

PÉTER FÁBIÁN

European Union counter-terrorism strategy and provisions

Cross-border terrorism is classified in transnational criminal activities: it violates international interests, and it can only be counteracted if the international community cooperates.¹

The European Union is at the forefront in cooperation: shortly after 11 September 2001 attacks the EU started the development of the Counter-Terrorism Strategy, while at the same time it also made it clear that each Member State must take part in the implementation of this strategy.² The legal basis for this is provided by Article 83 of the Treaty on the Functioning of the European Union (TFEU) which provides power for the European Parliament and Council for the establishment of minimum rules in the case of extremely serious criminal offences, particularly in the case of terrorism committed in several Member States.³

The counter-terrorism strategy was adopted by the Council in 2005. The four pillars of the EU strategy are the following: prevention, protection, pursuit and response. The prevention strategy means the development of actions and programmes that help prevent people from turning to extremist ideologies. Therefore, the identification and eradication of the underlying causes of radicalisation are of the utmost importance. The two-way protection means the protection of citizens as well as the targeted protection of terrorist targets.

In the latter case, particular attention is paid to the security of external borders, busy public places and IT systems. The strategy of pursuit is the

¹ Bartkó, A terrorizmus, p. 105.

² Bartkó, A terrorizmus, p. 162.

³ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ L 326, 26.10.2012, 47–390).

development of responses to terrorist attacks. The EU strives to locate terrorist cells but this alone is not enough. Extremist elements must be prevented from obtaining weapons, explosives and precursors for the manufacture of explosives. Terrorists must be deprived of their financing instruments and means of communication which requires the increased effectiveness of the localisation of and investigation against terrorists.

The response includes preparation for terrorist attacks and minimisation of consequences. The latter includes not only the development of crisis management and crisis response mechanisms, but also the reinforcement of civil protection and the assistance to victims.⁴

In 2017, 68 people died and an estimated 844 people suffered smaller or major injuries due to terrorist attacks in the EU. 1219 people were arrested in the EU for terrorism-related offences, 412 of those in the United Kingdom, 411 in France and 91 in Spain. Half of the arrested people were EU citizens. The 2018 Eurobarometer poll shows that the majority (about 77 percent) of Europeans are dissatisfied with the EU's counter-terrorist effort.⁵

In the following chapters, the European Union's counter-terrorism arrangements between 2015 and the spring of 2019 will be presented.

Strategy to fight the radicalisation of young EU citizens

According to conservative estimations, about 5,000 EU citizens have joined terrorist organisations and military formations in the Middle East or North Africa. Presumably, most of them has decided to join the Islamic State and Jahbat al-Nusra.

In its resolution of November 2015, the European Parliament urged the development of a strategy that—when distributed in education institutions,

⁴ Council of the European Union. The European Union Counter-Terrorism Strategy Source: <https://data.consilium.europa.eu/doc/document/ST-14469-2005-REV-4/en/pdf>

⁵ European Parliament, "Terrorism. How Parliament is addressing the threat," Source: http://www.europarl.europa.eu/infographic/europe-and-terrorism/index_en.html.

prisons and via the Internet—can prevent the radicalisation of young Europeans and their recruit for terrorist organisations. Such strategy can only work if the information exchange between the Member States, and between the Member States and the Europol runs smoothly. Therefore, the Parliament called for the setting up of an EU blacklist containing the data of jihadists and jihadist terrorist suspects. The resolution also stressed the need for a common definition of “foreign fighters” because it is essential for the initiation of criminal proceedings against them when they return to the EU.

The Parliament called on Member States to ensure that foreign fighters were put under judicial control and, if necessary, in administrative detention upon their return to Europe until due judicial prosecution takes place. Such measures can include the confiscation of passports and immediate freezing of financial assets. According to the Parliament’s proposal, different support systems shall be created, such as hotlines where families, friends and neighbours can get help quickly if they fear that someone around them is being radicalised or may be about to join a terrorist organisation. The resolution also covers the role of public education: in the educational institutions and beyond, in disadvantaged neighbourhoods—by organising courses, cultural events, forums—the dialogue needs to be facilitated between the disadvantaged members of society and members of mainstream society, and the latter should be sensitised in order to become more tolerant and inclusive. Researches show that the environment of prison establishments favours the spread of extremist views, and therefore, radicalised inmates should be separated from the others.⁶

⁶ European Parliament, “EP calls for joint EU strategy to fight radicalisation of young EU citizens,” November 25, 2015.

Source: <http://www.europarl.europa.eu/news/en/press-room/20151120IPR03612/ep-calls-for-joint-eu-strategy-to-fight-radicalisation-of-young-eu-citizens>.

Mutual defence clause

After the terrorist activities carried out in November 2015 in Paris, France requested aid from its EU partners for its fight against the Islamic State in the Foreign Affairs Council by invoking the Mutual defence clause of the Treaty on European Union (TEU).

Article 42(7) of the TEU states that “[i]f a Member State is the victim of armed aggression on its territory, the other Member States shall have towards it an obligation of aid and assistance by all the means in their power”.⁷ France requested two things: firstly, the pooling of capabilities and support for the operations in Iraq and Syria. Secondly, the country requested support for operations in other regions to allow France to redeploy troops so that they could only focus on fighting against the Islamic State. The TEU does not define the method of assistance, but it is important that the assistance shall not contradict the commitments under the North Atlantic Treaty Organisation (NATO).

The aid does not necessarily have to be a military aid, thus states pursuing a policy of neutrality—such as Austria, Ireland, Finland and Sweden—can also take part in the cooperation whose details must be recorded by the countries concerned in a bilateral agreement.

For all these reasons, the role of the European Union is formal in this matter, and it is limited to the facilitation and coordination of the process. In this regard, the Parliament adopted a resolution in January 2016 which included a proposal for the strengthening of the common security and defence policy and for the enhancement of EU engagement.⁸

⁷ Article 42(7) of the TEU

⁸ European Parliament, “Mutual defence clause: what the requirement to help out other member states means,” Security, January 20, 2016.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20160119STO10518-/mutual-defence-clause-what-the-requirement-to-help-other-member-states-means>.

Data protection reform

In April 2016, the European Parliament adopted the data protection rules. On the one hand, the aim of the new rules is that Internet users could have a greater control over their own personal data, for example they have the right to be forgotten and the right to be informed when a personal data breach has occurred. On the other hand, the rules set minimum standards on the use of data for law enforcement and judicial purposes. The reform promotes the cross-border cooperation of criminal investigative authorities, prosecutor's offices, courts; in addition, the rules further ensure the personal data protection of victims, witnesses and suspects of crime.

“The main problem concerning terrorist attacks and other transnational crimes is that member states’ law enforcement authorities are reluctant to exchange valuable information”, said Parliament's lead MEP on the directive Marju Lauristin (S&D, ET). “By setting European standards for information exchange between law enforcement authorities, the data protection directive will become a powerful and useful tool which will help authorities transfer personal data easily and efficiently, at the same time respecting the fundamental right to privacy.”⁹

Updated powers for Europol

European Police Office (Europol) headquartered in The Hague has been operating as the European Union's law enforcement agency since 2010. It deals with major crimes such as human smuggling, human trafficking, money laundering and cybercrimes. Europol provides aid for national authorities through intelligence, provision of data, further training and counselling. Having regard to the terrorist threat, the European Parliament adopted a resolution on the expansion of Europol's powers in November 2015.

⁹ European Parliament, “Data protection reform - Parliament approves new rules fit for the digital era,” April 4, 2016.

Source: <http://www.europarl.europa.eu/news/en/press-room/20160407IPR21776/data-protection-reform-parliament-approves-new-rules-fit-for-the-digital-era>.

Shortly after, a preliminary agreement was concluded between the Parliament and Europol, and the proposal adopted under that entered into force on 1 May 2017. On the basis of the new rules, Europol can set up specialised units more easily so that it can respond faster to emerging threats, and can increase staff number to improve effectiveness. In some cases Europol can also exchange information with private companies. For example, Europol can ask Facebook to remove objectionable content, webpages run by Islamic State.¹⁰

New cybersecurity rules

In July 2016, the European Parliament adopted the cybersecurity package on the basis of which firms operating in key sectors and supplying essential services—e.g. for energy, transport, banking and health—will have to improve their security systems to withstand cyber-attacks. The regulation also imposes certain obligations on some digital service providers, thus for example the providers of online marketplaces, search engines and cloud services will also have to take measures to ensure their security, and they will have to report major incidents or if their systems are attacked immediately to national authorities.

The Member States have double responsibility. On the one hand, they are required to adopt a national network and information security (NIS) strategy; on the other hand, they have to set up special security teams to handle reports and attacks by cooperating with the same units operating in other Member States. The European Network and Information Security Agency (ENISA) will play a key role in coordination.

¹⁰ European Parliament, “Fight against terrorism: Parliament approves updated powers for Europol,” October 5, 2016.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20160509STO2639-7/fight-against-terrorism-parliament-approves-updated-powers-for-europol>.

"Cybersecurity incidents very often have a cross-border element and therefore concern more than one EU member state. Fragmentary cybersecurity protection makes us all vulnerable [...]. This directive will establish a common level of network and information security and enhance cooperation among EU member states, which will help prevent cyberattacks on Europe's important interconnected infrastructures in the future", said Parliament's rapporteur Andreas Schwab (EPP, DE).¹¹

Means of criminal law against foreign fighters and lone terrorists

In March 2017, the Council adopted a directive to alleviate the threat posed by foreign fighters and lone terrorists returning to Europe. Under this directive, the following acts will be criminalised:

- travelling within the EU, to the territory of the EU or to third countries for terrorist purposes (for example when the passenger's specific aim is to join a terrorist group or to commit a terrorist attack);
- the organisation and facilitation of such travel (such as route planning, provision of assets or means of transport, ticket purchase);
- participation in or organisation, provision of a training for terrorist purposes (such as providing information on the production of explosives, acquisition and use of firearms, compiling or distributing such training material);
- providing or collecting funds related to terrorist offences or activities.¹²

¹¹ European Parliament, "Cybersecurity: MEPs back rules to help vital services resist online threats," July 6, 2016.

Source: <http://www.europarl.europa.eu/news/en/press-room/20160701IPR34481/cybersecurity-meps-back-rules-to-help-vital-services-resist-online-threats>.

¹² Council of the European Union, "Timeline: foreign terrorist fighters and recent terrorist attacks in Europe," 2019.

Source: <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/foreign-fighters/history-foreign-fighters/>.

Up to 15 years of imprisonment may be imposed on perpetrators of such terrorist offences.

The directive further improves the existing rules on the rights of victims of terrorist attacks. The directive includes a list about the special services the victims are entitled to: for example they can have access to medical and psychosocial treatment, practical guidance and assistance relating to legal and compensation claims.¹³

“We need to stop the perpetrators before they commit these acts [...]. We have struck a good balance between improving security and strictly upholding fundamental rights, because there is no point in having security without rights,” evaluated the directive Monika Hohlmeier, German MEP.¹⁴

Increased border controls, stronger external borders

In July 2017, the European Parliament adopted the legislation to strengthen control at the external borders of the EU: everyone entering or leaving the EU – whether EU citizen or third country national – must be systematically checked against databases, thus also against the Schengen Information System. Firstly, the purpose of this is to determine if the documents of the person in question is lost or stolen. On the other hand, the control must also determine if the person concerned poses a security threat.

However, an additional rule empowers the Member States to shift to targeted checks if they consider that systematic checks slow border traffic

¹³ Council of the European Union, “EU strengthens rules to prevent new forms of terrorism,” March 7, 2017.

Source: <https://www.consilium.europa.eu/en/press/press-releases/2017/03/07/rules-to-prevent-new-forms-of-terrorism/>.

¹⁴ European Parliament, “Preventing terrorism: clampdown on foreign fighters and lone wolves,” February 16, 2017.

Source: <http://www.europarl.europa.eu/news/en/press-room/20170210IPR61803/terror-ellenes-intezkedesek-a-kulfoldi-harcosok-es-maganyos-elkovetok-ellen>.

too much. This, however, shall be preceded by a risk assessment, and targeted checks can only be commenced if the assessment has shown that this would not lead to increased threats.

In the case of airports, however, this exemption only applies to a transitional period – within 6 months from the entry into force of this regulation - and the transitional period may be extended (to additional 18 months) in certain exceptional cases, for instance where the airport is technically not prepared for systematic checks.

According to rapporteur Monica Macovei, Romanian MEP, “[s]ecuring our external borders means building up a strong shield against terrorism in Europe and preserving the right to life, [...] and systematic checks against databases are a mandatory step towards this minimum protection [...]”.¹⁵

The Council adopted a regulation provided for the establishment of the European Travel Information and Authorisation System (ETIAS) on 5 September 2018.¹⁶ The system can be used for the monitoring of third-country nationals who can travel without visa to the territory of the European Union. Those concerned will be required to fill in an online application form and pay 7 euros per application as a travel authorisation fee. The system cross-references the information provided in the application forms with other EU and Interpol databases, and if no matches are found in the system, the permit will be granted automatically. Otherwise, the application will be examined by the competent authorities: first, ETIAS Central Unit will check if the data in the application coincide with the data provided in the matching results. If they find a match, further data analysis will be

¹⁵ European Parliament, “Stopping foreign fighters at EU external borders,” February 16, 2017.

Source: <http://www.europarl.europa.eu/news/en/press-room/20170210IPR61804/foko-zott-hatarellenorzesek-a-kulfoldi-harcosok-megallitasara>.

¹⁶ REGULATION (EU) 2018/... OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of ... establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226.

Source: <http://data.consilium.europa.eu/doc/document/PE-21-2018-INIT/en/pdf>

required, and the application will be forwarded to the ETIAS Central Unit of the competent Member State. In either case, a decision shall be made about the application within up to 96 hours from its submission.

The regulation also imposes an obligation on carriers: prior to boarding, they are obliged to check if the third-country national travelling without visa is in possession of a valid travel authorisation.

In the first three years of the operation of ETIAS, this obligation only applies to air and sea carriers, after three years, however, it will also apply to international carriers transporting groups overland by coach. However, it is important that travel authorisation will not automatically mean that the passenger can enter the territory of the EU: border guards will make the final decision on the basis of an individual assessment.

The validity of the travel authorisation is not limitless, under the regulation it shall be valid for three years, but it can only be used until the end of validity of the travel document registered during the application.

The automated authorisation system must be introduced in every EU Member State by 2020.¹⁷ The operation of ETIAS will be assisted by the new Entry/Exit System (EES), for the establishment of which MEPs voted in October 2017, and which is also expected to become operational in 2020. Upon entering and leaving the EU and upon refusal of entry of third-country nationals, EES records data, facial image and fingerprints of third-country nationals as well as the date and place of entry or exit. Data will be recorded for both visa-required travellers and travellers accepted without a visa, and will be kept for three years by default and for five years in case of overstays. The information will be accessible to border authorities, visa-issuing authorities of Member States as well as Europol.

However, the Member States' asylum authorities cannot have access to these data. The system mostly facilitates the work of those working at the

¹⁷ Council of the European Union, "European travel information and authorisation system (ETIAS): Council adopts regulation," September 5, 2018.

Source: <https://www.consilium.europa.eu/en/press/press-releases/2018/09/05/european-travel-information-and-authorisation-system-etias-council-adopts-regulation/>.

external borders since it helps to detect those wishing to enter without permission and overstayers. In addition to the countries of the Schengen area, Romania and Bulgaria will also be included in the system, and states whose Schengen evaluation has already been undertaken or countries that are passive members of the EU Visa Information System will also be able to use the system.¹⁸

In April 2019, the European Parliament decided to unify six different migration, border security and criminal records into one database: the Schengen Information System (SIS), the Visa Information System (VIS), the fingerprint database of Eurodac, the European Criminal Records Information System (ECRIS), European Entry/Exit System (EES) and the European Travel Authorisation System (ETIAS).

The databank called Common Identity Repository (CIR) will include 350 million EU and third-country nationals' personal data (name, place and date of birth, passport No.) and biometric data (facial image, fingerprint). No information is currently available of how and in what way the protection of our personal data will be guaranteed.¹⁹

In May 2019, Passenger Name Record (PNR) commenced its operation: Airlines operating flights from outside the EU to Europe are obliged to transfer certain data of the passengers to Member State authorities. The reporting obligation applies to the passenger's name, travel date, itinerary and payment method. PNR data must only be used by law enforcement agencies in the case of suspicion of terrorist offences, human smuggling

¹⁸ European Parliament, "Strengthening security checks at Europe's borders," October 25, 2017.

Source: <http://www.europarl.europa.eu/news/en/press-room/20171020IPR86543/strengthening-security-checks-at-europe-s-borders>.

¹⁹ European Parliament, "Upgraded EU visa information database to increase security at external borders," March 3, 2019,

Source: <https://www.europarl.europa.eu/news/en/press-room/20190307IPR30744/>.

"350 millió ember biometrikus adatait sűriti gigaadatbázisba az EU, a GDPR szabályai ellenére," April 24, 2019,

Source: <https://qubit.hu/2019/04/24/350-millio-ember-biometrikus-adatait-suriti-giga-adatbazisba-az-eu-a-gdpr-szabalyai-ellenere>.

and similar serious criminal offence. It is essential that during the data collection, no sensitive data (revealing racial origin, political opinion or religion, health or sexual orientation) shall be revealed.

Moreover, data must be kept for five years except for certain personal data (such as the passenger's name) which can only be preserved for six months.²⁰

In the end, it needs to be mentioned here that the European Parliament also made a proposal for the strengthening of the external borders of the European Union. According to this proposal, the number of the officials of the European Border and Coast Guard Agency must be increased.

The agreement concluded in 2019 is about the setting-up of a standing corps of 10,000 staff. The unit to be set up by 2027 will support the work of the national border guards, primarily they will take part in border surveillance, authorising entry and exit as well as in return tasks. They will be able to perform their tasks only with the agreement of the host Member State. Member State authorities will remain responsible for taking return decisions.²¹

Stricter gun control rules

During the Paris terror attack of January 2015, the perpetrators used deactivated and converted weapons. The earlier 1991 EU Directive has proved to be quite permissive concerning the deactivation and conversion of firearms, in some Member States for example, such weapons were allowed to be sold and purchased without a license. Therefore, the European Parliament decided to tighten the rules concerning the controls of alarm guns, blank-firing and deactivated weapons in March 2017.

²⁰ European Parliament, "How to stop terrorism: EU measures explained (infographic)," March 22, 2018.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20180316STO9992-2/terrorizmus-elleni-kuzdelem-az-eu-intezkedeseinek-magyarazata-infografika>.

²¹ European Commission, "European Border and Coast Guard: The Commission welcomes agreement on a standing corps of 10,000 border guards by 2027," April 1, 2019. Source: http://europa.eu/rapid/press-release_IP-19-1929_en.htm.

The revised Directive requires that weapons covered by it should be sold and acquired only with a licence, and the licensing process should be as strict as in the case of real weapons. The new regulation obliges Member States to automatically exchange gun control information.²²

The Commission has set up a working group of national experts to develop the uniform technical specifications – applicable to all types of firearms – for the permanent deactivation of firearms. As a result of this, the Commission has adopted its implementing regulation in March 2018. According to this, disarmed weapons must be clearly and irremovably labelled with a unique identification mark, and Member States are obliged to appoint an administrative body that properly testifies that the deactivation has been done in accordance with the technical specification set out in the regulation.²³

Home-made bombs

The Council of the European Union adopted the rules on the use and sale of chemicals that could be used to make homemade explosives. The regulation adds new chemicals to the list of banned substances, and defines strict licensing and screening systems for the sale of dangerous chemicals. The explosives precursors are chemical substances that can be found in several everyday products (such as fertilisers, detergents, machine oils) but by applying the appropriate method, they are also suitable for the production of homemade explosives. The regulation makes a distinction between the two categories of explosives precursors: the so-called restricted explosives precursors cannot be commercialised, private persons cannot

²² European Parliament, “Parliament approves revised EU gun law to close security loopholes,” March 14, 2017

Source: <http://www.europarl.europa.eu/news/en/press-room/20170308IPR65677/parliament-approves-revised-eu-gun-law-to-close-security-loopholes>

²³ Commission Implementing Regulation (EU) 2018/337 of 5 March 2018 amending Implementing Regulation (EU) 2015/2403 establishing common guidelines on deactivation standards and techniques for ensuring that deactivated firearms are rendered irreversibly inoperable (OJ L 65/1 08.03.2018 EN).

purchase, possess them and cannot bring them into the territory of the European Union. The regulated explosives precursors can still be used by authorised undertakings (by “professional users” such as miners or fireworks manufacturers), but traders must report suspicious transactions to the authorities.

The new rules shall also apply to the online sale of dangerous chemicals. The reason for the restriction is the recognition that homemade explosives were used in 40% of terrorist attacks committed between 2015 and 2017 in the EU.²⁴

The importance of the EU budget for 2019

The EU budget for 2019, in which the Parliament gives priority to migration management and security, was accepted in October 2018; and EUR 74.7 billion has been allocated to related programmes and the support of the agencies.

Headings	2019 EU budget (in € billion)	
	Commitments	Payments
1. Smart and inclusive growth	80.527	67.557
1a. Competitiveness for growth and jobs	23.335	20.522
1b. Economic, social and territorial cohesion	57.192	47.035

²⁴ European Parliament, “Terrorism: stricter EU rules to prevent home-made bombs,” February 28, 2019.

Source: <http://www.europarl.europa.eu/news/en/headlines/security/20190222STO2840-8/szigorubb-szabalyokkal-lep-fel-a-hazi-keszitesu-bombak-ellen-a-parlament>.

2. Sustainable growth: natural resources	59.642	57.400
3. Security and citizenship	3.787	3.527
4. Global Europe	11.319	9.358
5. Administration	9.943	9.945
Special instruments	0.577	0.412
TOTAL	165.796	148.199

Table 1: EU budget for 2019, main headings
Source: Council of the EU 2018

Table 1 shows the main headings of the 2019 budget: the commitments has increased by 3.2% (to EUR 165.8 billion) compared with the 2018 budget as amended; the total amount of the payments has increased by 2.4% (to EUR 148.2 billion) compared with the previous year. EUR 1.1 billion has been earmarked for migration management (which means an increase of 55.9% compared with 2018) while EUR 534 million has been allocated to the Internal Security Fund. Additional funds have been voted for several organisations and agencies in charge of responding to the migration crisis and security challenges (such as Europol, Frontex, eu-LISA, European Asylum Support Office).²⁵

²⁵ “Council of the EU Press release Council endorses agreement on EU budget for 2019,” Source: <https://www.consilium.europa.eu/en/press/press-releases/2018/12/11/council-endorses-agreement-on-eu-budget-for-2019/>
Accessed: 12.10.2018.