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The European Union's Counter-Terrorism Policy Twenty Years After 9/11: What Has Really Been Done?

STUDIA I ANALIZY

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Abstract: *This article examines legal, institutional and knowledge-based aspects of counter-terrorism policies developed by the European Union in the aftermath of the terrorist attacks on the United States in 2001. It focuses on selected areas in which progress has been made in the framing of the EU's strategies, policies and actions. The following case studies are included: counter-terrorist legislation, especially the framework decision and directive on combating terrorism; the EU Counter-Terrorism Coordinator as an institutional intermediary within the EU's institutional architecture and in the external dimension of counter-terrorism cooperation; Europol's TE-SAT report as an instrument of strategic awareness-building, which has facilitated the explaining of the nature of terrorist threats across the EU. The main assumption underpinning this paper is that the EU has managed to ensure an uneven yet constant development of counter-terrorism measures which have contributed to a more effective fight against terrorism.*

Introduction

Terrorism has been a global phenomenon and the past two decades have proven that to be the case. The effects of accelerated globaliza-

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tion, a worldwide communication system, large-scale mobility and – most importantly – the expansion of Internet-based social networks have opened up new opportunities for terrorist individuals and groups acting independently or, most often, in clandestine networks. The permanent risk of terrorist incidents and the atmosphere of fear of human casualties, material losses and political shocks has deeply transformed state policies, social attitudes and legal frameworks. The European Union (EU), as an international organisation and security community, has been directly exposed to the consequences of global terrorist activities and domestic sources of terrorism and violent extremism. Due to its complex nature, the EU has grappled with intricate interactions among the transnational and governmental levels in framing counter-terrorism policies and strategies. The functional logic of European integration and the bounded rationality of EU institutions and agencies have often collided with Member States' national interests and domestic legal and institutional frameworks.

It is not easy in this context to come to grips with a seemingly simple matter: What has really been done in the European Union in the realm of counter-terrorism? The present format of a conventional scholarly article allows for the proposing of a concise assessment of the EU's efforts and achievements, which highlight the value of transnational links and effectiveness of synergies produced at the EU level. Therefore, this article examines legal, institutional and knowledge-based aspects of counter-terrorism policies under the aegis of the European Union. It concerns only those matters which have been initiated, developed and consolidated at the EU level. Hence, the record does not appear to be very impressive due to the limitations and shortcomings of EU institutions and agencies resulting from legal, political and security-driven constraints. However, comparing the EU's counter-terrorism activities prior to 9/11 to its present-day level of engagement in counter-terrorism allows us to make an assumption that the post-9/11 terrorist threat has brought about an uneven yet constant development of counter-terrorism measures by taking advantage of the EU's legal and institutional framework. The research presented in this article was based on a reflexive strategy focused on the critical exploration of knowledge, deductive content analysis and the logic of causality.

Anchoring counter-terrorism measures in EU law

Prior to 9/11 anti-terrorist efforts were not at the forefront of the EU's security agenda. Only a few legal instruments had been adopted, sup-

plementing and improving to an extent the existing provisions of European law (especially conventions adopted by the Council of Europe)¹. Soon after the horrifying acts of terrorism in the US, the Council of the EU activated instruments of its Common Foreign and Security Policy (CFSP), targeting terrorist individuals, groups and entities. In a series of legal acts adopted in December 2001, the Council proposed specific measures to combat terrorism, including procedures for blacklisting persons and entities involved in acts of terrorism², criminalization of terrorist financing³ and the freezing of all funds, financial assets and economic resources owned by terrorists⁴. It is worth mentioning that one of the above-mentioned instruments, Common Position 2001/931/CFSP on the application of specific measures to combat terrorism, contained definitions of a 'terrorist act' in terms of 'persons, groups and entities involved in terrorist acts' and the 'terrorist group'. In spite of the fact that the common position covered only the CFSP and could not be considered as a single EU legal instrument⁵, those definitions set a basic framework for coping with terrorism as a security issue and as an act of crime. Moreover, Common Position 2001/930/CFSP on combating terrorism outlined general principles on the EU's approach to preventing and combating terrorism, such as: suppression of any form of support, active or passive, for terrorist entities or individuals, including measures for preventing recruitment to terrorist groups; elimination of the supply of weapons, as well as forged or fraudulent identity and travel documents

¹ M. den Boer, J. Monar, *Keynote Article: 11 September and the Challenge of Global Terrorism to the EU as a Security Actor*, «Journal of Common Market Studies» 2002, Annual Review, pp. 18–20; C. C. Murphy, *EU Counter-Terrorism Law: Pre-Emption and the Rule of Law*, Hart Publishing 2012, pp. 20–22.

² See Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism, «Official Journal of the European Communities» (hereinafter «OJEC»), L 344/93, 28.12.2001.

³ See Council Common Position of 27 December 2001 on combating terrorism, «OJEC», L 344/90, 28.12.2001.

⁴ 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, «OJEC», L 344/70, 28.12.2001.

⁵ However, the horizontal dimension of Common Position 2001/931/CFSP was confirmed in Council Regulation on specific restrictive measures to combat terrorism which used the definition of terrorist act contained in Common Position 2001/931/CFSP. See Art. 1.4. 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, «OJEC», L 344/70, 28.12.2001.

to terrorists; activation of early-warning mechanisms intertwined with the exchange of information, including operational information on terrorist individuals and networks; and – last but not least – criminalization of terrorist acts and the punishment of terrorist perpetrators.

The latter heralded the adoption of a parallel counter-terrorism measure under the EU's third-pillar cooperation in police and criminal justice matters. Framework Decision 2002/475/JHA on combating terrorism⁶, adopted by the Council in June 2002, criminalized terrorist acts across the EU. It provided a common definition of terrorist offences and a terrorist group, based on the appropriate provisions of Common Position 2001/931/CFSP. It is critically important to note that this obliged each Member State to incorporate this definition into its national laws. Accordingly, the minimum penalties for terrorist offences were agreed. Penalties and sanctions for natural and legal persons having committed or being liable for terrorist offences were established as well⁷. The Framework Decision provided that the necessary measures for ensuring that terrorist offences are punishable may entail extradition. Hence, the Council of the EU adopted a parallel Framework Decision on the European Arrest Warrant (EAW)⁸. It aimed at substituting the obsolete extradition system, based on the 1957 European Convention on Extradition adopted by the Council of Europe, with a system of surrender through the mutual recognition of judicial decisions between Member States. Moreover, it integrated law enforcement activities for the execution of an EAW within a single procedure enhanced by the use of the Schengen Information System, as a large-scale IT network covering the territories of the overwhelming majority of EU Member States, as well as several non-EU countries⁹. Terrorism was included in the list of offences without the verification of double criminality, which meant that the convicted terrorist offender need not be recognized in both the requesting and requested countries.

⁶ Council Framework Decision of 13 June 2002 on combating terrorism, «OJEC», L 164/3 22.06.2002.

⁷ See M. O'Neill, *The Evolving EU Counter-Terrorism Legal Framework*, Routledge 2012, pp. 102–104.

⁸ Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, «OJEC», L 190/1, 18.07.2002.

⁹ Currently the Schengen Information System is fully operational in the 26 states constituting the Schengen area (including the four Schengen associated countries: Norway, Iceland, Switzerland and Liechtenstein), as well as in Bulgaria, Romania, Croatia and Ireland, subject to specific limitations and restrictions.

As a result of those Framework Decisions counter-terrorism capabilities were strengthened considerably by the approximation of domestic criminal laws of Member States, in both substantive and procedural aspects. It was a remarkable achievement given that, prior to the enactment of that EU legislation, terrorism had been a specific criminal offence only in 6 of the 15 Member States¹⁰. If one adds several accompanying legal measures¹¹ to the post-9/11 counter-terrorist awakening in the EU, an overall picture of concerted European action might be drawn. However, the practical implementation of this legislation was rather disappointing. The main instruments (Framework Decisions on combating terrorism, on the EAW, and on the prevention of terrorist financing) were sluggishly and, in some cases, reluctantly transposed to national legal orders. Discrepancies across the jurisdictions, which hindered institutional coordination and practical actions, undermined the idea of a common system of counter-terrorism in the EU. Terrorist attacks in Madrid in 2004 and in London in 2005 caused public outrage and political mobilisation in most EU Member States but did not principally inspire new legislative undertakings at the EU level. Some noble exceptions, such as Decision on the exchange of information and

¹⁰ S. Douglas-Scott, *The Rule of Law in the European Union – Putting the Security into the Area of Freedom, Security and Justice*, «European Law Review» 2004, Vol. 29, No. 2, p. 229.

¹¹ Among them: Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freezing of funds and other financial resources in respect of the Taliban of Afghanistan, «OJEC», L 139/9, 29.05.2002; Council Common Position of 27 May 2002 concerning restrictive measures against Osama bin Laden, members of the Al-Qaida organisation and the Taliban and other individuals, groups, undertakings and entities associated with them, and repealing Common Positions 96/746/CFSP, 1999/727/CFSP, 2001/154/CFSP and 2001/771/CFSP, «OJEC», L 139/4, 29.05.2002; 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, «OJEC», L 349/1, 24.12.2002; Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, «Official Journal of the European Union» (hereinafter as: «OJEU»), L 196/45, 2.08.2003; 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, «OJEU», L 309/15, 25.11.2005.

cooperation concerning terrorist offences¹² and the Framework Decision on simplifying the exchange of information and intelligence between law enforcement authorities¹³, either collided with national rules and limitations (in respect of the former) or suffered from a slow transposition into domestic legislation (in respect of the latter). The case of the framework decision 2006/960/JHA illustrated well the divergencies among Member States as to the necessity of information exchange and the reliability of the means of communication, as well as to the lack of proper rules and mechanisms for handling sensitive information¹⁴.

Following the terrorist attacks in early 2015 in Paris and Copenhagen, and especially in the aftermath of the bloodshed in Paris in November 2015, the EU entered a period of elevated risk of terrorist actions. Despite political declarations and policy agendas (European Agenda on Security, Security Union), security measures (anti-terrorist alerts, reintroduction of checks at some sections of internal border within the Schengen area) and intensified information exchange, other serious terrorist crimes were perpetrated in 2016 and 2017 in Brussels, Nice, Berlin, Stockholm, Manchester, and London.

New terrorist actors (ISIS/Da'esh, lone offenders, foreign fighters) and the ways and means they practiced made the EU reform its legislation in the area of counter-terrorism. In March 2017, the Council and the European Parliament, after long months of discussions and exchanges of national views and experiences with Member States adopted Directive 2017/541 on combating terrorism¹⁵, which repealed the years-old 2002 Framework Decision. The directive extended the scope of terrorist offences by adding a new and broad category of 'related offences'. This encompassed such intentional actions as public provocation to commit terrorist acts, recruitment for terrorism, training and instruction for terrorist offenders, travelling for the purpose of terrorism (the syndrome of

¹² Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences, «OJEU», L 253/22 29.09.2005.

¹³ Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, «OJEU», L 386/89 29.12.2006.

¹⁴ See Commission Staff Working Paper. Operation of the Council Framework Decision 2006/960/JHA of 18 December 2006 ("Swedish Initiative"), SEC(2011) 593 final, Brussels, 13.05.2011.

¹⁵ Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA, «OJEU», L 88, 31.03.2017.

'foreign fighters'), terrorist financing, theft, extortion and fraud (including provision or use of false documents). As after 9/11, the bulk of the accompanying anti-terrorist legislation was adopted by the relevant EU institutions and implemented as far as possible by Member States. This helped to substantially strengthen the criminal law approach to terrorism despite some deficiencies in the comprehensive implementation of the adopted measures and loopholes in the prosecution of terrorists.

Over the two decades which have passed since 9/11, the criminalization of terrorism has become a significant landmark of counter-terrorism strategy and action, and a cornerstone of EU-wide cooperation with regard to the prosecution of terrorist perpetrators. A plethora of legal measures addressing the issue of terrorism to a greater or lesser extent has resulted in a massive political, judicial and institutional construction of legal responses and the capacity of criminal justice to counter terrorism.

Institutional coordination at the EU level

Terrorism aims to scare the population, as well as to hit the state, undermining its credibility and confidence in its institutions, particularly those in charge of public order and internal security. The acts of terrorism committed in EU Member States indirectly affected the EU as an area of freedom, security and justice and as a special type of a security community. Questions about the quality and reliability of security cooperation at the EU level, especially in the field of the prevention and combating of terrorism, were often posed immediately after terrorist actions. Given the above-described development of the counter-terrorism legal measures, it is necessary to have a glance at the institutional dimension.

The fact that counter-terrorism is subject to an effective enforcement by Member States' relevant authorities and services¹⁶ has been decisive in drawing the limits for EU action and involvement. The establishment and development of specialised EU agencies in the area of freedom, security and justice, such as Europol, Eurojust, Frontex, CEPOL and

¹⁶ This principle was strengthened by a new provision of the Treaty on European Union (TEU) adopted in Lisbon in 2007, stipulating that "[The Union] shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State." See article 4.2. thereof.

ENISA¹⁷, increased the ability to obtain insights into the very phenomenon of terrorism, get more information about terrorist actors and networks, and help national authorities to work out proper responses. Given the complex nature of terrorism and the multi-level architecture of EU security governance, the need to connect transversal aspects of counter-terrorism present in the EU's strategies, action plans and legal and institutional frames became indisputable. The need for institutional coordination of the dispersed counter-terrorism competences in the pre-Lisbon three-pillar EU brought about the establishment of the office of Counter-Terrorism Coordinator.

In the aftermath of the shocking terrorist bombing at the Atocha train station in Madrid on 11 March 2004, the European Council adopted the Declaration on Combating Terrorism, in which the establishment of the position of a Counter-Terrorism Coordinator (EU CTC) was agreed. The coordinator was tasked to "co-ordinate the work of the Council in combating terrorism and, with due regard to the responsibilities of the Commission, maintain an overview of all the instruments at the Union's disposal with a view to regular reporting to the Council and effective follow-up of Council decisions"¹⁸. Concomitantly, Gijs de Vries was appointed to the position of EU CTC pursuant to the decision of the High Representative for CFSP, Javier Solana. He began his tenure by seeking to improve coordination between the many different EU committees and working groups which dealt with the prevention and combatting of terrorism. He proposed some additional measures to improve external counter-terrorism cooperation, including information-sharing and international coordination with other organisations (such as the United Nations and NATO)¹⁹. His initial eagerness to consolidate EU-wide activities in the field of the prevention and countering of terrorism and strengthen cooperation with partners elsewhere in the world gave way to frustration. In statements and interviews he complained

¹⁷ Nine agencies in that area form a network, called the JHA Agencies' Network, which aims at coordinating their activities and producing synergies in the area of freedom, security and justice.

¹⁸ Declaration On Combating Terrorism, Brussels, 25 March 2004, p. 13, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/79637.pdf (26.03.2004).

¹⁹ M. Beunderman, *Anti-terror tsar makes first concrete proposals*, «EU Observer», 28 May 2004, <https://euobserver.com/justice/16351> (08.06.2004); G. de Vries: *EU counter-terrorism coordinator*, «NATO Review», 1 September 2005, <https://www.nato.int/docu/review/articles/2005/09/01/gijs-de-vries-eu-counter-terrorism-coordinator/index.html> (14.09.2005).

about his lack of real powers and underlined the point that his personal responsibilities were restricted by Member States, which primarily bore a national responsibility for countering terrorism on their soil²⁰. However, scholars investigating the EU's counter-terrorism policy emphasised the point that "the coordinator simply does not have either the mandate or the capacity to produce something that the EU MS are unwilling or unable to produce on their own. Moreover [...] it is hard to envisage some areas where the EU CTC could have even the potential for such value-added"²¹.

De Vries was replaced in 2007 by Gilles de Kerchove, who would remain in office for the next 13 years. Due to his experience of working in the EU Council's General Secretariat, de Kerchove focused more on internal coordination among Member States and sought to consolidate his role as an intermediary who could oversee working relationships within the EU Council. This did not mean that the new EU CTC would neglect the external dimension of counterterrorism. Rather, it heralded a more agile, intense and multi-dimensional effort across the fields cultivated by EU institutions and agencies, Member States' relevant authorities and their counterparts outside the European Union. Indeed, de Kerchove – as argued by Argomaniz – "followed a different pattern of action than his predecessor, concentrating on the more low-key coordination within the Council." He adopted "a more hands-on approach than his predecessor on information transfer within the Council and prioritised and raised the visibility of some particular dossiers"²².

The Lisbon Treaty reinforced the position occupied by the EU CTC in the realm of security. Despite the establishment of the European External Action Service (EEAS), led by the High Representative/Vice-President of the European Commission, the office of EU CTC was not transferred to the new institutional structure, yet remained within the Council's General Secretariat. Therefore his status was decisively shaped by Member States, which were prone to ensuring the transversal mode of EU CTC activities and endow him with flexibility in order to overcome turf battles and organizational tensions accompanying the

²⁰ H. Mahony, *EU anti-terror coordinator to stepdown*, «EU Observer», 12 February 2007, <https://euobserver.com/justice/23472> (31.10.2021).

²¹ O. Bures, *EU Counterterrorism Policy: A Paper Tiger?*, Ashgate 2011, p. 140. Comp. D. Zimmermann, *The European Union and Post-9/11 Counterterrorism: A Reappraisal*, «Studies in Conflict & Terrorism» 2006, Vol. 29, No. 2, pp. 133–134.

²² J. Argomaniz, *The EU and Counter-Terrorism. Politics, polity and policies after 9/11*, Routledge 2011, p. 74.

institutional transition²³. Focusing on the implementation of the Plan of Action on Combating Terrorism (adopted in June 2004) and the EU counter-terrorism strategy (approved in late 2005), he monitored the progress in the application of specific measures included in the Plan of Action, as well as assessing the state of play in the implementation of key political declarations adopted by Member States, especially the conclusions of the JHA Council and the European Council. Furthermore, based on an active cooperation with EU agencies and bodies, as well as with the Presidency in the Council of the EU and national delegates, he regularly issued assessments, reports and discussion papers concerning various elements of the EU's counter-terrorism policy. MacKenzie et al. noted in the early 2010s that the EU CTC is "progressively recognised as the face of the EU's counter-terrorism policy [...] [and] is increasingly becoming an actor on the international stage, being actively involved in the counter-terrorism relations between the EU and a growing number of third states and bodies"²⁴.

The next ISIS-inspired wave of terrorism had the effect of increasing the EU CTC's level of activity. He regularly provided Member States and EU institutions and agencies with detailed policy recommendations for priority areas of EU action and sought to intensify political dialogue on counter-terrorism with representatives of many countries of the Middle East and South Asia. He routinely took the well-proven 'name and shame' approach and exerted peer pressure on the main stakeholders of the EU's counter-terrorism policy. He used to conclude his reports by highlighting the argument that "while progress is being made in all areas, further urgent improvements to information sharing and border security are necessary"²⁵. He quite successfully shared his coordinating competences with the Commissioner for the Security Union, a post established in 2016 following the turbulence in the composition of the

²³ See T. Renard, *EU Counterterrorism Policies and Institutions After the Lisbon Treaty*, "Policy Brief", Center on Global Counterterrorism Cooperation, New York, September 2012, p. 11.

²⁴ A. Mackenzie, O. Bures, C. Kaunert, S. Leonard, *The European Union Counter-Terrorism Coordinator and the External Dimension of the European Union Counter-Terrorism Policy*, «Perspectives on European Politics and Society» 2013, Vol. 14, No. 3, p. 337.

²⁵ See for instance: Note from EU Counter-Terrorism Coordinator to Delegations. Subject: State of play on implementation of the statement of the Members of the European Council of 12 February 2015, the JHA Council Conclusions of 20 November 2015, and the Conclusions of the European Council of 18 December 2015, 6450/16, Brussels, 1 March 2016.; Note from EU Counter-Terrorism Coordinator to Permanent Representatives Committee/Council, 6146/18, Brussels, 27 February 2018.

Commission caused by the Brexit referendum, filled by UK delegate Julian King²⁶. He kept an eye on new challenges of technological and health origins, reporting for instance on the consequences of 5G networks for law enforcement and criminal justice²⁷, on the development of the terrorist threat as a result of the COVID-19 pandemic²⁸, and on online gaming as an enabler of terrorist activities²⁹.

De Kerchove's term finally came to an end in 2021. The new incumbent of the office, Ilkka Salmi, was assigned a prominent role in driving forward the EU counter-terrorism priorities agreed by EU home affairs ministers in November 2020³⁰. According to the official webpage of EU Counter-Terrorism Coordinator, he will "help advance EU efforts to tackle terrorism by briefing the Council on relevant issues and on proposals for future work and meeting with representatives from non-EU countries and international organisations, as well as the private sector"³¹. Salmi, the former Director of the EU Intelligence and Situation Centre (INTCEN) and Director in the European Commission's DG ECHO in charge of emergency management, disaster preparedness and prevention, seems to guarantee continuity in an active supportive role of the EU CTC in the overall policy of prevention and combating of terrorism.

Situational awareness: delivering a 'big picture' of terrorism in the EU

An effective and reliable system of counter-terrorism must be founded on a thorough assessment of the security environment, based

²⁶ O. Bures, *The Counterterrorism Coordinator and the Commissioner for the Security Union: Does the European Union Need Two Top-level Counterterrorism Officials?*, «Terrorism and Political Violence» 2020, online first, <https://doi.org/10.1080/09546553.2020.1730329> (11.05.2020).

²⁷ Note from EU Counter-Terrorism Coordinator to Delegations. Subject: Law enforcement and judicial aspects related to 5G, 8983/19, Brussels, 6 May 2019.

²⁸ Note from EU Counter-Terrorism Coordinator to Delegations. Subject: Terrorism in Times of Corona: The development of the terrorist threat as a result of the Covid-19 crisis, 7838/20, Brussels, 7 May 2020.

²⁹ Note from EU Counter-Terrorism Coordinator to Delegations. Subject: Online gaming in the context of the fight against terrorism, Brussels, 9066/20, 6 July 2020.

³⁰ See Communication from the Commission. A Counter-Terrorism Agenda for the EU: Anticipate, Prevent, Protect, Respond, COM(2020) 795 final, Brussels, 9.12.2020.

³¹ The role of the EU Counter-Terrorism Coordinator, <https://www.consilium.europa.eu/en/policies/fight-against-terrorism/counter-terrorism-coordinator> (6.11.2021).

on comprehensive knowledge of situational awareness and anticipation of emerging threats and risks. Situational awareness not only serves the practical purposes of threat assessment, risk analysis, early warning and prevention. It also facilitates policy planning, strategic assessment and the proper understanding of ongoing developments and future trends. The EU was deeply affected by the lack of its own capacity of situational awareness, with the exception of small units providing geospatial intelligence and situational assessments for European Security and Defence Policy and being institutionally located in the Western European Union.

The need to coordinate the collection of data and information regarding terrorism, and to compile the available information for a threat assessment document was suggested already by the Netherlands in 1999. At a meeting in March 2001, the Article 36 Committee³² asked the Belgian Presidency to finalise work on a non-confidential report on the terrorism situation and trends in Europe and submit it at the end of 2001. Belgium suggested that the report could serve to inform the European Parliament on the phenomenon of terrorism in the Member States. It insisted that the report be unclassified and not contain any information which could compromise investigations underway or the fight against terrorism³³. The Council decided to establish a reporting mechanism from the Council's Terrorism Working Party (TWP) to the European Parliament based on information and analyses supplied by Europol. The first report entitled TE-SAT (Terrorism Situation and Trends) was released in December 2002. It constituted a loose compilation of unclassified information concerning terrorism-related activities focused on domestic groups and organisations, and reported on post-9/11 Islamic extremist terrorism³⁴.

Set against the dynamics of terrorist activities and threats, the following TE-SAT reports lacked consistency, insight and accuracy due to a lack of knowledge stemming from the fact that sensitive and classified information was held by Member States³⁵. In 2006, a new methodology

³² The so-called CATS (*Comité de l'article trente-six*) was the Council's Coordinating Committee in the area of police and judicial cooperation in criminal matters.

³³ Note from Belgian Presidency to Article 36 Committee. Subject: Non-confidential report on the terrorism situation and trends in Europe, 8466/1/01 REV 1, Brussels, 24 August 2001.

³⁴ Note from Article 36 Committee to COREPER/Council. Subject: Non-confidential report on the terrorism situation and trends in Europe, 14280/2/02 REV 2, Brussels, 10 December 2002.

³⁵ See remarks by O. Bures, *Europol's Fledgling Counterterrorism Role*, «Terrorism and Political Violence» 2008, Vol. 20, No. 4, pp. 509–510.

was approved by the Council, according to which Europol was charged with full responsibility for producing the report. TE-SAT was characterised as an unclassified strategic assessment authored by Europol and addressed to the European Parliament and the Council, presenting the phenomenon of terrorism in the EU, including counter-measures taken at the EU level and an assessment of emerging trends and patterns³⁶.

TE-SAT contains an overview of terrorist activities throughout the EU against a global backdrop and a typology of terrorist organisations by their source of motivation (religious, ideological, ethno-nationalist) and predominant trends. The report is built on Member States' inputs, information and analysis from some EU agencies and entities (Eurojust, Frontex, EU Counter-Terrorism Co-ordinator, INTCEN) based on inter-agency agreements, reports from non-EU partners and information acquired from open sources. Profiles of new and emerging trends drawn from Europol's SCAN (Scanning, Analysis & Notification) system are also used. Member States are obliged to collect information resulting from criminal investigations into terrorist crimes conducted by national law-enforcement authorities. They decide whether a given piece of information should be transmitted to Europol. Any information delivered by a relevant national stakeholder to Europol is verified, processed by Europol and cross-checked with Member States. Any individual Member State may question Europol's output if an error, misinterpretation or gap is identified. In such a case, Europol should correct, complement or improve the results of its intelligence work and then return it to Member States for validation³⁷.

A separate procedure was established for contributions from EU agencies and bodies, which may send their products directly to Europol's unit in charge of TE-SAT or, as is the case for Eurojust, feed information to analysis work files (AWFs) and respective analysis projects. Eurojust has made a significant contribution to TE-SAT in the new format. It has delivered copies of relevant judgments or other information on ongoing investigations or prosecutions in the cases of terrorist offences. In 2019, Eurojust established the European Judicial Counter-Terrorism Register to improve information sharing on ongoing and concluded judicial counter-terrorism proceedings.

³⁶ Note from Europol to Article 36 Committee. Subject: Europol's Proposal for the New TE-SAT, 8196/2/06 REV 2, Brussels, 18 May 2006.

³⁷ *European Union Terrorism Situation and Trend Report 2021*, EUROPOL 2021, p. 107.

Concluding remarks

The remarkable and tragic events of 11 September 2001 provided compelling evidence of the changing nature of contemporary security and evolving terrorist threats. In the post-9/11 reality, the terrorist menace was upgraded to the biggest political, military and cultural challenge which had to be met by the global community as a whole. The complexity, multidimensionality and amorphous shape of contemporary terrorism constitute a real security issue that cannot be handled by any state acting alone. New information technologies, ICT networks and the expansion of cyberspace and social media have exerted an enormous impact on the terrorists' modus operandi and counter-terrorism measures.

Any assessment of the counter-terrorism policy of the European Union throughout the period after 9/11 is doomed to ambiguity. Much has been achieved, yet many loopholes, shortcomings and limitations have remained. The famous label of a 'paper tiger' placed by Oldrich Bures³⁸ on the EU's counter-terrorism policy no longer seems to be valid. Rather, following Bures, one might ponder on this policy in terms of 'glass half-full or half-empty'³⁹. This article has adopted the glass-half-full perspective, pointing out selected positive aspects and achievements of the EU's policy.

An irregular rhythm of political, legal and institutional changes in the counter-terrorism field has weakened synergy-building and a straightforward continuity of counter-terrorism undertakings, yet it should not be considered as a factor disorganising and undermining the counter-terrorism system built by the EU. The clearly punitive approach, which has prevailed since 9/11⁴⁰, brought about an approximation of the domestic legal systems of Member States on the basis of the criminalization and penalization of terrorist offences. The legal framework worked out at the EU level was closely connected with strategies, action plans, guidelines and other policy measures which quickly proliferated across related EU

³⁸ O. Bures, *EU Counterterrorism Policy...*

³⁹ O. Bures, *EU Counter-Terrorism: Glass Half-Full or Half-Empty*, [in:] A. Ripoll Servent, F. Trauner (eds.), *The Routledge Handbook of Justice and Home Affairs Research*, Routledge 2018, pp. 157–168.

⁴⁰ C. Hamilton, *The European Union: Sword or Shield? Comparing Counterterrorism Law in the EU and the USA After 9/11*, «Theoretical Criminology» 2018, Vol. 22, No. 2, pp. 207–210.

areas and policies⁴¹. It avoided the danger of dysfunctional entanglement and inter-blocking thanks to the ‘honest brokering’ performed by the Counter-Terrorism Coordinator, especially during de Kerchove’s term. Despite the substantial deficit of formal powers and clear-cut competences, the EU CTC has managed to energize the EU’s policies and actions in periods of surging terrorist activity. Finally, strategic awareness of terrorist threats among both EU officials and citizens has been greatly improved thanks to the regular publishing of TE-SAT reports.

The practical effects of post-9/11 cooperation in the EU have been totally dependent on Member States’ willingness and capacity to cooperate and deliver substantive inputs to the overall counter-terrorism efforts in the EU. The Union should not be blamed for a failure to prevent every act of terrorism from occurring on its soil, yet it should not be blocked by Member States when putting forward new solutions and remedies to the scourge of terrorism.

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⁴¹ According to a report published by Statewatch, only in the period between 11 September 2001 and 2013 the EU adopted over 300 counter-terrorism measures. See B. Hayes, C. Jones, *Catalogue of EU Counter-Terrorism Measures Adopted Since 11 September 2001*, <https://www.statewatch.org/news/2013/dec/secile-catalogue-of-EU-counter-terrorism-measures.pdf> (30.10.2021).

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