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**THE POST-9/11 EUROPEAN UNION
COUNTERTERRORISM RESPONSE:LEGAL-
INSTITUTIONAL FRAMEWORK**

by

Bozenko Devoic

December 2012

Thesis Co-Advisors:

Donald Abenheim
Carolyn Halladay

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**THE POST-9/11 EUROPEAN UNION COUNTERTERRORISM
RESPONSE:LEGAL-INSTITUTIONAL FRAMEWORK**

Bozenko Devoic
LTC, Croatian Army
B.S., University of Zagreb, 1997

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December 2012**

Author: Bozenko Devoic

Approved by: Donald Abenheim
Thesis Co-Advisor

Carolyn Halladay
Thesis Co-Advisor

Harold A. Trinkunas
Chair, Department of National Security Affairs

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ABSTRACT

This thesis explores the EU's legal-institutional response to international terrorism since 9/11. Through an analytical approach this work connects counterterrorism measures with outcomes in order to determine whether the European counterterrorism framework is successful in Europe today. The second chapter presents a historical overview of the EU's counterterrorism response. Furthermore, this part details the main European counterterrorism-related institutions. The third chapter provides a qualitative analysis of several of the most influential as well as controversial European counterterrorism measures, with focus on solutions for the security-versus-human-rights dilemma and challenges in implementation. The fourth chapter evaluates the European counterterrorism framework for effectiveness by measuring several indicators. This analysis demonstrates that the implementation of many counterterrorism measures corresponds to positive trends in terrorist activities, arrests, and convictions of terrorists. Also European counterterrorism initiatives may be linked to a lessening of European citizens' fears of terrorism and to stable public support for European counterterrorism efforts, both positive developments. The fifth chapter gives an overview of European counterterrorism institution-related costs through period at issue. Ultimately, this thesis finds the European counterterrorism legal-institutional framework to accommodate human rights at the very high level that European citizens expect, while successfully managing effective counterterrorism measures.

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LIST OF ACRONYMS AND ABBREVIATIONS

AFSJ	Area of Freedom, Security and Justice
AHGNS	Ad Hoc Group on Nuclear Security
ATSA	Aviation and Transportation Security Act of 2001
CBRN	Chemical, biological, radiological, and nuclear
CCPM	Community Civil Protection Mechanism
CEPOL	European Police College
CERT	Computer Emergency Response Team
CFI	Courts of First Instance
CFSP	Common Foreign and Security Policy
CIIP	Critical Information Infrastructure Protection
CIPS	Protection of citizens and critical infrastructures against terrorist attacks
CIRA	Continuity Irish Republican Army
CIWIN	Critical Infrastructure Warning and Information Network
COPRA	Community Policing and Prevention of Radicalization
COREPER	Council of Permanent Representatives to the European Council
COREU	EU Core information system
COSI	EU Standing Committee on Internal Security
CSDP	Common Security and Defense Policy
CT	Counterterrorism
CTC	EU Counterterrorism Coordinator
CTG	Counter Terrorism Group
DG HOME	Directorate General Home Affairs
DG Justice	Directorate General of Justice
EAW	European Arrest Warrant
EBDS	European Bomb Data System
ECHR	European Court on Human Rights

ECJ	European Court of Justice
ECRIS	European Criminal Records Information System
EDU	Europol Drugs Unit
EEAS	European External Action Service
EEODN	European Explosive Ordnance Disposal Network
EEW	European Evidence Warrant
EJN	European Judicial Network
ENISA	European Network and Information Security Agency
EPCIP	European Program for Critical Infrastructure Protection
ERN-CIP	European Reference Network for Critical Infrastructure Protection
ESDP	European Security and Defense Policy
ESS	European Security Strategy
ETA	Basque Euzadi Ta Askatasuna
EU	European Union
EUROJUST	EU Agency for Judicial Cooperation in Criminal Matters
EUROPOL	European Police Office
EUROSUR	European Border Surveillance System
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FMDA	Agreement on Financial Messaging Data
FP	Framework Program
FRONTEX	European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union
FSJ	Freedom, security, and justice
GTD	Global Terrorism Database
ICAO	International Civil Aviation Organization
IMF	International Monetary Fund
IntCen	European Union Intelligence Analysis Center

IRA	Irish Republican Army
ISEC	Prevention and fight against crime
ISS AP	Internal Security Strategy in Action Plan
JHA	Justice and Home Affairs
JIT EN	Joint investigation teams Experts Network
LIBE	Civil Liberties, Justice and Home Affairs of the European Parliament
MEP	Members of the European Parliament
MLA	Mutual Legal Assistance
MLAT	Mutual Legal Assistance Treaty
MLD	Money Laundering Directives
NGO	Non-Governmental Organization
OCTA	European Organized Crime Threat Assessment
OLAF	European Anti-Fraud Office
PCOTF	Police Chief Operational Task Force
PJCC	Police and Judicial Co-operation in Criminal Matters
PMOI	People's Mujahedin of Iran
PNR	Passenger Name Records
PPN	Countering Radicalization and Polarization
PSC	EU Political and Security Committee
QMV	Qualified majority vote
RAF	Red Army Faction
RAN	Radicalization Awareness Network
RIRA	Real Irish Republican Army
SIS	Schengen Information System
SitGen	EU Joint Situation Centre
START	National Consortium for the Study of Terrorism and Responses to Terrorism
SWIFT	Society for Worldwide Interbank Financial Telecommunication

TCM	Terrorism Convictions Monitor
TEC	Treaty of the European Community
TE-SAT	Terrorism Situation and Trend Report
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TFTP	Terrorist Finance Tracking Program
TREVI	Terrorism, Radicalism, Extremism, and Political Violence Group
TWG	Terrorism Working Group
UN SC	United Nations Security Council
VIS	Visa Information Systems
WEU	West European Union
WMD	Weapons of mass destruction

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I. INTRODUCTION

Despite a long experience with terrorism, homegrown and exogenous, Europe has only recently developed a comprehensive legal and institutional framework for counterterrorism (CT). What are the characteristics, challenges, and effects of the European Union's counterterrorism legal and institutional measures introduced in the post-9/11 period? Does the EU fulfill its strategic commitment to "combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice?" The most difficult challenge to the development of a counterterrorism framework is the dilemma of security versus human rights, yet in the European Union CT measures are as much as possible on the side of human rights while remaining effective.

European cooperation in combating terrorism over the period from the late 1950s until the early 1990s resulted in several multinational legal measures for CT, but most of them were less than complete solutions without strong legal binding powers.¹ The first truly supranational European CT legal measures were developed after 1992, with the ratification of the Treaty on European Union (TEU), now commonly called the Maastricht Treaty.² With "Anti-Terrorism Collaboration" now a part of the so-called third pillar of the treaty,³ terrorism became a joint EU security issue, rather than a domestic problem for the respective member states. There followed several European CT-related conventions, which seemed to herald a bright beginning for European CT

¹ Paul Wilkinson, *International Terrorism: The Changing Threat and the EU's Response*, Chaillot Paper No. 84 (Paris, France: EU Institute for Security Studies, October 2005), 29, accessed May 10, 2012, <http://www.iss.europa.eu/uploads/media/cp084.pdf>.

² Europa: Summaries of EU legislation, "Building Europe through the treaties," accessed May 10, 2012, http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_maastricht_en.htm.

³ The first pillar of the European Union, according to the Maastricht Treaty, is the so-called European Community pillar, with the most supranational attention from the premier European institutions, namely the European Commission, the European Parliament, and the European Court of Justice. The second pillar concerns itself with the EU's Common Foreign and Security Policy (CFSP), while the third pillar involves "justice and home affairs," including criminal justice and terrorism, albeit on a more multilateral than supranational basis.

legislation.⁴ However, refinements to the European CT legal framework in that time were slow in coming, and the EU's priority shifted to more pressing developments in the essential institutional/legal documents in the 1990s, specially focused on the full functioning of a European single market, which includes the free movement of goods, services, capital and persons.⁵

The September 11, 2001, terrorist attacks on the United States moved the European CT legal framework well up the list of the EU's priorities for action. Immediately after 9/11, the EU Council adopted several important instruments of the European CT legal framework, including: the Plan of Action in 2001 (impetus for the CT actions of the EU administration), the Framework Decision on Combating Terrorism in 2002 (legal cornerstone of the European CT), and the Framework Decision on European Arrest Warrant in 2002 (replaced the complicated EU extradition procedures).⁶ Thus, in light of recent events, the willingness of EU member states to develop a proper European CT framework ran high. Something had to be done to protect Europe from the inevitable spread of anti-Western violence that the 9/11 attacks portended. At the same time, the European Commission⁷ used this opportunity to introduce some institutional measures related to combating homegrown terrorism that had been rejected before. The most important of those measures are establishment of the EU Agency for Judicial Cooperation

⁴ Peter Chalk, "The Third Pillar on Judicial and Home Affairs Cooperation, Anti-Terrorist Collaboration, and Liberal Democratic Acceptability," in *European Democracies against Terrorism: Governmental Policies and Intergovernmental Cooperation*, ed. Fernando Reinares (Burlington, VT: Ashgate Publishing Company, 2000), 175.

⁵ European Parliament, "The Maastricht and Amsterdam Treaties," accessed May 31, 2012, http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf.

⁶ Javier Argomaniz, *The EU and Counter-Terrorism*, New York: Routledge, 2011, 19-21.

⁷ "The three main decision-making institutions are: the European Parliament (EP), which represents the EU's citizens and is directly elected by them; the Council of the European Union, which represents the individual member states; [and] the European Commission, which represents the interests of the Union as a whole. The powers and responsibilities of the EU institutions, and the rules and procedures they must follow, are laid down in the Treaties on which the EU is founded. The Treaties are agreed by the presidents and prime ministers of all the EU countries and then ratified by their parliaments. In general, it is the European Commission that proposes new legislation, but it is the Council and Parliament that pass the laws. In some cases, the Council can act alone."; European Commission, "How the European Union works: Your guide to the EU institutions," (Brussels, Belgium: European Commission, July 2007), accessed November 6, 2012, www.ec.europa.eu/publications/booklets/eu_glance/68/en.doc.

in Criminal Matters (Eurojust) and the EU Joint Situation Centre (SitCen), as well as institutionalization of CT-related cooperation with the Police Chief Operational Task Force (PCOTF).⁸ These new measures/institutions, along with the Europol's expanded CT role, have been "influential in both shaping national responses and in producing a more harmonized approach throughout the EU."⁹

Later, the terrorist attacks in Madrid (March 11, 2004) and London (July 7, 2005) gave additional urgency to the introduction of new CT-related legal and institutional measures. The European Council adopted in 2004 the new and legally binding Declaration on Combating Terrorism. This document was an urgent call for the member states to put into practice the measures approved after 9/11, yet not implemented in national level. Along with the declaration and in order to improve coordination within the EU and member states in implementing CT measures, the first European Counterterrorism Coordinator was appointed.¹⁰ Soon after the terrorist attack in London the first EU Counter-Terrorism Strategy was adopted at the end of 2005.

Since then, the strategy has been augmented with more than one hundred European CT legal and institutional measures. Many of these measures are not exclusively related to terrorism, but they indirectly support counterterrorism efforts. Moreover, they were developed in compliance with the EU's strategic CT commitment to combat terrorism while respecting human rights and making EU safer, as well as

⁸ Frank Gregory, "The EU's Response to 9/11: A Case Study of Institutional Roles and Policy Processes with Special Reference to Issues of Accountability and Human Rights," *Terrorism and Political Violence* 17 (2005), 105-123, <http://www.tandfonline.com/doi/pdf/10.1080/09546550590520618>.

⁹ CEPOL, "Counter Terrorism," accessed May 26, 2012, <http://www.cepola.europa.eu/index.php?id=counter-terrorism>.

¹⁰ Council of the European Union, *Declaration on Combating Terrorism* (Brussels, Belgium: Council of the European Union, 2004), accessed May 31, 2012, 25, <http://www.consilium.europa.eu/uedocs/cmsUpload/DECL-25.3.pdf>.

following the four main European CT Strategy pillars: prevent, protect, pursue, and respond.¹¹

Thus, the quantity of the European CT legal and institutional measures is clear, but what about the quality of all this legislation and institutions? Is Europe safer from terrorism today? Some experts argue that the European CT framework is, at best, an administrative achievement without operational effects.¹² Other observers take a more positive view and argue that the CT framework has had a real and positive impact on the EU member states' counterterrorism efforts, quantifiable as a decrease in terrorist activities.¹³

This thesis begins with this latter viewpoint—that the European's CT efforts have been substantive and meaningful. The study explores the development and outcomes of the post-9/11 EU counterterrorism-related legal-institutional framework, with an eye toward its human rights sensitivity, effectiveness, and—briefly—overall costs.

¹¹ Council of the European Union, *The European Union Counter-Terrorism Strategy* (Brussels, Belgium: Council of the European Union, December 1, 2005), accessed April 2, 2012, <http://register.consilium.eu.int/pdf/en/05/st14/st14469-re04.en05.pdf>; The European CT strategy is developed through four main pillars: prevent (targeting root causes of terrorism, cross-cultural dialogue, media-related strategy, counter recruitment measures, combating radicalization), protect (transport security standards, critical infrastructure protection, border control), pursue (funding reduce measures, police and judicial EU and international cooperation and technical assistance), and respond (consequence management, civil protection, risk assessment tools, lessons learned sharing).

¹² Oldrich Bures, *EU Counterterrorism Policy, A Paper Tiger?* (Furnham, UK: Ashgate Publishing Limited, 2001); Raphael Bossong, "The Action Plan on Combating Terrorism: A Flawed Instrument of EU Security Governance," *Journal of Common Market Studies* 46, no. 1 (2008): 27-48, <http://web.ebscohost.com.libproxy.nps.edu/ehost/pdfviewer/pdfviewer?sid=168b8165-0cda-4d42-93e5-417a7af5a770%40sessionmgr10&vid=2&hid=21>.

¹³ Christian Kaunert, *European Internal Security: Towards supranational governance in the Area of Freedom, Security and Justice* (Manchester, UK: Manchester University Press, 2010); Dorine Dubois, "The Attack of 11 September: EU-US Cooperation Against Terrorism in the Field of Justice and Home Affairs," *European Foreign Affairs Review* 7, no. 3 (Fall 2002): 317-335; Nicola Vennemann, "Country Report on the European Union," in *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, ed. Christian Walker et al. (Heidelberg, Germany: Springer, 2004), 265; Jörg Monar, "Common Threat and Common Response? The European Union's Counter-Terrorism Strategy and its Problems," *Government and Opposition* 42, no. 3 (2007): 293, accessed May 10, 2012, <http://onlinelibrary.wiley.com/doi/10.1111/j.1477-7053.2007.00225.x/pdf>; Davide Casale, "EU Institutional and Legal Counter-terrorism Framework," *Defense Against Terrorism Review* 1, no. 1 (Spring 2008): 49-78, accessed May 10, 2012, <http://www.coedat.nato.int/publications/datr/04.Davide%20CASALE.pdf>.

A. THESIS CONSPECTUS

Following this introduction, Chapter II reviews chronologically the response of the EU through introduction of the CT legal-institutional measures in different periods: the post-9/11 initial stage, the post-Madrid attack stage, and the post-London attack stage. Each terrorist attack triggered a boost of EU activity related to the introduction and implementation of CT legal-institutional measures. Furthermore, this chapter gives a detailed overview of the main European CT-related institutions.

Chapter III provides qualitative analysis of several of the most influential as well as controversial European CT legal-institutional measures: the European Arrest Warrant, Money Laundering and Terrorist Financing Directives, EU targeted sanctions against individuals or groups, and counterterrorism cooperation with the United States. The chapter analyzes the characteristics and applied solutions for a security-versus-human-rights dilemma, as well as challenges in implementation. The results show that the EU, in part through the very legal and institutional mechanisms that so frustrate some CT partners (like the United States), does, in fact manage to uphold its commitment human rights, while implementing CT measures.

Chapter IV evaluates the European CT legal-institutional framework from the effectiveness perspective by measuring several indicators. First, the chapter examines trends of terrorist activities in the EU (2006–2011) through the data on failed, foiled, and successful terrorist attacks and data of victims. Second, the chapter analyzes for the same time period the data on arrested terrorists and the data on terrorism-related prosecutions and convictions. Finally, the chapter examines the EU public terrorist threat perception according to opinion poll trends since 2001. This chapter demonstrates that the implementation of many CT measures in last six years corresponds to a decreasing trend in terrorist activities, as well as fits increasing and then decreasing trends of arrests and convictions of terrorists. Furthermore, European CT initiatives may be linked to a lessening of European citizens' fears of terrorism and to stable public support for European CT efforts, both positive developments.

Chapter V gives an overview of European CT institution-related costs through period after 9/11 as well as providing a comparison of the costs associated with the introduction of the European CT instruments, some trends in terrorist activities and achievements of the European CT institutions. Ultimately, this thesis finds the European CT legal-institutional framework to accommodate human rights at the very high level that European citizens expect, while successfully managing effective CT measures.

B. WHY AND HOW THE EUROPEAN COUNTERTERRORISM LEGAL-INSTITUTIONAL FRAMEWORK MATTERS

Although European terrorism has long formed a very important international security issue, it was normally considered to be a national or, at most, a regional problem and typically failed to garner long-term focus by policymakers. Among the European countries, the United Kingdom and Spain have suffered the most domestic separatist terrorism; indeed, it is only in the context of the most recent circumstances that the Irish Republican Army (IRA) and the Basque Euzadi Ta Askatasuna (ETA) have declared an end to their violence as a means of effecting political change. Other European terrorism-related issues in the past include left-wing (revolutionary) terrorist groups like the *Brigate Rosse* in Italy, the Baader-Meinhof gang (later Red Army Faction—RAF) in West Germany, 17 November in Greece, and *Action Directe* in France. All operated since 1970s, but had vanished after the collapse of the Soviet Union because they were pretty much wholly funded by or through Moscow. (The groups tended to direct their actions domestically, despite their connections across the Iron Curtain.) Right-wing¹⁴ terrorism has been issue for European centuries, with peaks in the period after WWII and during the 1980s and early 1990s; far-right extremists were especially active in Italy, the UK, France, Germany, and Sweden. Over the last three decades, many right-wing terrorist groups petered out, while others changed their strategy and transformed into right-oriented political parties, but right-wing terrorism has never entirely disappeared in Europe, as Anders Breivik’s 2011 rampage in Norway or the so-called “Nazi murders” in

¹⁴ Right-wing terrorism (extremism) is inspired by several different ideologies, including neo-fascism, neo-Nazism, racism, nationalism, and anti-immigrant ideas.

Germany attest. Right-wing terrorism is more or less necessarily nationalistic and, thus, domestically fixated, though the Breivik case raised fears that the far right might be networking for methods and means.

Oslo police Chief Wilberg discovered this first-hand, when he described “searching for a needle among 8,000 other needles” in his attempts to retrospectively identify presumed members of Anders Breivik’s elusive *Knights Templar*. While the perpetrator’s utterances surrounding this group have been deemed fictional – little more than mere fantasies dreamt up during hours of roleplaying online – his tortuous accounts, as he [Breivik] affirmed himself, may well have reflected “pompous” exaggeration rather than outright myth. Certainly, the confused organizational structures and interactions he described during his trial somewhat mirrored what we already knew about the complex behaviors of online extremist networks.¹⁵

Then in the 1990s, Islamic terrorism came to Europe for the first time in a campaign of violence against the French government and its political support for the autocratic regimes in North Africa.¹⁶ After the attacks of 9/11 and the rising prominence of the worldwide Islamist threat, terrorism became the most important global security challenge. EU law and institutions changed to meet this challenge, introducing measures tailored to combat international as well as homegrown terrorism.

The examination of the evolution, the characteristics, the challenges, and especially the effectiveness of the European CT legal-institutional framework demonstrates the novel and significant contribution to European and global CT efforts. The EU agencies, in particular Europol and Eurojust have developed close, daily CT cooperation with the EU member states and with external partners, especially the United States; “cooperation” here entails sharing information, threat analyses, early warnings, and joint investigation teams. The unique European Arrest Warrant tremendously

¹⁵ Sebastien Feve, “Mapping the right-wing terrorist threat?” Extremis Project, accessed November 1, 2012, <http://extremisproject.org/2012/09/mapping-the-right-wing-terrorist-threat/>.

¹⁶ Argomaniz, *The EU and Counter-Terrorism*, 3.

decreased the time required for the extradition of terrorism suspects. Legal instruments to combat the finance of terrorism have had many positive effects, identifying and freezing ever more terrorist assets. Infrastructure-protection measures have brought in the private sector as a valuable CT partner as well as introducing standards in port security (airports, bus/train stations, and seaports) has become a new standard.

Furthermore, the importance of the present effort lies in its analysis of solutions for overcoming certain limitations of CT-related international law by using the European CT legal framework as an example. In the absence of international legal consensus regarding the definition of terrorism, there is an opportunity to use to good effect the new and comprehensive definition introduced by the EU, which accords with the UN terrorism-related conventions. Generally speaking, an effective and efficient European CT legal-institutional regime can be used in other treaty-based regional organizations that seek an effective CT framework solution, like the African Union, the League of Arab States, the Commonwealth of Independent States, or the Organization of American States.

C. EU COUNTERTERRORISM IN THE EYES OF SCHOLARS

The crucial message is that turning EU counterterrorism policy into a real tiger requires a careful assessment of both the comparative advantages and disadvantages of the available legal instruments and institutional structures at all levels. There are several areas where EU approaches make perfect sense due to the transnational nature of the contemporary terrorist threat and the nature of a “borderless” Europe where people, goods, capital and services ought to move freely.¹⁷

The foremost controversy among scholars of EU counterterrorism concerns the question of whether the European CT legal-institutional framework amounts to anything. While noting some moments of progress, Oldrich Bures ultimately concludes that the

¹⁷ Bures, *EU Counterterrorism Policy*, 258.

European CT framework is just a “paper tiger.”¹⁸ However, Bures takes a selective view of the available evidence and, thus, arrives at overstated conclusions. He provides an effectiveness analysis based on a few salient measurement indicators (terrorist threats, public perception, and implementation deficit impact) without taking into consideration the broader picture and strong direct indicators (terrorist activities, arrests and prosecutions of terrorists, interagency CT cooperation, and costs of CT measures). Furthermore, Bures’s effectiveness analysis does not account for the fulfillment of the strategic commitment in the European CT Strategy, which is the baseline of the framework; for example, many reports show that the CT framework has contributed greatly to better integration and cooperation in European and international CT efforts, as well as in straightening national CT capabilities and more human rights sensitiveness in terrorism related activities.

Since the comprehensive development of the European CT legal-institutional framework started after 9/11, there has been a flurry of analyses, but most focus on one particular CT measure or institution, rather than the overall approach. While many CT experts have analyzed the same European CT measures, they use different methods or indicators, so their final results are different—and incompatible.

The European CT legal-institutional measures adopted after 2005, curiously, have received little attention. Such scholars as Beckman, Bures, Argomaniz, or Kaunert have turned their attention to the topic, but they are selective in their works and analyze just a part of measures, especially “direct” CT legal measures (related only to terrorism), without accounting for the full range of factors.¹⁹ Beyond the variety of official European CT documents related to the broad set of the European CT legal measures, only O’Neill examines the matter through a very comprehensive secondary study and gives an overview of evolution and characteristics. He argues “that the EU’s counter-terrorism

¹⁸ Bures, *EU Counterterrorism Policy*, 2.

¹⁹ James Beckman, *Comparative Legal Approaches To Homeland Security and Anti-Terrorism*, (Hampshire, UK: Ashgate Publishing Limited, 2007); Bures, *EU Counterterrorism Policy*; Argomaniz, *The EU and Counter-Terrorism*; Kaunert, *European Internal Security*.

provisions are still under construction” and many CT measures are scattered around several areas hardly visible as the European CT related measures—perhaps in part because so little other scholarship has clarified these issues.²⁰

Analysis of the effectiveness of the European CT legal-institutional measures remains the aspect of this thesis with the slimmest backing in the literature. Argomaniz argues that “EU counter-terrorism currently suffers from serious consistency weaknesses and some of these shortcomings have their roots in the political processes that shaped the proceeding stage of institutionalization of the policy domain.”²¹ Furthermore, he concludes that is very hard to research effectiveness of the European CT measures without an understanding of EU institutions and complexity of relations between the EU and its member states. Um and Pisoiu argue that main problem of measuring CT effectiveness is researchers’ overemphasis on an “impact” component of effectiveness (trends of terrorist attacks or specific methods) rather than an “output” component (implementation of CT measures, increasing capabilities) and an “outcome” component (direct effect of measures on life).²²

Although several European countries publish annual reports on terrorist activities, this thesis uses Europol reports as the only comprehensive reports with standardized data and typology. According to the EUROPOL annual reports (TE-SAT 2006–2011), terrorist activities in the EU after 2005, when the European CT Strategy was adopted, have declined steadily and rapidly. Other reports document negative trends in failed, foiled, or completed attacks, increasing numbers of arrests, and increasing numbers of prosecutions for terrorism charges.²³ Even these detailed and accurate Europol reports

²⁰ Maria O'Neill, *The Evolving EU Counter-Terrorism Legal Framework*, (New York: Routledge, 2012), 7, 24.

²¹ Argomaniz, *The EU and Counter-Terrorism* 2.

²² Eric van Um and Daniela Pisoiu, *Effective counterterrorism: What have we learned so far?*, Economics of Security Working Paper 55, (Berlin, Germany: Economics of Security, 2011), 3, accessed May 10, 2012, http://www.diw.de/documents/publikationen/73/diw_01.c.386651.de/diw_econsec0055.pdf.

²³ EUROPOL, *TE-SAT 2012 EU Terrorism Situation and Trend Report* (The Hague, Netherland: European Police Office – EUROPOL, 2012), accessed May 10, 2012, <https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf>.

should be taken with a certain caution because some of positive outcomes are not known in public. De Goede concludes “due to the secrecy in issues relating to countering terrorism, even if a means to measure effectiveness did exist, its results would not be public.”²⁴

Regarding the implementation of the European CT legal-institutional measures EU and member-state produces reports according to the EU Council “[d]ecision establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.”²⁵ Brown concludes that the effects were broad and very positive after the implementation of legal measures that especially facilitated multinational cooperation among the EU member states in the judiciary, police, and anti-money laundering.²⁶ Furthermore, this thesis explores many post-9/11 reports and studies of European CT Coordinator, Europol, and Eurojust.

The terrorist threat perception in the EU (including all member states), as a part of the overall security threat rarely has been analyzed; Bakker, Meyer, Murshed, and Bures.²⁷ The authors conclude that terrorist threat perception among EU member states varies over time and according to the incidence of terrorist attacks. This thesis uses

²⁴ The Finnish Institute of International Affairs. “European Counter Terrorism and the Revival of “Old” Extremisms,” accessed May 24, 2012, <http://www.fiia.fi/en/event/450/>.

²⁵ Council of European Union, *Council Decision of 28 November 2002 Establishing a Mechanism for Evaluating the Legal Systems and Their Implementation at National Level in the Fight against Terrorism* (Brussels, Belgium: Council of European Union, 2002), access May 24, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:349:0001:0003:EN:PDF>.

²⁶ David Brown, *The European Union, Counter Terrorism and Police Cooperation, 1992-2007: Unsteady Foundations?* (Manchester, UK: Manchester University Press, 2010): 124-130; For example, the number of Eurojust cross-border judicial support cases increased more than 30 percent per year, and Europol law enforcement and intelligence information exchange increased more than 20 percent per year.

²⁷ Edwin Bakker, “Difference in Terrorist Threat Perceptions in Europe,” in *International Terrorism, A European Response to a Global Threat?*, ed. by Dieter Mahncke and Jörg Monar (Brussels, Belgium: Peter Lang Publishing Group, 2006); Christoph O. Meyer, “International Terrorism as a Force of Homogenization? A Constructivist Approach to Understanding Cross-National Threat Perception and Responses,” *Cambridge Review of International Affairs* 22, no. 4 (2009): 647-666; Syed Mansoob Murshed, *Threat Perceptions in Europe: Domestic Terrorism and International Crime*, Economics of Security Working Paper 2, (Berlin, Germany: Economics of Security, 2009), 2-14, accessed May 10, 2012, http://www.diw.de/documents/publikationen/73/diw_01.c.94888.de/diw_econsec0002.pdf; Bures, *EU Counterterrorism Policy*, 31-58.

Eurobarometer²⁸ as the only detailed and official source for measuring of the EU public opinion (all of the above authors use the same source).

Ultimately, regarding the overall European CT effort, Monar concludes: “There is no other example in the world of a group of countries agreeing on a comprehensive common (counterterrorism) strategy and action plan similar to that of the EU ... this must be regarded as a major achievement in itself.”²⁹ In support of Monar’s opinion this thesis is an attempt to find comprehensive arguments and evidence for acknowledgement of the European CT efforts.

D. METHODS AND SOURCES

The European CT legal-institutional framework serves as a case study of evolution, scope of action, challenges, and effectiveness. To a significant extent, this thesis relies on qualitative and quantitative analysis of the primary sources of the European Union including: directives, declarations, framework decisions, common positions, communication papers, plans of actions, reports, meeting minutes, public opinion polls, terrorist activities annual reports, and other contributing documents. Furthermore, the examination of the European CT legal-institutional framework will be supported with qualitative analyses of the available secondary sources like books, journal articles, and think-tank research papers.

Chapter II is a historical overview with focus on identifying the factors that led to development of broad set of CT measures. In this case, the examination will focus on the three different periods that were dominated in evolution, post-9/11 initial stage, post-Madrid attack stage, and post-London attack stage. Chapter III is a qualitative review of the major characteristics, challenges and solutions concerning the European CT legal-institutional framework including CT governance issues, human rights sensitiveness, and legislation harmonization issue. Chapter IV is triangulating different methods including

²⁸ European Commission, “Public Opinion,” accessed May 24, 2012, http://ec.europa.eu/public_opinion/index_en.htm.

²⁹ Monar, “Common Threat and Common Response?,” 293.

comparative study, statistical analysis, and qualitative analysis. Several data collections in quantitative research methods will be used extensively to analyzing indicators of the European CT legal-institutional framework effectiveness (terrorist activities, threat perception pools). Chapter V is a statistical analysis of the EU bodies' CT expenditures since 9/11.

This analytical approach connects measures with outcomes in order to decide whether the European CT framework is successful or not. Governments and CT agencies usually justify their measures in terms of incidents of terrorist activities versus funds committed to CT measures to arrive at a basic measure of cost-effectiveness. On the other hand, many experts suggest that this rational approach with direct indicators is insufficient and other indicators should be taken into account, as well. Such indicators include legality of measures, public fear of terrorism, the adequacy and efficiency of the terrorist attack response, the number of victims in terrorist attacks, international CT cooperation, the sharing of information, and the impact of CT measures on terrorist recruitment. These factors provide a much fuller picture of the effect and effectiveness of CT measures and this thesis provides analyses of all of them except impact on terrorist recruitment. Although an impact on terrorist recruitment represents a very important indicator, the proposed project will not undertake to examine it, owing to the absence of sources (no existing official reports or literature).

The existing literature is mixed in its conclusions about the quality of the efforts and the effectiveness of the European CT approach. This thesis responds to the differences in those findings through an acknowledgement of the unique EU approach to the issue. Distinct from—but not incompatible with—the United States as a global leader in the fight against terrorism, the EU and European countries view combating terrorism primarily as a mission of law enforcement and intelligence institutions, while emphasizing the protection of the fundamental human rights of all involved, including even the terrorists. Europe's own struggle to secure human rights to the degree and extent that the EU knows today informs and impels this ongoing process and, as the pages that

follow demonstrate, may represent one of the EU's most significant contributions to the global order today—and tomorrow.

II. EVOLUTION AND KEY INSTITUTIONS OF THE POST-9/11 EU COUNTERTERRORISM RESPONSE

Although many European countries gained a lot of counterterrorism experience with homegrown terrorism throughout the 20th century, the development of a European legal framework for CT as well as CT-related institutions only happened with the establishment of the European Union. Thus, even the Convention on Extradition (1957), which facilitated the early stage of European judicial cooperation, was ineffective in counterterrorism because one of the articles allowed a state to refuse an extradition in case the request related to a political offence—at a time when European terrorism was thought of almost exclusively as politically oriented.³⁰

The informal cooperation was much more promising. In the 1970s, amid the uptick in domestic terrorism and the rising threat of Palestinian extremism, European countries formed several different working groups and initiatives in order to improve their counterterrorism efforts.³¹ Of particular interest is the Terrorism, Radicalism, Extremism, and Political Violence Group (TREVI), established in 1975 by European Community member states. In 1977, the same states introduced TREVI I as special counterterrorism subgroup.³² Although TREVI did not have official European

³⁰ Council of Europe, *European Convention on Extradition* (Paris, France: Council of Europe, December 13, 1957), accessed September 26, 2012, <http://conventions.coe.int/Treaty/en/Treaties/Html/024.htm>; In 1977, the Council of Europe introduced a Convention on the Suppression of Terrorism, which unsuccessfully tried (through one article) to improve on the European Convention on Extradition by requiring signatories to “extradite the suspect or bring the suspect before your own judicial authorities.”; Wilkinson, *International Terrorism*, 29.

³¹ These groups included: the Club of Berne established in 1971 by national security services of Belgium, Denmark, France, Germany, Switzerland, Great Britain, Italy, the United States, and Israel; the Club of Vienna established in 1978 by law-enforcement authorities from Austria, France, Germany, Switzerland and Italy; the Police Workgroup on Terrorism established in 1979 by nine member states of the European Community, along with Austria, Finland, Norway, and Sweden; and the Quantico Club established in 1979 by Australia, France, Canada, Germany, Great Britain, and the United States; Magdalena Grajny, “The European Union counterterrorism policy before and after the 9/11 attacks: to what extent does the European Union have an integrated policy towards terrorism?”, *Terrorryzm.com*, February 21, 2009, accessed September 26, 2012, <http://www.terrorryzm.com/the-european-union-counterterrorism-policy/>.

³² Casale, “EU Institutional and Legal,” 50.

Community competencies, permanent structures, legal powers, or even a budget, until the 1990s, it marked the only European CT success, however limited, especially in information sharing and cross-border assistance in organized crime and terrorism.³³

Initially little more than a drinking club, it [TREVI] developed from its humble social origins into a body where experience and good practice could be exchanged between police forces.³⁴

The TREVI group persisted until 1993, when the Treaty of European Union (TEU, Maastricht Treaty) was ratified and became operational. Title VI of the third Maastricht Treaty pillar, “Cooperation in Justice and Home Affairs (JHA),” advances the most fundamental EU idea, freedom of movement, which requires a secure area where people can travel safely within the Union and enjoy the same protections of life, liberty, and property that they know at home. To this end, the JHA followed lead of the TREVI group and addressed issues such as asylum policy, external borders and border control, immigration, drug addiction, international fraud, judicial cooperation in civil and criminal matters, customs cooperation, and police cooperation.³⁵ The Maastricht Treaty also called for the establishment of the European Police Office (Europol), but amid the complicated and changing framework of EU institutions, Europol did not take up operations until 1998.³⁶ Slowly but surely, the counterterrorism legislation began to appear, as well, including such measures as the EU Declaration on the Financing of Terrorism in 1993; the La Gomera Summit Declaration in 1995, which recognized terrorism as a “priority objective among the matters of common interest”; the EU Convention on Extradition in 1996, which abolished political exemptions in case of extradition; and the European

³³ Monar, “Common Threat and Common Response?,” 292.

³⁴ University of Exeter, “History of Europol,” accessed September 26, 2012, <http://people.exeter.ac.uk/watupman/undergrad/pollard/html/history.htm>.

³⁵ Title VI, Provisions on Cooperation in the Field of Justice and Home Affairs; *Maastricht Treaty, Treaty of European Union*, February 7, 1992, Eurotreaties.com, accessed September 26, 2012, <http://www.eurotreaties.com/maastrichteu.pdf>.

³⁶ Casale, “EU Institutional and Legal,” 50.

Judicial Network (EJN), introduced in 1998, which speeded up judicial processes among member states.³⁷

Then came the Amsterdam Treaty in 1999, which introduced the Area of Freedom, Security and Justice (AFSJ), with which the EU promised “to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime.”³⁸ The Treaty of Amsterdam made changes in JHA pillar by moving areas of asylum, immigration, and judicial cooperation in civil matters to the first pillar (European Community), and then consolidating the remaining functions into a new, more streamlined pillar, now called Police and Judicial Co-operation in Criminal Matters (PJCC).³⁹ After the Treaty of Amsterdam, the third pillar acquired many of the basic provisions that would become important for counterterrorism, including operational police cooperation (prevention, investigation, data exchange, joint training, liaison officers), Europol (support for national investigations, EU police coordination, assisting in arrangements between prosecuting/investigating officials), judicial cooperation (proceedings, facilitation of extradition, compatibility of rules, prevention of conflicts of jurisdiction), harmonization of national criminal laws including the provisions of terrorism, opportunity for agreements with third countries or international organizations regarding third pillar issues, unification of standards in carrying out checks on persons at external EU borders, and unified rules on visas for period less than three months.

Still, PJCC posted only limited operational progress, especially in the field of counterterrorism. More broadly, in the period 1993–2000, EU conventions on issues of terrorism did not lead to the introduction of strong CT legal-institutional measures

³⁷ Wilkinson, *International Terrorism*,” 30; Grajny “The European Union counterterrorism.”

³⁸ *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts*, Official Journal C 340, November 10, 1997, European Union, accessed September 26, 2012, <http://eur-lex.europa.eu/en/treaties/dat/11997D/htm/11997D.html>.

³⁹ Ibid.

because member states still did not consider CT as an EU issue. They also resisted the demands for increased integration at the expense of sovereignty, especially in sensitive area as security. As Argomatiz concludes, “terrorism almost always remained at the bottom of initiatives [and furthermore] in two of these eight years—1997 and 2000—there was not a single legislative instrument, binding or non-binding.”⁴⁰ The EU Commission had to contend with insufficient experts in the JHA Directorate and Europol was effectively limited to activities in collection, transmission, and analysis of data provided by national law-enforcement. (Before 9/11, only seven officers were seconded to the CT section).⁴¹ The notable—if partial—exception to this record of inactivity on CT came in 1999, when the EU Council met in Tampere, Finland, and agreed on the so-called Tampere milestones, related to freedom, justice, and security.⁴²

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

A. 9/11 AND THE FIRST EU COUNTERTERRORISM RESPONSES

The terror attacks on the United States on September 11, 2001, provided both a call to action and an opportunity for action in the realm of EU counterterrorism.⁴³ It is

⁴⁰ Javier Argomaniz, *The EU and Counter-Terrorism*, New York: Routledge, 2011, 7.

⁴¹ Jörg Monar, “The European Union’s response to 11 September 2001: Bases for action, performance and limits,” 2003, Albany.edu, accessed September 27, 2012, <http://www.albany.edu/~rk289758/BCHS/col/JHA-TERRORISM-NEWARK.doc>; Gregory, “The EU’s Response to 9/11,” 1-2, 106.

⁴² Monar, “The European Union’s response”; Following the recommendations of the Tampere EU Council Summit in October 1999, the Police Chiefs Task Force (2000) was established as a coordination group for reinforcement of Europol (exchange of experiences, evaluations, and planning); the European Police College (2000), as a hub of national law-enforcement training institutes; and a provisional unit Pro-Eurojust (2001), in area of judicial cooperation.

⁴³ Dubois, “The Attack of 11 September,” 324.

important to note that by that date, only six EU member states had CT legislation and operational CT instruments; cross-border CT support was negligible.⁴⁴ However, shortly after 9/11, Germany and Spain were identified as bases for the planning and execution of the attacks, and European officials, in cooperation with the United States, undertook many CT operations (79 actions by October 19, 2001) that led to numerous arrests in several EU member states—Belgium, France, Germany, Italy, Spain, and the UK.⁴⁵

The European Council held its first 9/11-related session just ten days after the attacks, on September 21, 2001, in order to discuss the international situation and urgent EU responses. Through its final conclusions, the Council expressed its solidarity with the United States, its willingness to cooperate more and more intensively, and its determination to play greater role in finding solutions in conflicts around the world (especially Middle East) as prevention of terrorism. Most importantly, the Council approved the first Plan of Action to Combat Terrorism.⁴⁶ The Plan of Action or “CT Roadmap” was inspired by the 1999 Tampere Summit conclusions and provided guidelines for the European CT response. It introduced 41 measures/actions in five main CT areas: (1) enhancing police and judicial cooperation (development of the European Arrest Warrant and a common EU definition of terrorism, identification of terrorists and its organizations in the EU, enhance Europol role in data sharing and special investigation teams); (2) developing international legal instruments (implementation as quickly as possible all terrorism-related international conventions); (3) putting an end to the funding of terrorism (extension of the Council Directive on money laundering and the framework Decision on freezing assets); (4) strengthening air security (threat assessment, training for crews, improve checking of luggage, cockpit protection, quality control of all measures applied by the EU member States); and (5) coordinating the European Union’s global CT

⁴⁴ Counterterrorism legislation in 2001 have Germany, Spain, France, Italy, Portugal and the United Kingdom; Grajny “The European Union Counterterrorism Policy.”

⁴⁵ Grajny “The European Union Counterterrorism Policy.”

⁴⁶ Council of the European Union, “Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001,” (Brussels, Belgium: Council of the European Union, Document SN 140/01, 2001), 21, accessed September 28, 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/140.en.pdf.

action.⁴⁷ On October 19, 2001 the European Council adopted a declaration that mainly repeats European CT position and strongly encouraged the urgent implementation of the measures listed in the roadmap.⁴⁸

Although by the end of 2001, the EU Commission and the EU member states agreed on a common definition of terrorism as the main element of CT legislation and on the EU list of terrorists and terrorist organizations, six more months of negotiations ensued before the Framework Decision on Combating Terrorism was adopted.⁴⁹ The Framework Decision forms the legal cornerstone of the European CT efforts and, as a part of EU law, is binding for all member states and EU bodies.⁵⁰

The framework decision harmonizes the definition of terrorist offences in all EU countries by introducing a specific and common definition. Its concept of terrorism is a combination of two elements:⁵¹

⁴⁷ Council of the European Union, “Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001”; Council of the European Union, “Extraordinary Council meeting, Justice, Home Affairs and Civil Protection, Brussels, 20 September 2001,” (Brussels, Belgium: Council of the European Union, Document 12019/01, 2001), accessed October 12, 2012, <http://www.consilium.europa.eu/uedocs/cmsUpload/12019.en1.pdf>.

⁴⁸ Council of the European Union, “Declaration by the Heads of State or Government of the European Union and the President of the Commission: Follow-up to the September 11 Attacks and the Fight against Terrorism,” (Brussels, Belgium: Council of the European Union, Document SN 4296/2/01 REV 2, October 19, 2001), accessed September 28, 2012, http://ec.europa.eu/justice_home/news/terrorism/documents/conseil_gand_en.pdf.

⁴⁹ Council of the European Union, “Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP),” *Official Journal of the European Communities* L344 (December 28, 2001): 93-96, accessed September 28, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0093:0096:EN:PDF>.

⁵⁰ “The main forms of EU law are directives and regulations. Directives establish a common aim for all member states, but leave it to national authorities to decide on the form and method of achieving it. Normally, member states are given one-to-two years to implement a directive. Regulations are directly applicable throughout the EU as soon as they come into force without further action by the member state. The rules and procedures for EU decision-making are laid down in the Treaties. Every proposal for a new European law must be based on a specific Treaty article, referred to as the “legal basis” of the proposal. This determines which legislative procedure must be followed. The three main procedures are “co-decision,” “consultation” and “assent.” Co-decision is the procedure now used for most EU law-making. In the co-decision procedure, Parliament shares legislative power equally with the Council. If Council and Parliament cannot agree on a piece of proposed legislation, there will be no new law.”; European Commission, “How the European Union works.”

⁵¹ Council of the European Union, *Council Framework Decision of 13 June 2002 on combating terrorism* (Luxembourg: Council of the European Union, 2002), accessed April 2, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:164:0003:0003:EN:PDF>.

- An objective element, as it refers to a list of instances of serious criminal conduct (murder, bodily injuries, hostage taking, extortion, fabrication of weapons, committing attacks, threatening to commit any of the above, etc.);
- A subjective element, as these acts are deemed to be terrorist offences when committed with the aim of seriously intimidating a population, unduly compelling a government or international organization to perform or abstain from performing any act, or seriously destabilizing or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.

The Framework Decision provides also important CT guidelines in areas of terrorism support penalties, policing, jurisdiction and prosecution, protection of victims, implementation regulations, and reporting system.⁵² On the same day as the CT framework, the European Arrest Warrant, another binding document for member states, was introduced to replace the complicated extradition procedures between EU member states with a streamlined and unified process.⁵³

Since the European CT Action Plan was adopted on September 21, 2001, it was updated several times in October 2001, July 2002, and November 2002 as regards the implementation and introduction of new measures. In all, some 64 measures/actions were added by the end of 2002. Then the momentum seems to have given out. No updates were published in 2003.⁵⁴ More broadly, while many CT activities from the previous versions of the Action Plan were ongoing, motivation for further refinements of the European CT efforts in 2003 was declining. The U.S.-led intervention in Iraq divided member states, particularly over Iraq's possession of weapons of mass destruction

⁵² Council of the European Union, *Council Framework Decision of 13 June 2002*.

⁵³ Bures, *EU Counterterrorism Policy*, 151-52; The European Arrest Warrant receives further examination in Chapter III, Section A of this thesis.

⁵⁴ Council of the European Union, "European Union Action Plan to Combat Terrorism—Update of the Roadmap," (Brussels, Belgium: Council of the European Union, Document 13909/1/02 REV 1, November 14, 2002), accessed September 28, 2012, <http://register.consilium.europa.eu/pdf/en/02/st13/13909-r1en2.pdf>.

(WMD). In order to overcome these differences, the EU needed to renegotiate its common security and defense positions with all member states, updating and consolidating the European Security and Defense Policy (1999).⁵⁵

A solution was found through the development of the European Security Strategy (ESS), adopted in December 2003. The ESS marked a major step forward in framing a common approach to security, and it identifies three strategic objectives: (1) address the threats (terrorism, proliferation of WMD, regional conflicts, state failure, and organized crime); (2) build security in EU neighborhood; and (3) help to establish an international order based on effective multilateralism.⁵⁶ The ESS is “the first ever strategic document providing long-term guidance for the whole of EU foreign policy,”⁵⁷ and provides opportunity for further development of different security issue-related sub-strategies—including a Counterterrorism Strategy—in order to define specific objectives, priorities, resources, and conditions (norms) for execution.

The Strategy calls for the EU to be “*more active*” in pursuing its strategic objectives, through a *holistic* approach utilizing “the full spectrum of instruments for crisis management and conflict prevention, including political, diplomatic, military and civilian, trade and development activities.” “Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule

⁵⁵ “European Security and Defense Policy (ESDP) ... came into being at the 1999 Helsinki European Council where member states set themselves a defense capability target called the Helsinki Headline Goal (HHG). This called for the EU to be able to deploy a Rapid Reaction Force of up to 60,000 combat troops at sixty days’ notice for missions including crisis management, peacekeeping and peace-making operations. However in June 2004 the HHG was reformed to replace large deployments with a series of European Battle groups of 1,500 troops, provided either by single nations or by groups of nations (known as Headline Goal 2010). The EU’s Lisbon Treaty (2007) renamed ESDP the Common Defense and Security Policy (CDSP). It changed the way decisions are made in the EU but, crucially, decisions on military or defence issues must still have the unanimous support of EU states.”; CIVITAS EU Facts, “EU Common Security and Defense Policy,” accessed September 30, 2012, <http://www.civitas.org.uk/eufacts/FSEXR/EX4.htm>.

⁵⁶ Ruprecht Polenz, “The E Security Concept - Implications for NATO and the EU,” Report from 2004 Annual Session, (Brussels, Belgium: NATO Parliamentary Assembly, 2004), accessed September 30, 2012, <http://www.nato-pa.int/default.asp?CAT2=471&CAT1=16&CAT0=2&COM=490&MOD=0&SMD=0&SSMD=0&STA=&ID=0&PAR=0&PRINT=1>.

⁵⁷ Council of the European Union, *European Security Strategy: A Secure Europe in a Better World* (Brussels, Belgium: Council of the European Union, 2009), 10, accessed September 30, 2012, http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC7809568ENC.pdf.

of law and protecting human rights' should produce 'a world of well-governed democratic states.'⁵⁸

The promising, if high-flown, rhetoric proved hard to follow with action, even in the post-9/11 situation, not least because the members of the EU lapsed back into politics-as-usual in the relative quiet that ensued after the first burst of activity. For example, the European Arrest Warrant and the Money Laundering Directives adopted in 2001 were not implemented for another four years.⁵⁹ In other words, the bracing effects of the 9/11 attacks on the distant shores of a controversial ally had only so much staying power. Europe's CT framework would have to wait for the next calamity before it took on more substance.

B. MADRID TERRORIST ATTACK AS AN ACCELERATOR

During the Madrid morning rush hour on March 11, 2004, ten bombs exploded in four commuter trains. The blasts killed 191 people, injured 1,841, and caused €17.62 million in immediate material damages—plus another €211.58 million in estimated related economic cost for Spain.⁶⁰ The bombings were reported to be retaliation, authored by a Spanish group sympathetic to or affiliated with al Qaeda, for Spain's participation in the U.S.-led coalition in Iraq, yet later investigation did not find evidence to decide exactly who masterminded the attacks.⁶¹

This horrible event pushed the EU counterterrorism issue again into the limelight—and moved it to the forefront of EU planning. Shortly after the Madrid bombings, the European Commission issued the Action Paper in Response to the

⁵⁸ Council of the European Union, *European Security Strategy*.

⁶⁰ Fernando Reinares, "The Madrid Bombings and Global Jihadism," *Survival: Global Politics and Strategy* 52, no.2 (2010): 83-104, accessed October 2, 2012, <http://dx.doi.org/10.1080/00396331003764629>.

⁶¹ The Spanish court verdict in 2007 implies "that the attacks were carried out by a local group of loosely connected Islamic radicals who linked up with a gang of Moroccan drug dealers. In other words, 11-M was a local job executed without outside assistance and funded by a Madrid-based drug dealing racket."; Soeren Kern, "Spain Faces Difficulties in Judging Islamic Terrorists," *Grupo de Estudios Estratégicos*, October 23, 2007, accessed November 3, 2012, http://www.gees.org/articulos/spain_faces_difficulties_in_judging_islamic_terrorists_4749.

Terrorist Attacks on Madrid (March 18), which proposed to the Council several urgent responses from the EU: the EU Declaration of solidarity with Spain; better and faster national implementation of earlier adopted European CT legislative instruments; adoption of draft CT measures that waiting on the EU Council table; strengthening the fight against terrorist financing, enhanced operational coordination and cooperation, enhanced dialogue with third countries on terrorism, and such other measures as support for victims of terrorism, health security measures related to bio-terrorism, community civil-protection mechanisms, etc.⁶²

The European Council reacted quickly adopted the Declaration on Combating Terrorism on meeting March 24–26, 2004, which introduced all the proposed actions from the EU Commission memo, a and, in addition, requested urgent work on a plan for implementing the ESS; established the EU counterterrorist coordinator to facilitate the CT work of the EU Council; and mandated the preparation of a revised Plan of Action to Combat Terrorism through seven main objectives:⁶³

- [Objective 1] To deepen the international consensus and enhance international efforts to combat terrorism [17 measures/actions];
- [Objective 2] To reduce the access of terrorists to financial and economic resources [16 measures/actions];
- [Objective 3] To maximize the capacity within EU bodies and member States to detect, investigate and prosecute terrorists and to prevent terrorist attacks [59 measures/actions];
- [Objective 4] To protect the security of international transport and ensure effective systems of border control [19 measures/actions];
- [Objective 5] To enhance the capability of the European Union and of member States to deal with the consequences of a terrorist attack [15 measures/actions];

⁶² European Commission, “European Commission action paper in response to the terrorist attacks on Madrid,” *Europa Press Releases RAPID*, March 18, 2004, accessed October 2, 2012, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/04/66&format=HTML&aged=1&language=EN&guiLanguage=en>.

⁶³ Council of the European Union, *Declaration on Combating Terrorism March 25, 2004* (Brussels, Belgium: Council of the European Union, 2004), accessed September 30, 2012, <http://www.consilium.europa.eu/uedocs/cmsUpload/DECL-25.3.pdf>.

- [Objective 6] To address the factors which contribute to support for, and recruitment into, terrorism [12 measures/actions];
- [Objective 7] To target actions under EU external relations towards priority Third Countries where counter-terrorist capacity or commitment to combating terrorism needs to be enhanced [16 measures/actions].⁶⁴

Furthermore, the Declaration on Combating Terrorism included the EU declaration on solidarity against terrorism, “in which Member States agreed to act jointly and mobilize all available means, including military resources, if one of them is victim of a terrorist attack.” Thus, following the seven objectives from the Declaration, the CT Plan of Action was updated immediately (during the March meeting) with more detailed measures and more precise deadlines for implementation. In all, it includes a total of 155 measures and actions.⁶⁵

Just two months later, on June 18, 2004, the EU Council approved the next revision of the European CT Action Plan, but it also made the important decision that the Action Plan should be revised and approved by the Council twice a year. Moreover, the plan should consist of an “updated matrix, containing all the actions of the Action Plan and an annex showing an overview of the implementation by Member States of EU-legislation in the fight against terrorism as well as ratification of the relevant UN-Conventions.”⁶⁶

In the wake the Council meeting and the proposals for the latest revision of the European CT Action Plan, the EU Commission on October 20, 2004, sent to the Council and the European Parliament four important initiatives with aim to make counterterrorism “an integral part of general EU policy”: (1) prevention, preparedness and response to terrorist attacks; (2) prevention of and the fight against terrorist financing; (3)

⁶⁴ Council of the European Union, *Declaration on Combating Terrorism March 25, 2004*.

⁶⁵ Council of the European Union, “EU Plan of Action on Combating Terrorism, March 24, 2004” (Brussels, Belgium: Council of the European Union, 2004), accessed September 30, 2012, http://ue.eu.int/uedocs/cmsUpload/EU_PlanOfAction10586.pdf.

⁶⁶ Council of the European Union, “EU Plan of Action on Combating Terrorism – Update, December 7, 2004” (Brussels, Belgium: Council of the European Union, 2004), accessed September 30, 2012, <http://ue.eu.int/uedocs/cmsUpload/EUplan16090.pdf>.

preparedness and consequence management in the fight against terrorism; and (4) critical infrastructure protection in the fight against terrorism.⁶⁷ These initiatives developed important ideas for civil society's involvement in the fight against terrorism through: defending fundamental rights against violent radicalization; public-private security dialogue; support to victims of terrorism; integrated community CT policies; integrated EU and national rapid alert and civil protection systems; better communications with public; scientific and technical research in the area of security; and effective and integrated cooperation with the private sector.⁶⁸

Also during the meeting on November 4–5 2004, the EU Council adopted “The Hague Program: Strengthening Freedom, Security and Justice in the European Union,” which among many measures, requested integrated CT actions between member states and third states in connection with terrorist recruitment, terrorist financing, threat analysis, infrastructure protection, and consequence management.⁶⁹ And on November 22, 2004, the Council adopted the Conceptual Framework on the European Security and Defense Policy (ESDP) Dimension of the Fight Against Terrorism, which initiates use of an overall crisis-management and conflict-prevention ESDP capabilities in support of the European CT objectives listed in the March 2004 Council's Declaration.⁷⁰ According to the EU Council decision from June 2004 on regular reporting about the European CT Action Plan measures and activities and implementation, in December 2004 was presented updated version of the plan.⁷¹ The updated Action Plan identifies several

⁶⁷ Europa Summaries of EU Legislation, “Fight Against Terrorism: Prevention, Preparedness and Response,” accessed October 2, 2012, http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/133219_en.htm.

⁶⁸ Ibid.

⁶⁹ Council of the European Union, “Brussels European Council 4/5 November 2004, Presidency Conclusions,” (Brussels, Belgium: Council of the European Union, December 8, 2004), accessed October 2, 2012, http://ec.europa.eu/echo/civil_protection/civil/prote/pdfdocs/hague_programme2_4.pdf.

⁷⁰ Council of the European Union, “Conceptual Framework on the ESDP dimension of the fight against terrorism,” (Brussels, Belgium: Council of the European Union, November 22, 2004), accessed October 2, 2012, http://www.consilium.europa.eu/uedocs/cmsUpload/14797Conceptual_Framework_ESDP.pdf.

⁷¹ Council of the European Union, “EU Plan of Action on Combating Terrorism – Update, December 7, 2004.”

achievements: total number of listed CT measures/actions increased to 164; better CT cooperation with non-member states (especially with U.S. and neighbors); ratification and implementation of the CT-related UN conventions by most of the EU member states; improvements in the fight against terrorism financing; limited progress in implementation of the earlier adopted European CT legislative instruments; better CT-related information sharing; and improving the CT contribution from Europol, Eurojust, and Police Chiefs Task Force.⁷² According to the schedule, the last update of the European CT Action Plan in the post-Madrid stage was adopted by the Council on May 24, 2005. The main objectives remain unchanged, but the number of CT measures and actions increased to 203.⁷³

The post-Madrid period represents a more joint European approach in CT than ever before, and two important adopted instruments contributed to the ultimate development of the CT framework: the EU Declaration on Solidarity against Terrorism and new European CT Coordinator position in the EU Council Secretariat. Ultimately, at the end of the post-Madrid period, the EU adopted many new CT measures, activities and legal documents. Still, the lack of a strategic European CT strategy that serves as binding document for member states, as well as very slow member state's implementation process, continued to degrade the overall outcomes of the European CT efforts.

C. LONDON TERRORIST ATTACK AS A FINAL TRIGGER

On July 7, 2005 the first suicide terrorist bombing in Western Europe took place on the London Public Transport System. Three bombs at three separate locations on the London Underground, and one bomb on a

⁷² Ibid.

⁷³ Council of the European Union, "EU Plan of Action on Combating Terrorism – Update, May 24, 2005" (Brussels, Belgium: Council of the European Union, May 24, 2005), accessed October 4, 2012, <http://register.consilium.europa.eu/pdf/en/05/st08/st08211-ad01.en05.pdf>.

London Bus, were detonated by hand.⁷⁴ Fifty-two civilians and four bombers were killed and more than 700 [people] were injured.⁷⁵

The London attacks again proved the theory that the European CT response has been driven by events, notably terrorist attacks. And like after 9/11 and Madrid, the political momentum to agree on difficult CT issues picked up quickly after London attacks, which was obvious through the more efficient and faster implementation of CT measures. The EU reaction was fast; an extraordinary EU Council Meeting was held on July 13, 2005, and the Council adopted a Declaration condemning the London attacks and promising to “accelerate implementation of the EU Action Plan on Combating Terrorism and other existing commitments.”⁷⁶ The Declaration highlights the importance of improving capabilities in pursuing and investigating terrorists across borders, preventing people turning to terrorism, protecting citizens and infrastructure, and improving ability to manage and minimize the consequences of terrorist attacks. Also, the Council requested the rapid introduction and implementation of several already prepared important European CT-related legal instruments,⁷⁷ and announced review of all activities in “December 2005, including on national implementation of EU measures in order to ensure that the Union has the right framework for combating terrorism.”⁷⁸

⁷⁴ Glen M. Segell, “Terrorism: London Public Transport—July 7, 2005,” *Strategic Insights IV*, No. 8 (August 2005), accessed October 4, 2012, <http://www.nps.edu/Academics/centers/ccp/publications/OnlineJournal/2005/Aug/segellAug05.html>.

⁷⁵ British Red Cross, “London Bombings 2005,” accessed October 4, 2012, <http://www.redcross.org.uk/What-we-do/Emergency-response/Past-emergency-appeals/London-bombings-2005>.

⁷⁶ Council of the European Union, “Press Release: Extraordinary Council meeting Justice and Home Affairs, Brussels, 13 July 2005,” (Brussels, Belgium: Council of the European Union, July 13, 2005), accessed October 4, 2012, http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/jha/85703.pdf.

⁷⁷ Decisions on the Retention of Telecommunications Data (Deadline: October 2005, Adopted: March 15, 2006), European Evidence Warrant (EEW, Deadline: December 2005, Adopted: December 18, 2008), Decision on the exchange of information concerning terrorist offences (Deadline: September 2005, Adopted: September 20, 2005), Regulation on Wire Transfers (Deadline: December 2005, Adopted: November 15, 2006), Third Money Laundering Directive and the Regulation on Cash Control (Deadline: September 2005, Adopted October 26, 2005), Code of Conduct to Prevent the Misuse of Charities by Terrorists (Deadline: December 2005, Adopted: December 2, 2005).

⁷⁸ Council of the European Union, “Press Release: Extraordinary Council meeting Justice and Home Affairs, Brussels, 13 July 2005.”

More than four years after 9/11 and around two hundred CT measures and activities the EU was still missing a long-term CT policy that could be understood easily by EU citizens and used as strategic guidelines for member states' governments. Therefore, the UK, during its six-month rotation in the presidency of the EU, joined forces with the EU Counter-Terrorism Coordinator to develop the first draft of the European CT Strategy. The strategy was presented on October 21, 2005, to the Council of Permanent Representatives to the European Council (COREPER).⁷⁹ The draft explains the European CT as a strategic commitment for the long term. It positions itself as a reinforcement of national CT efforts and introduces mechanisms for political oversight of the strategy and for monitoring progress at the operational level. Tellingly, while many previous important EU legal-institutional CT instruments were adopted only after delays and long and hard negotiations between the EU Commission and the member states, the draft of European Union Counter-Terrorist Strategy was negotiated very quickly and the strategy was adopted after only 40 days on November 30, 2012.⁸⁰

Through the CT Strategy, “the commitment of the Union is to combat terrorism globally while respecting human rights, and to make Europe safer, allowing its citizens to live in an area of freedom, security and justice.”⁸¹ The strategy organizes previously adopted CT-related measures and actions under four pillars—prevent, protect, pursue, and response—as well as summarizing all previous CT legal, institutional, and operational documents of the EU.

The strategy emphasizes a need to: (1) prevent “people [from] turning to terrorism by tackling the factors or root causes which can lead to radicalization and recruitment, in Europe and internationally,” (2) protect “citizens and infrastructure and reduce our vulnerability to attack,

⁷⁹ Council of the European Union, Presidency and the Counterterrorism Coordinator, “Towards a Counter-Terrorism Strategy for the European Union,” (Brussels, Belgium: Council of the European Union, Presidency and the Counterterrorism Coordinator, Document 13613/05, October 21, 2005), accessed October 5, 2012, <http://register.consilium.europa.eu/pdf/en/05/st13/st13613.en05.pdf>.

⁸⁰ Council of the European Union, *The European Union Counter-Terrorism Strategy*.

⁸¹ EU Counterterrorism Coordinator, “Implementation of the Strategy and Action Plan to Combat Terrorism,” (Brussels, Belgium: EU Counterterrorism Coordinator, Document 9416/1/08 Rev 1, May 26, 2008), accessed October 5, 2012, <http://register.consilium.europa.eu/pdf/en/08/st09/st09416-re01.en08.pdf>.

including through improved security of borders, transport and critical infrastructure,” (3) pursue and investigate “terrorists across our borders and globally; to impede planning, travel, and communications; to disrupt support networks; to cut off funding and access to attack materials, and bring terrorists to justice,” (4) “prepare ourselves, in the spirit of solidarity, to manage and minimize the consequences of a terrorist attack, by improving capabilities to deal with: the aftermath; the co-ordination of the response; and the needs of victims.”⁸²

At the end of 2004 the EU Council agreed to develop counter-radicalization and recruitment in the terrorism strategy and related action plan—which after the London attacks became the European CT Strategy—but also simultaneously adopted the European Union Strategy for Combating Radicalization and Recruitment to Terrorism on November 24, 2005.⁸³ In the strategy, the EU promises to: “disrupt the activities of the networks and individuals who draw people into terrorism; ensure that voices of mainstream opinion prevail over those of extremism; promote yet more vigorously security, justice, democracy and opportunity for all.”⁸⁴

Since the end of 2005, dozens of new legal and institutional instruments has been introduced. The EU Counterterrorism Coordinator (CTC) has reported to the Council twice a year on the implementation of the CT Strategy and on the Action Plan to Combat Terrorism and the implementation of European CT-related legislation in member states; additionally the office has published occasionally EU Counter-Terrorism Strategy discussion papers with updates and recommendations on the European CT legal-institutional framework. Following the introduction of the European Union Strategy for Combating Radicalization and Recruitment to Terrorism (2005), some measures listed in the European CT Action Plan were transferred in the new EU Action Plan for Combating Radicalization and Recruitment to Terrorism (2005). This plan remains classified, though

⁸² Grajny “The European Union counterterrorism.”

⁸³ Council of the European Union, *The European Union Strategy for Combating Radicalization and Recruitment to Terrorism* (Brussels, Belgium: Council of the European Union, November 24, 2005), accessed October 5, 2012, <http://register.consilium.europa.eu/pdf/en/05/st14/st14781-re01.en05.pdf>.

⁸⁴ Council of the European Union, *The European Union Strategy for Combating Radicalization*.

it was partially declassified in 2010 and shows only the titles of 14 measures and actions.⁸⁵

Year	2001	2002–2003	2004	2005	2006	2007–2009	2010–2012
EU Action Plan on Combating Terrorism (Measures/Actions)	41	64	164	203	138	139	37

Table 1. EU Action Plan on Combating Terrorism—Updates 2001–2012 (After:⁸⁶)

Analysis of published EU Action Plans on Combating Terrorism since 2001 shows that the Action Plan was updated seven times. It started from a modest 41 measures in 2001, grew slowly to 64 in the period 2002–2003, and then rapidly increased in 2004 after the Madrid attacks to 164 measures and again after the London bombings to its maximum of 203 active CT measures and actions (Table 1). After the European CT Strategy was adopted in 2006, many of measures were executed and Action Plan ended 2006 with 138 active CT measures and actions, which remained steady in period 2008–2009 (139 measures). The list shows only 37 active CT measures and actions in 2010, which owes something to measures having been executed and also can be related to reorganization of EU institutions in light of the Lisbon Treaty. Some measures and actions were redirected to the other specific (and some confidential) CT Action Plans, for example, the EU Action Plan for Combating Radicalization and Recruitment to

⁸⁵ Council of the European Union, “The European Union Action Plan for Combating Radicalization and Recruitment to Terrorism,” (Brussels, Belgium: Council of the European Union, Document 14782/05, November 11, 2010), accessed October 12, 2012, <http://register.consilium.europa.eu/pdf/en/05/st14/st14782-ex01.en05.pdf>.

⁸⁶ Author’s analysis derived from list of various EU Documents. Council of the European Union Public Register, “EU Action Plan on Combating Terrorism,” accessed October 12, 2012, http://register.consilium.europa.eu/servlet/driver?page=Result&lang=EN&typ=Advanced&cmsid=639&ff_COTE_DOCUMENT=&ff_COTE_DOSSIER_INST=&ff_TITRE=Action+Plan+Terrorism&ff_FT_TEXT=&ff_SOUS_COTE_MATIERE=&dd_DATE_DOCUMENT=&document_date_single_comparator=&document_date_single_date=&document_date_from_date=&document_date_to_date=&dd_DATE_REUNION=&meeting_date_single_comparator=&meeting_date_single_date=&meeting_date_from_date=&meeting_date_to_date=&fc=REGAISEN&srm=25&md=400&ssf=DATE_DOCUMENT+DESC&srs=101.

Terrorism,⁸⁷ the EU Action Plan to Take Forward Customs Counterterrorism Initiatives,⁸⁸ the EU CBRN Action Plan,⁸⁹ the Critical Information Infrastructure Protection (CIIP) Action Plan,⁹⁰ or the EU Action Plan on Enhancing the Security of Explosives.⁹¹

Since the European CT Strategy was adopted in 2005, the whole European CT framework has come to encompass four strands of work (prevent, protect, pursue, and response) to fulfill the main strategic commitment, namely “to combat terrorism globally while respecting human rights, and make Europe safer, allowing its citizens to live in an area of freedom, security and justice.”⁹² Has the EU succeeded in this CT strategic commitment?

1. Prevent

The objective of the EU under the prevent pillar of the European CT Strategy is “to prevent people turning to terrorism by tackling the factors or root causes which can lead to radicalization and recruitment, in Europe and internationally.”⁹³ The cornerstone of the “prevent” pillar is the EU Strategy for Combating Radicalization and Recruitment

⁸⁷ Council of the European Union, “The European Union Action Plan for Combating Radicalization.”

⁸⁸ Council of the European Union, “Fifth action plan to take forward customs counter-terrorism initiatives - Report from the project group,” (Brussels, Belgium: Council of the European Union, Document 8590/11, April 11, 2011), accessed October 12, 2012, <http://register.consilium.europa.eu/pdf/en/11/st08/st08590.en11.pdf>.

⁸⁹ Council of the European Union, “EU Action Plan on CBRN,” (Brussels, Belgium: Council of the European Union, Document 17705/09, December 21, 2009), accessed October 12, 2012, <http://register.consilium.europa.eu/pdf/en/09/st17/st17705.en09.pdf>.

⁹⁰ European Commission, “Protecting Europe from large scale cyber-attacks and disruptions: enhancing preparedness, security and resilience,” (Brussels, Belgium: European Commission, Document COM(2009) 149 final, March 30, 2009), accessed October 12, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0149:FIN:EN:PDF>.

⁹¹ Council of the European Union, “Implementation of the Action Plan on Enhancing the Security of Explosives,” (Brussels, Belgium: Council of the European Union, Document 11056/09, June 18, 2009), accessed October 12, 2012, http://www.europa-nu.nl/9353000/1/j4nvgs5kjg27kof_j9vvikqpopjt8zm/vi7cbz3zipzu/f=/pdf.

⁹² Council of the European Union, *The European Union Counter-Terrorism Strategy*, 3.

⁹³ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 3.

(2005), which was revised in November 2008. Since then, 17 member states have developed national strategies to prevent radicalization and extremism, and five of them have specific activities on de-radicalization and disengagement. The Framework Decision on Combating Terrorism (2002) was amended in 2008 and came into force in December 2010 with important prevention-related amendments that allow the prosecution of people who organize terrorist recruitment (including on the Internet), as well as spreading information that can be used to commit terrorist attacks (for example, bomb-making recipes).⁹⁴ In this connection, an important initiative of the EU Commission has been the development of a public-private partnership in the CT-related use of the Internet because almost all Internet providers in Europe are private companies.⁹⁵ Furthermore, the EU and its members have launched many initiatives in order to fight extremism and radicalization. These initiatives have been spearheaded by particular member states but they are of use to all and mostly funded by the EU.⁹⁶ Nevertheless, qualitative and quantitative assessments are rare, and therefore the EU Commission plan is that in cooperation with member states first develop reliable indicators and later analyze effectiveness of measures.⁹⁷

⁹⁴ Europa Press Releases RAPID, “EU Counter-terrorism strategy: main achievements,” MEMO/10/350, July 20, 2010, accessed November 2, 2012, <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/10/350>.

⁹⁵ European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges,” (Brussels, Belgium: European Commission, COM(2010)386 final, July 20, 2010), accessed November 2, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0386:FIN:EN:PDF>.

⁹⁶ Council of the European Union, “EU Action Plan on combating terrorism, December 9, 2011,” (Brussels, Belgium: Council of the European Union, Document 17594/1/11, December 9, 2011), 4-9, accessed October 12, 2012, <http://register.consilium.europa.eu/pdf/en/11/st17/st17594-re01.en11.pdf>; Important European CT-related initiatives that have been executed under the “prevent” pillar and listed in the latest CT Action Plan are: De-radicalization—Targeted Intervention (immigrants, Denmark); Back on Track (in prisons, Denmark), Handbook: How to Handle Radicalization among the Young People (Denmark); Community Policing and Prevention of Radicalization (COPRA training program, Belgium); Imam-training (Spain); Training for Frontline Workers: Schoolteachers, Police, and Youth Workers (Netherlands); the Check the Web Portal (Germany); Clean IT (Netherlands); Policy Planners Network on Countering Radicalization and Polarization (PPN, EU); Alliance of Civilizations (toward media, EU); and Radicalization Awareness Network (RAN) as an EU top initiative, introduced on September 9, 2011.

⁹⁷ European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges.”

2. Protect

The objective of the “protect” pillar of the European CT Strategy is “to protect citizens and infrastructure and reduce our vulnerability to attack, including through improved security of borders, transport and critical infrastructure.”⁹⁸ One of the most important CT-related measures in the “protect” area is the introduction of the European Program for Critical Infrastructure Protection in 2006 (reviewed 2011), which was followed by a list of critical facilities, related protection standards, and many new measures and actions, such as: EU network of laboratories for testing and certification of security solutions, list of actions to protect information systems, and the Security of Explosives Action Plan and 50 concrete actions to minimize the risk of terrorist attacks with explosives.⁹⁹ Also, in order to support further development in area of security and CT, the EU established a special program for research and technological development that received an impressive €1.4 billion budget for the period 2007–2013. Many initiatives have been made concerning the improvement of border security, especially through new technologies, like biometric passports that help thwart multiple asylum applications, and in the development of integrated border management systems like “entry-exit system” that tracks the mobility of third-country nationals in the EU.¹⁰⁰ Within transport security, the EU has introduced many new rules and regulations, especially in civil aviation and maritime transport, like clearly standardized levels of threats and related security actions, new technologies to defeat efforts by terrorists to procure dangerous substances (e.g., liquid explosives), and human rights sensitive new standards for security scanners at EU ports (2010).¹⁰¹ Furthermore, in the last six years, the EU has adopted more than twenty important framework programs, action plans, and

⁹⁸ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 3.

⁹⁹ European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges.”

¹⁰⁰ Franco Frattini, “Providing Europe with the tools to bring its border management into the 21st century,” SPEECH/08/142, March 12, 2008, *Europa Press Releases RAPID*, accessed November 2, 2012, http://europa.eu/rapid/press-release_SPEECH-08-142_en.htm?locale=en.

¹⁰¹ European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges.”

legal measures that reinforce some older official CT activities, as well as enhancing a wide range of new public-private CT activities.¹⁰²

3. Pursue

The objective of the EU under the “pursue” pillar of the European CT Strategy is “to pursue and investigate terrorists across our borders and globally; to impede planning, travel, and communications; to disrupt support networks; to cut off funding and access to attack materials, and bring terrorists to justice.”¹⁰³ A significant number of measures were introduced enhancing the gathering and simplifying exchange of information and intelligence between the CT-related EU and member-state institutions, such as the European Evidence Warrant that has simplified the exchange of evidence between member states.¹⁰⁴ Europol and Eurojust have contributed significantly to the many areas of the CT strategy, especially with various of effectiveness analyses, sensitive data exchange, training support, and Joint Investigations Teams.¹⁰⁵ Furthermore, the

¹⁰² Important European CT-related initiatives that have been executed under “protect” pillar and listed in the latest CT Action Plan are: Visa Information Systems (VIS, shared issuing EU visa and includes compulsory biometrics), Schengen Information System (SIS, data exchange), the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX, new larger authorities in October 2011), the European Border Surveillance System (EUROSUR, established in December 2011), the European Program for Critical Infrastructure Protection (EPCIP, adopted 2006, reviewed 2011), the Directive on European Critical Infrastructures (adopted 2008, reviewed 2011, list of critical infrastructure and required protection standards), prepared project of Critical Infrastructure Warning and Information Network (CIWIN, pilot phased finished in 2011), the European Reference Network for Critical Infrastructure Protection (ERN-CIP, in planning phase, link EU laboratories in order to test of new CIP technology), Council Conclusions on Critical Information Infrastructure Protection (CIIP, 2011, updates and results of the 2009 CIIP Action Plan), the EU-US Working Group on Cyber-security and Cyber-crime (EU-US WG, 2010), the Computer Emergency Response Team (CERT), the European Network and Information Security Agency (ENISA, extended mandate until 2013), the EU Regulatory committees (AVSEC and MARSEC for security of airports and sea ports), Aviation Security Rules for EU-inbound Cargo and Mail (2011), Internal Security Strategy in Action (ISS AP, 2010, project for land security), EU European Bomb Data System (EBDS, 2008), European Explosive Ordnance Disposal Network (EEODN, 2008), EU CBRN Law Enforcement Network (2009), and Ad Hoc Group on Nuclear Security (AHGNS, 2011).; Council of the European Union, “EU Action Plan on combating terrorism, December 9, 2011,” 9-25.

¹⁰³ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 3.

¹⁰⁴ European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges.”

¹⁰⁵ European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges” 8; See more in Chapter II, Section D.

Commission has developed several CT pursue-related laws and operational measures that have yielded valuable results--amid some controversy about human rights, especially in regards to those measures related to individual data exchange and combating terrorist financing.¹⁰⁶

4. Response

The objective of the EU under the “response” pillar is “to prepare ourselves, in the spirit of solidarity, to manage and minimize the consequences of a terrorist attack, by improving capabilities to deal with: the aftermath; the co-ordination of the response; and the needs of victims.”¹⁰⁷ The EU has its framework decision and related regulations on the standing of victims in criminal proceedings and on compensation for more than decade, including victims of terrorist attack.¹⁰⁸ The EU provides an average of €1.8 million a year to help terrorism-related victims and their families to recover.¹⁰⁹ The EU Community Civil Protection Mechanism (CCPM) has been developed since 2001 and today is the cornerstone of the EU response efforts.¹¹⁰ It is continuously reinforced every year and insures fast response by capabilities of all member states in “any type of natural or man-made disaster, such as earthquakes, floods, forest fires, industrial accidents,

¹⁰⁶ Important European CT-related initiatives that have been executed under “pursue” pillar and listed in the latest CT Action Plan are: National Structures for Counter Terrorism (established in more than half of member states), Information Sharing Mechanism on Changes in the National Threat Level (2011, provides by SitCen), Prüm decisions (2008, automated data exchange regarding DNA, fingerprints and vehicle registration data), Passenger Name Records (PNR, 2011, tool to detect terrorist networks and movements), EU-US Agreement on the Terrorist Finance Tracking Program (TFTP, 2010), Joint investigation teams (JITs) Experts Network (JIT EN, 2010), European Criminal Records Information System (ECRIS, 2012), and Revised Strategy on Terrorist Financing (2008); Council of the European Union, “EU Action Plan on combating terrorism, December 9, 2011,” 25-39; European Commission, “The EU Counter-Terrorism Policy: main achievements and future challenges,” 8, See on security vs. human rights more in Chapter III, Section B and D.

¹⁰⁷ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 3.

¹⁰⁸ European Commission Home Affairs, “Victims,” European Commission, accessed November 2, 2012, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/crisis-and-terrorism/victims/index_en.htm.

¹⁰⁹ European Commission Home Affairs, “Victims.”

¹¹⁰ “All 27 member states of the EU and the 3 EEA countries, Norway, Iceland and Lichtenstein as well as Croatia and the former Yugoslav Republic of Macedonia, participate in the mechanism.”; Bundesministerium für Inneres, “Civil Protection,” accessed November 3, 2012, http://www.bmi.gv.at/cms/BMI_Zivilschutz/more_on_topic/european_union.aspx.

marine pollution or terrorist attacks.”¹¹¹ So far, the CCPM has 128 modules in high readiness and eight technical and assistance teams.¹¹² The mechanism has been activated more than hundred times in recent years;¹¹³ for example, in the period 2010–2011 it was activated 46 times, 15 times within and 31 times outside the EU.¹¹⁴ A recent Eurobarometer survey shows that 82 percent of Europeans agree that the CCPM is more effective in response to major crisis than actions taken by individual member states.¹¹⁵ Although the CCPM was activated mostly for natural disasters in recent years, the EU has organized many training sessions, including annual exercises in CT response. Furthermore, the EU has developed framework programs to join member states capabilities, including important program and related regulations in case of chemical,

¹¹¹ European CCPM applies the EU member states, but may be also apply to other non-EU countries – “any country in the world can call on the European Civil Protection Mechanism for assistance.”; Reliefweb, “Questions and Answers on European Civil Protection Mechanism,” accessed November 2, 2012, <http://reliefweb.int/report/haiti/questions-and-answers-european-civil-protection-mechanism>.

¹¹² “e.g. water purification, high capacity pumping, urban search and rescue, aerial and ground forest fire fighting, CBRN detection and sampling, medium and heavy urban search and rescue in CBRN conditions, forest fire fighting, and medical assistance (advanced medical post with surgery and medical aerial evacuation of disaster victims, field hospital), flood containment, flood rescue, temporary shelters.”; Council of the European Union, “EU Action Plan on combating terrorism, December 9, 2011,” 42.

¹¹³ Some of large actions include responses to Greece forest fires in 2009 and 2012, earthquake in Italy in 2009, chemical pollution in Hungary in 2010, as well as outside of EU responding to the Asian tsunami in 2004, the hurricane Katrina in 2005, and the Haiti earthquake in 2010. Reliefweb, “Questions and Answers on European Civil Protection Mechanism”; European Commission, “Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their implementation in 2010,” (Brussels, Belgium: European Commission, COM/2011/0343 final, 2011), accessed November 2, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0343:FIN:EN:HTML>.

¹¹⁴ European Commission, “Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their implementation in 2010”; European Commission, “Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their implementation in 2011,” (Brussels, Belgium: European Commission, COM(2012) 489 final, 2012), accessed November 2, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0489:FIN:EN:PDF>.

¹¹⁵ European Commission, “Annual Report on the European Union's Humanitarian Aid and Civil Protection Policies and their implementation in 2011.”

biological, radiological, and nuclear disaster, which has special regulations in case of terrorist CBRN attacks.¹¹⁶

The EU has introduced hundreds of CT-related EU regulations, directives, decisions, working documents, and other EU legal documents. Although research into the EU Documents Public Register is very demanding and takes a lot of time, Maria O'Neill in *The Evolving Counter-Terrorism Legal Framework* provides the most accurate list of 271 EU documents that have a direct or indirect relationship with the European CT framework.¹¹⁷ Of these documents, the Treaty of Lisbon¹¹⁸ brings to the European CT framework the most significant changes in way of execution as well as in EU structure and institutional powers, such as: (a) the EU decision-making process is changed from the unanimity rule to a qualified majority vote (QMV, simplified decisions); (b) the European Parliament got stronger oversight role and full co-decisional powers; (c) the European Court of Justice (ECJ) jurisdiction is extended and now covers all issues in the area of freedom, security, and justice (FSJ), yet effectively after November 30, 2014 (ECJ is able to penalize slow implementation of EU measures, including CT); (d) EU agencies Europol, Eurojust, and Frontex have a legal personality (able to be party in international agreements); (e) a new EU Standing Committee on Internal Security (COSI) was created in the Council related to operational cooperation on internal security with members from national security services; (f) the Lisbon Treaty promotes the “solidarity clause “ (Lisbon Treaty, Article 222: “The Union and its Member States shall act jointly

¹¹⁶ Important European CT-related initiatives that have been executed under “response” pillar and listed in the latest CT Action Plan are: Proposal of expanding the provisions of Framework Decision (2001) on the Standing of Victims in Criminal Proceedings (2011), EU CBRN Action Plan (2009, preventive, detection and response measures), and EU Community Civil Protection Mechanism (CCPM, 2007); Council of the European Union, “EU Action Plan on combating terrorism, December 9, 2011,” 40-48.

¹¹⁷ O. Neill, *The Evolving EU Counter-Terrorism Legal Framework*, xi-xxxiii. This work includes 33 international treaties and agreements of the EU, four international Treaties and agreements of the Council of Europe, 12 other international treaties and agreements, eight protocols to treaties, 32 EU regulations, 18 directives, 13 Council acts, 6 Council common positions, 19 framework decisions, 73 Council decisions, 17 joint actions, 11 other EU legal documents, 7 Commission staff working documents, and 18 strategy documents.

¹¹⁸ The Treaty of Lisbon entered into force December 1, 2009, and amends the current EU and EC treaties mostly with institutional issues; Europa: Treaty of Lisbon, “The Treaty at a Glance,” Europa, accessed October 13, 2012, http://europa.eu/lisbon_treaty/glance/index_en.htm.

in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural or man-made disaster. The Union shall mobilize all the instruments at its disposal, including the military resources made available by the Member States.”); (g) regarding to external security and CT, the Lisbon Treaty states that Common Security and Defense Policy (CSDP) missions can contribute to the fight against terrorism, as well as the EU can support non-EU countries in CT in their countries.¹¹⁹ The Lisbon Treaty did not diminish any European CT institutional authorities; rather, it expanded the oversight and legislative authorities of the European Parliament, which has nudged recent CT directives, regulations, and international agreements in more a human rights-sensitive direction. It is significant that since the Lisbon Treaty came into power, no major European CT-related document has been challenged before the ECJ, and even the United States has relented during recent negotiations on some CT agreements with EU.¹²⁰

Ten years after 9/11, the European CT framework remains under construction, but the positive outcome is the fact that all of the main CT-related Council framework decisions, the European CT strategy, and the CT-related EU institutions are so far still in effect. Except for the strategy, some CT-related Council decisions, especially those related to EU institutions, were amended several times, but always toward wider and stronger CT authorities, and without degrading any of previous given capabilities. Thus, the evolution of the European CT legal-institutional framework is still not finished, but because of the simplified decision-making process and stronger CT institutions after the Lisbon Treaty, it is possible to expect even faster and more comprehensive development in some of CT areas where member states have been reluctant to full cooperate before.

D. KEY INSTITUTIONS RELATED TO EU COUNTERTERRORISM

This section examines four of the EU institutions with the greatest influence and the most direct operational tasks in the European CT efforts: the European Police Office

¹¹⁹ Thomas Renard, “EU Counterterrorism Policies and Institutions after the Lisbon Treaty,” *Policy Brief* (September 2012), *Center on Global Counterterrorism Cooperation*, accessed October 13, 2012, http://www.globalct.org/images/content/pdf/policybriefs/Renard_policybrief_1216.pdf.

¹²⁰ See more in Chapter III, Section D.

(Europol), European Union's Judicial Cooperation Unit (Eurojust), EU Counterterrorism Coordinator (EU CTC), and the EU Joint Situation Center (EU JSC, SitCen). To be sure, among the rest of the EU bodies, the European Police College (CEPOL),¹²¹ the European Police Chiefs Operational Task Force (PCOTF),¹²² and the FRONTEX Agency¹²³ are the most active in support of the European CT, but they are not analyzed here because these institutions are still not significant contributors to the European CT framework.

1. Europol

Emerging from the original idea to have some formal cooperation between European law-enforcement forces in the 1970s, with the TREVI group as a cornerstone the Maastricht Treaty mandated the establishment of a European Police Office (Europol) with mission to provide “police cooperation between member states to combat terrorism, drug trafficking and other international crime.”¹²⁴ The following year, Europol

¹²¹ European Police College (CEPOL): Established as formal EU institution in 2005 (2005/681/JHA), the CEPOL Secretariat is in Bramshill, UK. CEPOL task is to help in training of senior police officers from the EU member states. It organizes 60-100 courses per year, but mostly works as a network and share training programs with many National Police Colleges. Regarding to CT, CEPOL provides one specialized course on combating terrorism; European Police College, “About Cepol,” accessed October 13, 2012, <https://www.cepol.europa.eu/index.php?id=training-learning>.

¹²² European Police Chiefs Operational Task Force (PCOTF): Established as working group in 2000 following conclusions from the EU Tampere Summit in October 1999, yet to the end does not have legal basis in the EU. “PCOTF concerns several counter-terrorism issues, such as the operational analysis of ‘Islamic Extremist Terrorism,’ terrorism threat assessments, the financing of terrorism, and weapons of mass destruction.” Mathieu Deflem, “Europol and the Policing of International Terrorism: Counter-Terrorism in a Global Perspective,” *Justice Quarterly* 23, no.3 (2006): 336-359, accessed October 13, 2012, <http://deflem.blogspot.com/2006/08/europol-and-policing-of-international.html>.

¹²³ European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX): Established in 2004 in order “to reinforce and streamline cooperation between national border authorities” with joint operations, training, risk analysis, research, providing a rapid response capability, assisting member states in joint return operations, and providing information sharing system; FRONTEX, “Mission and Tasks,” accessed October 13, 2012, <http://www.frontex.europa.eu/about/mission-and-tasks>; “FRONTEX has not yet been involved directly in CT work but is associated with the border security aspects of the EU and UN Global CT strategies.” ; EU Counterterrorism Coordinator, “EU Counter-Terrorism Strategy - Discussion Paper,” (Brussels, Belgium: EU Counterterrorism Coordinator, Document 9990/12, May 23, 2012), 3, accessed October 13, 2012, <http://register.consilium.europa.eu/pdf/en/12/st09/st09990.en12.pdf>.

¹²⁴ Europol, “History,” accessed October 5, 2012, <https://www.europol.europa.eu/content/page/history-149>.

commenced work through Europol Drugs Unit (EDU, 1993), and the EDU paved the way for the convention establishing Europol (1995), and after its ratification to a fully-fledged Europol on October 1, 1998. The organization is headquartered in The Hague, Netherlands.¹²⁵ The convention required member states to designate a national unit to liaise with Europol, and to second liaison officers to the Europol headquarters. The Treaty of Amsterdam provides Europol a mandate as the main EU law-enforcement coordination point and introduced the idea of Europol Joint Investigation Teams (JITs).¹²⁶ Recently, the EU Council (Tampere, October 1999) requested that “joint investigative teams... be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism.”¹²⁷ Although, the Europol was constantly in transition in first two years while trying to enhance operational activities, its role was expanded in 1994, and member states were requested to implement several EU legal instruments, which make Europol key in the EU fight against serious international organized crime and terrorism with high-quality information from member states.¹²⁸ On April 6, 2009, the EU Council adopted a decision¹²⁹ that extended Europol’s mandate and tasks (data processing, protection and operational capabilities) and makes Europol as an EU agency equal to other bodies and agencies in the Justice and Home Affairs pillar of the EU. Now, Europol is financed from the EU budget, falls under the EU financial and staff regulations, and is subject to EU oversight.¹³⁰

Today, Europol has developed into a respectable EU law-enforcement agency with more than 700 staff—130 seconded from 27 EU member states and some from

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

¹²⁹ Came into force on January 1, 2010 and replaced the Europol Convention (1995).

¹³⁰ Europol, “History.”

partner states¹³¹—that support national law enforcement agencies through “gathering, analyzing, and disseminating information and coordinating operations,” as well as through participation of Europol’s experts and analysts in Joint Investigation Teams serious criminal cases in EU countries.¹³² Among the JIT, analyses are important part of Europol activities that employs more than 100 the best European criminal analysts, who provide analyses and threat assessments for member states—for example daily and long term threat assessments; the European Organized Crime Threat Assessment, OCTA, an annually published CT-related report; and the EU Terrorism Situation and Trend Report, TE-SAT.¹³³ Today, Europol is organized as the EU’s law-enforcement hub or a police operational center that operates non-stop and deal with more than 10,000 cases a year.¹³⁴

Europol has successfully launched and maintained several counterterrorism programs: Counter Terrorist Program (analyzes information, provides threat assessments and JIT); Counter Proliferation Program (monitors trafficking of nuclear material, arms, explosives, etc.); Networking Program (establishes effective contacts between counterterrorist authorities from EU and third countries); Preparedness Program (relates to the readiness of multilateral investigative teams); Training and Education Program (provides experts in area of police training; and as an institutional measure, the Europol Task Force for the Fight against Terrorism (collect, analyze and assess terrorism-related intelligence and CT security measures across the EU)).¹³⁵

¹³¹ “Europol cooperates with a number of Non-EU countries and organizations, but also EU agencies and institutions, for example (in alphabetical order): Albania, Australia, Bosnia and Herzegovina, Canada, CEPOL (European Police College), Colombia, Croatia, Eurojust, European Central Bank, European Commission, European Monitoring Centre for Drugs and Drug Addiction, Former Yugoslav Republic of Macedonia, Frontex, Iceland, Interpol, Moldova, Norway, OLAF (European Anti-Fraud Office), Russian Federation, Serbia, Switzerland, SITCEN (EU Joint Situation Centre), Turkey, United Nations Office on Drugs and Crime, USA, World Customs Organization.”; Europol, “Frequently Asked Questions: International Operations,” accessed October 6, 2012, <https://www.europol.europa.eu/faq#n109>.

¹³² Europol, “Europol Profile,” accessed October 6, 2012, https://www.europol.europa.eu/sites/default/files/publications/en_europolprofile_0.pdf.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Deflem, “Europol and the Policing of International Terrorism”; Grajny, “The European Union counterterrorism.”

[Furthermore,] [i]n addition to its support to Member States' terrorist investigations and its participation in joint investigation teams, Europol has developed or is in the process of developing a set of useful CT products/instruments including the TE-SAT report (supported by Eurojust), the explosive/CBRN databases, "check the web," the European Cybercrime Centre (by 2013), and the First Responders Network, used for the first time in the wake of the Breivik case in July 2011.¹³⁶

2. Eurojust

The first idea for the establishment of a judicial cooperation unit in the EU was introduced at the EU Council Summit in Tampere in October 1999; the first provisional judicial cooperation unit (Pro-Eurojust) was established on March 1, 2001.¹³⁷ Post-9/11 urgency led to the faster establishment of the European Union's Judicial Cooperation Unit (Eurojust) on February 28, 2002 (Council Decision 2002/187/JHA); its full operational capabilities were reached in January 2003, after the Rules of Procedure were agreed.¹³⁸ Eurojust headquarters is in The Hague, Netherlands, and is "composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to their own legal systems."¹³⁹ Furthermore, cooperation agreements to exchange of judicial information have been concluded with Europol, Norway, Iceland, the United States., Croatia, European Anti-Fraud Office (OLAF), Switzerland, and the Former Yugoslav Republic of Macedonia; in addition, liaison prosecutors from Norway, the United States., and Croatia are based at Eurojust headquarters.¹⁴⁰ Eurojust has 269 personnel, of whom 49 are seconded from member

¹³⁶ EU Counterterrorism Coordinator, "EU Counter-Terrorism Strategy - Discussion Paper."

¹³⁷ Eurojust, "Background: History of Eurojust," accessed October 6, 2012, <http://eurojust.europa.eu/about/background/Pages/history.aspx>.

¹³⁸ Ibid.

¹³⁹ Ibid.

¹⁴⁰ Eurojust, "Background: History of Eurojust."

states to serve as prosecutors, judges, and police officers. Other 210 staff members are employed under EU staff regulations.¹⁴¹

Eurojust stimulates and improves the coordination of investigations and prosecutions between the competent authorities in the Member States and improves the cooperation between the competent authorities of the Member States, in particular by facilitating the execution of international mutual legal assistance and the implementation of extradition requests. Eurojust competence covers the same types of crime and offences for which Europol has competence, such as terrorism, drug trafficking, trafficking in human beings, counterfeiting, money laundering, computer crime, crime against property or public goods including fraud and corruption, criminal offences affecting the European Community's financial interests, environmental crime and participation in a criminal organization.¹⁴²

Since its establishment, Eurojust's activities in European judicial cooperation have grown rapidly, especially following the Madrid and later London terrorist attacks. The Eurojust Counterterrorism Team was established in 2004 with tasks to organize Eurojust and partners CT-related meetings, to build up a legal database (CT-related legislation, cases and verdicts), and to provide data for Europol reports (TE-SAT).¹⁴³ Important issues in EU judicial cooperation were solved in December 2008, when the EU Council adopted broader operational capabilities for Eurojust in the areas of international data exchange, relationships with non-EU states, and establishing a Eurojust desk for 24/7 support of national judicial authorities.¹⁴⁴

Eurojust has been very active. Eurojust deals with about 30 cases related to terrorism (serious and mostly multilateral cases) every year. It organizes regular meetings

¹⁴¹ Eurojust, *Eurojust Annual Report 2011* (The Hague, Netherlands: Eurojust, 2012), accessed October 11, 2012, <http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202011/Annual-Report-2011-EN.pdf>.

¹⁴² Eurojust, "Background, Mission and Tasks," accessed October 6, 2012, <http://eurojust.europa.eu/about/background/Pages/mission-tasks.aspx>.

¹⁴³ Eurojust, "Counter-Terrorism Team," *Eurojust News* 1, (October 2009), accessed October 10, 2012, <http://eurojust.europa.eu/doclibrary/corporate/Pages/newsletter.aspx>.

¹⁴⁴ Ibid.

on terrorism with judicial authorities of the EU and third states, as well as the EU member states have to have liaison for national correspondence with Eurojust about terrorism.¹⁴⁵ Beside the classical Eurojust tasks, it monitors the judicial application of the European CT legislation, facilitates discussion of criminal policy, including CT, within the EU, participates in Joint Investigation Teams with Europol, and helps to engage EU's international CT partners.¹⁴⁶ Furthermore, "[s]ince 2008 Eurojust has developed a regular Terrorism Convictions Monitor (TCM) as well as a Memorandum on Terrorism Financing which provide a regular overview of developments throughout the EU."¹⁴⁷

Since the establishment of Eurojust, the total number of cases that have been coordinated by Eurojust has witnessed an exponential growth, from 202 cases in 2002 to 1441 in 2011 (Table 2). In terrorism-related cases, its number follows trend of court cases and convicted terrorists in period after 9/11, starting with 18 cases in 2002, reaching a maximum of 44 cases in 2006, than slowly decreasing to 27 cases in 2011 (Table 2).¹⁴⁸ Furthermore, during the period 2002–2011, more than 25 percent of coordinating cases and more than 70 percent of coordinating meetings have been multilateral (three or more countries), which after analysis of serious cases mentioned in Eurojust annual reports, leads to the conclusion that terrorism-related cases and meetings have been represented much more often in multilateral than in bilateral cases.¹⁴⁹

¹⁴⁵ Grajny "The European Union counterterrorism."

¹⁴⁶ Gilles de Kerchove, "Speech delivered by the EU Counterterrorism Coordinator Gilles de Kerchove at the Opening Ceremony for the 10th Anniversary of EUROJUST," (The Hague, Netherlands, 28 February 2012), Council of the European Union, accessed October 9, 2012, <http://www.consilium.europa.eu/media/1459936/speech-10th-an-eurojust-ver2.pdf>.

¹⁴⁷ EU Counterterrorism Coordinator, "EU Counter-Terrorism Strategy - Discussion Paper," 3.

¹⁴⁸ See data in Chapter IV.

¹⁴⁹ Author's analysis derived from list of annual reports from Eurojust, "Corporate Publications: Eurojust Annual Reports 2002-2011," accessed October 11, 2012, <http://eurojust.europa.eu/doclibrary/corporate/Pages/annual-reports.aspx?Page=2>.

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Total Eurojust Cases	202	300	381	588	771	1085	1193	1372	1424	1441
Terrorism Related Cases	18	18	33	25	44	23	31	21	28	27

Table 2. Eurojust coordinated cases 2002–2011 (After:¹⁵⁰)

European CT has been priority for the establishment of Eurojust, its activities and the further development of its authorities, and over the last decade, Eurojust has become a significant contributor to the overall CT framework.¹⁵¹ For the most part, Eurojust facilitates cooperation between two or more EU member states, many times including non-EU states, in terrorism-related cases. It also participates with Europol in terrorism-related Joint Investigation Teams, supports the execution of European Arrest Warrants, publishes the Terrorism Conviction Monitor (two to three times per year, documenting best practices through judicial case analyses), organizes strategic and tactical meetings on terrorism law, contributes to Europol’s Terrorism Situation and Trend Reports, and exchanges sensitive terrorism-related judicial data with Europol, OLAF, and Frontex. In the future, Eurojust contribution to the European CT efforts can be even more significant, especially if it succeeds in establishing Eurojust liaison magistrates in third countries, which will boost judicial cooperation and investigations in cases that include these countries—Bosnia, Algeria, Egypt, Kosovo, etc.¹⁵² These third-country cases often involve terrorism or offenses that contribute to or support terrorism.

The EU role in the promotion of a criminal justice approach to terrorism-related cases in Eurojust, and this combination of senior magistrates, prosecutors, judges and other legal experts, is “an effective and streamlined instrument to assist cooperation,

¹⁵⁰ Eurojust, “Corporate Publications: Eurojust Annual Reports 2002-2011.”

¹⁵¹ Bures, *EU Counterterrorism Policy*, 115.

¹⁵² Council of the European Union, “Judicial dimension of the fight against terrorism - Follow-up to the CTC recommendations for action,” (Brussels, Belgium: Council of the European Union, December 2, 2010), accessed October 11, 2012, <http://www.statewatch.org/news/2011/jan/eu-council-judicial-dimension-anti-terrorism-15067-rev1-10.pdf>.

investigation, and gathering of evidence across borders.”¹⁵³ The most important value-added Eurojust outcomes in European CT are trust promotion as a pre-condition for cross-border cooperation in CT and the facilitation of prosecution to overcome the lack of knowledge, different legal standards, bad experience, and traditional conservatism among the member states.¹⁵⁴ The development of Eurojust under the frame of terrorism as also has provided important lessons learned into many other areas of the EU, especially regarding information sharing.¹⁵⁵

3. EU Counterterrorism Coordinator

In 2004, the EU Council established the position of EU Counterterrorism Coordinator under the EU’s High Representative for the Common Foreign and Security Policy, tasked to increase EU oversight and accountability for all CT efforts.¹⁵⁶ This special assignment within the Council Secretariat was initiated because of the visible implementation gap for CT measures after the 2002 Framework Decision on Combating Terrorism and the new wave of European CT-related enthusiasm after the Madrid terrorist attacks.¹⁵⁷ Despite these heady beginnings, the CTC’s authorities were limited from the outset. They include: (1) analysis of CT measures with an eye toward how it can be done better; (2) preparatory CT-related work in order to inform Council members in advance of serious CT decisions; and (3) coordination of the European CT policy among

¹⁵³ Council of the European Union, “Council conclusions on the tenth Eurojust Annual Report (calendar year 2011),” (Luxemburg: Council of the European Union, June 8, 2012), accessed August 16, 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/130720.pdf.

¹⁵⁴ Jiří Vlastník, “Eurojust: a cornerstone of the federal criminal justice system in the EU?” in *Security versus justice? : police and judicial cooperation in the European Union*, ed. by Elspeth Guild and Florian Geyer (Hampshire, England: Ashgate Publishing Limited, 2008), 38.

¹⁵⁵ Michèle Coninx, “Interview with Michèle Coninx, Chair of the Counter-Terrorism Team of Eurojust,” The Hague, September 2009, cited in Oldrich Bures, “Eurojust’s Fledgling Counterterrorism Role,” *Journal of Contemporary European Research* 6, No. 2 (2010): 236-256.

¹⁵⁶ Council of the European Union. *Declaration on Combating Terrorism March 25, 2004*.

¹⁵⁷ *Ibid.*

EU institutions.¹⁵⁸ Even with limited oversight and coordination authorities and without any powers that can influence implementation of CT measures, the CTC succeeded in first few years to solidify its role mostly because of the low profile of the first CTC Gijssels—non-confrontation with member states—its approach, and the support of the EU administration. At the end of 2007, the new CTC Gilles de Kerchove introduced a new approach to the issue through additional tasks: coordination of the EU Council CT-related work; keeping records (an overview) of all European CT measures; oversight implementation of the EU Counterterrorism Strategy; and supporting an active CT role for the EU.¹⁵⁹ After the Lisbon Treaty was adopted in 2009 and the Maastricht Treaty (including later Amsterdam and Nice updates) pillar structure was removed, the CTC office retained its unique position between all major EU sectors—European External Action Service (EEAS), Directorate General of Justice (DG Justice), and Directorate General Home Affairs (DG HOME).¹⁶⁰ Although the CTC office is composed of just the coordinator and a few assistants, this function represents a precedent because it is only one existing coordinator position in wider EU policies, which definitely shows the importance that the EU puts on CT efforts.

To date, the most significant outcomes of the CTC office are its unified report (every six months) on execution of measures listed in the European CT Action Plan and its active role in preparatory work (together with EU Commission and EU Presidency) on all CT-related documents and decisions for the EU Council or the EU Parliament meetings.¹⁶¹

The Council of the European Union calls upon the EU Counterterrorism Coordinator [to be] consistent with his or her existing mandate, to continue to contribute to ensuring the implementation and evaluation of the EU Counter Terrorism Strategy as well as coordination and coherence

¹⁵⁸ EU Counterterrorism Coordinator, “The EU’s Response to the Threat of Terrorism,” (Brussels, Belgium: EU Counterterrorism Coordinator, Briefing Paper 15, May 15, 2012), 1, accessed October 11, 2012, <http://www.qcea.org/wp-content/uploads/2012/05/bp-terrorism15-may-2012.pdf>.

¹⁵⁹ Ibid., 2.

¹⁶⁰ Ibid., 1.

¹⁶¹ Ibid., 2.

between the various policy strands in the implementation of the Strategy, to support, in close cooperation with the Member States, the EEAS and the Commission, coordination and coherence between the EU's internal and external CT policies, and to foster better communication between the Union and third countries.¹⁶²

4. The EU Joint Situation Center

Although, European states have been actively sharing intelligence through bilateral agreements since the 1970s—a limited multilateral approach was adopted in 1990s because of conflicts in the former Yugoslavia—the first formal, institutionalized approach to EU-wide intelligence sharing happened after 9/11 with establishment of the EU Joint Situation Centre (SitCen).¹⁶³ According to Eurowatch research on SitCen, its function and staff also can be traced to the analysis cell of the West European Union (WEU) military staff, then later as a part of the EU Military Staff, and finally as a part of the EU.¹⁶⁴ An idea for an EU intelligence-related Situation Centre came about during the development of the European Security and Defense Policy (Council of Cologne, 1999), which proposed a formal EU intelligence analysis cell under the EU High Representative for Common Foreign and Security Policy (CFSP) and Secretary General of the Council Secretariat.¹⁶⁵ In the wake of the 9/11, SitCen was established initially as the forum for several¹⁶⁶ EU intelligence agencies within the Counter Terrorism Group (CTG, 2001),

¹⁶² Council of the European Union, “Council Conclusions on Enhancing the Links Between Internal and External Aspects of Counterterrorism,” (Luxembourg: Council of the European Union, JHA Meeting, June 9 – 10, 2011), 4, accessed October 11, 2012, http://www.europarl.europa.eu/meetdocs/2009_2014/documents/dmag/dv/dmag20110622_09_/dmag20110622_09_en.pdf.

¹⁶³ Mai’a K. Davis Cross, “EU Intelligence Sharing & The Joint Situation Centre: A Glass Half-Full,” (Paper prepared for the Meeting of the European Union Studies Association, March 3-5, 2011), accessed October 10, 2012, http://euce.org/eusa/2011/papers/3a_cross.pdf.

¹⁶⁴ Jelle van Buuren, *Secret Truth: The EU Joint Situation Centre*, (Amsterdam, Netherlands: Eurowatch, 2009), 9, accessed October 10, 2012, www.statewatch.org/news/2009/aug/SitCen2009.pdf.

¹⁶⁵ Ibid.

¹⁶⁶ SitCen initially served as forum for intelligence sharing between Germany, France, Italy, Netherlands, Spain, Sweden, and UK. Later, intelligence exchange gradually expanded and today all EU member states are active in SitCen (IntCen); Buuren, *Secret Truth*, 9.

but without formal status as EU agency.¹⁶⁷ It is important to note, then, that “9/11 and the terrorist attacks in Madrid and London served as major impetuses towards increased intelligence sharing and the creation of SitCen.”¹⁶⁸

Initially, SitCen operated as an EU crisis response center with information from open sources and with a focus on the EU-external threats. However, the Madrid and London attacks militated for an increase of intelligence sharing, especially CT-related, and over the years, SitCen’s mandate has expanded. Today, the center covers external as well as internal threats for the EU.¹⁶⁹ SitCen’s mission and tasks have been never published by the EU, but according to the analysis of the Cross-border Research Association on the EU Situation Center, its main tasks are: monitoring 24/7 world events and producing daily press summaries; serving as the EU’s point of contact in times of crisis; preparing SitCen reports and analyses;¹⁷⁰ contributing to the development of new CT instruments; communicating and coordinating with EU member states’ national security and intelligence agencies; and serving as the focal point for CSDP international operations, which includes capability to initiate fast EU responses to major incidents within those missions (early warning system).¹⁷¹ Furthermore, the analysis point out that SitCen operates the COREU information system (EU secret) and the New Communications Network (for EU delegations abroad). It manages satellite images from member states and the United States, supports and accompanies high EU officials while travelling, and also coordinates between the EU member states and third states in any crisis that involves citizens of two or more EU member states. Its headquarters are in

¹⁶⁷ “The CTG was formed after the attacks of 9-11, as a Dutch initiative of the so called ‘Club de Bern’, an informal gathering of the heads of the security and intelligence services of the EU member states as well as Norway and Sweden.”; Buuren, *Secret Truth*, 9-10.

¹⁶⁸ Cross, “EU Intelligence Sharing & The Joint Situation Centre.”

¹⁶⁹ Buuren, *Secret Truth*, 9-10.

¹⁷⁰ SitCen reports/analyses provide security related information primarily for the EU Political and Security Committee (PSC), but also for other working groups like, Terrorism Working Group (TWG), CivCom, Military Committee, Politico-Military Group, etc.); Focus, “Cross-border Research Association (CBRA) analysis of EU Situation Centre,” accessed October 10, 2012, <http://www.focusproject.eu/documents/14976/0/CBRA+analysis+of+EU+Situation+Centre?version=1.0>.

¹⁷¹ Focus, “CBRA analysis of EU Situation Centre.”

Brussels and it has more than 110 staff members who can execute tasks in all EU languages, as well as Arabic, Chinese, Farsi, Russian, etc.¹⁷²

On December 1, 2010 SitCen became a part of the European External Action Service (EEAS),¹⁷³ which finally gave it a formal status (though it is still not an official agency), and better funding from the Community budget.¹⁷⁴ On January 1, 2011, SitCen was renamed in the European Union Intelligence Analysis Center (IntCen), but its core tasks remain unchanged.¹⁷⁵ On March 16, 2012, the number of IntCen personnel decreased from 110 to 70, following the restructuring of its two main divisions, the Analysis Division, which conducts strategic analyses, and the General and External Relations Division, responsible for legal and administrative issues and open-source analysis.¹⁷⁶ Some of SitCen's previous functions in this restructuring moved to other EEAS bodies, such as: service for the EU representatives abroad (consular affairs), the watch keeping capability (24/7 Duty Area), and the secure communication sector (for example, COREU).¹⁷⁷

Many decisions of the EU Council and other bodies have been adopted referring to SitCen reports/analyses, yet because of the secrecy there are no published SitCen documents and regarding to its results only information is that "SitCen has issued more than 150 reports per year to Council bodies on major issues in the field of CFSP and the threat posed to the Union by terrorism (Council of the European Union 2007b: 52)."¹⁷⁸ The Eurowatch analysis on SitCen points out that "no information was found on the substance of reports produced by SitCen."¹⁷⁹ Although, secrecy caused absence of

¹⁷² Focus, "CBRA analysis of EU Situation Centre."

¹⁷³ Part of the EU which serves as a Ministry of Foreign Affairs.

¹⁷⁴ Focus, "CBRA analysis of EU Situation Centre."

¹⁷⁵ European Parliament, "Parliamentary question, August 7, 2012," accessed October 10, 2012, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-006019&language=EN>.

¹⁷⁶ European Parliament, "Parliamentary question, July 25, 2012," accessed October 10, 2012, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2012-006017&language=EN>.

¹⁷⁷ European Parliament, "Parliamentary question, July 25, 2012."

¹⁷⁸ Buuren, *Secret Truth*, 12-15.

¹⁷⁹ Ibid., 12.

evidence on SitCen/IntCen CT activities, yet its recent repositioning within the EU bodies was probably driven by lessons learned and shows SitCen/IntCen importance for the EU decision makers and member states.

E. CONCLUSION

September 11 was the decisive point in the recent European CT response, built up as broad set of legislation, institutions, and individual measures and actions. Nevertheless, policy conflicts emerged soon after further terrorist activities extended acceptance of the European CT products in member states, which caused delays in the development and implementation of the European CT framework as whole.¹⁸⁰ Furthermore, in the absence of a unitary or comprehensive strategic European CT vision, the EU Council sporadically supported the EU Commission in its proposals for development of a CT legal-institutional framework. Thus, after 9/11, the EU Commission leveraged member states' pro-CT willingness to advance the ambitious Council Framework Decision of 13 June 2002 on Combating Terrorism and the European Arrest Warrant.¹⁸¹

After the European CT framework was adopted, member states were divided in their view of a strategic CT approach.¹⁸² However, in the wake of the attacks in Madrid (2004) and London (2005), the EU Council finally reached a consensus, culminating in the four-pronged EU Counter-Terrorism Strategy.¹⁸³ Although the EU Commission balanced between different levels of willingness among member states and the necessity to develop and implement quality CT measures, the European CT strategy and later many CT-related measures were finally introduced and the implementation level improved.

¹⁸⁰ Bossong, "The Action Plan on Combating Terrorism," 35.

¹⁸¹ Kaunert, *European Internal Security*, 68-69; Wilkinson, *International Terrorism*.

¹⁸² Christina Eckes, *EU Counter-Terrorist Policies and Fundamental Rights: The Case of Individual Sanctions* (New York: Oxford University Press, 2009), 65.

¹⁸³ *Ibid.*

In light of this analysis of the evolution of the European CT framework over last ten years, it is obvious that the EU has developed comprehensive legal-institutional response to terrorism, yet in order to achieve full CT operational capabilities, it is necessary to speed up work in some areas, especially where member states were resisting giving the EU larger part of their sovereignty, for example, cross-border investigations or intelligence sharing. Examination of key CT-related institutions—Europol, Eurojust, European CTC, and the EU JSC—shows that they became added value to the member states in European terrorism response, just as the EU promised in its CT Strategy for development of collective CT capabilities, “[e]nsuring EU level capacity to understand and make collective policy responses to the terrorist threat, and making best use of the capability of EU bodies.”¹⁸⁴

¹⁸⁴ Council of the European Union, *The European Union Counter-Terrorism Strategy*, 3.

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III. SECURITY VERSUS LIBERTY: THE EU COUNTERTERRORISM FRAMEWORK SOLUTIONS

Some experts and EU authorities argue that the EU legal and institutional CT measures do not conflict with human rights.¹⁸⁵ Other observers take a more reserved position and argue that the European CT measures have “sufficient” level of human-rights protections, but they are not completely unscathed by the “security versus liberty” dilemma.¹⁸⁶ The balance requires much consideration and frequent adjustment amid shifting threats on the one hand and democratic principles on the other—all refracted through the lens of public expectations. For the EU, the dilemma intersects the challenge of multilateralism and member states’ prerogatives, particularly in light of the varying extent to which EU law has been incorporated into the domestic law of all EU states.¹⁸⁷

This chapter presents case studies of important European CT legal-institutional measures and European solutions that may be used as lessons learned: the European Arrest Warrant; the Money Laundering Directives (including terrorist financing); targeted sanctions related to UN Security Council resolutions 1267 and 1373; and the strategic CT partnership with the U.S. (including case study of Passenger Name Records data exchange). These CT measures have been often used as examples in literature, as well as challenged in front of national and European courts (ECJ, ECHR) as European CT measures that violate the provisions of the European Convention on Human Rights.

¹⁸⁵ Casale, “EU Institutional and Legal Counter-terrorism Framework,” 68-69.

¹⁸⁶ Vennemann, “Country Report on the European Union,” 265.

¹⁸⁷ According to the Treaty on the Functioning of the European Union (Article 258, TFEU), each member state must adopt or incorporate into its own law all EU legal measures by a specific deadline. Consequently, some authors conclude that many times, member states disregard parts of the EU legislation in order to harmonize the spirit of the EU instruments—directives, decisions, and so on—with national law; *Consolidated Version of the Treaty on the Functioning of the European Union*, Eur-Lex: Access to European Union law, *Official Journal of the European Union*, C 83/199 (March 30, 2010) accessed May 24, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0047:0200:en:PDF>; see also Bures, *EU Counterterrorism Policy*, 160; Kaunert, *European Internal Security*, 87. Furthermore, the EU Council and European Commission, when faced with member state resistance, are forced into “bargaining” or if this step fails, engaging the European Court of Justice (ECJ) to resolve a dispute according to the TFEU. Kaunert, *European Internal Security*, 42. So, close enough often has to be good enough for the incorporation of EU law.

On the matter of human rights at the Union level, various “watch keepers” constantly oversee all EU actions in developing and maintaining the CT legal-institutional framework, including the EU member states, the European Parliament, ECJ, and ECHR, as well as some NGOs. This mix of official and unofficial oversight has prompted several changes to proposals and even annulments of final decisions or agreements. In other words, the EU has been assiduous, even activist, in ensuring that hard-won European civil liberties are preserved to the extent possible in all CT measures. Still, there are some unclear provisions in CT measures that can be interpreted in different ways and leave space for possible violations of human rights in member states’ implementation acts.

A. EUROPEAN ARREST WARRANT

The European Arrest Warrant (EAW) is one of the 9/11 reaction measures adopted by the Council Framework Decision on June 13, 2002. After it entered into force on January 1, 2004, the EAW has provided a valuable instrument for the member states judicial authority.¹⁸⁸ It replaces the old extradition system regulated by bilateral agreements, as well as several earlier European Union decisions.¹⁸⁹ Although the EAW was adopted as the first post-9/11 EU counterterrorism measure, according to the Council framework decision, it is applicable in all other criminal offences, including participation in a criminal organization, trafficking (in human beings, narcotics, cultural goods, or weapons), rape and child pornography, corruption, fraud, money laundering, cyber-crime,

¹⁸⁸ Europa: Summaries of EU Legislation, “European Arrest Warrant,” accessed June 2, 2012, http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33167_en.htm.

¹⁸⁹ Council of the European Union, *Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States* (Brussels, Belgium: Council of the European Union, 2002/584/JHA, June 13, 2002), accessed June 2, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:190:0001:0018:EN:PDF>.

environmental crime, murder, racism and xenophobia, armed robbery, racketeering and extortion, arson, counterfeiting, sabotage, and crimes under the jurisdiction of the ICC.¹⁹⁰

According to the latest European Commission report on the implementation of the EAW in period between 2005 and 2009, the results of the EAW are remarkable. Member states issued 54,689 EAWs. Of them, 11630—or 21 percent—were executed; 55 percent of persons consented to their surrender. For persons who waive extradition (that is, who consents to the surrender), the average time between arrest and the decision to extradite is 15.7 days. Otherwise, 48.3 days is the average time between arrest and the decision on the surrender for persons who do not consent to the surrender.¹⁹¹ Before the EAW, the average time between the issue of a request for extradition and the decision to execute was one year.

According to Amnesty International, “[t]he Framework Decision on the ... EAW ... is not of itself a threat to the protection of human rights.”¹⁹² Indeed, the EAW even stresses obligations to respect the civil liberties and human dignity of the subject to be extradited, and it instructs judges to refuse to surrender arrested person if there is any

¹⁹⁰ Council of the European Union, *Council Framework Decision of 13 June 2002*; If an EAW is issued for any offense\ punishable with at least three years of imprisonment, it will be executed without verification of the double criminality of the act. An EAW may be issued in a criminal prosecution for acts punishable with at least one year in prison or in the case of a criminal sentence, for acts punishable with at least four months. Administrative procedures are simplified with EAW because member states’ judicial authorities send it directly to each other, which circumvents the political dimension of the Ministry of Foreign Affairs or the Ministry of Justice. The executing judicial authority has to decide on issued EAW no later than 60 days after the arrest, or in case of arrested person consent that time is 10 days.

¹⁹¹ European Commission, *Report from the Commission*, 3.

¹⁹² Amnesty International: EU Office, “Human Rights Dissolving at the Borders?”

possibility that the requesting member state will violate the individual's human rights.¹⁹³ On the other hand, several member states, EU institutions, NGOs, and even some individuals point out significant shortcomings with the EAW, including violations of human rights.¹⁹⁴ Members of the European Parliament (MEP), in a debate held on June 6, 2011, pointed out three main flaws related to EAW in accordance with EU official reports, NGO suggestions, and European Court of Human Rights (ECHR) related cases:¹⁹⁵

- (1) EAW is abused by some member states through disproportional use in minor offences, which lead often to violation of human rights and large financial costs for arrested persons.
- (2) Some executing member state courts have no mechanism to explore human rights consequences of surrendered persons in EAW-issuing states, which led to hasty extradition and, many times, violations of the surrendered person's human rights.
- (3) Some issuing member states sent EAWs before the trial process was prepared, which led to excessive pre-trial detention of surrender persons, often in unacceptable conditions in detention facilities.

¹⁹³ Council of the European Union, *Council Framework Decision of 13 June 2002 on the European arrest warrant*, 12; "This Framework Decision respects fundamental rights and observes the principles recognized by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union ... Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons."; Council of the European Union, *Council Framework Decision of 13 June 2002 on the European arrest warrant*, 13; "No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment."

¹⁹⁴ European Commission, *Report from the Commission*, 3; Bures, *EU Counterterrorism Policy*, 170-71; Wiegand, *The Protection of Human Rights*, 2; Amnesty International: EU Office, "Human Rights Dissolving at the Borders? Counter-Terrorism and EU Criminal Law," Amnesty International, 2005, 17-2 http://www.amnesty.eu/static/documents/2005/counterterrorism_report_final.pdf.

¹⁹⁵ European Parliament, "Minutes Wednesday, 8 June 2011 – Strasbourg," accessed June 5, 2012, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+PV+20110608+ITEM-012+DOC+XML+V0//EN>.

Disproportional use of the EAW for minor offences is problem in some countries that have criminal law that request prosecution of all offences without discretion. For example, Poland had issued 31 percent of all EAWs in the period 2005–2009, though its population is only 7.6 percent of the EU total. Similarly, Romania issued 11.6 percent of all EAWs in the period 2007–2009 (Romania joined EU in 2007), while it accounts for just 4 percent of the EU population.¹⁹⁶ This overuse of the EAW means extra costs for executing member states in terms of police/judicial services, interpreters, legal aid, and detention facilities. The European Union has tried to introduce a proportionality requirement through revision of the EAW Handbook, and training programs, but to date, there are no visible positive effects.¹⁹⁷

Although EU member states should follow the standards of the European Convention on Human Rights, the European Commission concluded that surrenders do not always comply with EU human rights standards.¹⁹⁸ ECHR annual reports between 2005 and 2011 show that the court arbitrated against EU member states in seven cases of torture, 212 cases of inhuman or degrading treatment, and 903 cases of the violation of the right to a fair trial.¹⁹⁹ Interestingly, those member states that disproportionately use the EAW for minor offences are also the main respondents in these ECHR cases—Romania has one-third and Poland has one-tenth of all EU ECHR cases for the violation of human rights through the EAW.

¹⁹⁶ European Commission, *Report from the Commission*, 12; Eurostat, “Population on 1 January,” accessed June 5, 2012, <http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tps00001&tableSelection=1&footnotes=yes&labeling=labels&plugin=1>.

¹⁹⁷ European Commission, *Revised version of the European handbook on how to issue a European Arrest Warrant* (Brussels, Belgium: European Commission, 2010), <http://register.consilium.europa.eu/pdf/en/10/st17/st17195-re01.en10.pdf>.

¹⁹⁸ European Commission, *Report from the Commission*, 7.

¹⁹⁹ Author’s analysis derived from list of annual reports from European Court of Human Rights, “Annual Reports,” accessed June 6, 2012, <http://www.echr.coe.int/echr/en/header/reports+and+statistics/reports/annual+reports/>; Data is related to the Article 3 (Prohibition of torture and inhuman or degrading treatment) and Article 6 (Right to a fair trial) of the European Convention on Human Rights.

In 2009, the EU Council decided to streamline Eurojust authorities and introduce an on-call center, all in the name of bettering the human rights situation in connection with the EAW.²⁰⁰ Recently, the European Commission initiated another round of activities to prevent violations of human rights related to EAW, such as the Eurojust Coordination Center (including the web info-portal), and EAW training programs in cooperation with European Judicial Training Network.²⁰¹

In sum, the European Arrest Warrant is definitely very successful among the introduced post-9/11 EU legal measures. It replaced the traditional bi-lateral extradition system with quick administration and execution, limited possibilities for rejecting of an execution, decision-making by judicial authorities (no politics), and the option to deny extradition in case the issuing state violates or likely will violate human rights. The problems that still exist with the EAW are related to the implementation acts on the member-state level. Furthermore, European Commission and other EU bodies reacted and in order to prevent violations of human rights they have introduced additional preventive measures and activities. Ultimately, the EAW “is an innovative and dynamic instrument. Since it came into force in 2004 it has given judicial authorities an accessible and efficient mechanism to ensure that offenders do not evade justice wherever they may hide within the European Union.”²⁰²

²⁰⁰ Council of the European Union, *Council Decision 2009/426/JHA of 16 December 2008 on the Strengthening of Eurojust and Amending Decision 2002/187/JHA Setting up Eurojust with a View to Reinforcing the Fight against Serious Crime* (Brussels, Belgium: Council of the European Union, 2009), accessed June 6, 2012, [http://eurojust.europa.eu/doclibrary/Eurojust-framework/ejdecision/New%20Eurojust%20Decision%20\(Council%20Decision%202009-426-JHA\)/Eurojust-Council-Decision-2009-426-JHA-EN.pdf](http://eurojust.europa.eu/doclibrary/Eurojust-framework/ejdecision/New%20Eurojust%20Decision%20(Council%20Decision%202009-426-JHA)/Eurojust-Council-Decision-2009-426-JHA-EN.pdf); Eurojust is an EU body established by the EU Council 2002, “Eurojust’s main role is to promote cooperation and coordination between the competent judicial authorities in the EU countries involved in investigations and prosecutions of serious cross-border criminal cases.”

²⁰¹ European Judicial Training Network, “Criminal Justice Project,” accessed June 6, 2012, <http://www.ejtn.net/en/About/Criminal-Justice-Project/>; Eurojust, “Eurojust Coordination Center,” accessed June 6, 2012, <http://eurojust.europa.eu/Practitioners/operational/Pages/eurojust-coordination-center.aspx>.

²⁰² European Commission, *Report from the Commission to the European Parliament and the Council on the implementation since 2007 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States* (Brussels, Belgium: European Commission, 2011), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0175:FIN:EN:PDF>.

B. MONEY LAUNDERING AND TERRORIST FINANCING DIRECTIVES

While the execution of terrorist attacks usually does not require a lot of money, the preparation phase, to say nothing of recruitment, training, or even propaganda usually demands more funding. Thus, combating the financing of terrorism is one of the most important preventive CT measures. Although terrorist networks are mostly international, any CT response also requires better regional and international coordination. International cooperation in the fight against terrorist financing has existed for decades, but until recently, its punitive measures were limited to sanctions. The terrorist attacks on 9/11 clarified the urgency among all global players (UN, U.S., EU, IMF, FATF, etc.) to focus on thwarting terrorist financing, and both the quality of cooperation and the quantity of regional and international solutions increased rapidly.

The cornerstone of the European Union legislation against money laundering—as a significant aspect of terrorist financing—is the Money Laundering Directive (MLD). The MLD was first adopted by the Council of the European Communities²⁰³ in 1991, according to the globally accepted recommendations and standards of Financial Action Task Force (FATF), an international organization established by the G7 Summit in 1989 that “exists for the purpose of protecting the international financial system from misuse and to mobilize action to go after criminals and their assets.”²⁰⁴ The first European MLDs defined the regulations for combatting the laundering of illicit narcotics profits through the financial sector and introduced requirements for customer identification and

²⁰³ The Council of the European Communities was a legislative and executive body of the European Economic Community in period 1957-1993. After the Maastricht Treaty came into force on 1 November 1993 and EU established, the Council formally change its name in the Council of the European Union.

²⁰⁴ Financial Action Task Force, “FATF General,” accessed June 6, 2012, <http://www.fatf-gafi.org/topics/fatfgeneral/documents/ministersrenewthemandateofthefinancialactiontaskforceuntil2020.html>.

record keeping, the training of financial staff, and the reporting of suspicious money transactions (over €15.000).²⁰⁵

The second MLD amended the first MLD in 2001, extending the scope of the directive from drug trafficking to all serious crime and from the traditional financial sector to other areas, including law firms, notary, real estate business, NGOs, auditors, external accountants, tax advisors, insurance business, high-value goods business, and casinos.²⁰⁶

The third MLD, adopted in 2005, accorded with the revised FATF recommendations, published 2003, and replaced the first MLD (as amended by the second MLD).²⁰⁷ It introduced for the first time explicitly the area of terrorist financing and updated previous directives with detailed regulations on collecting customer information (due diligence) and a reporting regime to the member states.. Furthermore, the third MLD calls on member states to establish a Financial Intelligence Unit (FIU) to fight money laundering and terrorist financing.

²⁰⁵ The Council of the European Communities, *Council Directive of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering*, (Brussels, Belgium: The Council of the European Communities, 1991), accessed June 6, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1991:166:0077:0082:EN:PDF>.

²⁰⁶ European Parliament and Council of the European Union, *Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering*, (Brussels, Belgium: European Parliament and Council of the European Union, 2001), accessed June 6, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0076:0081:EN:PDF>.

²⁰⁷ The MLD was adopted by the Council of the European Union under the first pillar of the Maastricht Treaty, the so-called European Community pillar, with the most supranational attention from the premier European institutions, namely the European Commission, the European Parliament, and the European Court of Justice. The second pillar concerns itself with the EU's Common Foreign and Security Policy (CFSP), while the third pillar involves "justice and home affairs," including criminal justice and terrorism, albeit on a more multilateral than supranational basis.; Europa: Summaries of EU Legislation, "Money laundering: prevention of the use of the financial system," accessed June 6, 2012, http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_organised_crime/124016a_en.htm; European Parliament and Council of the European Union, *Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (Brussels, Belgium: European Parliament and Council of the European Union, 2005), accessed June 6, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0015:0036:EN:PDF>.

The FIU shall be established as a central national unit. It shall be responsible for receiving (and to the extent permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of information which concern potential money laundering, potential terrorist financing or are required by national legislation or regulation. It shall be provided with adequate resources in order to fulfill its tasks. Member States shall ensure that the FIU has access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that it requires to properly fulfill its tasks.²⁰⁸

The MLDs have been in force more than 20 years and the implementation acts in member states have placed MLD-related regulations on almost every area of the life. The effectiveness of MLDs is not clear; some believe the complicated implementing procedures do make money laundering more difficult, while others express concern about the lack of clear evidence necessary to apply the MLD (confidential data of FIUs and law enforcement), which is according to them a sign of an ineffectiveness.²⁰⁹ Recently, EU Commission lauded the overall positive effects of MLD, but also noted some challenges:

The results of the [Deloitte] study²¹⁰ do not suggest the need for a fundamental overhaul of the EU regime [MLD], but highlight a number of areas where practical improvements could be made (e.g., guidance on the risk based approach, ensure better access to information on beneficial ownership and politically exposed persons, provide for a more tailored approach for small businesses and professionals, etc.).²¹¹

In an important addition, the third MLD provided that the EU Commission can issue legally binding measures to clarify some provisions of the MLD. Since 2005, the

²⁰⁸ European Parliament and Council of the European Union, *Directive 2005/60/EC*.

²⁰⁹ HM Treasury, *Review of the Money Laundering Regulations: summary of the call for evidence* (London, UK: HM Treasury, 2010), 4-11, accessed June 7, 2012, http://www.hm-treasury.gov.uk/d/mlr2007_summaryofevidence.pdf.

²¹⁰ Deloitte Bedrijfsrevisoren Enterprise Risk Services, *European Commission DG Internal Market and Services – Budget, Final Study on the Application of the Anti-Money Laundering Directive*, (Diegem, Belgium: Deloitte Bedrijfsrevisoren Enterprise Risk Services, 2011), accessed June 7, 2012, http://ec.europa.eu/internal_market/company/docs/financial-crime/20110124_study_amld_en.pdf.

²¹¹ European Commission, “Roadmap: Revision of the third Anti Money Laundering Directive,” (Brussels, Belgium: European Commission, 2011), accessed June 7, 2012, http://ec.europa.eu/governance/impact/planned_ia/docs/2012 Markt_001_third_anti-money_laundering_directive_en.pdf.

European Commission has issued several such directives in order to clarify the implementation of the MLD in member states, including such issues as: the definition of “politically exposed person,” the technical criteria for due-diligence procedures, execution of electronic payments rules, the Commission’s implementation powers, and a lawyer-client confidentiality.²¹² This last issue—the conflict between lawyer-client confidentiality and some regulations of the third MLD—represent a particularly charged problem area, which the Commission has attempted to address with its “tailored approach,” not least because the rules are still decried as unclear and many times characterized as violation of European Convention on Human Rights.²¹³ Under the second MLD, lawyers were subject to MLD provisions only when participating in financial or assets transactions (typically as corporate lawyers), but they were “exempt from reporting information received in the course of defending or representing a client on courts.”²¹⁴ Member states could arrange for self-reporting from legal professionals to their national expert institutions, such as bar associations; only if the authorities later confirmed such activities as money laundering or terrorism financing would they report their findings to the FIU. The third MLD expended its application to lawyers who participate in financial or real estate transactions, manage money or other assets, open bank accounts, or manage companies, trusts or similar structures; it also requested direct reporting to the FIU. Like the second MLD, the third MLD exempts lawyer from reporting on suspicious transactions in cases that they are representing in trials, but it not exempt them from the reporting requirements when somebody asks for legal advice. Still, the third MLD requires only the “minimum legislation harmonization,” which leaves member states to decide in some circumstances that their lawyers do not fall under the

²¹² Europa: Summaries of EU Legislation, “Money laundering.”

²¹³ European Commission, *Roadmap: Revision of the third Anti Money Laundering Directive*; Bernard Vatie, “Speech in Prague: Money Laundering,” (Prague, Czech Republic: IBA Conference, September 30, 2005), accessed June 7, 2012, http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/speech_vatier_prague1_1184146395.pdf.

²¹⁴ IBA Anti-Money Laundering Forum, “Europe,” International Bar Association, accessed June 7, 2012, <http://www.anti-moneylaundering.org/Europe.aspx>.

MLD, for example, when legal activities are very limited or no risk of money laundering or terrorist financing.

Not surprisingly, European lawyers engaged their national and international bar associations against these provisions of MLD, organizing conferences, public statements, working groups, and position papers, and finally referring the matter to the national courts and European Court of Justice.²¹⁵ None of these courts found that EU Money Laundering Directives violate European Convention of Human Rights, but they did conclude that some provisions of the directives are unclear. For example, the MLD implementation act in France was challenged in the French administrative court (under Article 6 and Article 8 of the European Convention on Human Rights), and in 2008 the court found that “no distinction could be drawn between representation in legal proceedings on the one hand and legal advice on the other. Information obtained by a lawyer in the course of assessing the legal position of the client was held not to be subject to the reporting requirement.”²¹⁶ In Belgium, the national bar association challenged the implementation act in the Belgian Constitutional Court (under Article 6 of the ECHR),²¹⁷ but the court referred a question to the European Court of Justice.²¹⁸ When the case was before the ECJ, many European bar and law associations were allowed to weigh in, and the Council of Bars and Law Societies of Europe referred additional question regarding the MLD and Article 8 of the ECHR.²¹⁹ Finally in 2007, the ECJ decided that the MLD

²¹⁵ The Treaty of European Union (Maastricht Treaty) in Article 6 requires all member states to respect fundamental rights according the European Convention on Human Rights; IBA Anti-Money Laundering Forum, “European Chart,” International Bar Association, accessed June 7, 2012, <http://www.anti-moneylaundering.org/EuropeanChart.aspx>; The Council of Bars and Law Societies of Europe, “Committees - Money Laundering,” accessed June 7, 2012, http://www.ccbe.eu/index.php?id=94&id_comite=20&L=0.

²¹⁶ Colin Tyre, “Anti-Money Laundering Legislation: Implementation of the FATF Forty Recommendations in the European Union,” *IBA Anti-Money Laundering Forum*, FATF Symposium, 2010, 74, accessed June 8, 2012, http://www.americanbar.org/content/dam/aba/migrated/cpr/pdfs/jpl10_03tyre.authcheckdam.pdf.

²¹⁷ ECHR, Article 6, Right of a person to a fair trial, especially rights of a defendant (the right to legal assistance and the right not to incriminate oneself).

²¹⁸ Tyre, “Anti-Money Laundering Legislation,” 73.

²¹⁹ ECHR, Article 8, Right to respect for private life.

was compliant with the ECHR, though the court noted that wording regarding the lawyer's responsibility to report can have more than one interpretation.

On this basis, the Court interpreted MLD Article 6(3) as exempting lawyers from the reporting obligation whenever the lawyer acting in connection with one of the transactions giving rise to the obligations finds himself called upon to give assistance in defending or representing the client in court, or to give advice "as to the manner of instituting or avoiding judicial proceedings."²²⁰

In 2008, in light of the ECJ decision, the Belgian court interpreted the phrase "advice on instituting or avoiding proceedings," to mean that an "exemption from the reporting obligation could apply to advice given otherwise than in connection with any proceedings at all ... for example, legal advice given to a client on his personal circumstances in relation to a transaction that he is contemplating, or on the best way of undertaking it, could be regarded as advice on avoiding proceedings."²²¹

National and European bar and law associations activities delayed implementation of the third MLD in member states so egregiously that the EU Commission in 2008 even threatened "to refer Belgium, Ireland, Spain, Sweden, France, and Poland to the ECJ for their continuing failure to implement the Third Directive."²²² Ultimately, all EU member states implemented the third MLD, ending with Ireland in July 2010.²²³ Implementation acts in member states vary, with the differences mostly related to the issue of lawyers' professional secrecy and the right to a fair trial. For example, in Austria, provisions of the third MLD pertaining to lawyers were incorporated into the "Lawyers' Code," while in the Czech Republic, the MLD implementation act included the broader obligation to identify customers in all transactions of more than €1000. In Bulgaria, the MLD was extended to companies that provide health insurance, and in Slovakia, the implementation

²²⁰ Tyre, "Anti-Money Laundering Legislation," 73.

²²¹ Tyre, "Anti-Money Laundering Legislation," 73-74

²²² IBA Anti-Money Laundering Forum, "Europe."

²²³ IBA Anti-Money Laundering Forum, "European Chart."

act provides detailed explanations of exceptions to the lawyer's reporting obligations.²²⁴ For its part, the EU Commission started in 2011 consultations with Council of Bars and Law Societies of Europe in order to better clarify the lawyer-related provisions in expecting fourth MLD (2012).²²⁵

C. EU TARGETED SANCTIONS AGAINST INDIVIDUALS OR GROUPS

Although the UN and individual states have used various sanctions to enforce actions related to other states, the first time sanctions were used against persons was on October 15, 1999, when the United Nations Security Council (UN SC) adopted Resolution 1267, related to persons and entities affiliated to the Al-Qaida and/or the Taliban.²²⁶ The resolution:

require[s] all States to take the following measures in connection with any individual or entity associated with Al-Qaida, as designated by the Committee:

- freeze without delay the funds and other financial assets or economic resources of designated individuals and entities [assets freeze],
- prevent the entry into or transit through their territories by designated individuals [travel ban], and
- prevent the direct or indirect supply, sale and transfer from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types, spare parts, and technical advice, assistance, or training

²²⁴ IBA Anti-Money Laundering Forum, "European Chart."

²²⁵ The Council of Bars and Law Societies of Europe, "CCBE Response to the Commission: The Review of the third Anti-Money Laundering Directive," 2011, accessed June 7, 2012, http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_211011_CCBE_Respo1_1319525363.pdf.

²²⁶ Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, "Important Changes to the Committee Website Pursuant to Security Council Resolution 1989 (2011)," United Nations, accessed October 17, 2012, <http://www.un.org/sc/committees/1267/>; Resolution 1267 was subsequently amended by resolutions 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009) and resolution 1989 (2011).

related to military activities, to designated individuals and entities [arms embargo].²²⁷

Later, on December 9, 1999, the UN General Assembly adopted the International Convention for the Suppression of the Financing of Terrorism, and under Article 8(1) authorized states to take measures against individuals for freezing funds related to the purpose of committing terrorist acts.²²⁸ On September 28, 2001, the UN SC adopted Resolution 1373, which authorized under provisions of Chapter VII of the Charter of the UN, that states shall prevent and suppress the financing of terrorist acts.²²⁹ The EU and its member states responded:

Although the European Union is not itself bound by the Security Council Resolutions from an international law perspective, it has the exclusive competence to implement embargoes ordered by United Nations and binding on the EU member states (Article 48 para. 2 UN Charter) by virtue of Article 60 and 301 TEC.²³⁰

Both the Union and its member states adopted various measures in the implementation of these sanctions, mostly out of concerns for human rights.

²²⁷ Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011), “Important Changes.”

²²⁸ United Nations General Assembly, “International Convention for the Suppression of the Financing of Terrorism,” (54/109), December 5, 1999, United Nations, accessed October 18, 2012, <http://www.un.org/law/cod/finterr.htm>.

²²⁹ United Nations Security Council, “Resolution 1373 (2001),” (S/RES/1373), 2001, United Nations, accessed October 18, 2012, http://www.unodc.org/pdf/crime/terrorism/res_1373_english.pdf; The resolution points requires that states shall “[f]reeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities.”

²³⁰ Vennemann, “Country Report on the European Union,” 240.

1. The UN SC Resolution 1267 Sanctions Regime

UN SC Resolution 1267 and all later updates through 2011²³¹ request response of states according to the UN list of individuals and entities associated only with Al-Qaida and/or the Taliban (Consolidated List). On February 26, 2001, the EU Council adopted Common Position (2001/154/CFSP), with the related Council Regulation coming on March 6, 2001 (467/2001).²³² These binding Council regulations served to “ensure that funds, financial assets or economic resources or financial or other related services will not be made available, directly or indirectly, for the benefit of persons, groups and entities listed in the Annex.”²³³ (The EU list is a copy of the regularly updated UN Resolution 1267 Consolidated List.) This document only pertains to persons affiliated with al-Qaida.²³⁴

Although, there are no available official data on frozen assets under the UN Resolution 1267 for the EU, according to the reports of the UN Analytical Support and Sanctions Monitoring Team average amount of the frozen assets, tallied in U.S. dollars, under the sanctions regime from 2000–2010 is approximately \$84 million annually; the

²³¹ In 2011 the UN SC Resolution 1267 was split in two resolutions, 1988 (2011) Taliban-related and 1989 (2011) Al-Qaida-related.

²³² Council of the European Union, “Council Common Position of 27 December 2001.”

²³³ Council of the European Union, “Council Common Position of 27 December 2001.”

²³⁴ UN SC resolutions 1988 (2011, Taliban-related) and 1989 (2011, Al-Qaida-related) split the Resolution 1267-related Consolidated List, and since June 17, 2011, the new “Al-Qaida Sanctions List” includes only the names of individuals and entities associated with Al-Qaida and others associated with Taliban transferred to the new “List established pursuant to resolution 1988 (2011).”; United Nations Security Council, “Letter dated 8 May 2012 from the Chair of the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities addressed to the President of the Security Council,” United Nations, May 10, 2012, accessed October 18, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/305; The latest updated Al-Qaida Sanctions List, from October 18, 2012, contains 306 entries: 238 individuals and 68 entities associated with Al-Qaida; Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, “The List established and maintained by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with respect to individuals, groups, undertakings and other entities associated with Al-Qaida,” United Nations, accessed October 19, 2012, http://www.un.org/sc/committees/1267/aq_sanctions_list.shtml; The latest updated List established pursuant to resolution 1988 (2011) contains 132 entries, (August 15, 2012): 130 individuals and 2 entities associated with Taliban; Security Council Committee established pursuant to resolution 1988 (2011), “List of Individuals Subject to the Measures Imposed by Paragraph 1 of Resolution 1988 (2011):The 1988 List,” United Nations, accessed October 19, 2012, <http://www.un.org/sc/committees/1988/list.shtml>.

highpoint of \$112 million came in 2002. Some 30 to 36 UN member states executed these sanctions, presumably several EU members among them.²³⁵

The first human rights critique of the regime established under the Resolution 1267 was the lack of a de-listing procedure. Six years later, UN SC Resolution 1730 addressed this issue, by “establish[ing] a focal point within the [UN] Secretariat to ensure ‘fair and clear’ procedures for placing individuals and entities on sanctions lists and for removing them.”²³⁶ The EU Commission and especially some of member states—France, Greece, and Denmark—were directly involved in development of the de-listing procedures as co-sponsors of Resolution 1904.²³⁷ Since the establishment of the Focal Point some 21 individuals and 43 entities have been de-listed.²³⁸ Furthermore, the UN SC Committee Pursuant to Resolutions 1267 and 1989 concerning Al-Qaida and Associated Individuals and Entities has removed dozens of entries because of new

²³⁵ Data on frozen assets according to the Consolidated List: \$51.9 (2001), \$112 (2002), \$75 (2003), \$82.5 (2004), \$91 (2005), \$91.4 (2006), \$85 (2007-2010). Data on frozen assets according to new Resolutions 1988 (Taliban) and 1989 (Al-Qaida) have never been published. Author’s analysis derived from list of reports from Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) concerning Al-Qaida and associated individuals and entities, “Monitoring Team Reports,” United Nations, accessed October 19, 2012, <http://www.un.org/sc/committees/1267/monitoringteam.shtml>.

²³⁶ UN Security Council, “Security Council Adopts Measures to Ensure “Fair and Clear” Procedures Exist for De-listing from Sanctions Committees,” United Nations, 5599th Meeting, December 19, 2006, accessed October 18, 2012, <http://www.un.org/News/Press/docs/2006/sc8913.doc.htm>; The Focal Point, later replaced with Office of Ombudsperson by UN SC Resolution 1904, 2009, deals exclusively with the de-listing mechanism, but under special conditions, (a) listed individual or entity in order to be de-listed have to submit a written application to the Office (cannot contact the Committee or appear in front of), (b) after verification of a request the Office will forward it to the government(s) of petitioner citizenship and residence, (c) those government(s) will send back their opinion on de-listing, (d) the Office will forward request and government(s) opinion to the Committee members and at least one of them should recommend de-listing, (e) after the procedure, the Office will inform the petitioner on the Committee decision.

²³⁷ UN Security Council, “Security Council Adopts Measures to Ensure Fair and Clear.”

²³⁸ In the period between the establishment of the Focal Point (2006) and the formation of the Office of Ombudsperson (June 3, 2010), 24 requests for de-listing have been completed (of 25 submitted), and five individuals and 19 entities were de-listed. Since the Office of Ombudsperson was founded, 19 cases (of 30 submitted) have been completed, 16 individuals and 24 entities have been de-listed; United Nations Security Council, “Letter dated 31 December 2010 from the Chairman of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council,” United Nations, accessed October 18, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=S/2010/685; United Nations Security Council, “Letter dated 30 July 2012 from the Ombudsperson addressed to the President of the Security Council,” United Nations, accessed October 18, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=S/2012/590.

information received from governments or international organizations (though the reasons were never published).²³⁹ All updates to the Resolution 1267-related list have been regularly introduced to the EU member states by Council Regulations.

Several individuals and entities from the EU challenged their inclusion on the list in national and European courts. Two cases are important because they had the most influence on the UN regime, as well as on the implementation in member states: the Kadi (Qadi) and the Al Barakaat joint case.²⁴⁰ The Courts of First Instance (CFI)²⁴¹ of the European Court of Justice decided in these cases that the states and EU “did not have powers to review resolutions of the UN Security Council and that the European human rights instruments were not applicable to the case”²⁴² because they [the states and EU] are bound by the Article 103 of the UN Charter and Article 27 of the Vienna Convention.²⁴³ Plaintiffs lodged a joint appeal with the ECJ, which in 2008 rejected CFI arguments and decided that according to the Treaty on European Union (Article 6), all EU “acts must respect fundamental rights and the principles of liberty, democracy and respect for human rights.”²⁴⁴ The ECJ concluded that in both cases the accused’s “right to defend himself ... right to an effective judicial review and ... right to property, had

²³⁹ United Nations Security Council, “Letter dated 13 April 2011 from the Chair of the Security Council Committee established pursuant to resolution 1267 (1999) concerning Al-Qaida and the Taliban and associated individuals and entities addressed to the President of the Security Council,” United Nations, accessed October 18, 2012, http://www.un.org/ga/search/view_doc.asp?symbol=S/2011/245.

²⁴⁰ Michal Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck’s World,” *Perspectives* 19, no. 1 (2011): 36, accessed October 18, 2012, <http://www.isn.ethz.ch/isn/Digital-Library/Publications/Detail/?lng=en&id=152146>.

²⁴¹ The Court of First Instance (CFI) was the first instance of the European Court of Justice (ECJ) since January 1, 1989 to November 30, 2009, when was renamed in the General Court (EGC).

²⁴² Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck’s World,” 36.

²⁴³ Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck’s World,” 36; Article 103, UN Charter: In the event of a conflict between the obligations of the Member of the United Nations under the present Charter and their obligations under any other international agreements [in this case TEU, Article 230], their obligations under the present Charter shall prevail.”; Article 27, Vienna Convention: “A Party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

²⁴⁴ Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck’s World,” 37.

been infringed.”²⁴⁵ The EU Council and the EU Commission used a loophole in the ECJ decision—stylizing their argument so that the case refers to a specific EU Regulation—and thus managed not to interfere with the UN SC by re-listing Qadi and Al Barakaat after a few months through a new implementing Regulation (1190/2008).²⁴⁶ Still, these cases brought about major changes toward a more fair and transparent regime by prompting UN SC Resolutions 1822 (2008), 1904 (2009); they also were mentioned in several 1267 Committee reports.²⁴⁷

The judgment of the ECJ in Kadi represents a strong commitment to fundamental rights and the (European) rule of law. Advocate General Maduro found an appropriate summary in advance: “[M]easures which are incompatible with the observance of human rights . . . are not acceptable in the Community.” From a global perspective, the ECJ’s insistence on the protection of European fundamental rights standards means that political bodies are now on the ball. The ECJ made it harder for the UN Security Council to adhere to violations of fundamental rights. As such, Kadi stands for a new bottom-up process in which a regional court pressures the UN Security Council to change its policy towards fundamental rights.²⁴⁸

After the Qadi and Al-Barakaat cases were concluded, several UN terrorist list-related cases at the ECJ and some at the CFI were decided in favor of listed individuals and entities.²⁴⁹

²⁴⁵ United Nations Security Council, “Letter dated 13 April 2011.”

²⁴⁶ European Commission, *Commission Regulations (EC) No 1190/2008 of 28 November 2008 amending for the 101st time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban*, (Brussels, Belgium: European Commission, 2008), accessed November 6, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:322:0025:0026:EN:PDF>; It is worth to mention that Al Barakaat (one individual and 17 related entities—companies) was de-listed for good from the UN list in February 2012, and Mr. Yasin Abdullah Ezzedine Qadi in October 2012; United Nations Security Council, “Security Council Al-Qaida Sanctions Committee Deletes Entry of Yasin Abdullah Ezzedine Qadi from Its List,” United Nations, October 5, 2012, accessed November 6, 2012, <http://www.un.org/News/Press/docs//2012/sc10785.doc.htm>.

²⁴⁷ Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck’s World,” 37.

²⁴⁸ Albert Posch, “The Kadi Case: Rethinking the Relationship Between EU Law and International Law?,” *The Columbia Journal of European Law* 1 (2009), accessed October 18, 2012, http://www.cjel.net/online/15_2-posch/.

²⁴⁹ United Nations Security Council, “Letter dated 13 April 2011.”

And additional problem within the sanction regime under the Resolution 1267 is that the Resolution was categorical in freezing assets, without allowing even funds for necessary basic expenses while cases were in adjudication. Although the EU and its member states challenged this hard-line from the beginning, they applied the Resolution 1267 strictly through the first EU implementation Regulation 467/2001. EU implementation Regulation 2580/2001 regarding the UN SC Resolution 1373 in December 2001 introduced for the first time exceptions to freezing funds for basic expenses, and the same provisions appeared in the update of implementation Regulations 881 (May 29, 2002) for the Resolution 1267, which finally challenged the UN SC Resolution 1267 in a more official way. The UN SC later accepted fact that Resolution 1267 is imperfect and after few months introduced Resolution 1452 (December 20, 2002), which allowed exceptions for basic expenses (Article 1).²⁵⁰ Then the EU widened its list of excepted expenses by the EU Regulations 561/2003.²⁵¹ Today, the EU provides the most extensive list of basic expenses among the all UN member states—often mentioned in a negative context in the Resolution 1267-related UN SC Committee reports.²⁵²

2. The UN SC Resolution 1373 Sanctions Regime

UN SC resolution 1373 (2001) authorizes states to develop their own list of individuals and entities associated with terrorism and to freeze their assets. The EU responded with Common Position (2001/931/CFSP), which includes the first EU list of

²⁵⁰ United Nations Security Council, “Resolution 1452 (2002),” (S/RES/1452), 2002, United Nations, accessed October 19, 2012, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N02/751/64/PDF/N0275164.pdf?OpenElement>.

²⁵¹ Council of the European Union, *Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism* (Brussels, Belgium: Council of the European Union, 2001), accessed October 17, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:344:0070:0075:EN:PDF>.

²⁵² Council of the European Union, *Council Regulation (EC) No 561/2003 of 27 March 2003 amending, as regards exceptions to the freezing of funds and economic resources, Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban* (Brussels, Belgium: Council of the European Union, 2003), accessed October 17, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:082:0001:0002:EN:PDF>.

individuals and entities associated with terrorism, and the related binding Council Regulation (2580/2001).²⁵³ Resolution 1373 places the same requirements on member states regarding terrorism finance as does Resolution 1267, but it applies all terrorism-related individuals and entities, not only Al-Qaida- or Taliban-related entities. Resolution 1373 calls on all UN members to shall refrain from providing any form of support to terrorists, to prevent terrorist activities and to inform other states of them, to deny safe havens for terrorists, ensure prosecution of terrorists, increase CT cooperation and accelerate exchange with other states CT-related intelligence, and to obey international law in CT efforts.²⁵⁴

In order to make a unified approach among member states for the implementation of UN SC Resolution 1373, the EU Council applied the EU common definition of terrorist offenses (Article 1(3) of Common Position 2001/931/CFSP), which marked the first definition of terrorism in the Framework Decision on Combating Terrorism, which was promulgated the same day (December 27, 2001).²⁵⁵

EU implementation Regulation 2580/2001 was introduced as more human rights sensitive, and some of its provisions became the basis for further EU decisions and regulations regarding the targeted sanctions, especially for individuals. The European list of individuals and entities associated with terrorism—the EU “blacklist—is updated every six months, and the responsibilities of EU bodies and member states in listing, execution, and de-listing are provided by Regulation 2580/2001 and its regular updates. The blacklist is managed by a working group, called the Clearing House, an “informal” body that coordinates with representatives from member states and the EU General Secretariat and the Commission.²⁵⁶ The Clearing House had problems with funding (a corollary to its informal status), continuity of members, and low transparency of

²⁵³ Council of the European Union, “Council Regulation (EC) No 2580/2001.”

²⁵⁴ United Nations Security Council, “Resolution 1373 (2001).”

²⁵⁵ Security Council Counter-Terrorism Committee, “About the Counter-Terrorism Committee,” United Nations, accessed October 17, 2012, <http://www.un.org/en/sc/ctc/aboutus.html>.

²⁵⁶ Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck’s World,” 38.

listing/de-listing processes. Thus, it was replaced in 2007 by the Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (CP 931 Working Party), which has more authorities, including the examination and evaluation of cases and drafting final recommendations (listing/de-listing) for the EU Council. The Working Party finally brought more transparency in the sanction regime.²⁵⁷

Transparency marked a human rights-related problem in the regime of the UN SC Resolution 1373 because of the secrecy of the information that supports the listing of individuals or entities on the EU blacklist. Although the EU Common Position 2001/931/CFSP states that a decision should be taken by a competent authority, that authority is not always a judicial authority. Many times, the deciding authority hails from intelligence quarters and, thus, the information is secret. The turning point as far as transparency in the European CT sanction regime was the court decision in case of the People's Mujahedin of Iran (PMOI). PMOI appeared on the UK's terrorism-related list in 2001 and on the first EU blacklist adopted by the Council Decision 2002/334/EC of May 2, 2002.²⁵⁸ That same year, the PMOI initiated a case with the CFI of the ECJ, seeking of the right to be heard and the annulment of Council Decision which listed PMOI as associated with terrorism.²⁵⁹ The CFI decided in December 2006 to accept PMOI's arguments about a lack of a fair trial and the evidence against PMOI, and it annulled Council Decision 2005/930/EC, which was the latest Council Decision that updated the blacklist.²⁶⁰ Still, PMOI remained on the list because of a new Council Decision that is

²⁵⁷ Onderco, "Managing the Terrorists: Terrorist Group Blacklisting in Beck's World," 38.

²⁵⁸ European Court of Justice, "Judgment of the Court (Grand Chamber) in Case C-27/09 P, December 21, 2011," *Eur-Lex: Access to European Union Law*, accessed November 6, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0027:EN:HTML>; "The PMOI was added to the list referred to in Article 2(3) of Regulation No 2580/2001 by Council Decision 2002/334/EC of 2 May 2002 implementing Article 2(3) of Regulation No 2580/2001 and repealing Decision 2001/927/EC."

²⁵⁹ Onderco, "Managing the Terrorists: Terrorist Group Blacklisting in Beck's World," 39.

²⁶⁰ The PMOI's inclusion in the list was maintained by a series of subsequent decisions taken by the Council in accordance with Article 1(6) of the Common Position 2001/931/CFSP.; European Court of Justice, "Judgment of the Court (Grand Chamber) in Case C-27/09 P, December 21, 2011."

not mentioned in the CFI decision.²⁶¹ Even after two more new cases before the CFI (2007, 2008), PMOI remained on the list because UK did not de-list the group from its national blacklist.²⁶² Only after the UK blacklist oversight body decided in 2007 that PMOI's listing was unlawful—after the CFI in 2008 ruled in favor of PMOI to be stricken from both the UK and EU blacklists—did the PMOI finally disappear from the 2009 EU blacklist.²⁶³ Since the PMOI case(s) concluded, individuals and entities on the EU blacklist have been informed through a “Statement of Reasons” of their listing, including reasons, evidence, and the procedures of de-listing, with possibility of using the CFI as a remedy.²⁶⁴

In sum, the EU's implementation of the sanctions regime according to UN SC Resolution 1373 is much better than the regime related to the UN SC Resolution 1267 and the human rights protection can be considered to be sufficient.

D. COUNTERTERRORISM COOPERATION WITH THE UNITED STATES

International and regional cooperation are indispensable to effective counterterrorism, but as Wiegand points out, this desideratum has many challenges. She concludes that all CT legal-institutional measures must comply with universal values, especially, according to the TEU, with “human rights norms, fundamental freedoms and rule of law.”²⁶⁵ Similarly, Seiber-Fohr argues that “the proper legal categorization of

²⁶¹ “The Council has again decided to include [the PMOI] on the list ... The Council has taken note of the fact that the competent authority decision which served as a basis for including [the PMOI] on the list is no longer in force as of 24 June. However, the Council has been provided with new information relevant to this listing. Having considered this new information, the Council has decided that [the PMOI] should still be included on the abovementioned list. Therefore, the Council has amended the statement of reasons accordingly.”; European Court of Justice, “Judgment of the Court (Grand Chamber) in Case C-27/09 P, December 21, 2011.”

²⁶² Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck's World,” 39.

²⁶³ Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck's World,” 39.

²⁶⁴ Onderco, “Managing the Terrorists: Terrorist Group Blacklisting in Beck's World,” 38-39.

²⁶⁵ Irina Wiegand, *The Protection of Human Rights and Fundamental Freedoms in the Fight against Terrorism: The Case of the European Union after September 11, 2001* (Stuttgart, Germany: Ibidem-Verlag, 2008): 2.

anti-terrorism measures will help to give guidance for balancing what seem to be at first sight competing interests.”²⁶⁶

Avoiding conflict between human rights and CT measures is especially difficult in data sharing within international CT cooperation, but the EU succeeded in this endeavor pretty well. The EU has developed broad international CT cooperation, especially after 9/11, and signed many CT-related international agreements—mostly with countries related to the roots of the external terrorist threat to the EU or related to immigrants communities that support terrorist organizations in their countries. European CT international cooperation is most active with countries of Eastern Europe, North Africa, Middle East, and South Asia.²⁶⁷ Since 9/11, the EU has succeeded in developing a strategic framework in CT partnership with the United States that was institutionalized through several important CT-related agreements, formalizing and expanding the old network of bilateral agreements.

Even though the operational CT cooperation has been excellent, negotiations for related agreements suffered under different legal approaches, especially as they related to the EU approach that agreements must comply sufficiently with human rights requirements.²⁶⁸ Although the EU Commission’s approach was not always consistent, thanks to pressure from the United States, but the constant oversight by some EU bodies, especially the EU Parliament, ensured that the EU-U.S. agreements that involve individual data sharing ultimately accorded with the European Convention of Human Rights.²⁶⁹

²⁶⁶ Anja Seibert-Fohr, “The Relevance of International Human Rights Standards for Prosecuting Terrorists,” in *Terrorism as a Challenge for National and International Law: Security versus Liberty?*, ed. Christian Walker et al. (Heidelberg, Germany: Springer, 2004): 127.

²⁶⁷ Monar, “The European Union’s response to 11 September 2001,” 13-14.

²⁶⁸ Casale, “EU Institutional and Legal,” 68-69.

²⁶⁹ Dubois, “The Attacks of 11 September,” 331-332.

1. U.S. – EU Counterterrorism Cooperation

Before 9/11 the EU sporadically cooperated with the United States in CT issues, on a bilateral basis with member states (France, Spain, UK, Germany). After 9/11, one of the priorities of the EU in its international approach to CT issue became increased cooperation with the United States.

During the Joint EU-U.S. Ministerial²⁷⁰ of 20 September 2001, European and American leaders made the commitment to “work in partnership in a broad coalition to combat the evil of terrorism” and to “vigorously pursue cooperation” in several areas: aviation and transportation security; police and judicial cooperation; border controls, including visa and document security; export control; and law enforcement and exchange of electronic data.²⁷¹

On September 21, 2001, the European Council introduced the first Plan of Action to Combat Terrorism that expressed solidarity as well as strong willingness for cooperation with the United States in international terrorism issues.²⁷² The EU member states’ law enforcement and intelligence agencies increased terrorism-related data sharing with Europol soon after 9/11 as the EU focal point in the European CT international cooperation; Europol concluded an operational agreement with the United States on December 6, 2001.²⁷³ The agreement provides legal support for CT data sharing, “including trends and developments in the methods used to commit offences, prevention strategies, threat assessments and crime situation reports, [yet] it specifically excludes the transmission of personal data” (added by the U.S.-Europol agreement in 2002, updated

²⁷⁰ An EU-US Ministerial Meeting on Justice and Home Affairs is held approximately every six months under each EU Presidency. The meeting covers current activities regarding to the areas of Justice and Home Affairs (JHA) and in common interest to the EU and the US.

²⁷¹ European Union Institute for Security Studies-United States Task Force 2011, “EU-US Counter-terrorism Cooperation since 9/11: Challenges and Perspectives,” European Union Institute for Security Studies, September 15, 2011, accessed October 21, 2012, http://www.iss.europa.eu/uploads/media/Prog_overview.pdf.

²⁷² Council of the European Union, “Conclusions and Plan of Action of the Extraordinary European Council Meeting on 21 September 2001.”

²⁷³ *Agreement between the United States of America and the European Police Office*, Signed at Brussels December 6, 2001, Europol, accessed October 21, 2012, https://www.europol.europa.eu/sites/default/files/flags/united_states_of_america.pdf.

2006).²⁷⁴ After the United States, as a part of the “war on terror,” executed strikes on Taliban forces in Afghanistan on October 7, 2001, several EU member states gave direct support to the operation through participation in large coalition land forces that were deployed later.²⁷⁵ The United States welcomed these measures, “recognizing that that they may help root out terrorist cells and prevent future attacks against the United States or its interests abroad.”²⁷⁶

Since 2001, law enforcement, intelligence, judicial, and border security officials substantially have increased their operational contacts in connection with a broad set of CT-related issues (including liaison officers), and the two partners have also reached several important agreements.²⁷⁷ These agreements do not replace existing bilateral agreements, but they supplement the agreements and introduce new level of international CT approach in several areas, including: law enforcement, judicial, and intelligence cooperation (U.S.–Europol Agreements, 2001, 2002 and Mutual Legal Assistance [MLA] and Extradition Agreements, 2003, 2010; combating terrorist financing (SWIFT Agreement, 2010); and strengthening transport security and border control (Passenger Name Records [PNR] Agreement, 2004, 2006, 2007, and 2012; Customs Cooperation and Container Security Agreement, 2004).²⁷⁸

Nevertheless, according to the EU, in connection with the sufficient protection of human rights in CT measures, some challenges have been always been present during the

²⁷⁴ *Supplemental agreement between European Police Office and the United States of America on exchange of personal data and related information*, Signed at Copenhagen December 20, 2002, Europol, accessed October 21, 2012, https://www.europol.europa.eu/sites/default/files/flags/supplemental_agreement_between_europol_and_the_usa_on_exchange_of_personal_data_and_related_information.pdf.

²⁷⁵ Grajny “The European Union counterterrorism.”

²⁷⁶ U.S. Library of Congress, Congressional Research Service, *U.S.-EU Cooperation Against Terrorism*, by Kristin Archick, CRS Report RS22030 (Washington, DC: Office of Congressional Information and Publishing, May 21, 2012), accessed October 21, 2012, <http://www.fas.org/sgp/crs/row/RS22030.pdf>.

²⁷⁷ CRS, *U.S.-EU Cooperation against Terrorism*, 3.

²⁷⁸ CRS, *U.S.-EU Cooperation against Terrorism*, 3-17; Alex MacKenzie, “The EU’s Growing Global Counter-Terrorism Role,” *ISN Security Watch*, August 23, 2012, accessed October 21, 2012, <http://www.isn.ethz.ch/isn/Security-Watch/Articles/Detail/?id=151681&lng=en>.

negotiations of these agreements. This circumstance has led to periodic tensions over such issues as individual data privacy and protection, the death penalty, detainee conditions and policies, differences in the U.S. and EU terrorist blacklists, and the appropriate balance between border security measures and legitimacy for trade and travel.²⁷⁹

One example of the U.S.-EU human rights-related negotiations is the U.S.-Europol Agreement, which was signed just few days after 9/11. It covers the sharing of information (threats warnings, crime patterns, risks analyses) but not the exchange of personal data (names, addresses, pictures, police criminal records).²⁸⁰ The Supplement to the U.S.-EU Agreement was signed on December 20, 2002, more than a year after negotiations on the exchange of personal data because the EU data protection standards²⁸¹ consider privacy of personal data as a basic human right.²⁸² Although the EU mostly succeeded in negotiating its requirements (especially mutual recognition of classification levels and handling with exchanged data),²⁸³ some of concerns remained, including the lack of U.S. data protection laws regarding non-U.S. citizens and the failure

²⁷⁹ CRS, *U.S.-EU Cooperation against Terrorism*, 3-17.

²⁸⁰ Statewatch, "Europol-USA Agreement: Was it Really Needed?", accessed October 22, 2012, <http://www.statewatch.org/news/2006/jul/01europol-usa.htm>.

²⁸¹ EU data protection standards: Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data; Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data; Directive 2002/58 concerning the processing of personal data and the protection of privacy in the electronic communications sector; and Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters; Els De Busser, "EU data protection in transatlantic cooperation in criminal matters Will the EU be serving its citizens an American meal?," *Utrecht Law Review* 6, no. 1 (January 2010): 89, <http://www.utrechtlawreview.org/index.php/ulr/article/viewFile/116/116>.

²⁸² Statewatch, "Europol-USA Agreement: Was it Really Needed?"

²⁸³ The Europol transmitted data will be protected in the U.S. as "United States law enforcement sensitive material" and the U.S. transmitted data will be protected as equivalent to "Europol 1" (highest level of classification).; Europol, *Agreement Between the United States of America and the European Police Office*.

of the U.S. side to provide a list of all agencies that will be consumers of the EU-provided data—estimated at more than 1500 in federal, state, and local agencies.²⁸⁴

A second example of the U.S.- EU negotiations with many frictions is the development of the Agreement on Extradition and Mutual Legal Assistance Agreement (MLA) that were signed on June 25, 2003.²⁸⁵

The extradition agreement incorporated facets of modern practice that were absent from older extradition treaties between the United States and Member States (e.g., conversion of list treaties to a dual criminality approach; streamlining of process for authentication and transmission of documents); while the mutual legal assistance agreement (MLA) provided a number of provisions absent even from newer mutual legal assistance treaties (MLATs) (e.g., tools to identify bank accounts and transactions, and to facilitate the establishment of joint investigative teams).²⁸⁶

The negotiation of these agreements had similar issues to the U.S.–Europol agreements, mostly related to EU human rights standards. The biggest problem was the death penalty (not permitted in the EU) related to extradition of EU citizens. It was solved after the United States “agreed that extradited persons would not face capital punishment.”²⁸⁷ Still, signed agreements could not be put into force because the EU cannot negotiate international agreements in justice and home affairs matters on behalf of the member states (TEU, Article 24 and 38). These agreements only can supplement existing the U.S.-EU member states bilateral treaties.²⁸⁸ Thus, the U.S. was forced to negotiate new bilateral treaties (Extradition and MLA) with all member states individually in order to put the new provisions into force. Although human rights standards delayed briefly the negotiations, the whole process was extended until 2009

²⁸⁴ Statewatch, “Europol-USA Agreement: Was it Really Needed?”

²⁸⁵ Council of the European Union, *Handbook on the practical application of the EU-U.S. Mutual Legal Assistance and Extradition Agreements* (Brussels, Belgium: Council of the European Union, Document 8024/11, March 25, 2011), 5, accessed October 22, 2012, <http://www.statewatch.org/news/2011/mar/eu-council-eu-usa-mla-handbook-8024-11.pdf>.

²⁸⁶ Council of the European Union, *Handbook on the practical application of the EU-U.S.*

²⁸⁷ Grajny “The European Union counterterrorism.”

²⁸⁸ Council of the European Union, *Handbook on the practical application of the EU-U.S.*, 5.

because after negotiations with all 15 EU member states came to the end, the EU expanded to 25 member states in 2004, and then to 27 member states in 2007.²⁸⁹ After the conclusion of all bilateral extradition and MLA treaties (MLAT), the process of exchange of all documents between the United States and the EU took two more years—until October 28, 2009. Finally, both U.S.–EU Agreements and related bilateral treaties entered into force as of February 1, 2010.²⁹⁰

Rather less has been made in this context of the frictions arising from the different approaches to the CT-related security versus human rights.²⁹¹ The first problems cropped up in 2006 and 2007, when newspapers reported the lack of privacy protection in the use of SWIFT²⁹² financial records, which was granted the U.S. according to implementation of the UN SC Resolution 1373 and the U.S. subpoena to the SWIFT office in New York in 2001 (includes financial transfers between EU users).²⁹³ Although the U.S. Treasury Department issued reports and communicated with the EU Commission in order to bring counter arguments, Belgium (where SWIFT is headquartered) and the EU Commission found evidence of violations of EU data protection regulations. The EU Parliament adopted two related resolutions (2006, 2007) that referred to the problem and called for a resolution through an official U.S.-EU agreement.²⁹⁴ In 2008, Belgium reported that new U.S. regime of using SWIFT data complied with the EU related regulations. Thereafter,

²⁸⁹ Council of the European Union, *Handbook on the practical application of the EU-U.S.*, 5.

²⁹⁰ Council of the European Union, *Handbook on the practical application of the EU-U.S.*, 6.

²⁹¹ CRS, *U.S.-EU Cooperation Against Terrorism*, 6.

²⁹² “SWIFT is the Society for Worldwide Interbank Financial Telecommunication, a member-owned cooperative through which the financial world conducts its business operations with speed, certainty and confidence. More than 10,000 banking organizations, securities institutions and corporate customers in 212 countries trust us every day to exchange millions of standardized financial messages.” SWIFT has 23 offices around the world, including two in the U.S.; Society for Worldwide Interbank Financial Telecommunication, “About SWIFT,” accessed October 23, 2012, http://www.swift.com/about_swift/index.page.

²⁹³ Marise Cremona, “Justice and Home Affairs in a Globalized World: Ambitions and Reality in the tale of the EU-US SWIFT Agreement,” Working Paper No. 04/2011, *Vienna: Institute for European Integration Research*, 2011, 11, accessed October 23, 2012, <http://www.eif.oew.ac.at/downloads/workingpapers/wp2011-04.pdf>.

²⁹⁴ Cremona, “Justice and Home Affairs in a Globalized World,” 11-12.

the Agreement on Financial Messaging Data between the EU and the USA (FMDA, also known as SWIFT Agreement) was adopted on November 30, 2009, by the EU Council.²⁹⁵ The Agreement was designed to be provisional, in effect for only nine months. Still, the EU Parliament rejected it just few days after became operational on February 1, 2010, and requested new Agreement with more rigorous EU legislation-related provisions.²⁹⁶ Thus, after few months of turbulent negotiations among the United States, the EU Commission, and the EU Parliament), “[t]he European Parliament approved the revised agreement on 8 July 2010 and it came into force on 1 August 2010.”²⁹⁷ Apart from solving all previous problems of access to SWIFT data, the new agreement also offers solutions to several other issues regarding future EU international CT cooperation agreements and especially compliance of data sharing with EU legislation, such as: (a) use of the official EU definition of terrorism (different than the U.S. one), (b) verification of all U.S. request with conditions of agreement by Europol, (c) the EU oversight over the use of data, (d) judicial compensation for EU citizens, (e) regulation of rights to rectification and erasure of data, and (f) regulation of transfer of data to the third countries.²⁹⁸

The second problem related to the security versus human rights dilemma that has been generated difficulties in the U.S.-European CT cooperation concerns the EU’s approach to implementing UN SC Resolutions 1267 and 1373. Apart from the human rights sensitiveness, some differences also exist in designated individuals and entities on the U.S. and the EU “blacklists” that have more to do with political issues. The most discussed difference is listing of Hezbollah- and Hamas-related charities in Lebanon and

²⁹⁵ It was just one day before Treaty of Lisbon came into force (December 1, 2009), which requests EU Parliament consent in the EU Agreements.; Cremona, “Justice and Home Affairs in a Globalized World,” 12-15.

²⁹⁶ Cremona, “Justice and Home Affairs in a Globalized World,” 15-16.

²⁹⁷ Cremona, “Justice and Home Affairs in a Globalized World,” 21.

²⁹⁸ Cremona, “Justice and Home Affairs in a Globalized World,” 19; In spite of problems in negotiations with the EU, the US Congressional Research Service in its newest report on U.S. – EU Cooperation Against Terrorism (May 12, 2012) points out that using of SWIFT financial records since 2001 has helped in sharing of more than 1500 leads to further investigations of terrorists activities. CRS, *U.S.-EU Cooperation against Terrorism*, 6.

associated individuals that appear on the U.S. terrorists' blacklist but not on the EU blacklist because some EU member states argue that it "would be counterproductive to managing relations with Lebanon and promoting peace and stability in the region."²⁹⁹

Every day approximately 30,000 passengers and more than 3,000 containers from the EU arrive in the United States, which explains why both sides made border controls and transport security a the priority for U.S.-EU cooperation after 9/11.³⁰⁰ For the most part, in aviation security there prevails a very active cooperation, and U.S. and EU security standards are similar or at least highly compatible. Still, differing approaches have led to periodical disputes arming air marshals (in which matter the U.S. approach ultimately prevailed and all were armed after June 2006); human rights sensitivities, particularly in Europe, about new body scanners at airports installed after the 2009 attempt to blow up an airliner on route from Amsterdam to Detroit (resolved by the EU Parliament decision on different types of scanners and allowing passengers the option of a body search instead x-rays); and U.S. concerns over the EU's intention to eliminate all limitations on liquids in cabin baggage by 2013 (still unresolved).³⁰¹

Maritime cargo security cooperation between U.S. and EU is even more seamless, codified now under the Customs Cooperation and Container Security Agreement, 2004. At least all operations were running smoothly until the recent U.S. request for 100-percent inspection of sea-borne cargo to American shores, a measure that first appeared in the Recommendations of the 9/11 Commission Act of 2007.³⁰² The proposal remains controversial in the United States, and the Obama administration shares the EU's view of the 100-percent scan as costly and time consuming. Amid clamor from U.S. business interests as well as major international trading partners, including the EU, "the U.S.

²⁹⁹ CRS, *U.S.-EU Cooperation against Terrorism*, 6.

³⁰⁰ CRS, *U.S.-EU Cooperation against Terrorism*, 13.

³⁰¹ CRS, *U.S.-EU Cooperation against Terrorism*, 14-15.

³⁰² CRS, *U.S.-EU Cooperation against Terrorism*, 15-16.

Department of Homeland Security notified Congress that it was extending the July 2012 100-percent scanning deadline by two years.”³⁰³

2. EU-U.S. Legal Dispute and Passenger Name Record Agreement

The EU and the United States take different approaches in legislating data privacy. The EU takes a more restrictive view that covers a wide spectrum of privacy rights related to the European Convention on Human Rights and EU human rights law. The cornerstone of European data protection is the Data Protection Directive, adopted in 1995 (95/46/EC). The directive provides detailed guidelines regarding the “processor,”³⁰⁴ quality of the data, the legitimacy of data processing, special categories of processing, information to be given to the data subject, the data subject’s right of access to data, exemptions and restrictions, the right to object to the processing of data, the confidentiality and security of processing, and the notification of processing to a supervisory authority (Article 29 Data Protection Working Party).³⁰⁵

³⁰³ CRS, *U.S.-EU Cooperation against Terrorism*, 16.

³⁰⁴ “Processor shall mean a natural or legal person, public authority, agency or any other body which processes personal data on behalf of the controller. Controller shall mean the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the processing of personal data; where the purposes and means of processing are determined by national or Community laws or regulations, the controller or the specific criteria for his nomination may be designated by national or Community law.”; European Parliament and Council of the European Union, *Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data* (Brussels, Belgium: European Parliament and Council of the European Union, 1995) accessed November 6, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995L0046:EN:HTML>.

³⁰⁵ “The Article 29 Data Protection Working Party was set up under the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.”; European Commission, “Justice: Article 29 Working Party,” accessed October 30, 2012, http://ec.europa.eu/justice/data-protection/article-29/index_en.htm; Europe: Summaries of EU Legislation, “Protection of personal data,” accessed October 30, 2012, http://europa.eu/legislation_summaries/information_society/data_protection/l14012_en.htm.

In contrast, the United States prefers to impose restrictions only in cases where a specific problem appears.³⁰⁶ The United States recognizes a more general right to privacy based on an evolution of jurisprudence that, since the latter third of the 20th century, is understood to guarantee the positive, if nebulous, right to privacy.³⁰⁷ Although the term “privacy” has various meanings in U.S. law (freedom from undue surveillance or interference by law enforcement, the right to an abortion, a person’s choice in the use of his name for marketing, etc.), “a person has to scour a number of authorities—the “patchwork quilt”—to determine how any element of his or her data is protected in the United States.”³⁰⁸ This lack of comprehensive or unitary privacy protections, coupled with the obsolescence of some U.S. laws in light of contemporary technology, prompted the EU Commission to conclude that the U.S. protection of European data is inadequate and incompatible with the Data Protection Directive.³⁰⁹

Transfers of personal data from a [EU] Member State to a third country with an adequate level of protection are authorized. However, they may not be made to a third country which does not ensure this level of protection, except in the cases of the derogations listed.³¹⁰

Ultimately, this divergent legislative approach has been at the root of all recent disputes related to the various EU-U.S. data exchange agreements.

The case of the Passenger Name Record (PNR) Agreement presents an apt a case study of these disputes because it is the most complex, not least because it has been

³⁰⁶ Matthew R. VanWasshnova, “Data Protection Conflicts Between the United States and the European Union in The War On Terror: Lessons Learned from the Existing System of Financial Information Exchange,” *Case Western Reserve Journal of International Law* 39, no. 3 (Fall 2007), 827, accessed October 30, 2012, <http://www.questia.com/library/p408869/case-western-reserve-journal-of-international-law/i2597994/vol-39-no-3-fall>.

³⁰⁷ VanWasshnova, “Data Protection Conflicts,” 830-831.

³⁰⁸ In order to continuing free flow of commerce with the United States, the Safe Harbor Principles were introduced in 2000 (EU Council Decision 2000/520/EC) and accepted by the United States and EU as adequate level of data protection in commercial-related transfers of data. However, the Safe Harbor Principles do not apply for transfers between government officials (e.g. Europol, Eurojust, FBI, etc.) and after 9/11 set path for complicated EU-US privacy data protection conflicts. VanWasshnova, “Data Protection Conflicts Between the United States and the European Union,” 831.

³⁰⁹ VanWasshnova, “Data Protection Conflicts,” 832.

³¹⁰ Europe: Summaries of EU Legislation, “Protection of personal data.”

challenged for many years by various EU and U.S. institutions. The United States enacted the Aviation and Transportation Security Act of 2001 (ATSA), which, among other provisions, requires all airline companies operating to, from, or across the United States to provide U.S. Customs with electronic access to their PNR data.³¹¹ Failure to do so could result in fines for the offending airline or even the loss of U.S. landing rights. To remain on the right side of the ATSA, European companies at the beginning mostly choose to comply with the U.S. act—which means that they violate the EU Data Protection Directive.³¹² Although data collected and exchanged in relation with public or state security and defense form an exception to the provisions of the Data Protection Directive, this exception does not cover PNR data collected for commercial use. In order to resolve European airlines' dilemma of which regulations to follow, the Commission negotiated with the United States the postponement of the entry into force of the ATSA requirements for the EU, and started initial talks on a bilateral EU-U.S. PNR agreement.³¹³

After two years of negotiations, on December 16, 2003, the Commission presented to the European Council and European Parliament provisions of future bilateral agreement and outlined that the U.S. had agreed to:

- a. limit its PNR requests to a closed list of thirty-four items,
- b. delete all categories of sensitive data,
- c. use the data only to prevent and combat terrorism and related crimes,
- (4) retain the PNR data for no more than three and a half years,
- d. receive and handle representations from E.U. data protection authorities on behalf of E.U. citizens who have outstanding complaints with the Department of Homeland Security,
- e. participate with an E.U. team led by the Commission in an annual joint review.³¹⁴

³¹¹ Encyclopedia of Immigration, "Aviation and Transportation Security Act of 2001," accessed October 30, 2012, <http://immigration-online.org/371-aviation-and-transportation-security-act-of-2001.html>.

³¹² Encyclopedia of Immigration, "Aviation and Transportation Security Act of 2001."

³¹³ VanWasshnova, "Data Protection Conflicts," 834.

³¹⁴ VanWasshnova, "Data Protection Conflicts," 834.

The Commission explained that data exchange would include a multilateral approach developed with the International Civil Aviation Organization (ICAO). It would be organized as a “push” system of data transfers, which means that airline companies would transfer data to the United States, in contrast to the “pull” system that was then in use—and that the United States clearly preferred—which allowed U.S. officials access to the airline companies’ databases.³¹⁵ Awkwardly, the Council supported the agreement, while the Parliament rejected it as drafted and sought adjustments to accord with the Data Protection Decision and TEU.³¹⁶ Furthermore, the Parliament “refer[red] the matter to the Court [ECJ] for review of the legality of the projected international agreement.”³¹⁷

The dispute between the Council and the Parliament about the PNR agreement culminated after April 28, 2004, when the Council asked the Parliament to give an urgent opinion on the conclusion of the agreement by May 5, 2004, but the Parliament rejected this request with opinion that is necessary to wait for the ECJ’s opinion.³¹⁸ On May 14, 2004, the Commission announced its decision that U.S. Customs has an adequate level of PNR protection for air passengers under the EU Data Protection Directive. This finding fulfilled the prerequisite for an agreement, under Article 25[6] of the Data Protection Directive, which led to the Council Decision on May 17, 2004, that introduced the Agreement between the European Community and the United States of America on the Processing and Transfer of PNR (Passenger Name Records) Data.³¹⁹

³¹⁵ VanWasshova, “Data Protection Conflicts,” 834.

³¹⁶ European Court of Justice, “Opinion of Advocate General Leger delivered on 22 November 2005 (Case C-317/04, Case C-318/04),” *InfoCuria - Case-law of the Court of Justice*, accessed October 30, 2012, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=56158&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1556660>.

³¹⁷ European Court of Justice, “Opinion of Advocate General Leger.”

³¹⁸ European Court of Justice, “Opinion of Advocate General Leger.”

³¹⁹ *Agreement between the European Community and the United States of America on the processing and transfer of PNR data by air carriers to the United States Department of Homeland Security, Bureau of Customs and Border Protection*, Eur-Lex: Access to European Union law, *Official Journal of the European Union*, L183/84 (May 20, 2004), accessed October 30, 2012, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:183:0084:0085:EN:PDF>.

Although the majority of the provisions announced in the Commission's earlier communication were included, the agreement did not provide for the multilateral approach through ICAO or, more importantly, timing timetable for changing from the current "pull" system to a "push" system of data transfer. The European Parliament responded on July 27, 2004, with an application to the ECJ for the annulment of both the Commission's decision that U.S. Customs can ensure an adequate level of data protection (ECJ case C-318/04) and the Council Decision 2004/496/EC related to the EU-U.S. PNR Agreement (ECJ case C-317/04).³²⁰ The European Court of Justice joined the cases and on May 30, 2006, annulled both PNR related documents.³²¹ However, the ECJ did not address fundamental rights infringements claims, and judgment was purely based on an inadequacy of both documents within the scope of Data Protection Decision. The ECJ postponed its decision until September 30, 2006, which gave some time to the EU and the United States to address the shortcomings in the data-sharing regime. The EU and the United States renegotiated the provisions of the PNR agreement quickly, and on October 19, 2006, they signed a new, temporary PNR agreement.³²²

Other than changing the legal basis from the Data Protection Directive to the TEU (Article 24 and 38), however, the temporary PNR agreement did not realize most of the EU Parliament's concerns, and the agreement met with a firestorm of criticism from even broader European quarters. First, the U.S. Department of Homeland Security, as a negotiator for the U.S. side, succeeded in inserting language that required the automatic application of future changes in the U.S. legislation, including U.S. Executive Orders, "meaning that the U.S. [side] will be able to decide on how the respective data will be processed and by whom."³²³ Members of the EU Parliament criticized some changes in

³²⁰ European Court of Justice, "Opinion of Advocate General Leger."

³²¹ European Court of Justice, "Opinion of Advocate General Leger."

³²² The temporary PNR agreement expired on July 31, 2007; VanWasshova, "Data Protection Conflicts," 837.

³²³ European Digital Rights, "EU-US PNR Agreement Formally Adopted by the EU Council," *EDRI-gram* 4.20 (October 25, 2006), accessed October 31, 2012, <http://www.edri.org/edriagram/number4.20/pnr>.

the current PNR data exchange regime, such as: unspecified timing of changing “pull” system to a “push” system of data transfer; facilitation of transfer of PNR data to new and unspecified U.S. agencies responsible for combating terrorism; new reasons for PNR data exchange, like “fight[ing] infectious disease and other risks,” which additionally expanded the number of PNR data users.³²⁴

The Commission tried to answer critics by characterizing the agreement as a matter of absolute urgency for the continuity of CT-related current PNR regime, which has resulted many times in crucial information in terrorism and organized crime-related investigations in the United States as well as in the Europe.³²⁵ Furthermore, the Council Decision 2006/729/CFSP/JHA on October 16, 2006, to sign the temporary agreement on behalf of the European Union, gave EU member states a control mechanism and authority to intervene should they find infringements of individual privacy.³²⁶

The competent authorities in Member States may exercise their existing powers to suspend data flows to DHS in order to protect individuals with regard to the processing of their personal data if they consider that the processing of PNR data is not in accordance with the standards of protection provided for in the Undertakings given by DHS, or where a competent United States authority has determined that DHS is in breach of those standards, until compliance with those standards is assured.³²⁷

Before the temporary PNR agreement expired, the EU and the United States inked a new, revised agreement in July 2007. This agreement consists of three documents: the EU-U.S. PNR Agreement; a letter of assurances from DHS on methods of data protection; and a confirmation letter from the EU that it accepts DHS’s assurances as

³²⁴ *European Digital Rights*, “EU-US PNR.”

³²⁵ *European Digital Rights*, “EU-US PNR.”

³²⁶ Council of the European Union, *Council Decision on the signing, on behalf of the European Union, of an Agreement between the European Union and the United States of America on the processing and transfer of passenger name record (PNR) data by air carriers to the United States Department of Homeland Security*, (Council Decision 2006/729/CFSP/JHA), (Brussels, Belgium: Council of the European Union, Document 13226/06, October 11, 2006), accessed October 31, 2012, 2, <http://www.statewatch.org/news/2006/oct/eu-usa-pnr-coun-new-decision.pdf>.

³²⁷ Council of the European Union, *Council Decision 2006/729/CFSP/JHA*, 2.

adequate.³²⁸ The revised agreement also incorporates some of the EU Parliament's proposals for stronger protection of individual privacy, such as: the United States agreeing that the U.S. Privacy Act of 1974 and the Freedom of Information Act may apply to EU citizens; compulsory and standardized DHS notice to air companies regarding PNR data use; a process of redress available for the public; and most centrally, the adoption of the "push" system of data transfer.³²⁹ On the other hand, the revised agreement weakens some earlier provisions, like extending the data retention period from three and a half to 15 years; requiring air companies to send data at least 72 hours before a flight departs; including data on additional baggage and frequent flyer membership; and in exceptional circumstances collecting individual data that may include information on: race, ethnicity, political opinion, religion, philosophical beliefs, trade union membership, health, and even sex life.³³⁰

Of course, although the 2007 PNR agreement was signed and put in practice, it was, as a legal and political matter, still provisional, pending the European Parliament's approval. Traditionally skeptical of EU-U.S. cooperation in CT and human rights issues, the European Parliament decided in May 2010 to postpone its vote on the 2007 PNR agreement and asked the Commission to develop a "global external PNR strategy," which should be implemented in all current PNR agreements (U.S. [2007], Australia [2008], and Canada [2005]), as well as applying to all future PNR agreements.³³¹ The European Commission issued the proposal on the global approach to transfers of PNR data to third countries on September 21, 2010. The European Parliament finally accepted strategy on November 11, 2010, and then gave recommendations for the opening of negotiations on

³²⁸ VanWasshova, "Data Protection Conflicts," 837.

³²⁹ *Agreement between the European Union and the United States of America on the processing and transfer of Passenger Name Record (PNR) data by air carriers to the United States Department of Homeland Security (DHS)*, (2007 PNR Agreement), Eur-Lex: Access to European Union law, *Official Journal of the European Union*, L 204/18 (August 4, 2007), 2, accessed October 31, 2012, http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_204/l_20420070804en00180025.pdf.

³³⁰ 2007 PNR Agreement, 22.

³³¹ CRS, *U.S.-EU Cooperation against Terrorism*, 9. It is worth noting that after the Lisbon Treaty came into force (December 1, 2009) the European Parliament got much greater authority over the EU bodies and law.

current PNR agreements between the European Union and Australia, Canada and the United States.³³²

PNR data should be used exclusively to combat terrorism and other serious transnational crimes, passengers should be given clear information about the exchange of their PNR data and have the right to effective administrative and judicial redress, and that a decision to deny a passenger the right to board an airplane must not be based solely on the automated processing of PNR data ... the categories of PNR data exchanged should be as limited as possible and that PNR data should be retained no longer than absolutely necessary.³³³

The Obama Administration started negotiations in December 2010 largely because the European Parliament was unlikely to approve the current agreement, but in May 2011, the U.S. Congress introduced a resolution (H.Res. 255) that passed in the Senate (S.Res. 174) supporting the existing 2007 PNR agreement and asking DHS to avoid any modification that could degrade its effectiveness. A few days later, the media published a draft of the renegotiated 2007 PNR agreement that enhanced the protection of individual privacy in PNR data exchange regime through larger restrictions on the retention of PNR data, greater legal certainty and clarity on individual rights to redress, and restrictions on denial of boarding because of automatic processing. Negotiations were concluded, and in November 2011 a new draft PNR agreement was presented. This latest draft did not differ much from the leaked version except for two important changes, one “limiting the use of PNR data specifically to terrorist or other serious transnational crimes that could result in three years or more in prison; and [the second,] varying the retention time depending on the type of crime under investigation (data would still be retained ultimately for 15 years for terrorist investigations, but only 10 years for investigations

³³² European Parliament, *European Parliament resolution of 11 November 2010 on the global approach to transfers of passenger name record (PNR) data to third countries, and on the recommendations from the Commission to the Council to authorize the opening of negotiations between the European Union and Australia, Canada and the United States*, (2012/C 74 E/02), (Brussels, Belgium: European Parliament, Document C 74 E/8, March 13, 2012), 1, accessed October 31, 2012 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:074E:0008:0011:EN:PDF>.

³³³ CRS, *U.S.-EU Cooperation against Terrorism*, 10.

into other types of crimes).”³³⁴ Although some EU member states (Germany, Austria) and some MEPs criticized provisions on data retention and redress as insufficient, the European Parliament gave its consents on April 19, 2012, the EU Council on April 26, 2012, adopted the decision to accept the new EU-U.S. PNR agreement, which finally came into force on June 1, 2012.³³⁵

The main aspects of the new PNR agreement with the U.S. are:

- a strict purpose limitation, the use of PNR data being limited to the prevention, detection, investigation and prosecution of terrorist offences or transnational crime;
- a legally binding commitment from the U.S. Department of Homeland Security to inform the Member States and EU authorities of any EU relevant intelligence leads flowing from the analysis of these PNR data;
- a robust data protection regime with strong data security and integrity requirements;
- rights of access, rectification and erasure and the possibility to obtain administrative and judicial redress;
- a limited usage of PNR data for a period of ten years for transnational crime and 15 years for terrorism. After 6 months personally identifiable information of PNR data will be masked out and after five years PNR data will be moved to a dormant database with additional controls.³³⁶

The case of EU-U.S. PNR agreement shows how difficult is in counterterrorism find adequate balance in “security vs. liberty” dilemma, yet the EU and the U.S. succeeded and set standards for others, like in the case of the agreements with Australia and Canada. Furthermore, as Timothy Kirkhope, the British representative in the European Parliament, pointed out in June 2011, the EU-U.S. PNR agreement “has proven

³³⁴ CRS, *U.S.-EU Cooperation against Terrorism*, 10.

³³⁵ Council of the European Union, “Council adopts new EU-US agreement on Passenger Name Records (PNR),” (Brussels, Belgium: Council of the European Union, Document 9186/12, April 26, 2012), accessed October 31, 2012, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/129806.pdf.

³³⁶ Council of the European Union, “Council adopts new EU-US agreement.”

incredibly effective at combating serious crime and terrorism.”³³⁷ Many officials on both sides of the Atlantic agree. For example, Belgium reported that 95 percent of all drug seizures in 2009 resulted from PNR data exchange. Similarly, the UK reported that PNR helped foil a number of potential terrorist incidents, and it was especially important in the investigation of David Headley, the terrorist convicted in the United States and involved in the Mumbai attacks in India in 2008. In all in the UK, the “use of PNR through the e-borders scheme has led to the refusal of entry and detention of many people, including 57 for murder, 175 for rape/sexual assault, 25 for kidnapping, 441 for fraud, 397 for drugs offences and 920 for violence.”³³⁸ Indeed, the United States reported that PNR data has been used successfully more than 3,000 times in 2008 and 2009, including in the investigation of many of the most notable terrorist plots in the country.³³⁹ The U.S. analyses of information provided by PNR and SWIFT data exchange regimes have produced thousands of quality leads for investigations and several thwarted plots in the EU and the United States. As Kirkhope concludes, “This is not a one-sided transfer of data across the Atlantic, but a partnership.”³⁴⁰

E. CONCLUSION

The majority of experts agree that effective counterterrorism measures are usually in some kind of conflict with human rights, either directly contravening laws or conventions of human rights or indirectly infringing through other implementation acts. Nevertheless, EU counterterrorism measures must comply with universal values, especially, according to the Treaty of EU, with “human rights norms, fundamental

³³⁷ Timothy Kirkhope, “Don’t ignore the value of air passenger data in fighting crime,” *The Guardian*, Response on June 9, 2011, accessed October 31, 2012, <http://www.guardian.co.uk/commentisfree/2011/jun/10/us-national-security-air-transport>.

³³⁸ Kirkhope, “Don’t ignore the value of air passenger data in fighting crime.”

³³⁹ *International Aviation Screening Standards: Hearing before the Committee on Commerce, Science, and Transportation/Subcommittee on Aviation Operations, Safety and Security*, (December 2, 2010) (statement of David Heyman, Assistant Secretary, DHS, and Vicki Reeder, Director of Global Compliance, DHS), 12, accessed October 31, 2012, http://commerce.senate.gov/public/?a=Files.Serve&File_id=5cbe4680-f1f2-41a8-a4a5-03023232c5f6; Kirkhope, “Don’t ignore the value of air passenger data in fighting crime.”

³⁴⁰ Kirkhope, “Don’t ignore the value of air passenger data in fighting crime.”

freedoms, and [the] rule of law.”³⁴¹ As such, it is fair to say that the European CT legal-institutional framework contributes significantly to the fight against terrorism “through strengthening of cooperation between Member States,” international CT cooperation, and the promotion of “sufficient” human rights protection.³⁴²

The term “sufficient” is very apt in the human rights-related examination of the European Arrest Warrant, EU Money Laundering and Terrorist Financing Directives, EU targeted sanctions related to UN Security Council resolutions 1267 and 1373, and the important CT partnership with the U.S. The analysis of the EAW shows that national implementation acts can undermine the human rights basis of an EU measure—and that the Union can and will take steps to address such discrepancies. The Union-wide EAW represents an innovative instrument that has given judicial authorities a very efficient mechanism against criminal offenders, including terrorists. Although the Money Laundering Directives have been fully—and effectively—implemented in all member states, the MLDs met with many challenges, especially from national and international lawyer associations. Still, all EU courts decisions ruled that the MLD complies with the Treaty of the EU and the European Convention of Human Rights. Similarly, the EU approach to challenging the UN SC terrorism-related targeted sanctions regimes on the basis of human rights protection provides an even more positive example that human rights should and can figure prominently, if not preeminently, in the security-versus-liberty calculus. Finally, despite deep-seated philosophical and practical differences between the EU and the United States, recent CT strategic meetings, joint statements, and other CT-related arrangements with mutually accepted solutions definitely reaffirmed the trans-Atlantic partnership and give examples for others.³⁴³

On the other hand, as the analysis of EAW and MLD shows, there are still some unclear provisions that can be interpreted in different ways that often lead in violation of

³⁴¹ Wiegand, *The Protection of Human Rights*, 2.

³⁴² Vennemann, “Country Report on the European Union,” 265.

³⁴³ U.S. – EU Summit (November 2009), Joint Declaration on Counterterrorism (June 2010), US National Strategy for Counterterrorism (June 2011); CRS, *U.S.-EU Cooperation against Terrorism*, 3.

European Convention of Human Rights. Also the EU Commission is eager (or sometimes forced) to check the human rights sensitivities of member states' implementation acts; indeed, the Commission often has reacted against them through consultations, additional directives, or even referring the matter to ECJ. However, this dynamic may be explained as lessons learned about the oversight of the EU Commission CT solutions by the EU Parliament.

Thus, this chapter shows one very positive side of the European CT management because CT measures have been closely monitored by the EU member states, non-governmental organizations, international organizations, and particularly European Parliament, many times demanding the development of additional clarifying directives or amendments to make them more fair and lawful. As such, in the universal dilemma of counterterrorism measures, security versus human rights, the European Union's CT measures come down as much as possible on a side of human rights while not endangers effectiveness of CT operations. Certainly, the EU's desire "to prevent and combat terrorism and transnational crime effectively as a means of protecting their [member states] respective democratic societies and common values" is sufficiently supported through the European CT efforts.

IV. EFFECTIVENESS OF THE EU COUNTERTERRORISM APPROACH

“Remarkably little has been done to assess to what degree EU counter-terrorism policies have achieved the stated objectives,” MEPs said in a non-binding text, which calls on the EU Commission to make use of its powers under the Lisbon Treaty and to produce a “full and detailed” evaluation of such policies and the extent to which they are subject to democratic scrutiny.³⁴⁴ Although scholars agree that the evaluation of the effectiveness of CT is, at best, an inexact science, this chapter provides a quantitative analyses of several CT indicators and is a logical extension of a qualitative analyses in the chapters leading up to this one in order to take full picture of the European CT.

Governments and CT agencies usually justify their CT measures in terms of trends of terrorist attacks and victims versus funds committed to CT measures to arrive at a basic measure of cost-effectiveness. On the other hand, many experts suggest that this rational approach, based entirely on direct indicators, is insufficient and other indicators should be taken into account, including the number of arrested, prosecuted, and convicted terrorists and public fear of terrorism. Ultimately, quantitative analyses of terrorist activities (attacks, victims), law enforcement and judicial responses (arrests and court proceedings), as well as public terrorist threat perception show the positive effects of the European CT legal-institutional framework in the period after the first EU Counter-Terrorism Strategy was adopted, since the end of 2005.

In this analysis of the terrorist activities, law enforcement, and judicial responses, the period since 2006 is important for two reasons. First, the development of the European CT legal-institutional framework culminated in 2005, when the CT strategy was adopted and most of the previously introduced measures finally were implemented by the EU member states. Second, Europol reports since 2005 have become much richer and more accurate as a result of the new European CT reporting instruments and Europol

³⁴⁴ Valentina Pop, “MEPs call for review of EU counter-terrorism policies,” EUobserver.com, December 15, 2011, accessed November 21, 2012, <http://euobserver.com/justice/114636>.

authorities regarding CT-related data exchange with member states.³⁴⁵ In other words, a comprehensive evaluation of the effectiveness of CT in the EU is finally possible, based on the authorities and requirements of the legal-institutional framework under analysis—and, indeed, to advance a methodology for such an analysis, as this chapter undertakes to do.³⁴⁶

All told, this chapter demonstrates that the European CT framework is effective on the basis of several indicators: the decreasing trends in failed, foiled, and successful terrorist attacks; the decreasing number of victims per terrorism attack as well as much lower overall number of victims in the EU than in the rest of the world; the significant initial increase and then decreasing trend of the number of suspects arrested on terrorist related charges; the increasing rate of arrests that lead to trials for terrorism; the modest average sentence after trials for terrorism following the lower incidence of terrorist activities; low level public fear of terrorism; and public support of European CT measures. Thus, this analysis explores all available terrorism-related numeric indicators that form an “impact” component of the CT effectiveness, and terrorism-related EU

³⁴⁵ See more in Chapter II, Section D.

³⁴⁶ To be sure, there are other statistics on terrorism apart from Europol, for example, RAND, NCTC, or GTD; RAND, “RAND Database of Worldwide Terrorism Incidents,” accessed July 11, 2012, <http://www.rand.org/nsrd/projects/terrorism-incidents.html>; NCTC, “National Counterterrorism Center,” accessed July 11, 2012, <http://www.nctc.gov/>; START: National Consortium for the Study of Terrorism and Responses to Terrorism, “Global Terrorism Database,” accessed July 11, 2012, <http://www.start.umd.edu/gtd/>; There are great discrepancies among them, however, because they use different definitions of terrorism and divergent reporting standards—though GTD is useful in the analysis of terrorism victims amid the dearth of publically released reports from Europol and other EU bodies. Similarly, among member states, the subjective element of the EU definition of terrorism, as this thesis has already noted, has led to different implementation laws, which finally leads to different interpretations of similar activities in member states. It is most visible in the case of defining as terrorist attacks many “small” incidents—with no casualties—executed mostly by separatist movements in France, Spain, and the UK. Because these incidents are categorized as terrorism by the reporting states, Europol reports show much higher rates of activity than do other global databases of terrorism. Alex P. Schmid, “Standards for Victims of Terrorism,” presentation during conference The Terrorism Threat in Europe, 10-11 March 2008, Tilburg University, The Netherlands, accessed July 5, 2012, <http://www.euforumrj.org/readingroom/Terrorism/SchmidTilburg2008presentation%208March%20doc.pdf>; Nevertheless, all EU member states are obliged to send comprehensive annual reports on terrorist activities to Europol, which then produces the *EU Terrorism Situation and Trend Reports*, which are a reliable source for analyzing terrorism trends in the EU; EUROPOL, “Acts Adopted Under Title VI of the EU Treaty, Council Decision of 6 April 2009 establishing the European Police Office (Europol), (2009/371/JHA),” accessed July 11, 2012, https://www.europol.europa.eu/sites/default/files/council_decision.pdf.

public opinion as an “outcome” component of the CT effectiveness to give a much fuller picture of the European CT legal-institutional framework as an experienced CT approach.³⁴⁷

A. TRENDS OF TERRORIST ACTIVITIES IN THE EU (2006–2011)

“In order to see if a particular policy is effective, the level of terrorist activity [should] be plotted over time, and then examined to see if the fluctuations bear any relationship to the introduction and operation of the policy.”³⁴⁸ Trends of terrorist activities represent an aggregate measure that must account for incidents and victims. Thus, the present analysis begins with a review of material comparable to the typical cost-effectiveness analysis, including the number of failed, foiled, and successful terrorist attacks as well as the number of victims of these attacks in EU member states for the period 2006–2011. (The most recent data currently available is from 2011.)³⁴⁹

1. Failed, Foiled, and Successful Attacks

By this measure, the European CT measures are positive in the sense of decreasing trends of violence. (See Figure 1.) On the one hand, the total number of failed, foiled, and successful terrorist attacks in the EU for the period 2006–2011 is very high—

³⁴⁷ Although no officially accepted definition of CT effectiveness and firm set of measurement indicators exist, this thesis follows Um and Pisoiu’s recommendation that indicators should cover three CT effectiveness components: an “impact” component as an analysis of trends in terrorist activities, arrests, prosecutions, and convictions; an “output” component as an analysis of quantity and quality of CT measures; and an “outcome” component as an analysis of direct effect of measures on life—fear of terrorism; Eric van Um and Daniela Pisoiu, *Effective counterterrorism: What have we learned so far?*.

³⁴⁸ Christopher Hewitt, “The Effectiveness of Counter-Terrorist Policies” (Washington, DC: U.S. Department of State, Office of Long-Range Assessments and Research, 1982), 1, accessed July 31, 2012, <http://www.dtic.mil/cgi-bin/GetTRDoc?AD=ADA119231>.

³⁴⁹ “The EU Council Decision on the exchange of information and cooperation concerning terrorist offences of 20 September 2005 (2005/671/JHA) obliges Member States to collect all relevant information concerning and resulting from criminal investigations conducted by their law enforcement authorities with respect to terrorist offences, and sets out the conditions under which this information should be sent to Europol.”; EUROPOL, *TE-SAT 2011 EU Terrorism Situation and Trend Report*, (The Hague, Netherlands: European Police Office – EUROPOL, 2011), accessed July 31, 2012, <https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf>; Although individual analysis of failed, foiled, and successful terrorist attacks would be more straightforward for an effectiveness evaluation, Europol does not publishes separate data on each of these types of attacks as the potential release of sensitive information on failed and foiled attacks could elevate public fear of terrorism.

some 2,411 such attacks in these years (Table 1). More importantly, though the trend has been steadily negative since 2007. This trend, as a direct indicator, supports the conclusion that European CT measures have had wide positive effects.

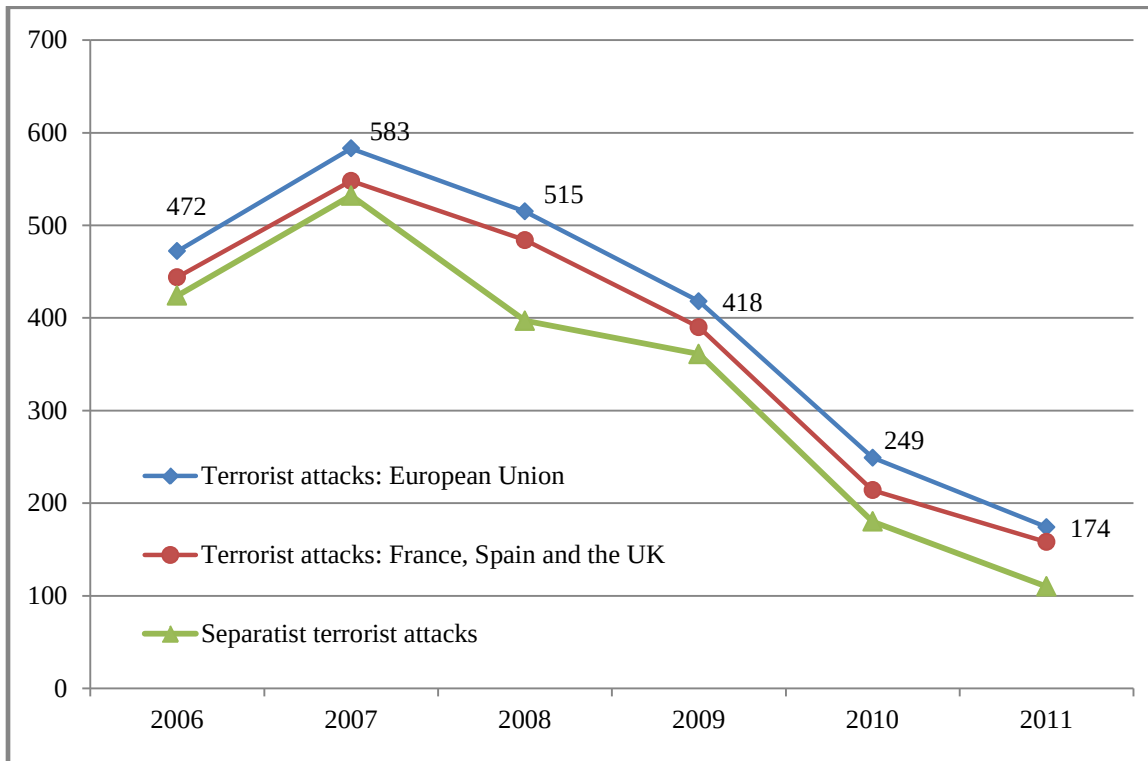


Figure 1. Number of failed, foiled and successful terrorist attacks in the EU 2006-2011 (After:³⁵⁰)

On the other hand, Table 3 shows that this positive trend simply tracks the decreasing number of separatist terrorist activities over the years—which is significant because almost all the designated terrorist attacks in the EU in this period were related to separatists. According to Europol, the vast majority of EU terrorist activities between 2006 and 2011 owed to separatist terrorist organizations in France (Basque and Corsican

³⁵⁰ EUROPOL, “TE-SAT,” accessed July 31, 2012, https://www.europol.europa.eu/latest_publications/37.

separatists), Spain (ETA), and the UK (Continuity IRA, Real IRA).³⁵¹ As such, more than 90 percent of all failed, foiled, and successful terrorist attacks in the EU in the period under analysis were related to separatism and happened in these three member states.

	Terrorist attacks: European Union	Terrorist attacks: France, Spain and the UK	Religiously inspired terrorist attacks	Separatist terrorist attacks	Left-wing terrorist attacks	Right-wing terrorist attacks	Single-issue terrorist attacks	Non-specified terrorist attacks
2006	472	444	1	424	30	1	0	16
2007	583	548	4	532	21	1	1	24
2008	515	484	0	397	28	0	5	85
2009	418	390	1	361	40	4	2	10
2010	249	214	3	180	25	0	1	40
2011	174	158	0	110	37	1	0	26

Table 3. Number of failed, foiled and successful terrorist attacks in the EU 2006-2011 (After:³⁵²)

The IRA first decreased and then stopped its offensive activities in 2005,³⁵³ mostly because of some UK government decisions that were executed in Northern Ireland

³⁵¹ ETA stands for Euskadi Ta Azkatasuna (Basque Homeland and Freedom) the biggest and the most dangerous separatist terrorist organization in Spain for more than 40 years. Real I.R.A (RIRA) and the Continuity I.R.A. (CIRA) are splinter groups which broke away from the Irish Republican Army (IRA) and have continued with terrorist activities in Northern Ireland after the IRA stopped violence activities in July 2005.

³⁵² EUROPOL, "TE-SAT 2006-2011."

³⁵³ The Washington Times, "IRA to stop fighting British," July 28, 2005, accessed November 5, 2012, <http://www.washingtontimes.com/news/2005/jul/28/20050728-100805-4145r/?page=all>.

according to the Good Friday Agreement (1998).³⁵⁴ At the same time, European CT measures implemented shortly after 9/11—notably the European Arrest Warrant and the money laundering directives, including measures to combat terrorist financing and freezing terrorist assets—put pressure on IRA operations and increased costs for terrorist activities.³⁵⁵ Indeed, the Republic of Ireland ratified the EAW just three weeks before the IRA’s announcement in July 2005 that it would renounce violence; in light of earlier negative experiences with IRA-related extradition between Ireland and UK, the EAW was a meaningful element in the IRA decision. Conversely, ETA in Spain did not end its hostile activities in 2011³⁵⁶ following any political negotiations; it was more the result of intensified counterterrorist operations executed simultaneously from Spain and France. These joint counter-ETA efforts have been reinforced with several European CT measures, including cross-border investigations and prosecutions supported by Europol and Eurojust, the EAW extradition regime, MLD CT-related measures, intelligence cooperation through SitCen, new EU infrastructure and ports protection standards, and

³⁵⁴ Good Friday Agreement between IRA and UK government signed April 10, 1998. “Terms in brief: Terms in Brief: Ireland shall not be one united country without the consent of a majority in Northern Ireland, the people of Northern Ireland have the right to call themselves either Irish or British, a multiparty assembly will be elected to govern the community, a north/south council be set up to consider areas of mutual interest, an Anglo-Irish council be set up to consider areas of mutual interest, all people shall have basic human rights, civil rights and equality, linguistic diversity to be recognized - Irish to be taught in all schools, paramilitary groups to be decommissioned within two years, a gradual reduction in the number of security forces deployed in Northern Ireland, to work towards having an unarmed police force, political prisoners to be released providing the ceasefire is maintained. History on the Net, “Northern Ireland Timeline,” accessed July 11, 2012, <http://www.historyonthenet.com/Chronology/timelinenorthernireland.htm>.

³⁵⁵ Europa: Summaries of EU Legislation, “European Arrest Warrant”; Europa: Summaries of EU Legislation, “Money laundering: prevention of the use of the financial system.”

³⁵⁶ Alvaro Barrientos and Daniel Woolls, “In Spain, relief over ETA’s end to violence,” October 21, 2011, The Washington Post, accessed November 5, 2012, <http://www.washingtontimes.com/news/2011/oct/21/spain-relief-over-etass-end-violence/?page=all>.

technical arrangements on the possession and handling with explosives and CBRN materials.³⁵⁷

Cooperation among European law enforcement agencies was important to counterterrorism successes. France and Spain continued to cooperate effectively against ETA. Belgian courts convicted individuals connected to the 2003 Madrid bombings and several countries, including France, Spain and Italy, broke up terrorist networks facilitating travel by foreign fighters to Iraq.³⁵⁸

After separatist terrorism, left-wing terrorism is next-most significant European CT issue. During the period 2006–2011, the number of left-wing terrorist attacks has hovered at 20–40 per year on the European level, but some countries like Italy and Greece have recently witnessed a resurgence of such violence. In 2006, left-wing terrorism accounted for only 6 percent of terrorist activities reported in Europe, but with the decline in separatist activities in the subsequent years, left-wing terrorism came to represent some 25 percent of the terrorist activity in Europe. As such, violence from the left has become a CT priority in many European countries, most urgently in Greece.

Other types of terrorist activities in the EU like religious-inspired, right-wing, and single-issue terrorism have not posted many activities, but they all remain important CT issues, especially right-wing and Islamist terrorism.³⁵⁹ Since 2007, Europol has repeatedly pointed out that the threat of violent right-wing extremism has re-emerged in Europe and should not be underestimated. “Although violent acts perpetrated by right-wing extremists and terrorists may appear sporadic and situational, right-wing activities

³⁵⁷ Rik Coolseat, “EU counterterrorism strategy: value added or chimera?”, *International Affairs* Vol 86, No 4 (2010): 857–873, accessed July 11, 2012, <https://biblio.ugent.be/input/download?func=downloadFile&fileId=1008450&recordId=1008449>; Gijss de Vries, “The Fight Against Terrorism - Five Years After 9/11,” (London, UK: EU Counterterrorism Coordinator, June 30, 2006), Accessed July 11, 2012, <http://www.consilium.europa.eu/uedocs/cmsUpload/060630LondonSchoolEconomics.pdf>; BBC News Europe, “What is ETA?”, October 20, 2011, accessed July 11, 2012, <http://www.bbc.co.uk/news/world-europe-11183574>.

³⁵⁸ U.S. Department of State, Office of the Coordinator for Counterterrorism, “Country Reports on Terrorism 2006,” U.S. Department of State, April 30, 2007, accessed August 13, 2012, <http://www.state.gov/j/ct/rls/crt/2006/82732.htm>.

³⁵⁹ Since TE-SAT 2012 EU Terrorism Situation and Trend Report, Europol reports on “religious-inspired terrorism” and not any more on Islamic terrorism as separate type; EUROPOL, *TE-SAT 2012*.

are organized and trans-national.”³⁶⁰ Therefore, some European police forces pay special attention to the investigation and prosecution of the far-right threat and even have established specialized units to fight against it. Otherwise, however, member states’ approaches have been inconsistent and so far joint European strategy against far-right extremism does not exist.³⁶¹

Cases of violent right-wing extremism have tended to be dismissed, with most deemed outliers, not representative of a growing trend or threat. However, a recent stream of right-wing extremist attacks in Norway, Germany and Italy has demonstrated that the extreme right should be a prime subject of inquiry over the coming years. Although there is less risk of a large-scale attack from the extreme right, recent years have borne witness to new forms of public disorder instigated and propagated by the British extreme right, often resulting in lower-level group or individual acts of violence.³⁶²

Although since 9/11, Islamist terrorism has been the main impetus for the development of the EU counterterrorism legal-institutional framework, Europol’s own figures show that Islamic and similar religiously inspired terrorism represents very few terrorist incidents in the EU—only 0.3 percent of all terrorist attacks. Still, in light of the mass casualties from 9/11 attack in the United States as well as the implications of the Madrid and London bombings and the persistent fear that Muslims in Europe are radicalizing, Islamist terrorism remains one of the main issues for the EU counterterrorism. Some information on several failed and foiled terrorist attacks have been published, especially those related to Islamist terrorism and intended to cause mass casualties and major material damage. Examples include the attempt to bomb trains in Koblenz, Germany, in 2006; a UK-based

³⁶⁰ EUROPOL, *TE-SAT 2007 EU Terrorism Situation and Trend Report*, (The Hague, Netherland: European Police Office – EUROPOL, 2007), accessed August 13, 2012, https://www.europol.europa.eu/sites/default/files/publications/tesat2007_1.pdf.

³⁶¹ Over the last decade violence of the far-right extremists and related government legal or institutional responses have happened in Czech Republic, France, Germany, Greece, Italy, Netherlands, Norway, Spain, Sweden, and the UK. Michael Whine, Jerusalem Center for Public Affairs, “The Radical Right in Europe,” July 26, 2012, accessed November 20, 2012, <http://jcpa.org/article/the-radical-right-in-europe/>.

³⁶² Vidhya Ramalingam and Sebastien Feve, “Security in an Olympic Year: Reassessing the Threat from Right-Wing Extremism,” (London, UK: Institute for Strategic Dialogue, Briefing Paper, 2012), accessed November 20, 2012, http://www.strategicdialogue.org/Security_in_an_Olympic_Year.pdf.

plot against 10 U.S.-bound airliners in 2006; a plot to bomb facilities in Odense, Denmark in 2006; the plot to bomb London city targets and Glasgow airport in 2007; the plot to attack Barcelona and other European metro systems in 2008, and a plot with links to Europe and Pakistan for Mumbai-style attacks on Britain, France and Germany in 2010.³⁶³

Although the majority of operational counterterrorism activities have been executed by member states, European officials argue that no state is able to tackle terrorism alone and that European CT measures have been very important in recent positive results of combating terrorism in Europe.³⁶⁴ At the bottom line, it seems clear that “European countries continued to improve their capabilities to counter the terrorist threat, foiled several significant terrorist plots, and continued to prosecute and jail terrorist suspects.”³⁶⁵ In other words, in terms of terrorist incidents, the EU’s CT framework is successful—and effective.

2. Terrorism Victims

The second part of this trends analysis is the number of terrorism victims per incident (fatalities and injured). According to the Global Terrorism database for the period 2006–2011 there are no discernible trends in Europe for fatalities, but the number of terrorism-related injuries has declined since 2008 (Table 4).³⁶⁶

³⁶³ Alex P. Schmid, “Standards for Victims of Terrorism”; Aljazeera, “Foiled ‘terror’ plots in 2010,” accessed July 5, 2012, <http://www.aljazeera.com/news/americas/2010/11/201011121042791250.html>.

³⁶⁴ EU Counterterrorism Coordinator, *Report on EU Action Plan on Combating Terrorism*, (Brussels, Belgium: EU Counterterrorism Coordinator, 2011), accessed July 11, 2012, <http://register.consilium.europa.eu/pdf/en/11/st17/st17594-re01.en11.pdf>; Gijs de Vries, “The Fight Against Terrorism - Five Years After 9/11”; Rob Wainwright, “Foreword by the Europol Director,” in *TE-SAT 2012 EU Terrorism Situation and Trend Report* (The Hague, Netherlands: European Police Office – EUROPOL, 2012), <https://www.europol.europa.eu/sites/default/files/publications/europoltsat.pdf>.

³⁶⁵ U.S. Department of State, Office of the Coordinator for Counterterrorism, “Country Reports on Terrorism 2007,” U.S. Department of State, April 30, 2008, accessed August 13, 2012, <http://www.state.gov/j/ct/rls/crt/2007/103707.htm>.

³⁶⁶ Although, Europol does not report on statistics of fatalities and injured in terrorist attacks, the data of terrorist victims in the EU for the period 2006–2011 is from the Global Terrorism Database (GTD). START: National Consortium for the Study of Terrorism and Responses to Terrorism, “Global Terrorism Database,” accessed July 11, 2012, <http://www.start.umd.edu/gtd/>.

		Fatalities	Injured	Fatalities per incident	Injured per incident
2006	World	8606	14523	3.5	5.9
	EU	4	26	0.06	0.4
2007	World	11456	19639	4.2	7.2
	EU	78 (6) ¹⁶	23	1.5 (0.1) ³⁶⁷	0.4
2008	World	5216	11389	2.4	5.2
	EU	1	48	0.01	0.5
2009	World	4594	12465	2.6	7.1
	EU	10 (3) ¹⁶	45	0.1 (0.03) ¹⁶	0.5
2010	World	3821	8564	2.1	4.6
	EU	4	30	0.05	0.4
2011	World	8100	14452	1.6	2.9
	EU	3	16	0.03	0.18

Table 4. Fatalities and injured in terrorist attacks 2006–2011 (After:³⁶⁸)

Most importantly, the number of victims per terrorism attack in the EU nowadays is much lower than in the rest of the world—which was not the case in period from 1970s until 1990s.³⁶⁹

The average number of fatalities per incident per year in the EU is 0.29, which is considerable lower than the global average of 2.73 fatalities per terrorist attack (Table 4).³⁷⁰ It is true that the world totals may be skewed, as GTD classifies the majority of

³⁶⁷ Data without incidents describes in footnote 15.

³⁶⁸ START, “Global Terrorism Database 2006-2011.”

³⁶⁹ START, “Global Terrorism Database,” Data for period 1970-1999.

³⁷⁰ For this analysis number of terrorist attacks in EU was taken from Global Terrorism Database in order to have same parameters in comparison of victims per terrorist attacks in EU and world.

incidents in Iraq and Afghanistan as terrorism, even though most observers today would count such incidents as acts of or in insurgency. Nevertheless, even without Iraq and Afghanistan, the global average still comes to 2.15 fatalities per attack, which is still very high—more than seven times higher than in the EU.³⁷¹

Moreover, if one counts only those incidents that fit the EU definition of terrorism in the GTD data, then the real number of fatalities per attack in the EU is even lower—0.05 deaths per terrorist incident. In the event, GTD counted three incidents in 2007 and 2009 with large numbers of victims and defined as terrorist acts, with the predictable effect on totals for these years. None of the EU member states where the attacks happened—Greece, Finland, and the Netherlands—treated them as terrorism, however, based on their rather narrower definition of the term, along the lines of the EU definition.³⁷²

The GTD data on injuries per terrorism attack in the EU during the period 2006–2010 reveals a fairly constant rate, an average number per year with 0.44 per attack. Then it decreases precipitously to 0.18 injured per attack in 2011 (Table 2). The simple average for the research period is 0.31 injured per attack, which, as with fatalities, is much lower than the global average of 5.9 (4.0 without the numbers from Iraq and Afghanistan).

Granted that one of the most important goals of any terrorist attack is to inflict massive casualties on the target population, the low number of terrorism victims in the EU—both in absolute terms and on a per-incident basis—supports the conclusion that the European CT framework has had positive effects. The lack of a clear trend in these numbers makes it difficult to correlate a given year's numbers with particular CT measures, but the overall positive effect is indisputable.

³⁷¹ Author's research, START, "Global Terrorism Database," Data for period 2006-2011.

³⁷² During July 2007 forest fires all over Greece have caused 63 deaths (At the beginning of investigation Greece characterized these fires as pyro-terrorism, but later did not find evidence for that and did not reported to Europol). On November 7, 2007 in Tuusula High-School (Finland) one student killed eight people and later on himself (Finish police concluded that act was not terrorism). On May 1, 2009 in Apledorn (Netherland) car smashed into the crowds celebrating the queen's day and killed seven people. According the investigation, it was the attack on the Dutch Royal family, but not an act of terrorism. START, "Global Terrorism Database"; Europol, *TE-SAT 2008*; Europol, *TE-SAT 2010*.

B. ARRESTED, PROSECUTED, AND CONVICTED TERRORISTS IN THE EU (2006–2011)

Little of the analytical literature uses statistics of arrested, prosecuted, and convicted terrorists as a measurement of CT effectiveness. Of the few that do look at this indicator, the majority argue that higher numbers mean successful policy, more or less as a matter of direct correlation. The real story of these numbers is more complex, however, as this section establishes.

It is true that after the implementation of new CT measures, especially those that include new law enforcement authorities or describe new offences, the number of arrested and later prosecuted and convicted terrorists should increase if the CT effects are positive. In this immediate aftermath period, then, higher numbers of arrests, prosecutions, and convictions certainly suggest successful CT measures. After some time, however, if law enforcement and judicial CT measures are successfully institutionalized and combined with preventive, social-oriented, or counter-radicalization measures, the trends of arrested, prosecuted, and convicted terrorists should decline amid the sustained improvements in CT. Precisely this trend is visible in the EU data. (See Figure 2, below.)

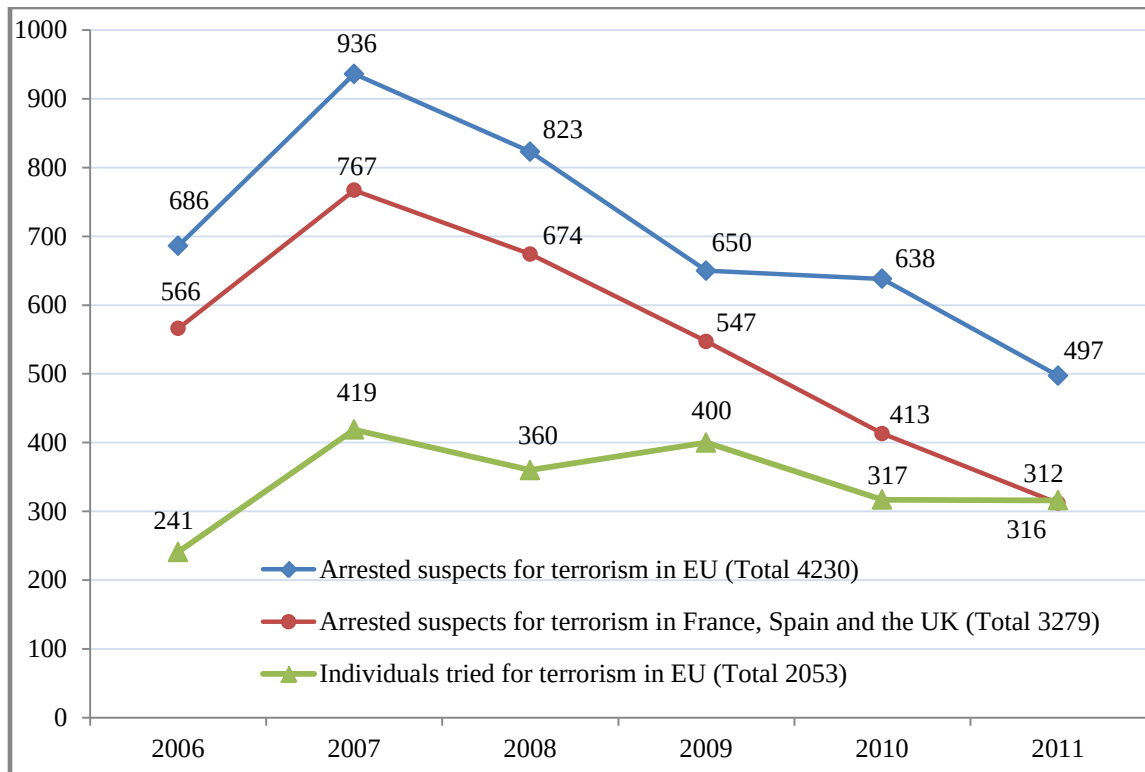


Figure 2. Number of arrested and tried suspects for terrorism in the EU 2006-2011
(After:³⁷³)

1. Arrest and Trial

The data on trials of terrorists is rather less reflective of changes in CT policy or practice because national judicial systems usually have special terrorism-related tracks. These special structures may limit the number of cases heard or at least proceed at a pace that has more to do with the particular rhythm of these prosecutions than with any factors outside the courtroom. Thus, as Figure 2 shows, the rates of trial are more or less constant

³⁷³ Europol, *EU Terrorism Situation and Trend Reports 2007-2012*, (excluded UK statistical data); UK Home Office, *Operation of police powers under the Terrorism Act 2000 and subsequent legislation: arrests, outcomes and stop and searches, 2009,2010,2011*, (London, UK: UK Home Office, 2012), accessed July 12,2012, <http://data.gov.uk/dataset/statistics-terrorism-arrests-outcomes> (Statistical data for England, Wales, and Scotland 2006-2011. Data for 2006 and 2007 are for financial years April-March); Police Service of Northern Ireland *Police Recorded Security Situation Statistics*, (Belfast, UK: Police Service of Northern Ireland, 2012), accessed July 12, 2012, http://www.psnl.police.uk/security_situation_statistics_-_by_district_and_area_april_2012_-_may_2012_published_15.6.12.pdf; UK data represent the number of charged after police arrests in order to provide a more accurate comparison with data of judicial arrests in the other EU Member States.

and provide little relevant insight into the effectiveness of the measures that got the defendants to the docks in the first place. The number of suspects arrested on terrorist related charges, quite apart from what happens to these suspects after arrest, therefore is a key indicator, even if the correlation is not as direct as the number of terrorist attacks or related victims.

The total number of suspects arrested for terrorism in the EU for the period 2006–2011 is 4,230. The numbers show a significant increase from 2006 to 2007, most likely a reflection of the many new CT measures passed in 2005 (Figure 2).³⁷⁴

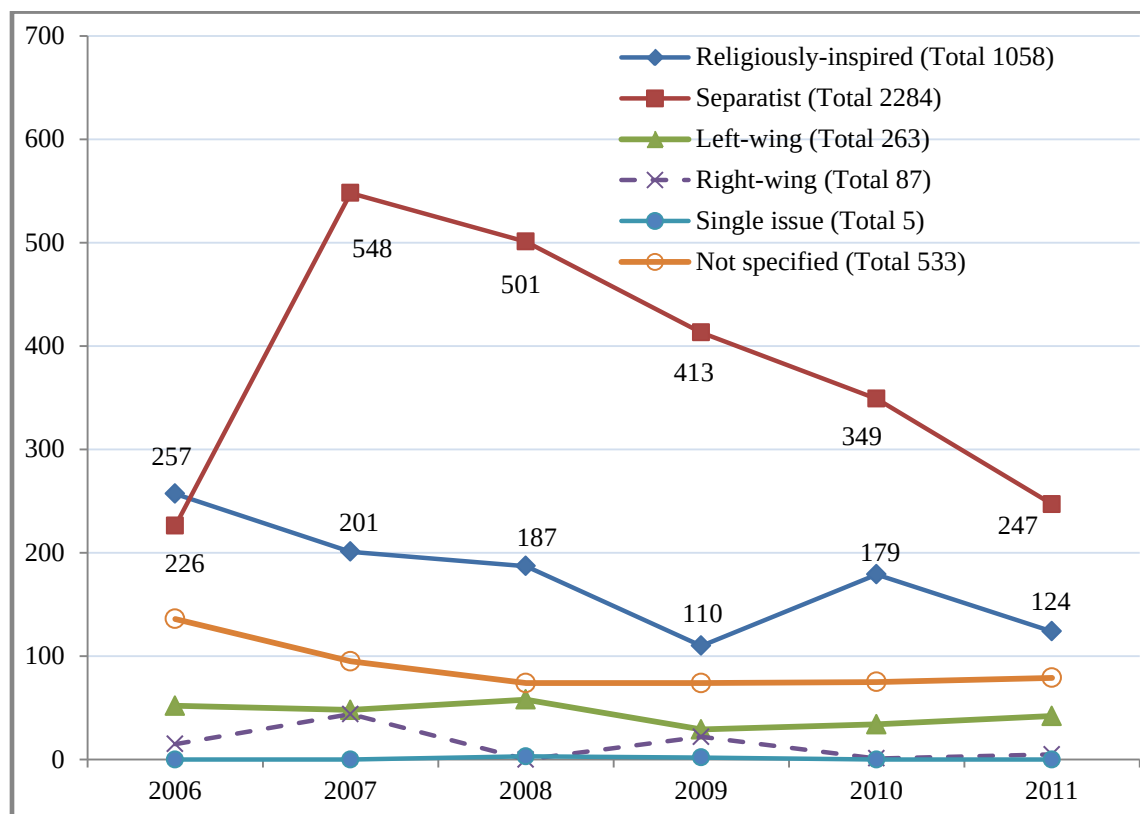


Figure 3. Number of arrested suspects for terrorism in the EU 2006-2011 (After:³⁷⁵)

³⁷⁴ It is most likely influenced by many new arrest and investigation authorities according to a new measures like European Arrest Warrant, Anti-money Laundering Directives, Freezing of Terrorist Assets Directive, Europol—Eurojust—Member States Joint Investigation Teams (JIT), Information Sharing Agreements, etc.

Figure 3 shows that number of arrests related to separatist terrorism in the EU, determines the total trend for the period 2006–2009. These numbers come overwhelmingly from France, Spain, and the UK. Separatist terrorism-related arrests represented 83 percent of all terrorism arrests in 2006, declining to 63 percent in 2011. The actual decline is even more marked, as much of the 2011 total is related to incidents by Corsican separatists, who are “the harmless ones in Europe” because they traditionally target only properties. Of the other categories of terrorism, only arrests for religious terrorism³⁷⁶ have significant representation. Although religious terrorism, especially the Islamist variant, remains a significant threat to and in Europe, the number of arrests shows a declining trend.³⁷⁷ This drop, too, could be connected to EU efforts to addressing the factors contributing to violent radicalization after 2005, including: broadcast media, Internet, education, youth engagement, encouraging European integration, inter-cultural and religious dialogue, experts sharing network, monitoring and collection of data, and active relationships with non-EU states.³⁷⁸

The total number of suspects arrested for terrorism shows a significant increase in 2006, following the new CT measures. Then after 2007, the data shows a steadily decreasing tend. If the simplistic correlation between arrest numbers and effectiveness is true, then this decline in arrests would mean that European CT became less and less effective as time progressed. It seems rather more likely, however, that other European CT measures produced positive synergistic effects, especially preventive anti-

³⁷⁵ EUROPOL, *EU Terrorism Situation and Trend Reports 2007-2012*, (excluded UK statistical data); UK Home Office, *Operation of police powers under the Terrorism Act 2000*, (Statistical data for England, Wales, and Scotland 2006-2011. Data for 2006 and 2007 are for financial years April-March); Police Service of Northern Ireland, *Police Recorded Security Situation Statistics*. UK data represent the number of charged after police arrests in order to provide a more accurate comparison with data of judicial arrests in the other EU Member States.

³⁷⁶ Until 2010 European Union officially used term “Islamic Terrorism.”

³⁷⁷ The United Kingdom does not differentiate according to ideology the individuals it arrests for terrorism-related crime.

³⁷⁸ Europa: Summaries of EU Legislation, “Addressing the factors contributing to violent radicalization,” accessed July 20, 2012, http://europa.eu/legislation_summaries/justice_freedom_security/fight_against_terrorism/114501_en.htm.

radicalization measures and the decreasing of separatist terrorism by curtailing IRA and ETA violence.

2. Conviction and Punishment

The rate of arrests that lead to trials for terrorism has risen from 35 percent in 2006 to 64 percent in 2011.³⁷⁹ While the overall number of arrests has decreased, this significant increase of cases that lead to trials for terrorism may owe to progress in the quality of CT-related pre-arrest investigations, as well as established information and evidence transfer regimes. Investigations include more countries that seriously evaluate accusations before any arrest or evidence sharing, so the majority of these arrests later lead to trials for terrorism.³⁸⁰ Furthermore, in a time of decline for serious terrorist activities in Europe, an increasing rate of arrests that lead to trials for terrorism could be connected to a new CT judicial measures that allow refocusing on “easier” cases. According to Europol, the recent years have seen increased arrests in less dangerous cases like “membership of a terrorist organization, propaganda, possession of arms and explosives, and the dispatch of fighters to conflict”³⁸¹ that are easier to investigate—than, say, more serious terrorist activities like preparation, attempted, or completed of attacks. Anecdotal evidence suggests that this trend can be also connected with emerged activities since 2006 in cross-border CT support of EU Joint Investigation Teams, Eurojust judicial

³⁷⁹ EUROPOL, *EU Terrorism Situation and Trend Reports 2007-2012*, (excluded UK statistical data); UK Home Office, *Operation of police powers under the Terrorism Act 2000*, (Statistical data for England, Wales, and Scotland 2006-2011. Data for 2006 and 2007 are for financial years April-March); Police Service of Northern Ireland, *Police Recorded Security Situation Statistics*. UK data represent the number of charged after police arrests in order to provide a more accurate comparison with data of judicial arrests in the other EU Member States.

³⁸⁰ U.S. Department of State, Office of the Coordinator for Counterterrorism, “Country Reports on Terrorism 2011,” U.S. Department of State, July 31, 2012, accessed August 13, 2012, <http://www.state.gov/j/ct/rls/crt/2011/195543.htm>; Michèle Coninsx, “Criminalization & Prosecution of Terrorist Offences,” Eurojust, Counter-Terrorism Team Special meeting, Strasbourg, April 20, 2011, accessed August 13, 2012, www.un.org/en/sc/ctc/specialmeetings/2011/docs/eurojust.ppt; U.S. Department of State, Office of the Coordinator for Counterterrorism, “Country Reports on Terrorism 2007.”

³⁸¹ EUROPOL, *EU Terrorism Situation and Trend Reports 2012*, 9.

direct CT support, SitCen role, as well as increased authorities of the European CT-related agencies.³⁸²

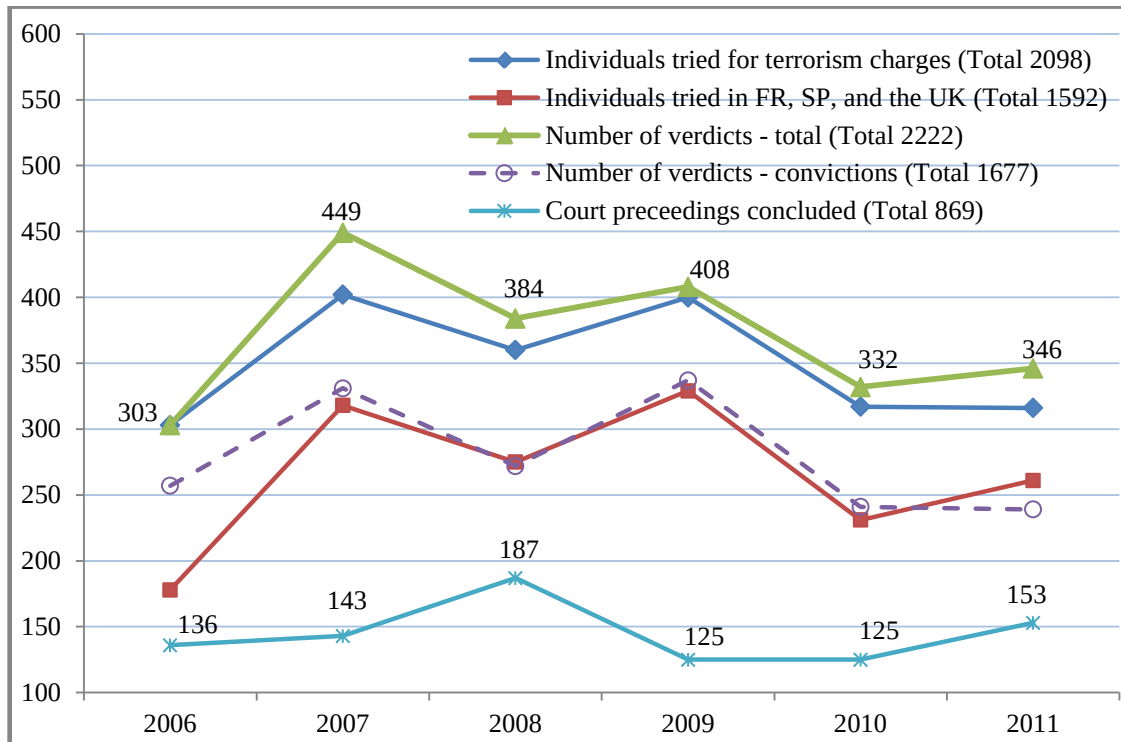


Figure 4. Concluded court proceedings involving terrorist charges in the EU 2006–2011 (After:³⁸³)

EU member states' courts concluded 869 proceedings for terrorism-related offences the period 2006–2011, trying 2,098 individuals (Figure 4.). The total number of verdicts was 2,222 because some individuals were tried for more than one offence. Some 1677 or 76 percent of verdicts were convictions. Annual data shows a rapidly increasing trend for conviction in the year 2006–2007, following the establishment of the comprehensive CT framework. To be sure, the number of individuals tried and convicted

³⁸² EUROPOL, "History"; Eurojust, "Background: History of Eurojust"; Mai'a K. Davis Cross, "EU Intelligence Sharing & The Joint Situation Centre: A Glass Half-Full," European Union Studies Association, 2011, accessed August 15, 2012, http://www.euce.org/eusa/2011/papers/3a_cross.pdf.

³⁸³ EUROPOL, *EU Terrorism Situation and Trend Reports 2007-2012*; UK Home Office, *Operation of police powers under the Terrorism Act 2000*.

for terrorism does not follow exactly the same patterns as arrests because of the length of court proceedings, which in the EU can take up to three years.³⁸⁴ Even so, however, the overall trend after 2007 is declining, which is most likely caused by other European CT measures that produced positive synergy effects, as well as because total terrorism-related activities declined. Moreover, because the number of court proceedings in France, Spain, and the UK represents more than 70 percent of the EU terrorism-related proceedings, the declining trend also may be explained by the decrease in IRA and ETA activities.

	2006	2007	2008	2009	2010	2011
Average penalty in the EU	8	12	10	5	7	6

Table 5. Average penalty in the EU (years in prison) for terrorism-related cases 2006–2011 (After:³⁸⁵)

In terrorism-related case proceedings in EU member states, the average penalty for terrorism in the period 2006–2011 is eight years in prison (Table 5). This average sentence is modest in compared with some other regions in the world, but this point also is indicative of the lower incidence of terrorist activities.³⁸⁶

The European Union has a general mission to promote a criminal justice approach to the fight against terrorism, in contrast to the paradigm of a “global war on terrorism.” Terrorists have to be investigated, prosecuted and convicted wherever possible according to the normal rules of criminal

³⁸⁴ For example: 21 terrorists for attack in Madrid 2004, convicted in 2007; members of the Moroccan Islamic Combatant Group (GICM) were convicted in France in 2007 for providing support to 2003 terrorist bombings in Casablanca. U.S. Department of State, Office of the Coordinator for Counterterrorism, “Country Reports on Terrorism 2011.”

³⁸⁵ EUROPOL, *EU Terrorism Situation and Trend Reports 2007-2012*.

³⁸⁶ Related to the largest terrorist attacks in the EU (Madrid, London), the penalties were much higher and like in case of Madrid bombings it range for multiply charges even up to 43.000 years EUROPOL, “In October [2007], Spain's National Court returned guilty verdicts on 21 of 29 individuals suspected of involvement in the 2003 Madrid train bombings that killed 191 people and wounded hundreds of others, and handed down sentences ranging from three years to almost 43,000 years in prison. (although the maximum time they can serve under Spanish law is 40 years).”; U.S. Department of State, Office of the Coordinator for Counterterrorism, “Country Reports on Terrorism 2007”; EUROPOL, *EU Terrorism Situation and Trend Reports 2007-2012*.

law. The Madrid bombers never feature in Al Qaeda propaganda like the inmates of Guantánamo. Why? Because they stood a fair trial and were convicted for their criminal acts.³⁸⁷

Still, the average terrorism conviction rate in the EU in period 2006–2011 was 73 percent, which, especially in light of the EU’s human rights sensitiveness, even in terrorism-related cases, may be a meaningful contributing factor to the decreasing trend of terrorism activities in EU.³⁸⁸

C. PUBLIC FEAR OF TERRORISM IN THE EU

A year before the tragic events of 2001 in the United States, the Eurobarometer³⁸⁹ introduced a section that includes fear of terrorism as one of the “things that could have disastrous effects for the world.”³⁹⁰ In the 2001 report, compiled after the 9/11 attacks, 86 percent of Europeans said that they personally feared terrorism (12 percentage points more than one year earlier); 79 percent feared the proliferation of nuclear, bacteriological, or chemical weapons of mass destruction (+17 points), and 64 percent feared a world war (+19 points).³⁹¹ It merits mention here that the exact question was just repeated from the survey from 2000, which asked “whether people are afraid of 10 things that could have disastrous effects for the world,” and provided a list.³⁹² Thus,

³⁸⁷ Gilles de Kerchove, Speech delivered by the EU Counterterrorism Coordinator at the Opening Ceremony for the 10th Anniversary of Eurojust, The Hague, 28 February 2012, accessed August 16, 2012, <http://www.consilium.europa.eu/media/1459936/speech-10th-an-eurojust-ver2.pdf>.

³⁸⁸ EUROPOL, *EU Terrorism Situation and Trend Reports 2007-2012*.

³⁸⁹ “Eurobarometer public opinion surveys (“Standard Eurobarometer surveys”) have been conducted each Spring and Autumn since Autumn 1973. From Autumn 2001, they have been conducted on behalf of the Directorate-General Press and Communication (Opinion Polls) of the European Commission. An identical set of questions was asked of representative samples of the population aged fifteen years and over in each Member State. The regular sample in standard Eurobarometer surveys is 1000 people per country except in Luxembourg (600) and in the United Kingdom (1000 in Great Britain and 300 in Northern Ireland). The figures shown in this report for each of the Member States are weighted by sex, age, region and size of locality.”; European Commission: Eurobarometer, *Report Number 56*, (Brussels, Belgium: European Commission, April 2002), accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb/eb56/eb56_en.pdf.

³⁹⁰ European Commission: Eurobarometer, *Report Number 56*, 12.

³⁹¹ Ibid.

³⁹² Ibid.

the 2001 percentage likely reflects the aftermath of 9/11 to some generalized extent, but it really did not measure the fear of terrorism in Europe because it did not refer to a terrorist attack in the EU; it was more globally oriented.

Year after, the Europeans' sense of the threat of terrorism as "one of 10 things that could have disastrous effects for the world" decreased to 82 percent, even while 91 percent of Europeans said that the EU should give priority to the fight against terrorism, and 54 percent saw European CT efforts as effective.³⁹³ Country-by-country analysis of these results showed there were not many differences in the level of fear of terrorism among EU member states, even for those with previous experience of terrorism on their soil, including the countries with major terrorist activities like France, Spain, Germany, Italy, and the UK. Again, these results suggest a generalized unease about terrorism somewhere, rather than a specific measure of Europeans' sense of personal security within the EU.

In 2003, the Eurobarometer changed its approach, and instead of more globally oriented issues, it introduced question: "What do you think are the two most important issues facing [your country] at the moment?"³⁹⁴ Thus, according to the new question, fear of terrorism resonated with only 12 percent of those interviewed (Figure 5), though 89 percent of Europeans agreed that EU must continue to place priority on the fight against terrorism.³⁹⁵ Additionally, in this new public opinion survey approach, the differences among the member states were larger. The sense of both the threat of terrorism and the

³⁹³ European Commission: Eurobarometer, *Report Number 58* (Brussels, Belgium: European Commission, March 2003), 13, 66-68, accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb/eb58/eb58_en.pdf.

³⁹⁴ European Commission: Eurobarometer, *Eurobarometer 59, Public Opinion in the European Union* (Brussels, Belgium: European Commission, July 2003), B.5, accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb/eb59/eb59_rapport_final_en.pdf.

³⁹⁵ European Commission: Eurobarometer, *Eurobarometer 60, Public Opinion in the European Union* (Brussels, Belgium: European Commission, February 2004), accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb/eb60/eb60_rapport_standard_en.pdf.

priority of counterterrorism measures was clearest in Spain and the UK, and also scored significant numbers in Ireland, Portugal, Belgium, Germany, Denmark.³⁹⁶

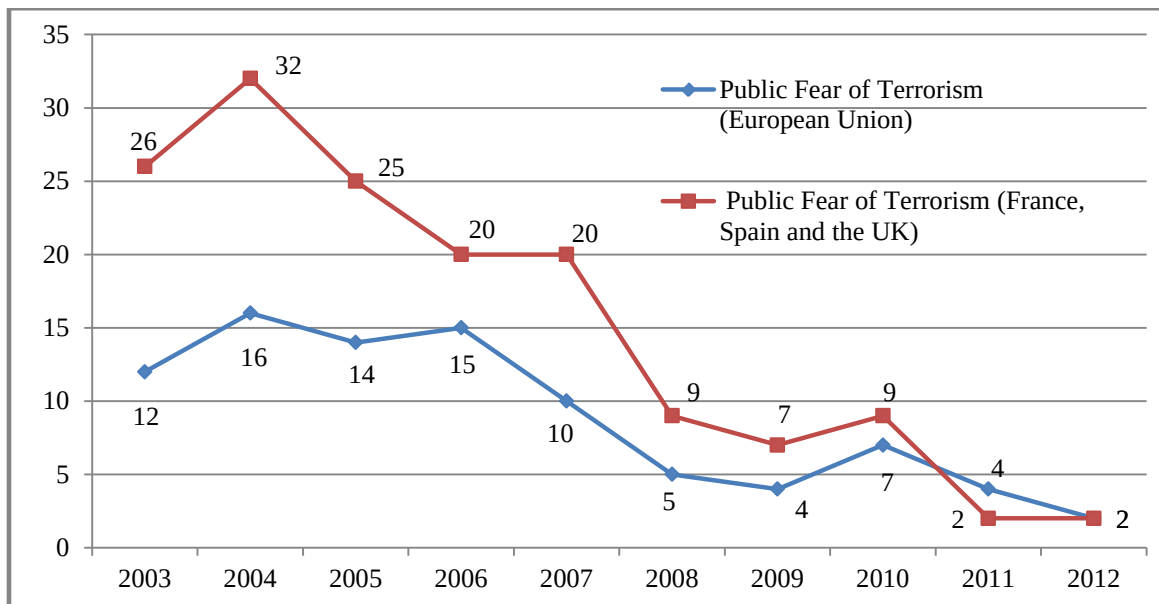


Figure 5. Public opinion on terrorism as one of the two most important issues facing EU member state (After:³⁹⁷)

With less specific prompting in the survey language, Europeans seem largely untroubled by the threat of terrorism. Indeed, according to the results of Eurobarometer surveys from 2003 to 2012, terrorism has never been an important issue for European citizens (Figure 5). In 2003, only 12 percent of Europeans identified terrorism as a major concern. The fear rate, as it were, peaked at 16 percent after the Madrid bombings, and then hit 15 percent after the London bombings, dropping in 2012 to vanishing negligible two percent.

³⁹⁶ Ibid.

³⁹⁷ European Commission: Eurobarometer, "Public Opinion: Standard Eurobarometer," Autumn Number 60 (2003), 62 (2004), 64 (2005), 66 (2006), 68 (2007), 70 (2008), 72 (2009), 74 (2010), 76 (2011), Spring Number 77 (2012), European Commission, accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb_arch_en.htm.

One might argue that these results were influenced by the many EU member states that have never experienced terrorist attacks. However, a comparison of the EU-wide survey results and results from the three EU member states that traditionally have the most terrorist attacks per year (France, Spain, and the UK),³⁹⁸ shows no meaningful differences, particularly in terms of the direction of the trend (Figure 5). Even in France, Spain, and the UK, terrorism have been seen only occasionally as a very important national issue, and these moments of increasing citizens' concerns of terrorism correspondent with major attacks. Following the March 2004 attacks in Madrid, public fear of terrorism slightly increased on European level. It increased more in France, Spain, and the UK; as a product of Spanish citizens' fear of future terrorist attacks, in the autumn 2004 increased to its historical maximum of 59 percent.³⁹⁹ Spanish respondents remained concerned thereafter, but terrorism as important issue has steadily declined to 46 percent in spring 2005 and 31 percent in autumn 2005.⁴⁰⁰

Interestingly, after the London bombings in July 2005, the survey results for 2006 registered only a slightly higher concern about terrorism among European—15 percent, just 1 percent higher than in 2005 (Figure 5). Surprisingly, at the same time, fear of terrorism increased significantly only in few countries, notably in those where terrorist attacks or threats were current issues. In the UK, the responses rose from 14 percent to 34 percent; in the Netherlands, from 22 percent to 40 percent; and in Denmark, from 10 percent to 32 percent.⁴⁰¹ Even these localized upticks did not change the overall trend among France, Spain, and the UK, which saw a steady decline in the perception of fear as the Madrid bombing faded into memory. In fact, these three states have experienced such

³⁹⁸ According to the EUROPOL reports more than 90 percent of all failed, foiled and successful terrorist attacks in the EU in 2006-2011 period have been related to separatism (ethno-nationalism) and happened in Spanish, France, and the UK; see Chapter III, Section A.

³⁹⁹ Even during the ETA bombing campaigns, like in 2003, the Spanish citizens' concerns of terrorism like one of the two most important national issues never exceeded 51 percent. European Commission, "Public Opinion: Standard Eurobarometer, Autumn Wave 64 (2005)," accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb/eb64/eb64_en.htm.

⁴⁰⁰ European Commission, "Public Opinion: Standard Eurobarometer, Autumn Wave 64 (2005)."

⁴⁰¹ Ibid.

a drop in public fear of terrorism that in 2011, for the first time, they posted an even lower percentage than the EU-wide level of less than 2 percent (Figure 5).⁴⁰²

The decline in the fear of terrorism began at a time when many new CT measures were introduced (2006);⁴⁰³ it also correlates with the decreasing trend of failed, foiled, and successful terrorist attacks in EU, all of which indicates a positive impact of the European CT framework.⁴⁰⁴

Furthermore, since 2003 the Eurobarometer occasionally introduced additional and more direct research into European CT efforts, including questions on: comparing the European and national counterterrorism decision-making; three actions that the EU should follow in order of priority; European CT approach in comparison with the U.S.; the two most important issues that EU citizens personally face at the moment; and the two most important issues facing the European Union at the moment. The results are illuminating. Support for a European approach to CT decision-making instead of national-level decision-making has been overwhelming (81 percent) and constant in the period 2003–2012.⁴⁰⁵ The greatest support for joint European CT traditionally has come from Germany (92 percent). The lowest support for EU CT comes, interestingly, from Spain (64 percent) and the UK (68 percent), but these numbers still indicate a two-thirds majority in favor of region (EU) decision-making.

As far as the three actions that the EU should follow in priority, during the period 2003–2007, every fourth European citizen responded that counterterrorism should be one

⁴⁰² While concerns about terrorism did increase in 2010—in Germany (19 percent, +17), the UK (12 percent, +6) and in France (6 percent, +4)—it was mainly the result of “widespread media coverage of the terrorist threats against these countries.” Thus, although in some countries, concerns about terrorism ran higher than in others and temporarily reacted to major terrorist attacks, the fear of terrorism around the Europe in last decade has declined to almost nothing. European Commission, “Public Opinion: Standard Eurobarometer, Autumn Wave 74 (2010),” accessed November 3, 2012, http://ec.europa.eu/public_opinion/archives/eb/eb74/eb74_en.htm.

⁴⁰³ See data in Chapter II, Section C.

⁴⁰⁴ See data in Chapter IV, Section A.

⁴⁰⁵ European Commission, “Public Opinion: Standard Eurobarometer,” Autumn Number 60 (2003), 62 (2004), 64 (2005), 66 (2006), 68 (2007), 70 (2008), 72 (2009), 74 (2010), 76 (2011), Spring Number 77 (2012).

of the EU's main tasks. After that, the question was reformulated, and CT was removed as an answer option for this question.⁴⁰⁶ Views on which actions or policy areas the EU should focus differ between old member states and the new ones that joined after 2004. Citizens of old member states favor CT as EU priority issue more than respondents in new member states.⁴⁰⁷ Old and new Europe alike agreed that the EU's approach to CT surpassed the American version. Public opinion at the EU level as well as separate results for Spain, France and the UK, characterized the European CT approach as better, with an average 59-percent approval for the EU approach in compare with average of 11 percent for the U.S. approach.⁴⁰⁸

In 2010 a question was introduced on the two most important issues that a citizen personally faces at the moment, and terrorism was mentioned in only 2 percent of the responses.⁴⁰⁹ This answer was similar in all EU member states, including Spain, France and the UK; later this rate decreased to 1 percent in 2011 and 2012. In the same period, the surveys covered the same question of the two most important issues, but now regarding the European Union. For all 27 EU member states, terrorism was mentioned by 15 percent of interviewed citizens; surprisingly in Spain, France, and the UK, only 13 percent of citizens identified terrorism as a top-two issue for the EU.⁴¹⁰ This result may related to the media campaign, previously noted, on the eminent terrorist threat because in later years, the opinion on terrorism as an important issue for the community dropped to 7 percent (2011), and then to 5 percent (2012). Furthermore, during 2011, Eurobarometer organized a special survey on European internal security issues, and of the five challenges set out by the EU Internal Security Strategy in Action, terrorism was

⁴⁰⁶ European Commission, "Public Opinion: Standard Eurobarometer," Autumn Number 60 (2003), 62 (2004), 64 (2005), 66 (2006), 68 (2007).

⁴⁰⁷ Fighting terrorism as priority policy area: average ratio is 29 percent in old member states versus 19 percent in new member states.

⁴⁰⁸ Average results for the period 2003–2007. European Commission, "Public Opinion: Standard Eurobarometer," Autumn Number 60 (2003), 62 (2004), 64 (2005), 66 (2006), 68 (2007).

⁴⁰⁹ European Commission, "Public Opinion: Standard Eurobarometer," Autumn Number 74 (2010), 76 (2011), Spring Number 77 (2012).

⁴¹⁰ Ibid.

identified as the most important.⁴¹¹ Also, regarding the five challenges, 60 percent of the respondents see the European as well as national CT efforts as positive and sufficient in the fight against terrorism; only 32 percent see CT efforts as insufficient.⁴¹² Through an open question on the key challenges to the security of the EU, and of their country, the interviewed citizens identified the economic and financial crises, but terrorism threat remains highly pressing. As a challenge to European security, terrorism was identified by 33 percent of respondents; and as a challenge to national security, by 25 percent.

With the possible exceptions of several months following the 9/11 attacks, terrorism actually never became a prime concern for EU citizens in any of the EU MS [member states], except for Spain and UK [recently after Madrid and London terrorist attacks]... [A] Majority of EU citizens sees EU efforts to address the terrorist threat more positively than EU actions in any other area of concern... [And] Eurobarometer data indicates that ever since 9/11, there is widespread consensus among European citizens in all EU MS that decisions regarding the fight against terrorism should be made jointly within the European Union.⁴¹³

Ultimately, most of the surveys' results over the years since 9/11 are in conformity with trends of failed, foiled, and successful terrorist attacks in the EU, which, in turn, is probably the largest influence on European citizens' dwindling fear of terrorism. Indeed, EU citizens see European as well as national CT efforts as positive and sufficient in the fight against terrorism.

D. CONCLUSION

Eleven years after September 11, European Union is safer from terrorism, and its citizens do not count terrorism as an important threat. Thus, how much the European CT framework has contributed to these positive trends in terrorist activities and public

⁴¹¹ The Internal Security Strategy in Action sets out five challenges to the internal security of the EU: terrorism, organized crime, natural and man-made disasters, cybercrime, and security of EU borders. Europa: Press Release RAPID, "Eurobarometer survey on internal security: the economic crisis and terrorism top the agenda," MEMO/11/829, November 25, 2011, accessed November 3, 2012, [http://europa.eu/rapid/press-release MEMO-11-829_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-829_en.htm?locale=en).

⁴¹² Europa: Press Release RAPID, "Eurobarometer survey on internal security."

⁴¹³ Bures, EU Counterterrorism Policy, 43.

opinion is a matter of ongoing policy significance. Although the ultimate ambition of CT—to put an end to terrorist incidents and casualties—is hard to achieve, the significant decrease of terrorist activities and the low number of terrorism victims in recent years in the European Union is a respectable result. The total number of failed, foiled, and successful terrorist attacks in the EU has been steadily declining since 2007, and the number of victims per terrorism attack in the EU is more than seven times lower than global rate and almost vanishing in comparison with Europe in the past few decades.

Similarly, the trends of arrested and later prosecuted and convicted terrorists first increased rapidly following the major activities following the introduction of the European CT measures, and then decreased most likely amid the synergy of results of police, judicial, and prevention CT measures—and quite possibly of decreasing terrorist activities. Furthermore, analysis of European public opinion related to terrorism shows that the decline in the fear of terrorism correlates with the increasing numbers of CT measures and the decreasing trend of failed, foiled, and successful terrorist attacks in EU. Perhaps most conclusively, overall, terrorism in the post-9/11 period has not been the most important issue for EU citizens. Taken together, these trends speak to the positive effects of the European CT framework since 2005.

V. THE COSTS OF EU COUNTERTERRORISM FRAMEWORK

Although European CT measures have broad effects on public life, rule of law, and EU decision-making, they also have an impact on budget and therefore, the European Parliament requested a costs-analysis of European CT measures implemented since 9/11. Serious analysis that can connect precise expenditures with European CT legal-institutional measures are impossible at this juncture, but this chapter represents a first attempt.

Until recently, little research had been done regarding the costs of the European CT legal-institutional framework. For this reason, the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament (LIBE Committee) requested in January 2011 to be informed about CT expenditures before July 2011.⁴¹⁴ The European Commission responded quickly, and presented its first report on the *Estimated Costs of EU Counterterrorism Measures* in May 2011. This independent study⁴¹⁵ informs much of this chapter as it is the only comprehensive document on European CT costs so far.⁴¹⁶

The research into European CT costs was challenged even before it got started because of a dispute about which part of security-related costs may be attributed to CT. As noted, it is hard to distinguish clearly among the hundreds of European CT measures, how many of them are directly or 100-percent CT, or “CT-important,” or “CT-related,” or which were introduced under the faster process of adopting CT measures, but then barely used or put to purposes other than for CT. Furthermore, as majority of measures

⁴¹⁴ European Parliament Committee on Civil Liberties, Justice and Home Affairs, “The EU Counter-Terrorism Policy: main achievements and future challenges, Working Document 1,” (Brussels, Belgium: European Parliament, January 20, 2011), accessed November 8, 2012, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONGML%2bCOMPARL%2bPE-456.713%2b01%2bDOC%2bPDF%2bV0%2f%2fEN>.

⁴¹⁵ Study was done by PricewaterhouseCoopers EU Services Support Team.

⁴¹⁶ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, by Wim Wensink, Michael van de Velde, and Lianne Boer, (Brussels, Belgium: European Parliament, May 2011), accessed November 8, 2012, <http://www.alexander-alvaro.de/wp-content/uploads/2011/06/Estimated-costs-of-EU-counterterrorism-measures.pdf>.

are not 100-percent CT, many of them also are not used by single user; they are dual- or even multiple-user measures. Similarly, the majority of CT measures are taken in member states and used, as well, in combating such other important national issues as organized crime.

The research project arrived at a solution in the form of a broad approach to definition of European CT measures that included assessments of:

- Costs within the EU budget: for EU CT policy programs, for EU agencies (Europol and Eurojust), for the EU funds that were made available [in any level] for counterterrorism programs and projects, large IT-systems and EU bodies.⁴¹⁷
- Costs borne by the private sector: aviation sector, maritime sector, telecom companies and Internet service providers, and the financial sector.⁴¹⁸

However, the research does not include “all costs made for external aid, ranging from development aid to deployment of EU police forces outside the EU territory... [and] the costs of counterterrorism measures borne by EU member states.”⁴¹⁹ Furthermore, outcomes of estimated CT-related costs of private sector produced as only general remarks and rough estimations, and therefore the results have not presented as a part of a total European CT-related cost, and also not included in this chapter.

Obtaining precise CT expenditures posed many challenges that resulted with lacking of relevant data and made the results of study more imprecise, including the lack of financial provisions in most CT framework documents, the lack of specified CT expenditures in EU institutions or within EU security-related programs, as well as a less cooperative private sector. Thus, according to authors of study, the outcomes of the

⁴¹⁷ Costs within the EU budget includes expenditures of EU CT policy programs (Protection of civilians, transport, infrastructures and energy, and CBRN programs), EU Agencies (Europol, Eurojust), CT related funding (Framework Programs, Annual grants), Large IT-systems (SIS, VIS), General Secretariat of the Council (CTC, SitCen).; European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 35.

⁴¹⁸ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 14.

⁴¹⁹ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 16.

Estimated Costs of EU Counterterrorism Measures should be regarded as an “educated guess.”⁴²⁰ The results are as follows:

1. The major component of the overall costs of counterterrorism measures of the EU consists of the EU’s funding programs.
2. Costs incurred by the private sector are much harder to establish: information on the costs related to CT measures incurred by the private sector is fragmented and scarcely available and the actors themselves are mostly unaware of the costs resulting from specific (EU) CT measures.
3. Total estimated EU spending on CT measures [without private sector] between 2002 and 2009 increased from approximately €5.7 million in 2002 to around €93.5 million in 2009.⁴²¹

These are valuable findings of general trends in the European CT-related expenditures that may be used for limited conclusions about CT cost-effectiveness, for example in cases of Europol and Eurojust CT expenditures.

Related to the total estimated EU spending on CT measures without private sector, the European Commission followed the LIBE Committee specification on what exactly has to be included and provided report through four main areas: (1) Costs of EU

⁴²⁰ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 9.

⁴²¹ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 10.

CT policy programs;⁴²² (2) Costs of CT activities of EU agencies;⁴²³ (3) Costs of funding of CT programs and projects;⁴²⁴ (4) Costs of contribution to CT by large IT-systems.⁴²⁵

Although the EU has population of approximately 500 million and, as community, forms the largest world's economy, its total annual budget is relatively small in comparison to the total member states' budgets, about 1 percent of the combined sum. The EU budget has risen each year since the Union was established, though over the last six years, this growth slowed to only about 2 percent per year. Regarding to CT part of the EU budget in 2011 allocated €126,497 million.⁴²⁶ Amid the so-called euro-crisis, however, necessary fiscal savings among member states and a decrease of the EU budget in the next few years well may precipitate cuts to some CT expenditures funded under EU budget Heading 3a, "Freedom, Security and Justice." Although this item currently represents only 0.67 percent of total EU expenditures at the end of Financial Framework 2007–2013,⁴²⁷ it had enjoyed the steepest upward trend among all EU budget headings

⁴²² This area "deals with EU CT policy programs that are related to or relevant for the fight against terrorism on a European level. As such, it deals with the following policies: civil protection, transport-, energy- and infrastructure protection, and Chemical, Biological, Radiological and Nuclear (CBRN) protection. European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 19.

⁴²³ "With regard to the EU agencies, the CT costs incurred by Europol and Eurojust are assessed and included. Excluded from the scope of EU agencies are CEPOL and FRONTEX." European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 19.

⁴²⁴ "The EU's funding structure, relevant to this report, consists of two separate strands. One are the Framework Programs. Funding from these sources is completely dedicated to "research-related EU-activities". The time span of this study covers the end of Framework Program 5 (FP5; 1998-2002), the whole of Framework Program 6 (FP6; 2003-2006) and half of Framework Program 7 (FP7; 2007-2010(3)). The second strand is the annual grants, awarded by DG Home and DG Justice. The time span of this report covers the following programs: OISIN II, Falcone and Grotius (all 2001-2002), AGIS (2003-2006) and Security and Safeguarding Liberties (2007-2010). European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 20.

⁴²⁵ Large IT systems that contributed to European CT are: "the Schengen Information System, or SIS, consists of a database containing information on people and objects, submitted by the Member States of the Schengen area, [and] the Visa Information System, or VIS, consists of a central database containing personal data (for the visa process) of third country nationals entering the Schengen area."; European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 20.

⁴²⁶ European Commission, *EU Budget 2011: Financial Report*, (Luxembourg: European Commission, Publications Office of the European Union, 2012), accessed November 8, 2012, http://ec.europa.eu/budget/library/biblio/publications/2011/fin_report/fin_report_11_en.pdf.

⁴²⁷ Heading 3a: Freedom, security and justice did not exist in the Financial Framework 2000-2006, and even a heading Internal Policies exists, CT expenditures were scattered around the whole EU budget.

(Table 6). CT-related Heading 3a expenditure increased at a rate of almost 100 percent per annum in the years after the European CT strategy was adopted and when many new CT measures were introduced (2007–2009).

	2007	2008	2009	2010	2011	2012	2013
EU implemented budget (€ million) ⁴²⁸	112,377	113,070	112,107	120,490	126,497	129,088	137,924
“3a” implemented budget (€ million)	200	380	667	667	829	836	928
“3a” percentage of the total EU implemented budget	0.17	0.33	0.59	0.55	0.65	0.65	0.67

Table 6. Comparison of EU expenditure and CT-related Heading 3a expenditure (After:⁴²⁹)

The total amount of estimated costs of European CT funded from EU budget (Heading 3a) increased from €5.7 million in 2002 to €93.5 million in 2009, which represents only 0.08 percent of total EU spending. Analyzing the whole research period, the total cost of the European CT framework for the period 2001–2010 is estimated at €374.31 million or only 0.03 percent of the total EU implemented budget at the same time.⁴³⁰ Thus, CT expenditures since 2001 increased for almost three times, which still looks small, but positive results of European CT framework that analyses in previous chapters lead as to conclusion that CT expenditure is sufficient.

⁴²⁸ Figure for 2012 is EU voted budget and for 2013 is EU draft budget.

⁴²⁹ Although the report *Estimated Costs of EU Counterterrorism Measures* in its findings of some CT expenditures does not cover 2001 or some does not cover 2010, the trends of annual costs of European CT measures were presented in period 2002-2009 as period which has the most detailed data. European Commission, *EU Budget 2011: Financial Report*.

⁴³⁰ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 19-21; European Commission, *EU Budget 2011: Financial Report*, 94-97.

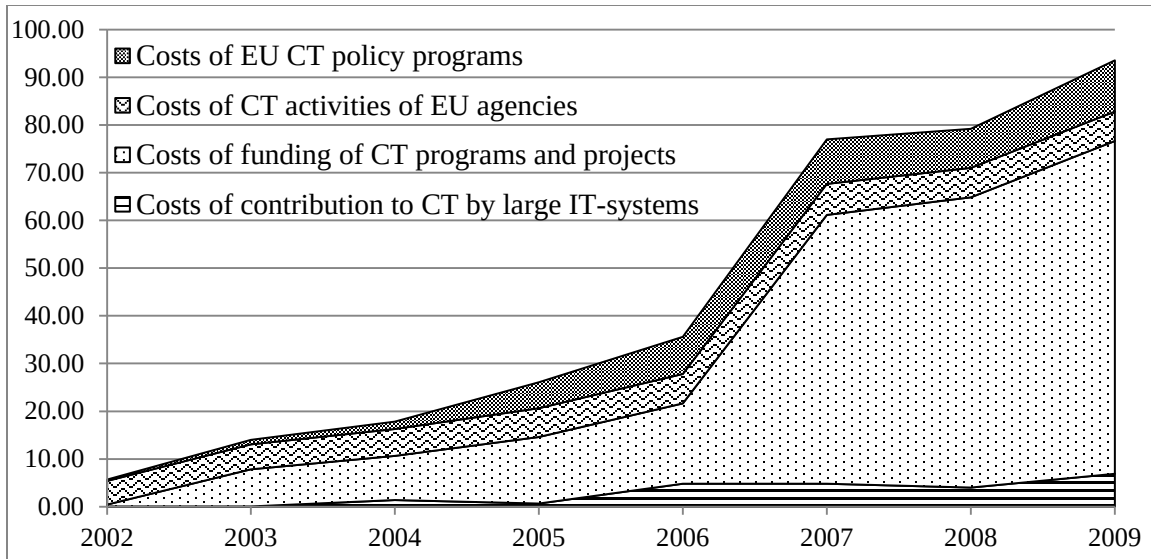


Figure 6. Total estimated costs of European CT measures in € millions 2002–2009 (After:⁴³¹)

These budget figures are negligible in comparison to the EU’s largest strategic CT partner, the United States. Detailed comparison of the CT-related costs between the U.S. and the EU is impossible because of different CT systems—notably the highly decentralized U.S. system of law enforcement, with more than 1500 institutions on the federal, state and local levels. On the other hand, the budget of the U.S. Department of Homeland Security (DHS) generally covers similar areas as the “Citizenship, freedom, security and justice” line within EU budget, so some plain parallels can be made. The total EU estimated CT outlays since 9/11 of €374.31 million looks pitiful in comparison with the U.S. “non-defense”⁴³² homeland security spending in the same period of \$471.1 billion.⁴³³ The U.S. “non-defense” DHS budget for 2010 alone was \$32.6 billion;

⁴³¹ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 19-21.

⁴³² Part of DHS annual budget is funded through the Pentagon's "base" budget.

⁴³³ “Funding for homeland security has risen from \$16 billion in FY2001 to \$71.6 billion requested for FY2012. Adjusted for inflation, the United States has spent \$635.9 billion on homeland security since FY2001. Of this \$163.8 billion has been funded within the Pentagon’s annual budget. The remaining \$472.1 billion has been funded through other federal agencies.”; National Priorities Project: Bringing the Federal Budget Home, “U.S. Security Spending Since 9/11,” May 26, 2011, accessed November 9, 2012, <http://nationalpriorities.org/analysis/2011/us-security-spending-since-911/>.

compared to the implemented EU budget in 2010 for “citizenship, freedom, security and justice” that is more than twenty times less, about \$1.7 billion.⁴³⁴

A. EUROPEAN CT POLICY PROGRAMS

The category of CT policy programs includes costs of programs in civil protection, transport protection, energy protection, and infrastructure protection as one category of costs, and CBRN programs as another category particularly because of the large expenditures specific to CBRN. A large increase in expenditures for policy programs is related to the European CT strategy and the provisions of the “protect” and “response” pillars. The total expenditure of CT-related policy programs since 9/11 is 12.7 percent of all CT costs, but in 2005 and 2006 that rate rose to more than 20 percent (Table 7) because after the Madrid and London bombings, the EU greatly increased the budgets for EU action programs in the field of civil and transport protection. It also introduced new action programs for the security of energy installations and infrastructure, and CBRN programs.⁴³⁵ In 2005–2006, the EU introduced many measures, but in the end, only 20 percent was really executed as CT. Furthermore, as many EU expenditures were related to time-limited research and technological development programs, and to support the establishment high-readiness civil protection modules or teams,⁴³⁶ the protection expenditures gradually decrease by almost 25 percent after 2008 (Table 7). For example, after full implementation of new measures the costs of CT-related programs in transport security vanished in 2010.⁴³⁷

⁴³⁴ The implemented EU budget in 2010 for headline 3. Citizenship, freedom, security and justice is €1306 million. It is converted in dollars using ration 1 US dollar = 0.7867 euros.; European Commission, *EU Budget 2011: Financial Report*, 96-97.

⁴³⁵ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 37-43.

⁴³⁶ See EU initiatives under protect and response pillar, Chapter II, Section C.

⁴³⁷ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 40.

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Protection	0.28	0.92	1.55	1.84	1.91	2.65	3.77	3.37	3.03
CBRN	-	-	-	3.55	5.87	6.67	4.46	7.36	10.78
Total	0.28	0.92	1.55	5.39	7.78	9.32	8.23	10.73	13.81
Percentage of EU CT	4.94	6.57	8.70	20.69	21.85	12.11	10.39	11.47	- ⁴³⁸

Table 7. Estimated costs of EU CT policy programs in € millions (After:⁴³⁹)

Regarding to inclusion of the CBRN protection in 2005 as an important CT measure in fight against international terrorism (particularly Al-Qaeda associated groups); it led to increasing of CT-related expenditures CBRN safety as well as security programs. Since the beginning CT expenditure associated to CBRN safety and security assessed to be 50 percent of total costs of CBRN-related initiatives. Other CBRN actions like public health preparatory actions and proliferation of WMD assessed to be CT-related as of 20 percent. Nevertheless, as many CBRN safety and security measures has implemented and costs decreased, the “main contributor to the rise in [total CT-related CBRN] spending, from 2008/2009, is the “public health” program..., [which] is specifically aimed at threats to public health resulting from CBRN-terrorism.”⁴⁴⁰

B. CT ACTIVITIES OF EU AGENCIES

Total estimated European expenditure on CT measures executed by Europol and Eurojust between 2002 and 2010 increased from €4.95 million in 2002 to €7.36 million in 2010 (Table 8), yet “the CT spending by Europol appears significantly larger than those incurred by Eurojust.”⁴⁴¹

⁴³⁸ The total estimated cost of the European CT measures for 2010 are incomplete, and therefore is not possible to make an accurate analysis.

⁴³⁹ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 19.

⁴⁴⁰ Ibid. 49.

⁴⁴¹ Ibid. 50.

	2002	2003	2004	2005	2006	2007	2008	2009	2010
Europol	54.6	57.6	61.0	65.8	66.0	70.4	66.4	68.0	80.1
Eurojust	0.6	1.6	1.5	4.2	4.5	5.7	5.9	6.1	7.8
Europol CT costs	4.9	5.2	5.5	5.9	5.9	6.3	6.0	6.1	7.2
Eurojust CT costs	0.05	0.09	0.11	0.18	0.25	0.18	0.15	0.09	0.16
Total CT costs	4.95	5.29	5.61	6.08	6.15	6.48	6.15	6.19	7.36

Table 8. Estimated costs of CT activities of EU agencies in € millions (After:⁴⁴²)

First, that is because the Europol structure is larger than Eurojust, which is also visible in their annual budgets, as of almost 100 times larger Europol budget in 2002, and 11 times larger in 2010 (Table 5). Second, CT-related cross-border Europol's activities are more frequent and costly, which resulted in stable CT-related budget representation of nine percent annually, and Eurojust CT-related cases represents small portion of overall Eurojust activities and representation gradually decreased from eight percent in 2002 to only two percent in 2010 (Table 5).⁴⁴³ That is because of linear increasing of Eurojust cases over the years since its establishment and in the same time CT-related cases remain relatively small or even decreased following overall trend of decreasing terrorist activities, arrests and prosecutions of suspects for terrorism in European Union after 2007. Although, in area of CT is almost impossible to apply a cost-effectiveness analysis because of incalculable cost of a human life, but in the case of relatively small

⁴⁴² Regarding to the EU agencies, this analysis included only Europol and Eurojust as two agencies that has direct tasks related to CT and have actively participated in execution of many European CT measures. Some agencies have occasionally dealt with CT as their secondary task, and therefore they are excluded from the scope of this study, such as: European Police College, FRONTEX, European Data Protection Supervisor, and European Fundamental Rights Agency. Furthermore, the European CTC's office was excluded from this study because consist of seconded staff finance by their member state. European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 20.

⁴⁴³ About Europol and Eurojust CT activities see more in Chapter II, Section D.

representation in the European CT-related costs of the Europol and Eurojust, a conclusion should be that their contribution is cost-effective.

C. FUNDING OF CT PROGRAMS AND PROJECTS

The estimated CT-related cost of EU's funding programs and projects of two separate areas, the Framework Programs (FP 5, 6 and 7)⁴⁴⁴ and EU's annual grants awarded by DG's Home and Justice. Since 9/11, the EU's funding of CT programs and projects represents the most of total European CT-related costs, as of €235.08 million or 67.4 percent. Nevertheless, this part of European CT cost started with humble €0.35 million in 2001 than following 9/11 rapidly increased for almost 20 times in 2003 on €7.72 and later again increased in years after the European CT strategy, especially in 2007 when increased for more than three times on €56.36 million (Table 9.). That is mostly related to the increase of the annual grants because the European CT-related framework programs remained the same in every year of program, which is usually four years.

	2001	2002	2003	2004	2005	2006	2007	2008	2009
Grants	0.32	0.36	0.38	1.94	6.59	9.53	40.75	45.21	54.10
Framework programs	0.03	0.03	7.34	7.34	7.34	7.34	15.61	15.61	15.61
Total	0.35	0.39	7.72	9.28	13.93	16.87	56.36	60.82	69.71

Table 9. Estimated costs of funding of CT programs and projects in € millions
(From:⁴⁴⁵)

One of important objectives in European framework programs is to promote research activities in support of all EU policies, but looking the CT-related funding data,

⁴⁴⁴. "The time span of this study covers the end of Framework Program 5 (FP5; 1998-2002) Framework Program 6 (FP6; 2003- 2006) and Framework Program 7 (FP7; 2007-2009)."; European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 57.

⁴⁴⁵ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 20.

this objective is not applied proportionally to other EU policies. Although, since 2003 and the Sixth FP many CT-related projects were funded because of the new introduced CT Framework Decision in 2002, and later within the Seventh FP in 2007 followed the European CT strategy, still the CT portion of the overall spending under FP remained very modest. The CT-related funding under Sixth FP was in total €29.36 million or just 0.17 percentage of €17.5 billion as total FP budget, and then through Seventh FP slightly increased on €62.44 million in nominal value, but decreased on only 0.12 percent of the overall FP budget of €53.2 billion. Thus, even with relatively small amount of total funds the EU supported significantly some of important CT activities and researches over the years since 9/11.⁴⁴⁶

The European CT-related annual grants funded programs related the area of freedom, security and justice, and included activities that “range from annual seminars to the design of computer systems to share information on criminal records across the EU.”⁴⁴⁷ Although the September 11 triggered increasing of the European CT framework, it first time influence on the introduction of CT-related grants two years after with amount of €0.38 million in 2003 and mostly covered CT-related training and cooperation projects in area of justice. Following the Madrid bombings, CT annual grants slowly increased on €1.94 million in 2004 and mostly spent on program related to victims of terrorist acts (more than 50 percent) and different programs of prevention, preparedness, consequences management, and JITs. Nevertheless, after the London bombing and especially after introduction the European CT strategy and updated CT Action Plan, the

⁴⁴⁶ Sixth FP has funded CT projects such as: land and sea integrated monitoring for European security, development of sensors applicable to detection of various of explosives, research of subject matter experts in CT-related issues, and coordination of national research programs on terrorism related crisis management. Seventh FP funded some of the earlier projects, as development of sensors for explosives and crisis management support programs, but also funded many new research projects related to the expanded CT Action Plan in 2005, such as: security and decontamination of drinking water systems, underwater coastal sea surveyor, integrated security of rail transport, and several projects in fighting against radical extremism and terrorism recruitment. European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 63-65.

⁴⁴⁷ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 66.

CT-related annual grants boosted; from €6.59 million in 2005 to €54.10 million in 2010.⁴⁴⁸

D. CONTRIBUTION TO CT BY LARGE IT-SYSTEMS

The estimated cost of large IT-systems related to CT since 2001 is €22.66 million and represents 6.5 percent of total CT-related costs. This cost increased from negligible €0.05 million in 2002 to its maximum of €6.9 million in 2009, and consists of expenditures regarding to two the largest European IT-systems; the Schengen Information System (SIS) and the Visa Information System (VIS).

The Declaration on Combating Terrorism, adopted on 25 March 2004, in the wake of the terrorist attacks in Madrid, represented a turning point with regard to the use of migration controls in EU counter-terrorism. For the first time, migration control measures were clearly identified as a priority in the development of the EU counter-terrorism policy.⁴⁴⁹

	2002	2003	2004	2005	2006	2007	2008	2009	2010
SIS	0.05	0.08	0.37	0.32	1.00	0.80	1.61	2.30	1.95
VIS	-	-	1.00	0.33	3.80	4.00	2.40	4.60	2.00
Total large IT-systems	0.05	0.08	1.37	0.65	4.80	4.80	4.01	6.90	3.95

Table 10. Estimated costs of contribution to CT by large IT-systems in € millions
(From:⁴⁵⁰)

⁴⁴⁸ The most important CT-related grants in recent years have been in areas such as: protection of citizens and critical infrastructures against terrorist attacks (CIPS); prevention and fight against crime (ISEC); optimization of methods of photo identification, CT explosives control system, sharing of best practice amongst European CT professionals, support victims of terrorist acts, projects countering violent radicalization, and support community's CT activities to further improve the security of citizens. European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 70-78.

⁴⁴⁹ Sarah Leonard, "The Use and Effectiveness of Migration Controls as a Counterterrorism Instrument in the European Union," *Central European Journal of International and Security Studies*, Vol. 4, No. 1 (2010): 34-35, <http://usir.salford.ac.uk/18771/>.

⁴⁵⁰ European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 20.

Regarding to the SIS IT-system, the European Council in 2004 and 2005 decided to adapt it in order to meet the requirements of the fight against terrorism, and following that the CT-related budget increased for almost five times from €0.08 million in 2003 to €0.37 million in 2004, and later reached maximum in 2009 as of €2.3 million (Table 10).⁴⁵¹ Relatively small CT expenditures are because the SIS has limited contribution to CT and researches in the study of European CT-related costs assessed that contribution as only 10 percent.⁴⁵² Although, the VIS function in fight against terrorism is its secondary tasks, assessed CT-related budget percentage is 20 percent and according to that CT-related VIS costs since establishment in 2004 occupy €18.13 million of total cost of VIS IT-system of €90.65 million.⁴⁵³ After the European Council in 2005 supported broader use of VIS in CT, related spending increased in next year for more than ten times, and since then has remained high in compare with CT-costs of SIS database.

E. CONCLUSION

The report on *Estimated Costs of EU Counterterrorism Measures* presents initial and preliminary findings, but even these rough estimations give a picture of the general trends in European CT-related expenditures. European CT-related costs funded from the EU budget are estimated on modest €348.84 million, yet since 9/11 CT expenditures have risen constantly to almost 1 percent of the EU budget in recent years and correlates with trends in introduction of new CT measures and terrorist activities. Thus, the impact of the CT-related costs on the total EU budget is very low, but the overall results of CT since

⁴⁵¹ The main adaptations of SIS made by the Council Regulation (EC) No 871/2004 of April 29, 2004, and the Council Decision 2005/211/JHA of February 24, 2005, “concerned access of Europol, national members of Eurojust and national judicial authorities to the data contained in SIS.”; European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 80.

⁴⁵² Total SIS expenditure in period 2002-2010 is €84.8 million; European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 81.

⁴⁵³ The VIS IT-system is the European central database that contains non-EU country visa applicants’ personal data, and it is introduced in 2004 with the aim of improving internal security and combating terrorism in combination with other EU border security measures, including SIS, FRONTEX, and PNR. “The information contained in the database includes personal data, fingerprints and a photograph of the applicant, as well as previous applications.”; Regarding the European CT-related measures, VIS database has been used the most by the Europol who accesses its contents, for “preventing, detecting and investigating terrorist.”; European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 81-82.

9/11 are very positive and even the majority of European stakeholders⁴⁵⁴ recently supported CT as the greatest added value of all EU internal policies, especially in relation with its low level of expenditures.⁴⁵⁵

Funding of indirect and low-visibility measures, especially research projects through the EU's Framework Programs and annual grants, represent more than two thirds of the overall European CT costs. Other components of the total CT costs like funding CT policy programs, CT-related agencies, or major IT-systems have not used large amounts of EU budget, but they were more visible. Such EU agencies as Europol and Eurojust were executors in most of the operational cross-borders CT activities from the EU side, and this analysis finds that a significant CT contribution may be achieved even with humble budgets.

The first report *Estimated Costs of EU Counterterrorism Measures* finally brings some new insights in European CT financial issue and provoked new CT expenditures related initiatives. First, the European Parliament recently requested from the Commission to provide in future regular and more accurate reports on CT costs. Second, the Commission proposed restructuring of EU internal security funds that includes more controlled CT-related funds and gradually increasing of CT part of EU budget in detrimental to other EU policies. Ultimately, European citizens, EU officials, stakeholders, and even international CT partners agree that European CT efforts have many positive effects; however this broad guessing at CT costs should be accepted as an

⁴⁵⁴ EU institutions, governments, social partners, civil society and academia.

⁴⁵⁵ [EU] DG Home has recently held a public consultation (from 5 January to 20 March 2011) via an online questionnaire, open to all stakeholders interested. One of the questions aimed at identifying where stakeholders deem the EU to add the greatest value and where to channel funding to deliver on DG Home key policies... Respondents ranked prevention of and fight against terrorism and organized crime (52 percent) as highest, followed by law enforcement (43 percent), legal migration and integration of third-country nationals (47 percent), building a Common European Asylum System (48 percent), and integrated border management (42 percent) as the most important. When asked whether EU funding could be used to promote practical cooperation between Member States in each policy area, the strongest case existed in prevention of and fight against terrorism and organized crime. European Parliament, *Estimated Costs of EU Counterterrorism Measures*, 12.

additional argument that the EU's significant CT achievements in the last decade are cost-effective.

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VI. CONCLUSION

Although many European states had their own experiences with domestic and international terrorism over the years, the first joint European CT legal-institutional measures were developed after establishment of the European Union in 1992. Even then, the EU's initial priority was developing the essential legal documents for EU institutions; development of the European CT legal framework in that time was slow, with only a few essential conventions, plans for plans, and agreements to agree taking shape in nearly 10 years. The September 11, 2001, terrorist attacks on the United States shifted the EU's priorities to the development of a comprehensive legal and institutional framework for counterterrorism that so far has introduced and implemented more than 100 CT legal and institutional measures. These measures cover a wide range of CT activities and arrangements, and some include counterterrorism as only one of several points of focus, but all were developed under a comprehensive approach to cover all pillars of CT—protection, prevention, response, pursuit—and to comply with the EU's promise to combat terrorism while respecting human rights.

A chronological review of the European CT response shows a clear pattern to the development of CT legal-institutional measures—not surprisingly related to major terrorist incidents: the post-9/11 initial stage, the post-Madrid attack stage, and the post-London attack stage. These tragic events further mobilized the EU for the faster and broader introduction and implementation of CT legal-institutional measures, institutions, and actions. In the absence of a globally accepted definition of terrorism, consensus on the European definition of terrorism within the Framework Decision on Combating Terrorism, adopted in 2002, was a great achievement, which has served as the legal cornerstone of all subsequent European CT efforts. On the other hand, the lack of a common strategic CT approach and the absence of major terrorist attacks in Europe right after the Framework Decision led to a shift in the EU's priorities and to serious delays in the implementation of CT measures, at least until the Madrid and London attacks reenergized the effort. Taking into account that the majority of EU member states before

2001 had not adopted any definition of terrorism, let alone a common or even reliably cooperative CT approach, the fact that just few years later, they implemented a broad set of legal and institutional CT measures represents a major success.

As this thesis has shown, the European CT initiatives played a great role in this achievement. Specifically, review of key CT-related institutions—Europol, Eurojust, European CTC, and the SitCen—shows that they added value from the EU level to the member states in terrorism response, especially with CT lessons learned and data sharing, threat analyses, and cross-border investigations, arrests and prosecution cooperation.

Now that it is up and running, is this CT framework worth something or is it just another useless set of administrative measures without any operational effect? After the qualitative analysis of the European Arrest Warrant, Money Laundering and Terrorist Financing Directives, EU targeted sanctions against individuals or groups, and CT-related bilateral agreements with the United States, is the present research makes clear that the European CT solutions, as practiced, are balanced and provide sufficient human rights protections while not diminishing its CT effectiveness. Outcomes in this analysis, especially EU solutions to the security-versus-human-rights dilemma and implementation challenges, are even more valuable as an evidence of European CT quality because researched measures have been used the most as negative examples of European CT initiatives.

The European Arrest Warrant is an innovative and efficient mechanism for accelerated extradition, with quick apolitical decision-making rules. Importantly, it also has options to deny extradition in case of possible derogation of human rights in issuing state. The Money Laundering Directives, after a delayed implementation because national and European bar and law associations' concerns, are now in effect and provide a useful CT tool for member states. Furthermore, following the lessons learned in the third MLD implementation, the European Commission became proactive and recently started consultations with the Council of Bars and Law Societies of Europe in order to better clarify some of the CT-lawyer-related issues in the anticipated fourth MLD. In the case of the UN Security Council resolutions for CT-related targeted sanctions against individuals

or groups (1267 and 1373), the EU's approach is an excellent example of human rights-sensitive implementation, even if this approach leads to momentary conflict with other strategic partners, including the UN Security Council. The EU's unilateral implementation of exceptions to freezing funds for basic expenses, though heavily criticized by the Security Council, eventually replaced the harder line that the UN and others originally took in their resolutions.

Even in the hardest case of international CT cooperation—with the United States, where two different legal systems collide—the European Union ensured that the CT-related agreements accorded with the European Convention of Human Rights. Although there are still some unclear CT legal provisions, especially in the EAW and MLD, that can lead in violation of human rights during implementation, the EU is more eager now to police member states' implementation acts, which ensures that future CT measures will be more fair and lawful. In all, the analysis confirms that the EU fulfilled its promise to protect European citizens and democratic common values against terrorism, while simultaneously respecting human rights.

More broadly, a cumulative analysis of all selected indicators shows the positive effects of the European CT framework, especially in the years since the introduction of the European CT Strategy. The implementation of the majority of European CT measures in these years corresponds to a decreasing trend in terrorist attacks—since 2007, such incidents have dropped off by more than 70 percent. In the number of terrorism-related fatalities and injuries has decreased significantly for first time after 2008, and the number of victims per terrorism attack for recent years is more than seven times lower than in the rest of the world—which was quite different over the several decades before 2001. Such straightforward numbers provide some of the quantitative evidence of the effects and effectiveness of the European CT framework. Moreover, in the absence of a theory that describes how look for a positive CT effect in relation to trends of arrests and convictions of terrorists, this thesis provides a new one. It suggests that after the implementation of new CT measures and increased CT activities, the number of arrested and later prosecuted and convicted terrorists should increase; later if the overall CT framework

continues to work in synergy, these numbers should decrease. The EU's experience follows exactly this pattern, which further affirms the success of its CT measures so far.

Furthermore, all of these positive results from direct indicators such as terrorist activities, victims, arrests, prosecutions and convictions, as well as absence of terrorist attacks with mass casualties, also ramify in public perceptions of terrorism as a threat in Europe. More than decade after September 11, and seven years after the last major terrorist attack in the EU, Europeans do not much fear terrorism and its importance in the eyes of Europeans has dropped in recent years to an almost vanishing 2 percent—and this trend applies to all EU member states, even France, Spain, and the UK, where more prevalent domestic terrorism once made these polities significantly more apprehensive of the issue. Analysis of EU citizens' fear of terrorism shows that the diminishing fear level correlates with the rate of implementation of CT measure, as well as with the decline in failed, foiled, and successful terrorist attacks in EU. At the same time, a large majority of EU citizens support these CT efforts as positive, and they support the European CT approach as superior to U.S. measures, not least because of the civil-liberties protections involved.

Of course, one can hardly list the benefits of these measures without a word about the costs. The overview in this thesis, based on the first official EU report of Estimated Costs of EU Counterterrorism Measures, presents some initial estimation of the real costs of CT in Europe; even these rough numbers suggest that overall, the European CT-related expenditure is very modest, especially compared to the outlays of Europe's main strategic CT partner, the United States. European CT-related costs have risen steadily since 2001, to a total expenditure of €348.84 million, but the annual proportion represents but 1 percent of the whole EU budget in recent years, very humble in comparison with other EU policy areas. This analysis finds that a significant CT contribution may be achieved even with modest budgets. Furthermore, even the majority of European stakeholders recently supported the European CT legal-institutional framework as the greatest added value of all EU internal policies, which is very positive in relation with the low level of CT-related expenditures. Although a classical analysis of CT cost-effectiveness is

impossible in no small part because of the uncountable costs of human life, the findings in this thesis—that the European CT framework has many positive effects at very modest costs—should be accepted as a strong evidence that the European fight against terrorism since 9/11 has been cost-effective.

Additionally, some findings on recent CT initiatives may further encourage the effectiveness of the European CT legal-institutional framework in the near future. The European Commission recently started to work on a more efficient overview of CT measures and their achievements, the first concerted effort to corral the 100-plus CT measures that are currently scattered around various EU policy areas. The recently published EU working documents on the main achievements and future challenges of European CT; the report on estimated CT expenditures; and the EU Parliament initiative for regular and more accurate provision of CT-related information are a good start on a useful inventory of CT measures. It will definitely makes less challenging all future CT-related analysis for EU institutions, CT practitioners, and scholars. Furthermore, the more proactive role of the current CTC, his regular reports with straightforward recommendations, the new initiative of the wider authorities of CTC, and the important initiative for a more unified CT framework under the Lisbon Treaty all look very promising.

Next, although the majority of the EU Action Plan for Combating Radicalization and Recruitment to Terrorism is classified, several other EU reports show that the EU recently funded several pilot programs related to the prevention of radicalization, fortifying the “prevent” pillar, which had been rather underdeveloped in compare with the other CT strategy pillars. Also, the Lisbon Treaty provision that authorizes the creation of a European Public Prosecutor’s Office, and an initiative to give Europol some authority in interstate investigations will aid CT-related cross-border arrests and prosecutions. Finally, the Commission recently proposed the restructuring of EU internal security funds that promote stronger control and gradually increase of the CT-related parts of the EU budget. All of these current initiatives ensure further development and more positive effects of the European CT framework.

After the comprehensive research into the development and outcomes of the post-9/11 European CT legal-institutional framework through quantitative, qualitative, and effectiveness analyses, as well as in light of the overview of overall CT costs, the final conclusion of this thesis is that European Union has developed successfully a comprehensive CT framework with many positive effects while assuring a high level of human rights to all involved, including even the terrorists. This significant contribution to European and global CT efforts must be regarded as a major achievement, even accounting for the work that must yet be done. Thus, this thesis, on the one hand, acknowledges all these positive outcomes of the European CT efforts, and on the other hand, emphatically urges a continued commitment to the fight against terrorism and the protection of the European common values.

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