernmental network of agencies from the 27 EU Member States, Norway, the UK, and Switzerland. In 2016, spurred on by the 2015 Paris attacks, the CTG established a joint secretariat and a common data base.

Strategic intelligence is also being shared through the European Union Intelligence Analysis Centre (IntCen). Staffed by agents from European intelligence and security services, IntCen evolved out of the EU’s Joint

(29) L. MALKKI, “International Pressure to Perform: Counterterrorism Policy Development in Finland”, *op. cit.*, p. 352.

(30) J. ARGOMANIZ, “Before and After Lisbon: legal implementation as the ‘Achilles heel’ in EU counterterrorism?”, *European Security*, 2010, Vol. 19, No. 2, p. 301; findings based on reporting by the two EU Counter-Terrorism Coordinators.

(31) European Commission, *Sixteenth Progress Report towards an effective and genuine Security Union*, COM(2018) 690 final, 10 October 2018.

Situation Centre (SitCen), which, following the 2004 Madrid bombings, has produced intelligence analysis to support EU policy-making, including on counter-terrorism. Since 2011 IntCen is part of the EEAS. In 2020, for the first time, it provided EU ministers with an integrated threat analysis to support the EU's Global Strategy.

The latest entity to be created is the Intelligence College in Europe (not, tellingly, the Intelligence College *of* Europe). Launched in 2019 at French behest as part of the intergovernmental European Intervention Initiative, the College is “a platform for reflection, engagement and outreach” between the participating countries, academics, and European decision-makers.⁽³²⁾ Contrary to some media reports it is not a “spy academy.” The (virtual) platform brings together services from 23 European states, including Norway. Its impact is, as yet, unclear.

Bilateral cooperation between national intelligence and security services usually works well, differences notwithstanding: British services have always – and openly – prioritised collaboration with their Five Eyes partners over information exchange with most European agencies.⁽³³⁾ Services also operate something of an informal pecking order. The Maximator alliance, formed in the 1980s by Danish, Dutch, French, German, and Swedish services, refused to admit their Belgian counterparts because of Belgium's lack of SIGINT capabilities.⁽³⁴⁾ Inter-agency trust is sometimes in short supply. When Austria's interior agency was controlled by the far-right Freedom Party, Germany reviewed intelligence sharing ties over fears that sensitive data might be affected.⁽³⁵⁾ Recently Slovenia accused Croatia's secret service of “outrageous” interference with Slovenia's media reporting about the long-running bilateral border conflict.⁽³⁶⁾

Perhaps conscious of such inter-agency frictions, European politicians have repeatedly proposed the creation of a European intelligence service with operational powers, a “European CIA.”⁽³⁷⁾ However, such a major step would require changing the EU Treaty's Article 4, something no European

(32) <https://www.intelligence-college-europe.org>.

(33) Five Eyes: USA, UK, Canada, Australia, New Zealand.

(34) B. JACOBS, “Maximator: European signals intelligence cooperation, from a Dutch perspective”, *Intelligence and National Security*, 2020, Vol. 35, No. 5, pp. 659-668.

(35) N. NIELSEN, “Germany casts doubt on Austrian intelligence sharing”, *EU Observer*, 22 March 2018.

(36) J. BARIGAZZI and A. GRAY, “Lovenian PM accuses Croatia of ‘outrageous’ interference”, *Politico.EU*, 4 October 2019.

(37) Austrian Interior Minister Ernst Strasser (2004), Belgian Interior Minister Patrick Dewael (2005), EU Commissioner Viviane Reding (2013), Italian Prime Minister Matteo Renzi (2015), Belgian Prime Minister Charles Michel (2015), and Romanian President Klaus Ioannis (2016), to name but some examples.

government has proposed, so these proposals can be – and have been – dismissed as intended for domestic consumption. European services, unsurprisingly, oppose any moves in this direction. Still, the idea keeps rearing its head. The latest variation on the theme dates from 2017 when the European Commission announced it was working towards a future European Intelligence Unit, as announced by President Juncker as part of his vision for the European Union by 2025.⁽³⁸⁾ The work, it seems, is still ongoing.

II. PROTECT

Although Member States are primarily responsible for protecting national infrastructure, the interdependency of border security, transport and other cross-border infrastructures require EU collective action. The Strategy therefore announced a range of initiatives to protect citizens and infrastructure and to reduce Europe's vulnerability to attack, mainly through improved security of borders, transport and critical infrastructure.

This policy area lends itself well to EU legislative initiatives and has consequently seen much action, including the establishment of the second generation Schengen Information System (SIS), the Visa Information System (VIS), the Prüm database, and the Passenger Name Record system (PNR). The European Borders Agency Frontex has been strengthened significantly, albeit not primarily in response to terrorism but in answer to the 2015 migrant crisis. The European Commission has also leveraged the EU budget to promote security-related research. Since the policy's inception in 2007, the EU has contributed more than €2bn in funding to some 400 projects ranging from airport scanners to advanced forensics. Today the European Union accounts for around half of all public funding for security-related research in Europe.⁽³⁹⁾

To illustrate the EU's role two areas will be examined in a some more detail: infrastructure protection, and protection against attacks with chemical, biological, radiological, or nuclear instruments (CBRN).

⁽³⁸⁾ European Commission, *Eleventh progress report towards an effective and genuine Security Union*, COM(2017) 608 final, 18 October 2017, p. 2.

⁽³⁹⁾ European Commission, *Seventeenth Progress report towards an effective and genuine Security Union*, COM(2018) 845 final, 11 December 2018, p. 15.

A. Infrastructure

In 2004 the Madrid European Council invited the Commission to prepare a strategy to protect vital European infrastructure. Maritime and port security was covered in a 2005 Directive. In 2006 the Commission proposed a European Programme for Critical Infrastructure Protection (EPCIP) and a European Critical Infrastructure Warning Information Network (CIWIN). This was followed two years later by a Regulation on civil aviation security and by an ambitious Directive to designate European Critical Infrastructures, specifically in energy and transport.

The results of this CIP Directive were mixed. On the positive side, an evaluation found that it had brought increased awareness and political momentum. In some Member States, including Spain, the EU initiative had spurred the creation of wide-ranging national CIP networks. Also, 93 European infrastructures had been designated. However, the vast majority of these infrastructures were designated by two Member States only, and primarily in the energy sector. Most Member States, including large ones with significant energy and transportation hubs, proved reluctant and appeared to prefer bilateral cooperation. Only a few transport infrastructures had been identified. There were no indications, the evaluation concluded, that the Directive had actually improved security in energy and transport.⁽⁴⁰⁾

Fortunately, since 2008 other initiatives to protect critical infrastructure have been taken and to some extent the 2008 Directive has been superseded by events. In 2013 the Commission launched a pilot focusing on infrastructure protection in energy and gas transmission as well as transport (Eurocontrol and the Galileo navigation system). In 2014 a Maritime Security Strategy saw the light. The 2016 Network and Information Systems (NIS) Security Directive covers banking, financial market infrastructures, health, drinking water supply and distribution, and digital infrastructure. In 2017 and 2018 Regulations followed to improve risk-preparedness in the electricity sector and to safeguard the security of gas supplies. Yet other measures target cybersecurity.⁽⁴¹⁾

(40) EY and Rand Europe, *Evaluation Study of Council Directive 2008/114 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection*, 2 April 2019.

(41) See also J. ARGOMANIZ, "The European Union Policies on the Protection of Infrastructure from Terrorist Attacks: A Critical Assessment", *Intelligence and National Security*, 2015, Vol. 30, No. 2-2, pp. 259-280.

Fifteen years after the EU Counter-terrorism Strategy most of the building blocks of a comprehensive European legal framework for Critical Infrastructure protection are in place – in itself a remarkable achievement. Still, some notable gaps persist. The EU, for example, still does not have a common approach to passenger railway security – a hiatus that is the more remarkable in light of the 2015 foiled Thalys attack, the 2016 Brussels metro bombing, the 2016 axe attack on German train passengers, the 2017 London tube bombing, the failed 2018 German train attack and similar incidents.⁽⁴²⁾

There is as yet little insight into the extent that EU legislation has improved security on the ground, including in terms of aviation preparedness. In a chilling episode, in 2015 it took a hacker only five minutes to penetrate European aircraft control systems.⁽⁴³⁾ Whether cross-sectoral vulnerabilities and interdependence are sufficiently addressed is also not clear. All in all, while progress has been made the EU's incremental, "*bric-à-brac*" approach to protecting critical infrastructure has resulted in increasing complexity and fragmentation. Policy consolidation appears overdue.

B. CBRN

Most terrorist acts involve explosives and other conventional means, but terrorist organisations have long been interested in using chemical, biological, radiological and nuclear materials (CBRN). Acquiring unconventional weapons, Osama Bin Laden declared in 1998, was "a religious duty". In 2004 Jordan foiled a chemical attack on its capital Amman directed by Abu Musab al-Zarqawi. Islamic State is believed to have used mustard gas in several attacks in Iraq and Syria.⁽⁴⁴⁾ Europe is not immune to the risk of CBRN-related terrorism: in 2002 French intelligence foiled a chemical attack.⁽⁴⁵⁾ Sarin, ricin, and anthrax have been used in terrorist attacks across the world.

(42) In 2017 the Commission, along with Member States, launched a railway risk assessment and in 2018 a Rail Passenger Security Platform was set up. A legislative framework has yet to be agreed.

(43) S. J. Fox, "Flying challenges for the future: Aviation preparedness – in the face of cyber-terrorism", *Journal of Transport Security*, 2016, Vol. 9, p. 198.

(44) C. QUILLEN, "The Islamic State's Evolving Chemical Arsenal", *Studies in Conflict and Terrorism*, 2016, Vol. 39, No. 11, pp. 1019-1030.

(45) "Judge warns of Iraq 'black hole'", *BBC News*, 20 October 2005.

Were a CBRN attack to succeed in Europe, even at a small scale, it would most likely result in significant and widespread disruption, panic and uncertainty. The EU has therefore been keen to add its weight to prevent CBRN-related terrorism. Building on its 2003 strategy against the proliferation of weapons of mass destruction and UN Security Council Resolution 1540 (2004), the EU included CBRN in the Protect strand of its Counter-Terrorism Strategy. An action plan on strengthening CBRN security was agreed in 2009. This was followed by a Communication on the detection of CBRN-E risks (2014) and an Action Plan to enhance preparedness (2017). Significant funding was made available from the Internal Security Fund and the EU research budget.⁽⁴⁶⁾ The EU also regularly funded and coordinated CBRN-related field and table-top exercises to strengthen cooperation among Member States under the EU Civil Protection Mechanism.

It has not been an easy task. Expertise in preventing and countering CBRN attacks is unevenly distributed in Europe and perceptions of the threat vary considerable across the EU. Cross-border cooperation remains limited and sometimes insufficient. In case of a nuclear accident, for example, the Dutch Safety Board has warned that cooperation between Belgium, Germany and The Netherlands is likely to fall short.⁽⁴⁷⁾

National governments have been particularly reluctant to share resources. In 2005 an international exercise, Atlantic Storm, showed that Europe was ill-prepared to cope with a terrorist smallpox attack. Only some countries had sufficient supplies to vaccinate their entire population. Others would only be able to protect less than half of the population (Austria 40%, Ireland and Spain 15%, Belgium, Hungary, Italy and Sweden 10%, Poland 5%, Croatia and Slovakia 1%). Another exercise by the US State Department and others (Black Ice) concluded that international coordination in case of bioterrorism would range from inefficient to chaotic and ineffective. EU Member States, prodded by the Commission and the Counter-Terrorism Coordinator, proved unresponsive. Most would not support either the establishment of a Community-level stockpile of vaccines or formal arrangements for sharing national stockpiles. It was argued that the protection of its population fell first of all under the responsibility of each Member State. Therefore, national resources such as vaccines, antibiotics and antivirals would firstly cover national needs and could not be committed in advance.

(46) Under the Horizon 2020 programme (2014-2020) €1.65bn was allocated to CBRN and other security-related research.

(47) Dutch Safety Board, *Cooperation on nuclear safety*, Den Haag, Onderzoeksraad voor Veiligheid, 2018.

Little appears to have changed. A study commissioned by the European Parliament finds that EU Member States still do not generally maintain sufficient stockpiles of medical countermeasures in case of bioterrorism and that preparedness remains inadequate. Many European countries rely on being able to obtain medical countermeasures from the United States, which in a crisis may prove a problem. The only viable solution, the study concludes, is for Europe to establish central or regional stockpiles.⁽⁴⁸⁾ The European Commission, keen to strengthen the EU's role in managing cross-border health crises, has proposed to create a European Health Emergency Preparedness and Response Authority (HERA), modelled after the US BARDA (Biomedical Advanced Research and Development Authority).⁽⁴⁹⁾ Buried in an impact assessment is the tentative suggestion that one of HERA's tasks could be to manage a European stockpile ("virtual or physical") to respond to chemical, biological, radiological and nuclear threats.⁽⁵⁰⁾ It is a good idea. But will it fly?

III. RESPOND

This brings us to the Strategy's Respond strand. EU competence in civil protection is confined to supporting, coordinating or supplementing Member States' action. Legal harmonization is excluded (Article 196 TFEU). At the same time, the Solidarity Clause in Article 222 TFEU requires the EU and the Member States to act jointly, in a spirit of solidarity, if a Member state is a victim of a terrorist attack or a disaster.

Civil protection is the core of this strand of the Strategy. Member States pledged to prepare, in the spirit of solidarity, to manage and minimize the consequences of a terrorist attack, by improving capabilities to deal with the aftermath, the coordination of the response, and the need of victims. Translating these commitments into action and getting Member States to implement joint efforts, however, proved an uphill struggle. Disasters invariably generate much public interest and publicity and national politicians and bureaucracies have been keen to preserve their powers in this area. The Commission soon found this out when its 2005 proposal to

(48) S. N. CHATFIELD, *Member States' Preparedness for CBRN Threats*, Brussels, European Parliament, 2018, pp. 30 and 31.

(49) European Commission, *Communication on Building a European Health Union*, COM(2020) 724 final, 11 November 2020, and *Communication on a Pharmaceutical Strategy for Europe*, COM(2020) 761 final, 25 November 2020.

(50) European Commission, *Inception Impact Statement*, Ares(2021) 674649, p. 4.

IV. PREVENT

The first priority in the fight against terrorism is, of course, to prevent attacks, and programmes to prevent radicalisation have multiplied in countries across the world. International organisations such as the United Nations are heavily involved. No fewer than 18 UN entities currently implement over 400 projects to prevent and counter violent extremism in more than 90 countries.⁽⁵³⁾

Prevention also figures prominently in EU policy. The purpose of the Strategy's Prevent strand is to prevent people turning to terrorism "by tackling the factors or root causes which can lead to radicalisation and recruitment, in Europe and internationally." Operationally, the aims are to identify and counter the methods, propaganda and conditions through which people are drawn into terrorism.

In practice, the first two objectives, countering methods and propaganda, have received most attention. The third objective, tackling the conditions that fuel terrorism, has proven the hardest nut to crack. Let us look at the three objectives in turn.

Countering the *methods used* by terrorists has taken various forms such as preventing terrorist financing and improving policing. This part of the Prevent agenda largely overlaps with the Pursue strand, as discussed above.

The second objective of combating *propaganda-induced radicalisation* has been a more difficult challenge. At the time they adopted the Strategy, European governments were concerned that they were being out-communicated by Al Qaeda. As US minister Robert Gates famously asked: "How has one man in a cave managed to out-communicate the world's greatest communication society?"⁽⁵⁴⁾

Communication-based activities soon became a staple of counter-terrorism in and beyond Europe. The Strategy recommended "ensuring" that voices of mainstream opinion prevail over those of extremism by engaging with civil society and faith groups that reject the ideas put forward by terrorists and extremists that incite violence. Thus far there is little evidence to suggest that this approach has worked. Governments often favour a

(53) Human Rights Council, *Human rights impact of policies and practices aimed at preventing and countering violent extremism*, A/HRC/43/46, 2020, p. 16.

(54) Robert Gates, Landon Lecture, Kansas State University, 26 November 2007.

strategic communication approach without supporting evidence, BBC Media Action has warned.⁽⁵⁵⁾ In 2018 UNDP brought together 170 experts and practitioners from national governments. They found that the theory that violent extremist narratives can be replaced with, or dismantled by, an alternative set of communications remains an unproven assumption.⁽⁵⁶⁾ A recent wide-ranging review concurs, noting a paucity of empirical data on effectiveness and the limitations and ambiguities of many communication-based activities.⁽⁵⁷⁾ A review of counter-terrorism communications in the UK and Denmark concludes that there is little data about effectiveness in either country.⁽⁵⁸⁾ Since 2005 the EU has largely left the task of counter-messaging to the Member States. Instead, it has focused on disrupting terrorist content on the web. The Commission took the lead in countering illegal content online. Among other measures it launched the EU Internet Forum, issued a Code of Conduct to counter hate speech online, and proposed a regulation to prevent dissemination of terrorist content. Simultaneously, Europol successfully coordinated European police initiatives to take down illegal content. By actively complementing Member State policy the EU has demonstrated particular added value in this area.

This brings us to the third EU objective, preventing terrorism by *tackling radicalisation and its causes*. This proved a more formidable challenge. The area is something of a conceptual and political mine-field. To begin with: what exactly is radicalisation, and what are its root causes? Decades of discussion by practitioners and academics have produced many hypotheses but little agreement about what constitutes “radicalisation”, or about how, where and when radicalisation leads to violence and acts of terrorism. For instance: where does freedom of expression end and radicalisation into (violent) extremism begin? Key concepts such as radicalisation, extremism, and violent extremism have proven intellectually challenging and politically contentious to define. They have remained essentially contested

(55) BBC Media Action (2017), Written evidence submitted to the British Council All Parliamentary Group, Building Resilience to Radicalisation in the Middle East and North Africa Inquiry, June 2017.

(56) UNDP, Assessing Progress Made, and the Future of Development Approaches to Preventing Violent Extremism, Report of the UNDP Second Global Meeting on Preventing Violent Extremism, ‘Oslo II’, Fornebu, Norway, 23-24 May 2018, p. 18.

(57) M. JONES, *Through the Looking Glass. Assessing the Evidence Base for P/CVE Communications*, London, Royal United Services Institute Occasional Paper, July 2020.

(58) D. PARKER, J.M. PEARCE, L. LINDEKILDE and M. B. ROGERS, “Challenges for Effective Counterterrorism Communication: Practitioner Insights and Policy Implications for Preventing Radicalization, Disrupting Attack Planning, and Mitigating terrorist attacks”, *Studies in Conflict and Terrorism*, 2019, Vol. 42, No. 3, p. 283.

concepts and sources of confusion.⁽⁵⁹⁾ Dozens of radicalisation drivers have been identified, but the chain of causality – even the very notion of causality – remains controversial and unclear.

These are not mere academic quibbles. Words matter. Governments around the world have stretched notions like radicalisation, extremism and terrorism to suppress journalists, academics and artists, shut down civic space and stifle political opponents. Under the guise of counter-terrorism numerous countries have unleashed a wave of oppression and trampled basic rights. If terrorism can destroy lives, so can the mere accusation of terrorism.

Even in the European Union, it has been argued, counter-radicalisation policies may have had unintended consequences. In the UK, for many years a driving force behind EU CT policy, the British Prevent programme has come in for serious criticism. Many consider the programme to be counterproductive and damaging to trust between Muslim communities and the state. Others found that the policy prevented open discussion in schools and universities. Nor did Prevent stop the spread of jihadist ideology in Britain. As one of the most respected former British intelligence officials said: “We are told that 600 dangerous extremists who are British citizens have fought in Syria. If Prevent had been working for the past 10 years we might not have seen so many going. [...] It seems to me that Prevent is clearly not working. We do not really know what works.”⁽⁶⁰⁾

Faced with the lack of consensus among prevention analysts and practitioners, the EU has opted for open-ended formulations. The latest Commission document on radicalisation, for example, does not provide a definition of radicalisation. As to drivers, it notes that these “may include” a strong sense of personal or cultural alienation, perceived injustice or humiliation reinforced by social marginalisation, xenophobia and discrimination, limited education or employment possibilities, criminality, political factors as well as an ideological and religious dimension, unstructured family ties, personal trauma and other psychological problems. The Commission is right: radicalisation may indeed include any or all of these factors. The trouble is that policy-makers and practitioners are left none the wiser.

(59) M. VERGANI, M. IQBAL, E. ILBAHAR and G. BARTON, “The Three Ps of Radicalization: Push, Pull and Personal. A Systematic Scoping Review about Radicalization into Violent Extremism”, *Studies in Conflict and Terrorism*, 2020, Vol. 43, No. 10, p. 855.

(60) M. HOLEHOUSE, “Tony Blair’s anti-jihadist programme has failed, says ex-MI5 chief”, *The Guardian*, 14 January 2015.

The Commission's reticence reflects political reality. At the time the EU Strategy was adopted Member States did not agree about what constitutes radicalisation, or what causes it. One likely contributing factor was Muslim anger about a perceived double standard in Western foreign policy, as documented in an official British report in 2005.⁽⁶¹⁾ However, within the Council discussion of Western foreign policy was off-limits. The British Presidency was adamant that the Strategy should focus on the terrorists and what Prime Minister Blair called their "evil ideology", and not on European or US policy. These and other differences of view persist to this day.

Faced with this lack of political agreement, how do European security officials cope on the ground? Some, apparently, make do. Dutch local security professionals were found to attach risk ratings primarily based on "gut feelings" or intuition. In the absence of a clear framework for addressing the risks of terrorism they tend to target radical ideas and ideologies. Researchers note that such assessments may involve arbitrariness and unintentional prejudice.⁽⁶²⁾ Further research may show to what extent similar patterns exist elsewhere in Europe.

In sum, looking back on 15 years of radicalisation prevention policy, what did the EU achieve? Some results are certainly worth noting. Legislation was adopted to counter terrorist web-based propaganda and Europol has come to play a leading and successful role in European efforts to take down extremist content on the web. EU financing enabled the creation of the Radicalisation Awareness Network, the most prominent network of CT practitioners and researchers in the world. The Horizon 2020 Programme has enabled collaborative European research into possible causes of and responses to radicalisation.

Directly and indirectly, EU policy has also influenced some Member States' policies. EU policy was reflected in Finland's national strategy for preventing violent extremism (2012). France published its first National Action plan to fight radicalization and terrorism in 2014.⁽⁶³⁾ Spain followed in 2015. Its National Strategic Plan to Fight Against Violent Radicalization

(61) S. HEWITT, "Is there a link between foreign policy and terrorism? British intelligence thinks so", *The Conversation*, 2 June 2017.

(62) A. VAN DE WEERT and Q. A. M. EIJKMAN, "Early detection of extremism? The local security professional on assessment of potential threats posed by youth", *Crime, Law and Social Change*, published online 10 December 2019.

(63) A. SCHWARZENBACH, "Fighting the 'Threat from Within': France and Its Counter-Radicalization Strategy", in L. VIDINO, *De-Radicalization in the Mediterranean: Comparing Challenges and Approaches*, Milano, ISPRI, 2018, p. 16.

(PEN-LCRV) follows, in particular, the 2005 European Union Counter-Terrorism Strategy and the 2008 European Strategy for Combating Radicalisation and Recruitment to Terrorism.⁽⁶⁴⁾ Italy on the other hand proved an outlier; it did not develop any counter-radicalization or de-radicalization strategies.⁽⁶⁵⁾

The key question, however, is whether the European prevention programmes work. Remarkably, we still cannot tell. Effect evaluations remain scarce.⁽⁶⁶⁾ Academic research has remained inconclusive. Amy Gielen's assessment reflects the consensus: "To put it bluntly, as scholars we hitherto cannot answer the question of "what works" in countering violent extremism."⁽⁶⁷⁾ Official policy assessments also strike a sceptical note. In France, the French Court of Audit concludes, the prevention of radicalisation has proven costly and programmes have only involved very few individuals. Policy effectiveness has not been demonstrated and evaluations remain to be done.⁽⁶⁸⁾ Italy's reluctance to develop deradicalisation programmes, researchers found, was caused by the lack of results of such programmes in other countries, as well as cautious views from security experts.⁽⁶⁹⁾

After 15 years of "Prevent" evidence of success remains scant. If the concept of radicalisation remains nebulous, the causes and drivers of radicalisation contested, the effectiveness of prevention programmes unproven, and the negative impact on human rights considerable, is it perhaps not time for the EU to reconsider its policies and programmes in this area?

(64) F. REINARES and C. GARCIA-CALCO, "Spain's Shifting Approach to Jihadism Post-3/11", in L. VIDINO, *De-Radicalization in the Mediterranean: Comparing Challenges and Approaches*, op. cit., p. 49.

(65) L. VIDINO, "Italy's Lack of CVE Strategy and Initiatives", in L. VIDINO, *De-Radicalization in the Mediterranean: Comparing Challenges and Approaches*, op. cit., p. 28.

(66) A literature review found that between 1990 and 2014 only 12% of evaluations of programmes to prevent radicalisation presented empirical data about effectiveness. A. R. FEDDES and M. GALLUCCI, "A Literature Review on Methodology used in Evaluating Effects of Preventive and De-radicalisation Interventions", *Journal for Deradicalisation*, 2015, No. 5.

(67) A.-J. GIELEN, "Countering Violent Extremism: A Realist Review for Assessing What Works, for Whom, in What Circumstances, and How?", *Terrorism and Political Violence*, 2019, Vol. 31, No. 6, p. 1149.

(68) Cour des Comptes, *Les moyens de la lutte contre le terrorisme. Exercices 2015-2029. Communication à la commission des finances, de l'économie générale et du contrôle budgétaire de l'Assemblée nationale*, 2020, p. 9.

(69) A. BECCARO and S. BONINO, "Terrorism and Counterterrorism: Italian Exceptionalism and Its Limits", *Studies in Conflict and Terrorism*, published online 9 December 2019, p. 11.

V. THE EU AS AN INTERNATIONAL ACTOR

From 9 November 2001 onward, the EU has worked to promote a multilateral approach to counter-terrorism, and external action was included as a horizontal dimension in the EU Strategy. One of the EU's priorities has been to contribute to the work of the United Nations.⁽⁷⁰⁾ The EU has acceded to all 19 UN conventions on terrorism.⁽⁷¹⁾ It also initiated counter-terrorism dialogues with partner countries around the globe. In 2019 11 such CT dialogues took place (with Algeria, Canada, Egypt, Indonesia, Israel, Jordan, Lebanon, Pakistan, Qatar, Turkey and the United Arab Emirates).

CT cooperation has also gained more prominence in bilateral relations. From 2001 onward EU cooperation with the US has been intense and wide-ranging, at operational as well as political level. Since its creation in 2017 the EEAS has gradually built up CT expertise. Its CT unit expanded from three officials in 2012 to 12 in 2018.⁽⁷²⁾ Counter-Terrorism Experts have been deployed to 15 EU Delegations.⁽⁷³⁾

Initially some of the EU's international partners proved reluctant to engage, preferring operational cooperation with EU Member States (and their intelligence services) to the more political dialogue of the EU. In response, the Commission and the Counter-Terrorism Coordinator promoted closer cooperation between EU agencies (Europol, Eurojust, CEPOL) and priority countries such as Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia, Turkey, and New Zealand.⁽⁷⁴⁾ Third countries were offered financial assistance from the Instrument contributing to Stability and Peace to protect critical maritime, aviation, and cyber infrastructures. In 2016, following the terrorist attacks on the Bardo Museum and a tourist resort, the EU co-lead international CT assistance to Tunisia. Operational cooperation is also central to several civilian CSDP missions. The EU Capacity Building Mission in Mali (EUCAP Sahel Mali) and the EU Advisory Mission in Iraq (EUAM Iraq) support the building of local CT/P-CVE capabilities. Action Plans on counter-terrorism have been agreed with the MENA countries (2016) and with six Western Balkan partners (2018).

(70) G. DE VRIES, "UN-EU cooperation on terrorism", in J. WOUTERS, F. HOFFMEISTER and T. RUYLS (eds), *The United Nations and the European Union: An Ever Stronger Partnership*, The Hague, Asser Press, 2006, pp. 305-322.

(71) European Parliament, *Peace and Security in 2020*, Brussels, European Parliamentary Research Service, 2020, p. 67.

(72) E. SELLIER, "The European External Action Service, Counterterrorism and the Imperative of Coherence", *The International Spectator*, 2018, Vol. 53, No. 4, p. 136.

(73) EU Annual Report on Human Rights and Democracy in the World 2019, p. 132.

(74) European Commission, *Twentieth Progress report towards an effective and genuine Security Union*, COM(2019) 552 final, 30 October 2019.

The EU Counter-Terrorism Coordinator has played a prominent role in developing the EU's international counter-terrorism policy. Writing about the early years of the mandate, Keohane notes⁽⁷⁵⁾ that the CTC advocated strongly for the EU to encourage third countries to sign up to various United Nations conventions, and that he also pushed for the six members of the Gulf Cooperation Council to counter terrorist funding.⁽⁷⁶⁾ Sellier observes that from 2011 the EEAS “has benefited enormously” from the CTC's longstanding experience with third countries.⁽⁷⁷⁾ EU foreign ministers, however, took their time to recognize the importance of the role. It was not until 2015 that the CTC was invited to attend the Foreign Affairs Council (“I was surprised to know for the first time”, remarked EU High Representative – and former Italian Foreign Minister – Federica Mogherini).⁽⁷⁸⁾ By 2015, Monar concludes, the CTC had “clearly become the most visible ‘face’ of the EU's international role in counter-terrorism”.⁽⁷⁹⁾

In recent years the Commission has boosted the EU's financial contribution to counter-terrorism around the globe. The EU aid budget for counter-terrorism and countering violent extremism (P/CVE) has tripled, rising from €138 million in 2015 to €465 million in 2019.⁽⁸⁰⁾ While indicative of a growing EU role, these figures must be seen in perspective. It is unclear, how EU funding compares to the budgets Member States devote to CT-related aid; whereas the EU is transparent about its expenditure, most Member States are not (even excluding military aid and covert spending). The total EU contribution (Commission plus Member States) to global counter-terrorism assistance thus remains unknown. By comparison, US counter-terrorism foreign aid – not including covert and military assistance – has been estimated conservatively at US\$12 billion in fiscal years 2002 to 2017.⁽⁸¹⁾

(75) D. KEOHANE, “The Absent Friend: EU Foreign Policy and Counter-Terrorism”, *Journal of Common Market Studies*, 2008, Vol. 46, No. 1, p. 124.

(76) By 2013 all six had joined the International Convention on the Suppression of Financing of Terrorism.

(77) E. SELLIER, “The European External Action Service, Counterterrorism and the Imperative of Coherence”, *op. cit.*

(78) Remarks by High Representative/Vice President Federica Mogherini at the press conference after the Foreign Affairs Council, 19 January 2015.

(79) J. MONAR, “The EU as an International Counter-terrorism Actor: Progress and Constraints”, *Intelligence and National Security*, 2015, Vol. 30, Nos. 2-3, p. 344.

(80) As estimated by the CT-Morse project on the basis of data provided by the Commission. See <https://ct-morse.eu/projects/#eu>, last accessed 25 October 2020.

(81) Stimson, *Counterterrorism Spending*, Washington (D.C.), The Stimson Center, 2018, p. 25.

Since the inception of the EU Counter-Terrorism Strategy in 2005 cooperation with the USA has figured prominently on the EU's agenda. EU and US policy-makers set up regular dialogues which ranged from terrorist financing to 'homeland security'. Seven EU-US agreements were concluded in areas ranging from container security to judicial cooperation. From the outset US agencies also saw Europol's potential and invested in cooperation; earlier, in fact, than some national police forces in Europe. Washington effectively agreed to EU demands that suspects extradited from the EU to the US will not face the death penalty, which EU law bans. US officials also relented on initial demands that the treaty guarantee the extradition of any EU national.⁽⁸²⁾ After many years of hesitation the EU, for its part, agreed in 2013 to list Hizbollah's military wing as a terrorist organization. In the field of counter-terrorism the US is by far the EU's most important bilateral partner.

However, it has not all been plain sailing. Three major disagreements caused considerable friction.

First, there were – and remain – major differences in approach. The US paradigm of the 'war on terror' sat uneasily with the European preference for a civilian framework based on criminal law. The Bush I Administration declared itself at war with Al Qaeda; a war without geographic or temporal limits. The infamous torture memo's (2002) sought to legitimize 'enhanced interrogation techniques' in defiance of international law. The US rejected the Geneva dichotomy between combatants and civilians and introduced a third category of unlawful combatants, many of whom it imprisoned without charge in Guantanamo Bay. Although 'Guantanamo' caused EU governments considerable unease they struggled to find the necessary unanimity to condemn it.⁽⁸³⁾ In the end, faced with consistent British back-stage resistance, EU protests fizzled. In 2009 the European Union issued a statement on the closure of Guantanamo. It was co-signed by the USA.⁽⁸⁴⁾

The differences were not only doctrinal. The US 'war on terror' also affected EU counter-terrorism efforts on the ground. EU counter-terrorism policy aimed to isolate the violent Islamic extremists from the large majority of non-violent Muslims; the 2005 Strategy stressed the common

(82) K. ARCHICK, *EU-EU Cooperation Against Terrorism*, Washington (D.C.), Congressional Research Service, 2016.

(83) M. BEUNDERMAN, "EU buries Guantanamo text", *EU Observer*, 24 March 2009.

(84) Press Release, 2950th Council meeting General Affairs and External Relations General Affairs, 15 June 2009.

interests and bonds between Muslims and non-Muslims, based on their joint allegiance to fundamental human rights. US policy on Guantanamo, the prison abuse in Abu Ghraib, and the rumours – later confirmed – of illegal renditions by the CIA directly contravened EU policy and undermined its credibility. President Bush's ill-considered branding of the American war on terror as a "crusade" did not help matters. Ultimately, however, it was the 2003 US invasion of Iraq that pitted France and Germany against the UK and fundamentally impaired the credibility of the European approach. Muslims world-wide saw the EU as beholden to the US, incapable or unwilling to chart a different course. As Eliza Manningham-Buller, the head of MI5 at the time, acknowledged: "Our involvement in Iraq radicalised a few among a generation of young people who saw [it] as an attack upon Islam."⁽⁸⁵⁾ In fact the Iraq war radicalised rather more than a few, including within the EU itself. It drove a cart-and-horses through the European Union's efforts to build bridges with mainstream Muslims.

Thirdly, US policy affected European CT capacity-building outside the EU. For many years France, the UK, and other European countries had provided CT-assistance to non-EU countries at risk of terrorism. Although some of this aid went to the military, most of it was directed at strengthening police forces, border control, intelligence agencies, and other civilian forces. The EU, legally barred from providing military aid, also targeted its CT assistance at civilian agencies, such as CT training centres in Algeria and Indonesia. After 9/11 the USA launched a major effort to strengthen counter-terrorism defences around the world. In contrast to the European approach, most US CT assistance, financed by the Pentagon, served to bolster military CT capabilities abroad. US military aid proved popular with recipient elites. It soon dwarfed the EU's efforts to export Europe's civilian CT paradigm.

Although European law enforcement and intelligence agencies continue to work closely with their American counterparts, some sensitive transatlantic differences persist to this day. One such area of contention is the use of targeted killings in counter-terrorism. Israel frequently practices such executions,⁽⁸⁶⁾ and under President Obama the US has stepped up its drone attacks to terminate what it saw as enemy combatants. Although

(85) R. NORTON-TAYLOR, "Iraq inquiry: Eliza Manningham-Buller's devastating testimony", *The Guardian*, 20 July 2010.

(86) R. BERGMAN, *Rise and Kill First*, New York, Random House, 2019.

the empirical evidence for the efficacy of targeted killings remains thin⁽⁸⁷⁾ and its legality questionable,⁽⁸⁸⁾ the practice is likely to continue. The European Parliament has condemned US drone strikes. It has called on EU Member States oppose and ban the practice of “extrajudicial targeted killings” and to ensure that Member States, “in conformity with their legal obligations, do not perpetrate unlawful killings or facilitate such killings by other states.”⁽⁸⁹⁾ In 2016 the EP called on the Council to adopt a common position (now called Council Decision) on the use of armed drones.⁽⁹⁰⁾ The Council did not react. However, the issue is not going away, if only because EU Member States *de facto* facilitate US policy. In 2019 a German court ruled that Germany is constitutionally obliged to ascertain that US drone strikes conducted via the US air base in Ramstein are compatible with international law. The court found strong reasons to think that US practice contravened the duty to distinguish between civilians and combatants as recognized in international law.⁽⁹¹⁾

In the fight against terrorism legality is the bedrock of legitimacy. The European approach to counter-terrorism continues to differ from the American one, although the Council prefers not to say so publicly. Unless these differences are addressed the potential for transatlantic friction remains significant.

VI. HUMAN RIGHTS AND ACCOUNTABILITY

This brings us to two critical and highly sensitive questions. First, the balance between human rights and counter-terrorism. Did the EU preserve it, or have corners been cut? Second, what about accountability? How effective is Europe’s oversight of its intelligence services and law enforcement agencies?

(87) J. GRUENEWALD, “Do Targeted Killings Increase or Decrease Terrorism?”, *Criminology & Public Policy*, 2017, Vol. 16, No. 1, pp. 187-190.

(88) A. BIRDSALL, “Drone Warfare in Counterterrorism and Normative Change: US Policy and the Politics of International Law”, *Global Society*, 2018, Vol. 32, No. 3, pp. 241-262; see also R. SANDERS, *Plausible Legality: Legal Culture and Political Imperative in the Global War on terror*, Oxford, OUP, 2018.

(89) European Parliament resolution of 27 February 2014 on the use of armed drones (2014/2567(RSP)), *OJ C* 285, 29 August 2017, pp. 110 and 111.

(90) European Parliament resolution of 28 April 2016 on attacks on hospitals and schools as violations of international humanitarian law (2016/2662(RSP)), *OJ C* 66, 21 February 2018, pp. 17-22.

(91) J. BERING, “German Court Reigns in Support for U.S. Drone Strikes”, *Just Security*, 22 March 2019.

Governments must defend and protect their citizens. Security is a condition for liberty; without effective protection of the right to life other human rights cannot be safely enjoyed. At the same time governments must be careful not to sacrifice basic freedoms on the altar of security. Liberty and security are mutually dependent: diminish one and you diminish the other. Counter-terrorism, then, must preserve the precarious balance between liberty and security.

In general, the governments and courts in Europe have managed to do so. EU governments have, for the most part, treated terrorism as a particularly serious form of crime which must be countered with criminal law, not the more permissive laws of war. Political opponents have not been locked up under the guise of counter-terrorism, as in Turkey and many other countries. Where politicians have been too ready to limit civil liberties such as people's right to privacy, national and European courts have drawn a line in the sand.

But all is not well. Lines have shifted, particularly since 9/11. As counter-terrorism legislation and practice expanded, human rights have suffered. Three rights have been particularly affected: the right not to be subject to torture and other forms of cruel, inhuman or degrading treatment or punishment, and the right to freedom of expression.

Torture, as UN Secretary-General Kofi Annan observed, is an instrument of terror that should never be used in the fight against terrorism.⁽⁹²⁾ The right to freedom from torture or cruel, inhuman and degrading treatment or punishment is non-derogable, that is, it may not be suspended even during a state of emergency (Article 7, International Covenant on Civil and Political Rights). Still, torture and cruel, inhuman and degrading treatment continue to be practiced during counter-insurgency and counter-terrorist operations around the world.⁽⁹³⁾ EU countries, which have pledged to respect the ban on torture, stand accused of condoning torture as an instrument of intelligence gathering by third parties abroad. Lithuania, Poland, and Romania were complicit in CIA rendition practices, the European Court of Human Rights has ruled. Since 9/11, an official inquiry found, UK officials in over 400 cases provided questions or intelligence to,

(92) UN Secretary-General Kofi Annan, Message for Human Rights Day, SG/SM/10257-HR/4877-OBV/533, 2005.

(93) M. Nowak, *An Expert's Confrontation with an Everyday Evil*, Philadelphia, University of Pennsylvania Press, 2018.

or obtained intelligence from liaison partners while knowing or suspecting that a detainee had been or was being mistreated.⁽⁹⁴⁾

Use of foreign intelligence obtained by unlawful methods is a clear breach of the positive obligation under international law to prevent and punish torture.⁽⁹⁵⁾ As long as EU Member States cooperate with intelligence services in countries notorious for abusive practices such as Egypt or Pakistan, the EU's official statements against torture arguably lack credibility.⁽⁹⁶⁾

The conundrum, in fact, is even deeper than this. British intelligence officials enjoy a legal right to commit illegal acts overseas, provided they have been authorised by the government (Secretary of State).⁽⁹⁷⁾ The Intelligence Act leaves open whether such acts include bribery of foreign governments, blackmail, torture, or lethal force. Interestingly, now that the UK has left the EU this permission of British officials to engage in illegal acts officially applies to the 27 remaining Member States.

MI6's domestic counterpart, MI5, has long allowed its own officers and informants to participate in criminal activity in the UK, although without a statutory basis. A proposal to legalise the practice, the Covert Human Intelligence Sources bill, has been tabled. The British government argues that the bill is compliant with its Human Rights Act. This act, passed by the Labour government in 1998, has long been unpopular in the Conservative Party and the government has commissioned a review "to consider whether the HRA strikes the correct balance between the roles of the Courts, the Government and Parliament." How many current EU Member States have enacted similar provisions that allow national agencies to commit crimes, including in the fight against terrorism, is unknown.

Counter-terrorism has not only weakened Europe's commitment to prevent and counter torture. Europe's signature traditions of privacy protection and freedom of expression has suffered as well.

(94) Intelligence and Security Committee of Parliament, *Detainee Mistreatment and Rendition, 2001-2010*, 28 June 2018. See also R. BLAKENEY and S. RAPHAEL, "Accountability, denial and future-proofing of British torture", *International Affairs*, 2020, Vol. 96, No. 3, pp. 691-709.

(95) Human Rights Watch, *No Questions Asked. Intelligence Cooperation with Countries that Torture*, New York, Human Rights Watch, 2010.

(96) Guidelines on EU Policy Towards Third Countries on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – 2019 Revision of the Guidelines, 12107/19, 16 September 2019.

(97) Section 7 of the 1994 Intelligence Act – a provision that has been called the statutory equivalent of James Bond's "licence to kill". See J. WADHAM, "The Intelligence Services Act 1994", *The Modern Law Review*, 1994, Vol. 57, No. 6, p. 922.

European governments have not put much stock in upholding *privacy rights* in the fight against terrorism. European judiciaries have pushed back. The European Court of Justice has been particularly decisive. In a series of landmark rulings it has invalidated the EU Data Retention Directive (2014), the Safe Harbour Agreement between the EU and the USA (2015), the Passenger Name Record Agreement with Canada (2017), and the Privacy Shield Agreement with the USA (2020) as incompatible with the right of European citizens to data protection and privacy. It also ruled that the Belgian, British, and French bulk data collection regimes (often referred to as mass surveillance) must be brought within EU law (2020). Cases pending before the Court concern the PRN Directive, the Directive on data protection in law enforcement, mass surveillance by Germany's Bundesnachrichtendienst, and the 2015 French Intelligence Act.

Although the ECJ has been careful in allowing the EU and national governments significant latitude to legislate, it has also insisted that human rights as enshrined in European law must be taken seriously. The European Commission now has to come up with new proposals on PNR and data exchange with Canada and the US. It must also consider whether to grant the UK an adequacy decision to enable data exchange with EU partners post-Brexit, taking account of the British practice to share data widely with its Five Eye intelligence partners. As there is no easy way to split the difference between the ECJ and EU governments the Commission has a difficult job on its hands.

Freedom of expression is the cornerstone of a free and democratic society – which is precisely why some terrorists select it as their target. European governments have been at pains to defend freedom of expression against terrorist aggression, whether in the case of the Danish cartoons (2008), Charlie Hebdo (2015), or right-wing hate speech and violence against minorities. They must persevere in this task. At the same time, however, counter-terrorism has proven to be a double-edged sword, unintentionally harming what it seeks to protect. The growing European restrictions on non-violent expression are a case in point.

Counter-terrorism legitimately counters incitement to violence. Non-violent expressions should be permissible, including those “that offend, shock or disturb the state or any sector of the population.” Such are “the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.”⁽⁹⁸⁾ But public policy in Europe

⁽⁹⁸⁾ European Court of Human Rights, *Handyside v. The United Kingdom*, 7 December 1976, Series A, No. 24, p. 23, para. 49.

has been moving in the opposite direction. Speech deemed extremist is being increasingly restricted, a practice applauded by the popular press particularly when it affects “Islamic extremism.” In France and Spain, glorification of terrorism has been made a criminal offence. Austria will create a criminal offence called “political Islam” in order to be able to take action against those who are not guilty of terrorism but who create the breeding ground for it.⁽⁹⁹⁾ In the UK, schools and hospitals are legally required to report signs of non-violent extremism to the authorities. The guidance in the Prevent legislation defines non-violent extremism as “vocal or active opposition to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs.” This arguably contravenes academic freedom. Oxford Vice-Chancellor Louise Richardson – herself an acknowledged academic expert on terrorism – remarked: “A university has to be a place where the right to express objectionable views is protected. [...] Now, if our university were to refer everyone, we would have to burn all our books by Plato and refer half our philosophy department who question these matters.”⁽¹⁰⁰⁾ Her protest was noted, and dismissed.

This slide towards criminalization of politically undesirable speech is a dangerous development, and it also affects the EU. Whether the EU Directive on Combating Terrorism (2017) respects the freedom to express non-violent opinions is a moot point.⁽¹⁰¹⁾ Crucially, what Europe permits itself in terms of limiting freedom of expression it cannot criticise in authoritarian countries elsewhere in the world. European politicians should have the courage of their convictions. Credibility in EU human rights policy begins at home.

Accountability

Credibility also requires oversight of the services entrusted with keeping Europe safe. *Quis custodiet ipsos custodes?* Here, too, there is reason to be concerned. Across Europe, external oversight mechanisms have performed poorly over the past decade, as Aldrich and Richterova have

(99) S. JONES, “What is behind Austria’s plan to outlaw ‘political islam?’”, *Financial Times*, 1st December 2020.

(100) Joint Committee on Human Rights, *Counter-Extremism*, Second Report of Session 2016-17, pp. 18 and 26.

(101) K. BABICKÁ, “EU Counter-terrorism Directive 2017/541: impact on human rights and way forward at EU level”, *Opinio Iuris* (ICJ), 20 November 2020.

demonstrated.⁽¹⁰²⁾ Parliamentary oversight has mostly been weak, including in countries with major intelligence capabilities such as France, Germany, and the UK. Parliamentary oversight committees usually lack adequate resources of time and expertise.⁽¹⁰³⁾ Many such committees also operate under tight control by the governing party. Oversight by specialist bodies, while occasionally useful, mostly lacks political teeth. Thirdly, the focus of most national oversight bodies remains surprisingly narrow: notwithstanding the intensification of cross-border intelligence sharing there is little international exchange of information, let alone cooperation. The Counter-Terrorist Group is a case in point. The CTG, where European security and intelligence agencies have stepped up their cooperation, still lacks any form of accountability, whether at national or at European level.

It is fundamental tenet of democracy that power must be subject to control. Scrutiny by the judiciary alone does not suffice, there must be political control as well. This goes for the EU as much as for each national state. The past 15 years have seen an unprecedented intensification of European cooperation in the fight against terrorism. But while national agencies increasingly work together, national institutions to ensure accountability and oversight have not kept pace. European oversight of European intelligence cooperation is a missing link in European governance. From a democratic point of view, effective European scrutiny of European intelligence cooperation is overdue. Intelligence agencies have a critically important role to play in preserving people's security, but their work also poses risks to civil liberties. It is time for Europe to take intelligence accountability seriously.

This is a matter of some urgency, if only to counter the risk of mission creep. Mission creep, the gradual expansion of a mission beyond its original scope or objectives, can seriously affect transparency and accountability, including when data collected for a specific purpose is subsequently used for unintended or even unauthorised purposes. These risks figure prominently in law enforcement and intelligence gathering. In Israel, for example, Shin Bet's surveillance technology has been employed to counter the spread of the corona virus. In France, too, security officials have been granted access to private health data.⁽¹⁰⁴⁾ The UK is planning to extend

(102) R. J. ALDRICH and D. RICHTEROVA, "Ambient accountability: intelligence services in Europe and the decline of state secrecy", *West European Politics*, 2018, Vol. 41, No. 4, pp. 1003-1024.

(103) P. GILL, "Of intelligence oversight and the challenge of surveillance corporatism", *Intelligence and National Security*, 2020, Vol. 35, No. 7, pp. 970-989.

(104) "Le Conseil d'État autorise les fichiers de renseignement élargies", *Le Parisien*, 4 January 2021.

the permission to commit crimes in the course of official duty beyond the intelligence services to the police, the armed forces, the Home Office, the Ministry of Justice, and four civilian agencies.⁽¹⁰⁵⁾

Police forces, security services and intelligence agencies are under continuous pressure from politicians and the media to prevent acts of terrorism. Agencies and their leaders know they are at risk of public shaming; woe betide any security official who cannot show that “everything possible” has been done to stop an attack. “Those who fail to avoid blame are likely to find themselves unemployed.”⁽¹⁰⁶⁾ Politicians also know that in the popular press and in much of public opinion security trumps liberty.

It is not surprising, then, to see security officials argue for an extension of their powers. In the UK, MI5 wants access to data held by the private sector.⁽¹⁰⁷⁾ Encrypted data are at the heart of the discussion. In the US, the FBI has tried (and failed) to gain access to encrypted data on Apple’s iPhone. GCHQ has proposed a protocol to allow it to eavesdrop on encrypted chats. Europol, too, is charting the value of accessing encrypted data. Faced with such pressure, how will the EU respond? Europol’s respect for data protection is limited; the European Data Protection Supervisor recently “admonished” the agency for its processing of large datasets.⁽¹⁰⁸⁾ The risks of a gradual slide into mass surveillance should not be taken lightly. In regulating and overseeing Europol, will EU governments be keen to preserve civil liberties? If not, will the European Commission?

CONCLUSION

Counter-terrorism is a policy area where national politicians and bureaucracies have tended to protect their prerogatives. Legally the European Union’s hands are tied: the Treaty attributes sole responsibility for national security to national governments. There is no European equivalent of the FBI or the CIA and operational intelligence sharing remains off limits to the EU. From law enforcement to infrastructure protection and civil defence, the EU’s role in counter-terrorism is limited to supporting and coordinating national agencies and policies. Before the Lisbon

(105) J. ROZENBERG, “Licence to kill”, *The Law Society Gazette*, 5 October 2020.

(106) R. K. WEAVER, “The Politics of Blame Avoidance”, *Journal of Public Policy*, 1986, Vol. 6, No. 4, p. 378.

(107) L. BARBER and H. WARRELL, “MI5 chief sees tech as biggest challenge and opportunity”, *Financial Times*, 13 January 2020.

(108) EDPS Decision on the own initiative inquiry on Europol’s big data challenge, 18 September 2020.

Treaty (2009) Council decisions in justice and home affairs were stymied by unanimity and the Commission's powers to secure implementation were weak. Unsurprisingly, policy-making and policy-implementation have often been slow. Major terrorist attacks such as the ones in Madrid (2004), London (2005), Paris (2015) and Brussels (2016) impelled EU leaders to enable progress, but once media attention faded political attention has tended to fade with it.

EU counter-terrorism policy, in other words, can be an exercise in defying political gravity. And yet, in Galileo's terms, it moves.

As noted, there are four ways in which the EU can add value to counter-terrorism: strengthening national capabilities, facilitating cooperation, developing collective capacity, and promoting international partnerships. In each of these respects the EU's role has grown, and notable results have been achieved.

As this chapter has shown, the EU budget currently accounts for half of security-related research in Europe. In 2001, at the time of 9/11, only six Member States had dedicated terrorism-related legislation (France, Greece, Italy, Portugal, Spain, and the UK); today the 27 Member States operate with a single legal definition of terrorism and a level playing field that extends from infrastructure protection to terrorism financing. European peer pressure has spurred several Member States to create national counter-terrorism coordination structures. In terms of collective capacity and cooperation Europol and Eurojust came to fulfil vital roles. EU-wide information exchanges have multiplied; common data bases and instruments such as SIS II and the European Arrest Warrant are used daily to prevent attacks and to bring terrorist suspects to justice. Since the 2009 Lisbon Treaty the European Commission has actively used its power to propose legislation; it also drives action to combat web-based terrorist propaganda. The EU has become a significant player in international counter-terrorism capacity-building. The EU Counter-Terrorism Coordinator, Gilles de Kerchove, is renowned far and wide as one of Europe's finest and most influential officials. Fifteen years after the 2005 EU Strategy counter-terrorism has become an acknowledged dimension of the EU's *acquis communautaire*.

Success, however, has been uneven. Of the Strategy's four principal strands, Pursue and to a lesser extent Protect have been most successful; Prevent and Respond have seen less progress. The horizontal, international dimension is situated in between. Some serious gaps remain, such

as the lack of a common approach to railway passenger security and the absence of a policy to share vaccines in case of a CBRN attack. Reluctance to share data has not been fully overcome, neither at national nor at European level. Even after 15 years evidence of success of the Prevent strand remains scant.

There is also a darker side to Europe's record. As national and European counter-terrorism legislation expanded, civil liberties receded. Across Europe that most fundamental of rights, freedom of expression, has come under increasing pressure, as has the right to protection of personal privacy. Under the pretext of counter-terrorism countries neighbouring countries have resorted to torture and outright censorship while cooperation with EU intelligence services continued. EU Member States and the EU are veering towards privatisation of controls on web-based speech, which may prove pernicious. As Islamic terrorism captured public imagination, public speech in Europe has coarsened and anti-Muslim prejudice has entered the political mainstream. Right-wing terrorism, in contrast, has yet to receive adequate political attention. Too often the courts are left as the last defenders of the rights and liberties that European governments and the EU had pledged to preserve. Intelligence services and law enforcement agencies are prone to mission creep, and effective mechanisms of oversight are overdue at European as well as at national level.

Terrorism poses a deadly threat. It must be countered with determination. But counter-terrorism can harm as well as protect. The balance is increasingly at risk, and it is a delicate one: once lost, freedoms are difficult to regain. EU Member States and the EU have reason to be proud of their record in defending Europe against terrorism. They should make sure they can be equally proud of their record in upholding the balance between security and liberty.

