

A new direction in the EU's fight against terrorism?

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By Katharina Boldt

The latest series of terrorist attacks has once again substantiated the judgement that European values are under attack. As Jean-Claude Juncker underlined in the political guidelines for his presidency, the European Union (EU) is not only a common market, but a Union of shared values. Juncker's prioritisation of "Justice and Fundamental Rights" aims to safeguard those values, fundamental rights and the rule of law by putting a strong emphasis on the containment of terrorism, radicalisation, organised crime and cybercrime¹. Tackling these major challenges has gained new momentum last year, e.g. through the agreement on the European Union's (EU) data protection reform in December 2015. But in light of last November's terrorist attacks in Paris, violent Islamic radicalisation seems to emerge as the biggest challenge to the EU's set of shared values. This phenomenon is not new as approximately 4,000 EU citizens travelled abroad in 2014 to get trained and fight in Syria and Iraq², but arguably reached a new dimension in 2015. As a consequence, balancing the need for effective privacy laws against the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences will accompany the European Commission throughout its tenure.³

The EU answered the January 2015 terrorist attacks with the adoption of the European Agenda on Security⁴ by the European Commission in the following April. One of the new commitments was to review the Framework Decision 2002/475/JHA

on combating terrorism⁵ in order to implement new international standards and obligations, e.g. the UN Security Council Resolution 2178 (2014) outlining measures to combat foreign terrorist fighters. Originally the review was planned as part of the Commission's 2016 Work Program, but the November 2015 attacks in Paris accelerated the process. Only three weeks later, on the 2nd of December 2015, the review had already been concluded and the Commission adopted two measures to intensify the EU's fight against terrorism. The first measure, an Action Plan, aims to step up the fight against the illegal weapons trade in order to limit the terrorists' access to weapons and explosives. Adjusting existing rules, the second measure is a new Directive on combating terrorism⁶, which criminalises the preparatory acts related to possible terrorist offences. It aims to especially address the new threat of foreign trained terrorist fighters returning to the EU. This Directive sets basic rules and guidelines for defining what exactly constitutes terrorist offences and preparatory acts as well as for criminal sentencing in this regard. Its provisions also target those aiding and abetting terrorist attacks.

The Directive specifically criminalises:

- o attempting to recruit and train fighters (Art. 6 & 7)
- o travelling abroad with the purpose of participating in a terrorist group (Art. 9)
- o financing various terrorist offences
- o supporting terrorist activities (Art. 11).

It also includes support measures for victims of terrorism, who require protection and assistance, e.g. immediate access to physical and psycho-social treatment.

The measures can be read as a direct answer to the Paris attacks in November, trying to combat every aspect of terrorist violence. The Commission felt the urgent need to act and thus issued its proposal for the above-mentioned Directive only three weeks after the shootings whilst bypassing the common but lengthy impact assessment. Economic, social and environmental impacts have not been considered yet, and neither has the potential danger to fundamental rights been thoroughly examined – as several human rights organisations have criticised in the course of the stakeholder consultations. For the implementation of the new Directive to be non-discriminatory, civil rights have to be protected adequately and equally with “sufficient legal clarity in terms of criminalised behaviour (*actus reus*) and intentions (*mens rea*) [as well as] clarification of obligations under international humanitarian law”⁷. The rules of law and people’s fundamental rights have to be consistently respected and cannot be suspended or adjusted for the fight against terrorism. Otherwise, Bigo et al. argue, these counter-terrorism policies will generate more insecurity, mistrust and legal uncertainty in the EU⁸. Furthermore, they state that the “criminalisation of the mobility and travel of ‘foreign fighters’ jeopardises the relationship of trust between citizens and the state”⁹. After all, the Directive will combat terrorism selectively by focusing on terrorism acts in Europe committed by foreign terrorist fighters.

Punishing actors and supporters of terrorism can only be a short-term response. Effectively fighting terrorism will have to be a long-term process on a global level. The issues facing the EU are highly complex, as every terrorist organisation has its

own motivation and cause, all of which may differ a great deal. More research and discussion on the roots and driving forces behind each terrorist group should be conducted, so that they can be targeted and combated individually. In the long run, preventing the spread of terrorist ideologies will be key and should therefore be the main focus of the EU’s strategy to tackle terrorism.

Katharina Boldt

ZEI MES Office

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2. Neumann, Peter (2015): Foreign fighter total in Syria/Iraq now exceeds 20,000; surpasses Afghanistan conflict in the 1980s, retrieved from <http://icsr.info/2015/01/foreign-fighter-total-syriairaq-now-exceeds-20000-surpasses-afghanistan-conflict-1980s/>.
3. The European Parliament and the Council have reached a provisional deal on a directive regulating the use of the PNR on the 2nd of December 2015.
4. For further information see Vogl, Matthias (2015): European Agenda on Security: Protection of what? – A Literature Review, retrieved from https://www.zei.uni-bonn.de/dateien/zei-insights/vogl_28.
5. Retrieved from <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133168>.
6. European Commission (2015): Proposal for a Directive of the European Parliament and of the Council on combating terrorism and replacing Council Framework Decision 2002/475/JHA on combating terrorism, COM(2015) 625 final, retrieved from http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-security/legislative-documents/docs/20151202_directive_on_combatting_terrorism_en.pdf.
7. *Ibid.*
8. Bigo, Didier; Carrera, Sergio; Guild, Elspeth; Guittet, Emmanuel-P; Jeandesboz, Julien; Mitsilegas, Valsamis et al. (2015): The EU and its counter-terrorism policies after the Paris attacks. Brussels, p.4, http://www.sciencespo.fr/ceri/sites/sciencespo.fr.ceri/files/no84_0.pdf.
9. *Ibid.*, p. 9.

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